

**Documents of the
Louisiana Constitutional Convention
of 1973**

**Relative to the Administration
of Criminal Justice**



HOUSE RESEARCH
LIBRARY

LOUISIANA CONSTITUTIONAL CONVENTION RECORDS COMMISSION

Documents of the Louisiana Constitutional Convention Relative to the Administration of Criminal Justice

Published by

LOUISIANA CONSTITUTIONAL CONVENTION RECORDS COMMISSION

Copyright © 1976 by the

LOUISIANA CONSTITUTIONAL CONVENTION RECORDS COMMISSION

Publication of these documents was made possible by a grant from the
LOUISIANA COMMISSION ON LAW ENFORCEMENT AND THE
ADMINISTRATION OF CRIMINAL JUSTICE

LOUISIANA CONSTITUTIONAL CONVENTION RECORDS COMMISSION

MEMBERS OF THE COMMISSION:

Chairman Moise W. Dennerly
Vice-Chairman David R. Poynter
Chris J. Roy
Max N. Tobias, Jr.
Mark T. Carleton
Louis E. Newman
W. Lee Hargrave
C. B. Ellis
Thomas Jacques
Donald J. Lemieux
Norma M. Duncan

COMMISSION STAFF PARTICIPATING IN THIS PROJECT:

A. Edward Hardin, Coordinator of Research and Project Director
Elouise S. Seay, Project Administrator
Carol B. Coltharp, Assistant Project Director
Paul A. Smith, Legal Research
Keith Borne, Law Clerk
Claire Goldsworthy, Law Clerk
Ann Davis, Typist
Suellyn Panjehpour, Typist
Jacquelyn Morton, Typist

COMMITTEE TRANSCRIPT PERSONNEL:

Jane M. Noble, Transcription Supervisor
Agnes L. Hooper
Mary E. Roush
Martha M. Schlicht
Maxine M. Maglione
Jean A. Glaze
Marjorie C. Gaudin

PREFACE

The Convention documents set out in this volume represent the full range of materials produced by the Louisiana Constitutional Convention of 1973 which relate to the administration of criminal justice. Publication of these materials was made possible through a grant from the Louisiana Commission on Law Enforcement and the Administration of Criminal Justice. The documents presented here do not purport to be exhaustive of the materials produced by the Convention which relate to the criminal justice system because of space limitations of this volume and the possibility of isolated references and discussions of criminal justice matters in those materials not directly relating to criminal justice topics.

The Commission and its staff acknowledge the kind assistance of the Louisiana Commission on Law Enforcement and its staff particularly Col. Wingate White, Commission Director. Special mention must be given to Louisiana State University, which makes facilities available for the Records Commission, and especially Dean Paul M. Hebert and the faculty and staff of the Law Center who have extended every courtesy to the Records Commission and its staff who are headquartered in the Law Center.

A. EDWARD HARDIN
Coordinator of Research
Project Director

EDITORIAL NOTES

SECTIONS OF THE LOUISIANA CONSTITUTION OF 1974 TREATED IN THIS VOLUME

ARTICLE I	DECLARATION OF RIGHTS	§§ 2, 3, 5, 6, 7, 9, 11, 12, 13, 14, 15 16, 17, 18, 19, 20, 21, 22.
ARTICLE III	LEGISLATIVE BRANCH	§ 12.
ARTICLE IV	EXECUTIVE BRANCH	§§ 5(E), 8.
ARTICLE V	JUDICIAL BRANCH	§§ 1, 2, 5, 10, 15(A), 16, 17, 18, 19, 20, 21, 25, 26, 27, 29, 30, 32, 33, 34.
ARTICLE VI	LOCAL GOVERNMENT	§§ 9, 10.
ARTICLE XII	GENERAL PROVISIONS	§ 7.
ARTICLE XIV	TRANSITIONAL MEASURES	§§ 18, 23, 26, 31.

GENERAL REFERENCE

The documents set out below are generally arranged in reverse chronological order from the finally adopted constitution back to the committee and staff research level of the Louisiana Constitutional Convention of 1973. They deal exclusively with those sections of the constitution as noted above although some references will be found to other sections and articles which are not included in this work. In many instances where there exist isolated references to the various sections fully treated herein, they have been maintained in the context in which they were presented and not editorially isolated. Isolated references have been noted for the convenience of users of this volume by stars [*] which are found in the margin next to the referenced material.

Chapter Reference Notes

I. Louisiana Constitution of 1974

The text of the entire constitution has been reproduced from an edition published by the Convention.

II. Convention Instruments Relative to the Administration of Criminal Justice

The vehicle used by the Convention to bring matter before it intended to become a part of the Constitution was the *Proposal*. These *Proposals* are designed as either *Committee Proposals* or *Delegate Proposals* according to their origins either in a committee or from individual delegates. A typical *Proposal* finally adopted by the Convention appears in this volume in several different forms: a) printed, as originally introduced; b) reprinted as engrossed, reflecting amendments offered by committee and adopted by the Convention; c) First Enrollment, reflecting the text of the *Proposal* as finally passed by the full Convention; d) Final Enrollment, reflecting any amendments recommended by the Committee on Style and Drafting and adopted by the Convention. Some *Proposals* were reported by substitute by the committee which heard them so that they first appear as Reprinted as Engrossed instruments, e.g. C.P. No. 25 which is a substitute for C.P. No. 2.

III. Official Journal and Calendar Entries Relative to the Administration of Criminal Justice

The materials in this chapter are taken from the *Official Journal and Calendar* of the Convention. Included are all Journal entries relating to the various sections of the Convention treated in this volume, a table of contents of the Constitution with cross references to

the *Proposal* and section from which each section of the Constitution was derived and *Calendar* entries indicating actions taken on each section treated in this volume. Following each *Calendar* entry are page references which are keyed to the daily *Journal* page numbers, which have been retained in this work.

IV. Transcripts of Proceedings Relative to Criminal Justice Sections

The transcripts reproduced here were taken from the *Transcripts of Proceedings* produced by the Constitutional Convention, as prepared for publication by the Records Commission. All substantive debate has been retained from the original *Transcripts*; however, headings have been inserted to show the orders of business in which the Convention was engaged and purely procedural matter has been condensed as indicated in italics in the transcripts.

V. Minutes of Committee Meetings Relative to the Administration of Criminal Justice

The materials set out in this chapter include the minutes of committee meetings at which potential criminal justice provisions were discussed together with relevant addenda, documents and verbatim transcripts of those portions of meetings at which potential criminal justice sections were discussed if committee tapes were available for such transcription.

VI. Committee Research Documents, Memoranda and Other Materials Relative to the Administration of Criminal Justice

Staff Memoranda, external reports to the Convention Committees and Style and Drafting Committee materials are included in this chapter.

Table of Cases

Cases cited in documents contained in this volume have been listed together with citations to the page of this volume on which the reference is found.

Addenda

[See Table of Contents for materials included.]

Index

Topical references are cross referenced to *Proposal* and section numbers, which show Article, Section and title in the new constitution. Entries are then made according to the various types of documents in which reference is made to that section. *Journal* entries are not included in this index but may be found in the *Calendar*, p. 366 ff.

CONTENTS

CHAPTER I—LOUISIANA CONSTITUTION OF 1974

	<i>Page</i>
Preamble	1
Article I. Declaration of Rights	1
Article II. Distribution of Powers	3
Article III. Legislative Branch	3
Article IV. Executive Branch	7
Article V. Judicial Branch	10
Article VI. Local Government	14
Article VII. Revenue and Finance	21
Article VIII. Education	28
Article IX. Natural Resources	31
Article X. Public Officials and Employees	32
Article XI. Elections	38
Article XII. General Provisions	38
Article XIII. Constitutional Revision	39
Article XIV. Transitional Provisions	40

CHAPTER II—CONVENTION INSTRUMENTS RELATIVE TO THE ADMINISTRATION OF CRIMINAL JUSTICE

C.P. No. 2 Printed Proposal	50
C.P. No. 3 Printed Proposal	53
C.P. No. 3 Reprinted, as reengrossed	53
C.P. No. 4 Printed Proposal	54
C.P. No. 4 Reprinted, as reengrossed	55
C.P. No. 4 First Enrollment	56
C.P. No. 4 Final Enrollment	57
C.P. No. 6 Printed Proposal	59
C.P. No. 12 Printed Proposal	66
C.P. No. 12 First Enrollment	67
C.P. No. 12 Final Enrollment	68
C.P. No. 17 Reprinted, as engrossed	69
C.P. No. 17 First Enrollment	70
C.P. No. 21 Reprinted, as engrossed	71
C.P. No. 21 First Enrollment	78
C.P. No. 21 Final Enrollment	90
C.P. No. 25 Reprinted, as engrossed	101
C.P. No. 25 First Enrollment	105
C.P. No. 25 Final Enrollment	111
C.P. No. 38 Printed Proposal	117
C.P. No. 38 First Enrollment	118
D.P. No. 2 Printed Proposal	120
D.P. No. 13 Printed Proposal	120
D.P. No. 22 Printed Proposal	121
D.P. No. 22 First Enrollment	122
D.P. No. 22 Final Enrollment	124
D.P. No. 32 Printed Proposal	126
D.P. No. 32 First Enrollment	127
D.P. No. 43 Printed Proposal	128
D.P. No. 43 First Enrollment	129
D.P. No. 43 Final Enrollment	130
D.P. No. 44 Printed Proposal	131

	<i>Page</i>
D.P. No. 46 Printed Proposal	131
D.P. No. 62 Printed Proposal	132
D.P. No. 75 Printed Proposal	132
D.P. No. 76 Printed Proposal	133
D.P. No. 93 Printed Proposal	133
D.P. No. 96 Printed Proposal	134
D.P. No. 99 Printed Proposal	134
D.P. No. 102 Printed Proposal	136

CHAPTER III—OFFICIAL JOURNAL AND CALENDAR ENTRIES RELATIVE TO THE ADMINISTRATION OF CRIMINAL JUSTICE

A. Journal [entries by date and page]	
July 5, p. 5	140
July 6, pp. 2, 3, 4, 5, 10, 12, 15, 16, 17, 23, 43, 52	141
July 25, p. 2	153
July 26, p. 2	154
August 1, p. 8	155
August 2, p. 2	156
August 3, pp. 10, 11, 12	157
August 4, pp. 1, 2, 3, 4	160
August 8, p. 4	164
August 10, p. 11	165
August 15, pp. 2, 3, 6, 7, 8, 9, 10	166
August 16, pp. 6, 7	173
August 17, pp. 1, 2, 3, 4, 5, 6, 7, 8	175
August 22, pp. 5, 6, 7, 8, 10, 11	183
August 23, pp. 9, 10, 11	189
August 24, pp. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14	192
August 28, pp. 2, 3, 4	205
August 29, pp. 2, 3, 4, 5, 6, 7, 8	208
August 30, pp. 1, 2, 13	215
August 31, pp. 3, 4, 5	218
September 5, p. 6	221
September 6, pp. 4, 5, 6, 7, 8, 9, 10	222
September 7, pp. 2, 3, 4, 5, 6, 7, 8, 9	229
September 8, pp. 1, 2, 3, 4, 5, 6, 7	237
September 12, pp. 1, 2, 3, 4	244
September 13, pp. 8, 9	248
September 14, pp. 3, 4, 5, 6	250
September 15, pp. 7, 8	254
September 26, pp. 6, 7	256
September 27, pp. 1, 2, 3, 4, 5	258
November 15, pp. 1, 2	263
November 19, pp. 4, 5, 6, 7, 8, 10, 11	265
November 20, p. 1	272
December 5, p. 3	273
January 8, pp. 2, 3, 4, 5, 7, 8, 9, 11, 12, 13, 14, 15, 16	274
January 9, pp. 7, 8, 9, 10, 11, 12	287
January 10, pp. 1, 2, 3, 10, 11, 14, 15, 16, 18, 19, 21, 26, 27, 28, 29, 30	293
January 11, pp. 17, 18, 19	309
January 12, pp. 10, 11, 12, 13	312
January 14, pp. 3, 10, 33	316
January 15, pp. 3, 16, 17, 19, 20, 25, 26, 28, 29, 33, 34, 37	319
January 16, pp. 2, 3, 13, 14, 15, 16, 17, 18	331
January 17, pp. 6, 7	339

January 18, pp. 4, 5, 6, 9, 15, 16, 27, 28, 32	341
January 19, pp. 3, 4, 7, 8, 21, 22, 23, 63, 64, 65	350
B. Calendar	
Table of Contents	350
Calendar	366

CHAPTER IV—TRANSCRIPTS OF PROCEEDINGS RELATIVE TO CRIMINAL JUSTICE SECTIONS

*[Pages indicated after date and Convention Day are references to placement
in original "Transcripts of Proceedings".]*

August 3, 1973 [25th Day] 1, 19-20, 89-124	398
August 4, 1973 [26th Day] 1-25	412
August 8, 1973 [27th Day] 46-50	422
August 15, 1973 [30th Day] 7-14, 48-94	424
August 16, 1973 [31st Day] 75-112	443
August 17, 1973 [32nd Day] 1-93, 107-116, 94-101	449, 1181
August 22, 1973 [34th Day] 42-68	483
August 23, 1973 [35th Day] 98-131	499
August 24, 1973 [36th Day] 1-42, 48-66, 75-142, 64-73	512, 1185
August 28, 1973 [37th Day] 1-44	553
August 29, 1973 [38th Day] 1-100	567
August 30, 1973 [39th Day] 1-7	597
August 31, 1973 [40th Day] 12-30	599
September 5, 1973 [41st Day] 36-55	605
September 6, 1973 [42nd Day] 1-112	611
September 7, 1973 [43rd Day] 1-116	649
September 8, 1973 [44th Day] 1-85	684
September 12, 1973 [45th Day] 1-29, 30-48	703, 1187
September 13, 1973 [46th Day] 66-80	711
September 14, 1973 [47th Day] 19-32, 51-59	715
September 26, 1973 [54th Day] 51-80	720
September 27, 1973 [55th Day] 3-42	730
November 16, 1973 [87th Day] 14-21	744
November 19, 1973 [90th Day] 70-76	747
January 8, 1974 [112th Day] 18, 19-46, 64-107, 134	750
January 9, 1974 [113th Day] 68-70, 72-77, 79-83, 85, 89-90, 102	787
January 10, 1974 [114th Day] 3-8, 27, 29, 46, 51-55, 63-78	796
January 11, 1974 [115th Day] 68-77	811
January 14, 1974 [117th Day] 13, 105	816
January 15, 1974 [118th Day] 2, 61-75, 82-84, 124	817
January 16, 1974 [119th Day] 2, 92, 94-95	827
January 17, 1974 [120th Day] 48-60	1192
January 18, 1974 [121st Day] 51-59, 68-70, 79-80, 129-133, 187-189, 192, 195-196, 198	829
January 19, 1974 [122nd Day] 155-156	842

CHAPTER V—MINUTES OF COMMITTEE MEETINGS RELATIVE TO THE ADMINISTRATION OF CRIMINAL JUSTICE

A. Committee on Bill of Rights and Elections	
Minutes, April 6 and April 7, 1973	844
Minutes, Addenda and Transcript, April 16 and April 17, 1973	845, 1199, 1200
Minutes, Addenda and Transcripts, May 4 and May 5, 1973	859
Minutes, May 11, 1973	889
Minutes, Addenda and Transcripts, May 18 and May 19, 1973	889, 1202
Minutes and Addendum, June 8 and June 9, 1973	908

Minutes, Addenda and Transcript, June 14, 1973	910, 1203
Minutes and Addenda, June 22, 1973	925
Minutes and Addenda, August 21 and August 22, 1973	927
Minutes, August 27, 1973	929
Minutes, August 31, 1973	930
Minutes and Addenda, September 13, 1973	930
B. Committee on the Judiciary	
Minutes and Transcript, March 9, 1973	931
Minutes and Transcript, March 16, 1973	939
Minutes and Transcript, March 23, 1973	947
Minutes and Transcript, March 30, 1973	950
Minutes and Transcript, April 13, 1973	956
Minutes and Transcript, April 14, 1973	959
Minutes and Transcript, April 20, 1973	982
Minutes and Transcript, April 21, 1973	990
Minutes and Transcript, May 11, 1973	995
Minutes, May 25, 1973	1002
Minutes and Transcript, May 26, 1973	1003
Minutes, June 1, 1973	1019
Minutes, June 2, 1973	1020
Minutes, June 15, 1973	1022
Minutes, June 16, 1973	1024
Minutes and Addendum, July 25, 1973	1031
Minutes, July 27, 1973	1032
Minutes, August 2, 1973	1033
Minutes, August 8, 1973	1034
Minutes, August 9, 1973	1035
Minutes and Addendum, November 14, 1973	1037
Draft Proposals Considered by the Committee	
Staff Memorandum No. 27, (Draft 4)	1038
Draft "A", (Tate's Draft)	1042
Exhibit "A"	1053
(Draft B)	1053
(Draft 1)	1055
Preliminary Draft #2	1056
Third Preliminary Draft (Draft #3)	1059
C. Committee on the Executive Department	
Minutes, March 26 and March 27, 1973	1062
Minutes, Addenda and Transcripts, April 30, May 1 and May 2, 1973	1063
Minutes, Addendum and Transcript, May 9, May 10 and May 11, 1973	1077
Minutes and Transcripts, Subcommittee on Powers and Duties of Other Elective Officials; and Boards and Commissions, June 7 and June 8, 1973	1082
Proposal by Subcommittee on Powers of Governor, Qualifications, Term of Office, Salaries, June 14, June 15 and June 16, 1973	1091
Draft Provisions Submitted by Subcommittee on Powers of Statewide Elective Officials, Boards and Commissions, Dual Office-Holding, Code of Ethics, June 14, June 15 and June 16, 1973	1116
Minutes and Transcript, June 29, June 30 and July 1, 1973	1118
Minutes, October 4, 1973	1123
D. Committee on Local and Parochial Government	
Minutes and Transcripts, June 15 and June 16, 1973	1124
Minutes, Subcommittee Drafting General Provisions, April 27, 1973	1127
Draft "A" of General Provisions, Local and Parochial Government Article, June 1 and June 2, 1973	1129
E. Committee on Legislative Liaison and Transitional Measures	
Minutes, January 15, 1973	1137

F. General Provisions

Subcommittee on Public Welfare of the Committee on Education and Welfare

Minutes and Addenda, May 2, 1973	1138
Proposal No. CC214	1140

CHAPTER VI—COMMITTEE RESEARCH DOCUMENTS, MEMORANDA,
AND OTHER MATERIALS RELATIVE TO THE
ADMINISTRATION OF CRIMINAL JUSTICE

A. Committee on Bill of Rights and Elections

Staff Memo. No. 9, [Automatic Restoration of Political Rights on Completion of Sentence]	1142
Staff Memo. No. 13, [Bail Bonds]	1142
Staff Memo. No. 15, [Newsman's Shield]	1143
Staff Memo. No. 17, [Grand Juries]	1143
Staff Memo. No. 30, [Extent of Criminal Procedure Rights]	1144
Staff Memo. No. 37, [Search and Seizure]	1145
Staff Memo. No. 38, [State of Double Jeopardy]	1147
Staff Memo. No. 39, [Freedom of Speech]	1148
Staff Memo. No. 44, [Comments on Proposed Sections]	1149
Staff Memo. No. 45, [Analysis of Proposal, Second Draft]	1150
Staff Report No. 10-A [Digest of C.P. No. 25]	1151
Memorandum from John A. Richardson, District Attorney, Caddo Parish	1153

B. Committee on the Executive Department

Staff Report No. 8, [Digest of C.P. No. 4]	1157
Draft Provisions, [In re Attorney General]	1157

C. Committee on Style and Drafting

Memo. from Alphonse Jackson, Chairman of Committee on Bill of Rights and Elections to Judge Tate, Committee on Style and Drafting	1157
C.P. No. 21, Comparative Presentation, [1/3/74]	1158
C.P. No. 21, Comparative Presentation, [Caveat Amendments, 1/3/74]	1170
C.P. No. 25, Comparative Presentation, [1/3/74]	1171

TABLE OF CASES1179

ADDENDA1181

A. Transcripts of Proceedings

August 17, 1973 [32nd Day] 94-101	1181
August 24, 1973 [36th Day] 64-73	1185
September 12, 1973 [45th Day] 30-48	1187
January 17, 1974 [120th Day] 48-60	1192

B. Minutes of Committee Meetings on Bill of Rights and Elections

Minutes, April 16, 1973, continued	1199
Minutes and Addenda April 17, 1973	1200
Addendum, May 19, 1973	1202
Addenda, June 14, 1973	1203

III. Index1204

Chapter I

**Louisiana Constitution
of 1974**

PREAMBLE

We, the people of Louisiana, grateful to Almighty God for the civil, political, economic, and religious liberties we enjoy, and desiring to protect individual rights to life, liberty, and property; afford opportunity for the fullest development of the individual; assure equality of rights; promote

the health, safety, education, and welfare of the people; maintain a representative and orderly government; ensure domestic tranquility; provide for the common defense; and secure the blessings of freedom and justice to ourselves and our posterity, do ordain and establish this constitution.

ARTICLE I. DECLARATION OF RIGHTS

Section 1. Origin and Purpose of Government

Section 1. All government, of right, originates with the people, is founded on their will alone, and is instituted to protect the rights of the individual and for the good of the whole. Its only legitimate ends are to secure justice for all, preserve peace, protect the rights, and promote the happiness and general welfare of the people. The rights enumerated in this Article are inalienable by the state and shall be preserved inviolate by the state.

Section 2. Due Process of Law

Section 2. No person shall be deprived of life, liberty, or property, except by due process of law.

Section 3. Right to Individual Dignity

Section 3. No person shall be denied the equal protection of the laws. No law shall discriminate against a person because of race or religious ideas, beliefs, or affiliations. No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations. Slavery and involuntary servitude are prohibited, except in the latter case as punishment for crime.

Section 4. Right to Property

Section 4. Every person has the right to acquire, own, control, use, enjoy, protect, and dispose of private property. This right is subject to reasonable statutory restrictions and the reasonable exercise of the police power.

Property shall not be taken or damaged by the state or its political subdivisions except for public purposes and with just compensation paid to the owner or into court for his benefit. Property shall not be taken or damaged by any private entity authorized by law to expropriate, except for a public and necessary purpose and with just compensation paid to the owner; in such proceedings, whether the purpose is public and necessary shall be a judicial question. In every expropriation, a party has the right to trial by jury to determine compensation, and the owner

shall be compensated to the full extent of his loss. No business enterprise or any of its assets shall be taken for the purpose of operating that enterprise or halting competition with a government enterprise. However, a municipality may expropriate a utility within its jurisdiction. Personal effects, other than contraband, shall never be taken.

This Section shall not apply to appropriation of property necessary for levee and levee drainage purposes.

Section 5. Right to Privacy

Section 5. Every person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy. No warrant shall issue without probable cause supported by oath or affirmation, and particularly describing the place to be searched, the persons or things to be seized, and the lawful purpose or reason for the search. Any person adversely affected by a search or seizure conducted in violation of this Section shall have standing to raise its illegality in the appropriate court.

Section 6. Freedom from Intrusion

Section 6. No person shall be quartered in any house without the consent of the owner or lawful occupant.

Section 7. Freedom of Expression

Section 7. No law shall curtail or restrain the freedom of speech or of the press. Every person may speak, write, and publish his sentiments on any subject, but is responsible for abuse of that freedom.

Section 8. Freedom of Religion

Section 8. No law shall be enacted respecting an establishment of religion or prohibiting the free exercise thereof.

Section 9. Right of Assembly and Petition

Section 9. No law shall impair the right of any person to assemble peaceably or to petition government for a redress of grievances.

Section 10. Right to Vote

Section 10. Every citizen of the state, upon reaching eighteen years of age, shall have the right to register and vote, except that this right may be suspended while a person is interdicted and judicially declared mentally incompetent or is under an order of imprisonment for conviction of a felony.

Section 11. Right to Keep and Bear Arms

Section 11. The right of each citizen to keep and bear arms shall not be abridged, but this provision shall not prevent the passage of laws to prohibit the carrying of weapons concealed on the person.

Section 12. Freedom from Discrimination

Section 12. In access to public areas, accommodations, and facilities, every person shall be free from discrimination based on race, religion, or national ancestry and from arbitrary, capricious, or unreasonable discrimination based on age, sex, or physical condition.

Section 13. Rights of the Accused

Section 13. When any person has been arrested or detained in connection with the investigation or commission of any offense, he shall be advised fully of the reason for his arrest or detention, his right to remain silent, his right against self incrimination, his right to the assistance of counsel and, if indigent, his right to court appointed counsel. In a criminal prosecution, an accused shall be informed of the nature and cause of the accusation against him. At each stage of the proceedings, every person is entitled to assistance of counsel of his choice, or appointed by the court if he is indigent and charged with an offense punishable by imprisonment. The legislature shall provide for a uniform system for securing and compensating qualified counsel for indigents.

Section 14. Right to Preliminary Examination

Section 14. The right to a preliminary examination shall not be denied in felony cases except when the accused is indicted by a grand jury.

Section 15. Initiation of Prosecution

Section 15. Prosecution of a felony shall be initiated by indictment or information, but no person shall be held to answer for a capital crime or a crime punishable by life imprisonment except on indictment by a grand jury. No person shall be twice placed in jeopardy for the same offense, except on his application for a new trial, when a mistrial is declared, or when a motion in arrest of judgment is sustained.

Section 16. Right to a Fair Trial

Section 16. Every person charged with a crime is pre-

sumed innocent until proven guilty and is entitled to a speedy, public, and impartial trial in the parish where the offense or an element of the offense occurred, unless venue is changed in accordance with law. No person shall be compelled to give evidence against himself. An accused is entitled to confront and cross-examine the witnesses against him, to compel the attendance of witnesses, to present a defense, and to testify in his own behalf.

Section 17. Jury Trial in Criminal Cases

Section 17. A criminal case in which the punishment may be capital shall be tried before a jury of twelve persons, all of whom must concur to render a verdict. A case in which the punishment is necessarily confinement at hard labor shall be tried before a jury of twelve persons, ten of whom must concur to render a verdict. A case in which the punishment may be confinement at hard labor or confinement without hard labor for more than six months shall be tried before a jury of six persons, five of whom must concur to render a verdict. The accused shall have the right to full voir dire examination of prospective jurors and to challenge jurors peremptorily. The number of challenges shall be fixed by law. Except in capital cases, a defendant may knowingly and intelligently waive his right to a trial by jury.

Section 18. Right to Bail

Section 18. Excessive bail shall not be required. Before and during a trial, a person shall be bailable by sufficient surety, except when he is charged with a capital offense and the proof is evident and the presumption of guilt is great. After conviction and before sentencing, a person shall be bailable if the maximum sentence which may be imposed is imprisonment for five years or less; and the judge may grant bail if the maximum sentence which may be imposed is imprisonment exceeding five years. After sentencing and until final judgment, a person shall be bailable if the sentence actually imposed is five years or less; and the judge may grant bail if the sentence actually imposed exceeds imprisonment for five years.

Section 19. Right to Judicial Review

Section 19. No person shall be subjected to imprisonment or forfeiture of rights or property without the right of judicial review based upon a complete record of all evidence upon which the judgment is based. This right may be intelligently waived. The cost of transcribing the record shall be paid as provided by law.

Section 20. Right to Humane Treatment

Section 20. No law shall subject any person to euthanasia, to torture, or to cruel, excessive, or unusual punishment. Full rights of citizenship shall be restored upon termina-

tion of state and federal supervision following conviction for any offense.

Section 21. Writ of Habeas Corpus

Section 21. The writ of habeas corpus shall not be suspended.

Section 22. Access to Courts

Section 22. All courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreason-

able delay, for injury to him in his person, property, reputation, or other rights.

Section 23. Prohibited Laws

Section 23. No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall be enacted.

Section 24. Unenumerated Rights

Section 24. The enumeration in this constitution of certain rights shall not deny or disparage other rights retained by the individual citizens of the state.

ARTICLE II. DISTRIBUTION OF POWERS

Section 1. Three Branches

Section 1. The powers of government of the state are divided into three separate branches: legislative, executive, and judicial.

Section 2. Limitations on Each Branch

Section 2. Except as otherwise provided by this constitution, no one of these branches, nor any person holding office in one of them, shall exercise power belonging to either of the others.

ARTICLE III. LEGISLATIVE BRANCH

Section 1. Legislative Power; Composition; Continuous Body

Section 1. (A) Legislative Power of State. The legislative power of the state is vested in a legislature, consisting of a Senate and a House of Representatives. The Senate shall be composed of one senator elected from each senatorial district. The House of Representatives shall be composed of one representative elected from each representative district.

(B) Continuous Body. The legislature is a continuous body during the term for which its members are elected; however, a bill or resolution not finally passed in any session shall be withdrawn from the files of the legislature.

Section 2. Sessions

Section 2. (A) Annual Session. The legislature shall meet annually in regular session in the state capital for not more than sixty legislative days during a period of eighty-five calendar days. A legislative day is a calendar day on which either house is in session. No such session shall continue beyond the eighty-fifth calendar day after convening. The legislature shall convene at noon on the third Monday in April. No new matter intended to have the effect of law shall be introduced or received by either house after midnight of the fifteenth calendar day, except by a favorable record vote of two-thirds of the elected members of each house. No measure levying a new tax or increasing an ex-

isting tax shall be introduced or enacted during a regular session held in an odd-numbered year.

(B) Extraordinary Session. The legislature may be convened at other times by the governor and shall be convened by the presiding officers of both houses upon written petition of a majority of the elected members of each house. The form of the petition shall be provided by law. At least five days prior to convening the legislature in extraordinary session, the governor or the presiding officers, as the case may be, shall issue a proclamation stating the objects of the session, the date on which it shall convene, and the number of days for which it is convened. The power to legislate shall be limited, under penalty of nullity, to the objects specifically enumerated in the proclamation. The session shall be limited to the number of days stated therein, which shall not exceed thirty calendar days.

(C) Emergency Session. The governor may convene the legislature in extraordinary session without prior notice or proclamation in the event of public emergency caused by epidemic, enemy attack, or public catastrophe.

Section 3. Size

Section 3. The number of members of the legislature shall be provided by law, but the number of senators shall not exceed thirty-nine and the number of representatives, one hundred five.

Section 4. Qualifications; Residence and Domicile Requirements; Term; Vacancies

Section 4. (A) Age; Residence; Domicile. An elector who at the time of qualification as a candidate has attained the age of eighteen years, resided in the state for the preceding two years, and been actually domiciled for the preceding year in the legislative district from which he seeks election is eligible for membership in the legislature.

(B) Domicile; Special Provisions. However, at the next regular election for members of the legislature following legislative reapportionment, an elector may qualify as a candidate from any district created in whole or in part from a district existing prior to reapportionment if he was domiciled in that prior district for at least one year immediately preceding his qualification and was a resident of the state for the two years preceding his qualification. The seat of any member who changes his domicile from the district he represents or, if elected after reapportionment, whose domicile is not within the district he represents at the time he is sworn into office, shall be vacated thereby, any declaration of retention of domicile to the contrary notwithstanding.

(C) Term. A member of the legislature shall be elected for a four-year term.

(D) Vacancy. A vacancy in the legislature shall be filled for the remainder of the term only by election by the electors of the respective district as provided by law.

Section 5. Taking Office

Section 5. (A) Full Term. Members of the legislature shall take office on the same day as the governor and other officials elected statewide.

(B) Filling Vacancy. A person elected to fill the remainder of an unexpired legislative term shall take office within thirty days after the secretary of state promulgates the election returns.

Section 6. Legislative Reapportionment; Reapportionment by Supreme Court; Procedure

Section 6. (A) Reapportionment by Legislature. By the end of the year following the year in which the population of this state is reported to the president of the United States for each decennial federal census, the legislature shall reapportion the representation in each house as equally as practicable on the basis of population shown by the census.

(B) Reapportionment by Supreme Court. If the legislature fails to reapportion as required in Paragraph (A), the supreme court, upon petition of any elector, shall reapportion the representation in each house as provided in Paragraph (A).

(C) Procedure. The procedure for review and for petition shall be provided by law.

Section 7. Judging Qualifications and Elections; Procedural Rules; Discipline; Expulsion; Subpoenas; Contempt; Officers

Section 7. (A) Judging Qualifications and Elections; Procedural Rules; Discipline; Expulsion. Each house shall be the judge of the qualifications and elections of its members; shall determine its rules of procedure, not inconsistent with the provisions of this constitution; may punish its members for disorderly conduct or contempt; and may expel a member with concurrence of two-thirds of its elected members. Expulsion creates a vacancy in the office.

(B) Subpoena Power; Contempt. Each house may compel the attendance and testimony of witnesses and the production of books and papers before it, before any committee thereof, or before joint committees of the houses and may punish those in willful disobedience of its orders for contempt.

(C) Officers. Each house shall choose its officers, including a permanent presiding officer selected from its membership. The presiding officers shall be the president of the Senate and the speaker of the House of Representatives. The clerical officers shall be the clerk of the House of Representatives and the secretary of the Senate, each of whom may administer oaths.

Section 8. Privileges and Immunities

Section 8. A member of the legislature shall be privileged from arrest, except for felony, during his attendance at sessions and committee meetings of his house and while going to and from them. No member shall be questioned elsewhere for any speech in either house.

Section 9. Conflict of Interest

Section 9. Legislative office is a public trust, and every effort to realize personal gain through official conduct is a violation of that trust. The legislature shall enact a code of ethics prohibiting conflict between public duty and private interests of members of the legislature.

Section 10. Quorum; Compulsory Attendance; Journal; Adjournment With Consent of Other House

Section 10. (A) Quorum. Not less than a majority of the elected members of each house shall form a quorum to transact business, but a smaller number may adjourn from day-to-day and may compel the attendance of absent members.

(B) Journal. Each house shall keep a journal of its proceedings and have it published immediately after the close of each session. The journal shall accurately reflect the proceedings of that house, including all record votes. A record vote is a vote by yeas and nays, with each member's vote published in the journal.

(C) Adjournment. When the legislature is in session,

neither house shall adjourn for more than three days or to another place without consent of the other house.

Section 11. Legislative Auditor

Section 11. There shall be a legislative auditor responsible solely to the legislature. He shall serve as a fiscal advisor to it and shall perform the duties and functions provided by law related to auditing fiscal records of the state, its agencies, and political subdivisions. He shall be elected by the concurrence of a majority of the elected members of each house and may be removed by the concurrence of two-thirds of the elected members of each house.

Section 12. Prohibited Local and Special Laws

Section 12. (A) Prohibitions. Except as otherwise provided in this constitution, the legislature shall not pass a local or special law:

(1) For the holding and conducting of elections, or fixing or changing the place of voting.

(2) Changing the names of persons; authorizing the adoption or legitimation of children or the emancipation of minors; affecting the estates of minors or persons under disabilities; granting divorces; changing the law of descent or succession; giving effect to informal or invalid wills or deeds or to any illegal disposition of property.

(3) Concerning any civil or criminal actions, including changing the venue in civil or criminal cases, or regulating the practice or jurisdiction of any court, or changing the rules of evidence in any judicial proceeding or inquiry before courts, or providing or changing methods for the collection of debts or the enforcement of judgments, or prescribing the effects of judicial sales.

(4) Authorizing the laying out, opening, closing, altering, or maintaining of roads, highways, streets, or alleys; relating to ferries and bridges, or incorporating bridge or ferry companies, except for the erection of bridges crossing streams which form boundaries between this and any other state; authorizing the constructing of street passenger railroads in any incorporated town or city.

(5) Exempting property from taxation; extending the time for the assessment or collection of taxes; relieving an assessor or collector of taxes from the performance of his official duties or of his sureties from liability; remitting fines, penalties, and forfeitures; refunding moneys legally paid into the treasury.

(6) Regulating labor, trade, manufacturing, or agriculture; fixing the rate of interest.

(7) Creating private corporations, or amending, renewing, extending, or explaining the charters thereof; granting to any private corporation, association, or individual

any special or exclusive right, privilege, or immunity.

(8) Regulating the management of parish or city public schools, the building or repairing of parish or city schoolhouses, and the raising of money for such purposes.

(9) Legalizing the unauthorized or invalid acts of any officer, employee, or agent of the state, its agencies, or political subdivisions.

(10) Defining any crime.

(B) Additional Prohibition. The legislature shall not indirectly enact special or local laws by the partial repeal or suspension of a general law.

Section 13. Local or Special Laws; Notice of Intent; Publication

Section 13. No local or special law shall be enacted unless notice of the intent to introduce a bill to enact such a law has been published on two separate days, without cost to the state, in the official journal of the locality where the matter to be affected is situated. The last day of publication shall be at least thirty days prior to introduction of the bill. The notice shall state the substance of the contemplated law, and every such bill shall recite that notice has been given.

Section 14. Style of Laws; Enacting Clause

Section 14. The style of a law enacted by the legislature shall be, "Be it enacted by the Legislature of Louisiana." It shall be unnecessary to repeat the enacting clause after the first section of an act.

Section 15. Passage of Bills

Section 15. (A) Introduction; Title; Single Object; Public Meetings. The legislature shall enact no law except by a bill introduced during that session, and propose no constitutional amendment except by a joint resolution introduced during that session, which shall be processed as a bill. Every bill, except the general appropriation bill and bills for the enactment, rearrangement, codification, or revision of a system of laws, shall be confined to one object. Every bill shall contain a brief title indicative of its object. Action on any matter intended to have the effect of law shall be taken only in open, public meeting.

(B) No General Reference. A bill enacting, amending, or reviving a law shall set forth completely the provisions of the law enacted, amended, or revived. No system or code of laws shall be adopted by general reference to it.

(C) Germane Amendments. No bill shall be amended in either house to make a change not germane to the bill as introduced.

(D) Three Readings. Each bill shall be read at least

by title on three separate days in each house. No bill shall be considered for final passage unless a committee has held a public hearing and reported on the bill.

(E) Rejected Bills; Reconsideration. No bill rejected by either house may again be introduced or considered during the same session by the house which rejected it without the consent of a majority of the members elected to that house.

(F) Concurrence in Amendments. No amendment to a bill by one house shall be concurred in by the other, and no conference committee report shall be concurred in by either house except by the same vote required for final passage of the bill. The vote thereon shall be by record vote.

(G) Majority Vote; Record Vote. No bill shall become law without the favorable vote of at least a majority of the members elected to each house. Final passage of a bill shall be by record vote. In either house, a record vote shall be taken on any matter upon the request of one-fifth of the elected members.

Section 16. Appropriations

Section 16. (A) Specific Appropriation for One Year. Except as otherwise provided by this constitution, no money shall be withdrawn from the state treasury except through specific appropriation, and no appropriation shall be made under the heading of contingencies or for longer than one year.

(B) Origin in House of Representatives. All bills for raising revenue or appropriating money shall originate in the House of Representatives, but the Senate may propose or concur in amendments, as in other bills.

(C) General Appropriation Bill; Limitations. The general appropriation bill shall be itemized and shall contain only appropriations for the ordinary operating expenses of government, public charities, pensions, and the public debt or interest thereon.

(D) Specific Purpose and Amount. All other bills for appropriating money shall be for a specific purpose and amount.

(E) Extraordinary Session. Except for expenses of the legislature, a bill appropriating money in an extraordinary session convened after final adjournment of the regular session in the last year of the term of office of a governor shall require the favorable vote of three-fourths of the elected members of each house.

Section 17. Signing of Bills; Delivery to Governor

Section 17. (A) Signing; Delivery. A bill passed by both houses shall be signed by the presiding officers and delivered to the governor within three days after passage.

(B) Resolutions. No joint, concurrent, or other reso-

lution shall require the signature or other action of the governor to become effective.

Section 18. Signature of Governor on Bills; Veto

Section 18. (A) Gubernatorial Action. A bill, except a joint resolution, shall become law if the governor signs it or if he fails to sign or veto it within ten days after delivery to him if the legislature is in session, or within twenty days if the legislature is adjourned.

(B) Veto. If the governor does not approve a bill, he may veto it. When he vetoes a bill, he shall return it to the legislature, with his veto message, within twelve days after delivery to him if the legislature is in session. If the governor returns or vetoes a bill after the legislature adjourns, he shall return it, with his veto message, as provided by law. A bill returned and subsequently approved by two-thirds of the elected members of each house shall become law.

(C) Veto Session. The legislature shall meet in veto session in the state capital at noon on the fortieth day following final adjournment of the most recent session, to consider all bills vetoed by the governor. If the fortieth day falls on Sunday, the session shall convene at noon on the succeeding Monday. No veto session shall exceed five calendar days, and any veto session may be finally adjourned prior to the end of the fifth day upon the vote of two-thirds of the elected members of each house.

No veto session shall be held if a majority of the elected members of either house declare in writing that a veto session is unnecessary. The declaration must be received by the presiding officer of the respective houses at least five days prior to the day on which the veto session is to convene.

Section 19. Effective Date of Laws

Section 19. All laws shall take effect on the sixtieth day after final adjournment of the session in which they were enacted, and shall be published prior thereto in the official journal of the state as provided by law. However, any bill may specify an earlier or later effective date.

Section 20. Suspension of Laws

Section 20. Only the legislature may suspend a law, and then only by the same vote and, except for gubernatorial veto and time limitations for introduction, according to the same procedures and formalities required for enactment of that law. After the effective date of this constitution, every resolution suspending a law shall fix the period of suspension, which shall not extend beyond the sixtieth day after final adjournment of the next regular session.

ARTICLE IV. EXECUTIVE BRANCH

Section 1. Composition; Number of Departments; Reorganization

Section 1. (A) Composition. The executive branch shall consist of the governor, lieutenant governor, secretary of state, attorney general, treasurer, commissioner of agriculture, commissioner of insurance, superintendent of education, commissioner of elections, and all other executive offices, agencies, and instrumentalities of the state.

(B) Number of Departments. Except for the offices of governor and lieutenant governor, all offices, agencies, and other instrumentalities of the executive branch and their functions, powers, duties, and responsibilities shall be allocated according to function within not more than twenty departments. The powers, functions, and duties allocated by this constitution to any executive office or commission shall not be affected or diminished by the allocation provided herein except as authorized by Section 20 of this Article.

(C) Reorganization. Reallocation of the functions, powers, and duties of all departments, offices, agencies, and other instrumentalities of the executive branch, except those functions, powers, duties, and responsibilities allocated by this constitution, shall be as provided by law.

Section 2. Qualifications

Section 2. To be eligible for any statewide elective office, a person, by the date of his qualification as a candidate, shall have attained the age of twenty-five years, be an elector, and have been a citizen of the United States and of this state for at least the preceding five years. In addition, the attorney general shall have been admitted to the practice of law in the state for at least the five years preceding his election. During his tenure in office, a statewide elected official shall hold no other public office except by virtue of his elected office.

Section 3. Election; Term

Section 3. (A) Election. The governor, lieutenant governor, secretary of state, attorney general, treasurer, commissioner of agriculture, commissioner of insurance, superintendent of education, and commissioner of elections each shall be elected for a term of four years by the electors of the state at the time and place of voting for members of the legislature. The term of each such official shall begin at noon on the second Monday in March next following the election.

(B) Limitation on Governor. A person who has served as governor for more than one and one-half terms in two consecutive terms shall not be elected governor for the succeeding term.

(C) Additional Limitation. Except as provided by this constitution, no official shall be elected statewide.

Section 4. Compensation

Section 4. Except as otherwise provided by this constitution, the compensation of each statewide elected official shall be provided by law.

Section 5. Governor; Powers and Duties

Section 5. (A) Executive Authority. The governor shall be the chief executive officer of the state. He shall faithfully support the constitution and laws of the state and of the United States and shall see that the laws are faithfully executed.

(B) Legislative Reports and Recommendations. The governor shall, at the beginning of each regular session, and may, at other times, make reports and recommendations and give information to the legislature concerning the affairs of state, including its complete financial condition.

(C) Departmental Reports and Information. When requested by the governor, a department head shall provide him with reports and information, in writing or otherwise, on any subject relating to the department, except matters concerning investigations of the governor's office.

(D) Operating and Capital Budget. The governor shall submit to the legislature an operating budget and a capital budget, as provided by Article VII, Section 11 of this constitution.

(E) Pardon, Commutation, Reprieve, and Remission; Board of Pardons. (1) The governor may grant reprieves to persons convicted of offenses against the state and, upon recommendation of the Board of Pardons, may commute sentences, pardon those convicted of offenses against the state, and remit fines and forfeitures imposed for such offenses. However, a first offender never previously convicted of a felony shall be pardoned automatically upon completion of his sentence, without a recommendation of the Board of Pardons and without action by the governor.

(2) The Board of Pardons shall consist of five electors appointed by the governor, subject to confirmation by the Senate. Each member of the board shall serve a term concurrent with that of the governor appointing him.

(F) Receipt of Bills from the Legislature. The date and hour when a bill finally passed by the legislature is delivered to the governor shall be endorsed thereon.

(G) Item Veto. (1) Except as otherwise provided by this constitution, the governor may veto any line item in an appropriation bill. Any item vetoed shall be void unless the veto is overridden as prescribed for the passage of a bill over a veto.

(2) The governor shall veto line items or use means provided in the bill so that total appropriations for the year shall not exceed anticipated revenues for that year.

(H) Appointments. (1) The governor shall appoint, subject to confirmation by the Senate, the head of each department in the executive branch whose election or appointment is not provided by this constitution and the members of each board and commission in the executive branch whose election or appointment is not provided by this constitution or by law.

(2) Should the legislature be in regular session, the governor shall submit for confirmation by the Senate the name of an appointee within forty-eight hours after the appointment is made. Failure of the Senate to confirm the appointment, prior to the end of the session, shall constitute rejection.

(3) If the legislature is not in regular session, the governor may make interim appointments, which shall expire at the end of the next regular session, unless submitted to and confirmed by the Senate during that session.

(4) A person not confirmed by the Senate shall not be appointed to the same office during any recess of the legislature.

(I) Removal Power. The governor may remove from office a person he appoints, except a person appointed for a term fixed by this constitution or by law.

(J) Commander-in-Chief. The governor shall be commander-in-chief of the armed forces of the state, except when they are called into service of the federal government. He may call out these forces to preserve law and order, to suppress insurrection, to repel invasion, or in other times of emergency.

(K) Other Powers and Duties. The governor shall have other powers and perform other duties authorized by this constitution or provided by law.

Section 6. Lieutenant Governor; Powers and Duties

Section 6. The lieutenant governor shall serve ex officio as a member of each committee, board, and commission on which the governor serves. He shall exercise the powers delegated to him by the governor and shall have other powers and perform other duties in the executive branch authorized by this constitution or provided by law.

Section 7. Secretary of State; Powers and Duties

Section 7. There shall be a Department of State. The secretary of state shall head the department and shall be the chief election officer of the state. He shall prepare and certify the ballots for all elections, promulgate all election returns, and administer the election laws, except those relating to voter registration and custody of voting machines. He shall administer the state corporation and trademark laws; serve as keeper of the Great Seal of the State of Louisiana and attest therewith all official laws, documents, proclamations, and commissions; administer and preserve the official archives of the state; promulgate and publish all laws enacted by the legislature and retain the originals thereof; and countersign and keep an

official registry of all commissions. He may administer oaths, and shall have other powers and perform other duties authorized by this constitution or provided by law.

Section 8. Attorney General; Powers and Duties

Section 8. There shall be a Department of Justice, headed by the attorney general, who shall be the chief legal officer of the state. The attorney general shall be elected for a term of four years at the state general election. The assistant attorneys general shall be appointed by the attorney general to serve at his pleasure.

As necessary for the assertion or protection of any right or interest of the state, the attorney general shall have authority (1) to institute, prosecute, or intervene in any civil action or proceeding; (2) upon the written request of a district attorney, to advise and assist in the prosecution of any criminal case; and (3) for cause, when authorized by the court which would have original jurisdiction and subject to judicial review, (a) to institute, prosecute, or intervene in any criminal action or proceeding, or (b) to supersede any attorney representing the state in any civil or criminal action.

The attorney general shall exercise other powers and perform other duties authorized by this constitution or by law.

Section 9. Treasurer; Powers and Duties

Section 9. There shall be a Department of the Treasury. The treasurer shall head the department and shall be responsible for the custody, investment, and disbursement of the public funds of the state, except as otherwise provided by this constitution. He shall report annually to the governor and to the legislature at least one month before each regular session on the financial condition of the state, and shall have other powers and perform other duties authorized by this constitution or provided by law.

Section 10. Commissioner of Agriculture; Powers and Duties

Section 10. There shall be a Department of Agriculture. The commissioner of agriculture shall head the department and shall exercise all functions of the state relating to the promotion, protection, and advancement of agriculture, except research and educational functions expressly allocated by this constitution or by law to other state agencies. The department shall exercise such functions and the commissioner shall have other powers and perform other duties authorized by this constitution or provided by law.

Section 11. Commissioner of Insurance; Powers and Duties

Section 11. There shall be a Department of Insurance, headed by the commissioner of insurance. The department

shall exercise such functions and the commissioner shall have powers and perform duties authorized by this constitution or provided by law.

Section 12. Commissioner of Elections; Powers and Duties

Section 12. There shall be a Department of Elections and Registration. The commissioner of elections shall head the department and shall administer the laws relating to custody of voting machines and voter registration. He shall have other powers and perform other duties authorized by this constitution or provided by law.

Section 13. First Assistants; Appointment

Section 13. Each statewide elected official except the governor and lieutenant governor shall appoint a first assistant, subject to public confirmation by the Senate, and may remove him at his pleasure. The official shall submit the appointment to the Senate in the manner and subject to the procedures and limitations applicable to appointments submitted by the governor. The first assistant shall possess the qualifications required for election to the office.

Section 14. Vacancy in Office of Governor

Section 14. When a vacancy occurs in the office of governor, the order of succession shall be (1) the elected lieutenant governor, (2) the elected secretary of state, (3) the elected attorney general, (4) the elected treasurer, (5) the presiding officer of the Senate, (6) the presiding officer of the House of Representatives, and then (7) as provided by law. The successor shall serve the remainder of the term for which the governor was elected.

Section 15. Vacancy in Office of Lieutenant Governor

Section 15. Should a vacancy occur in the office of lieutenant governor, the governor shall nominate a lieutenant governor, who shall take office upon confirmation by a majority vote of the elected members of each house of the legislature.

Section 16. Vacancies in Other Statewide Elective Offices

Section 16. A vacancy in a statewide elective office other than that of governor or lieutenant governor shall be filled by the first assistant. If the unexpired term exceeds one year, the office shall be filled by election at the next regularly scheduled congressional or statewide election, and the first assistant shall serve only until the person then elected takes office.

Section 17. Declaration of Inability by Statewide Elected Officials

Section 17. When a statewide elected official transmits

to the presiding officers of the Senate and House of Representatives a written declaration of his inability to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, the person who would succeed to the office when a vacancy occurs shall assume the powers and duties of the office as acting official.

Section 18. Determination of Inability of Statewide Elected Official

Section 18. (A) Declaration and Counter-Declaration. When a majority of the statewide elected officials determine that any other such official is unable to discharge the powers and duties of his office, they shall transmit a written declaration to this effect to the presiding officer of each house and to the official, and shall file a copy of the declaration in the office of the secretary of state. Thereafter, the constitutional successor shall assume the office as acting official unless, within forty-eight hours after the declaration is filed in the office of the secretary of state, the elected official files in that office and transmits to the presiding officer of each house his written counter-declaration of his ability to exercise the powers and perform the duties of his office.

(B) Determination by the Legislature. The legislature shall convene at noon on the third calendar day after the filing of any counter-declaration, which may be filed by the official at any time. Should two-thirds of the elected members of each house fail to adopt a resolution within seventy-two hours declaring probable justification for the determination that inability exists, the official shall continue in or resume office.

(C) Assumption of Office by Constitutional Successor. If two-thirds of the elected members of each house adopt a resolution declaring that probable justification exists for the declaration of inability, the constitutional successor shall assume the powers and duties of the office and a copy of the resolution shall be transmitted forthwith to the supreme court.

(D) Determination by Supreme Court. By preference and with priority over all other matters, the supreme court shall determine the issue of inability after due notice and hearing, by a majority vote of members elected to the court, under such rules as it may adopt.

(E) Reconsideration by Supreme Court. A judgment of the supreme court affirming inability may be reconsidered by the court, after due notice and hearing, either upon its own motion or upon the application of the official. Upon proper showing and by majority vote of its elected members, the court may determine that no inability then exists, whereupon the official shall immediately resume the powers and duties of his office.

Section 19. Temporary Absences

Section 19. When the governor is temporarily absent

from the state, the lieutenant governor shall act as governor. When any other statewide elected official is temporarily absent from the state, the appointed first assistant shall act in his absence.

Section 20. Appointment of Officials; Merger, Consolidation of Offices and Departments

Section 20. After the first election of state officials following the effective date of this constitution, the legislature may provide, by law enacted by two-thirds of the elected members of each house, for appointment, in lieu of election, of the commissioner of agriculture, the commissioner of insurance, the superintendent of education, the commissioner of elections, or any of them. In that event, the legislature shall prescribe qualifications and method of appointment and by similar vote, may provide by law for the merger or consolidation of any such office, its department, and functions with any other office or department in the executive branch. No action of the legislature pursuant hereto shall reduce the term or compensation of any incumbent elected official. By law enacted by two-thirds of the elected members of each house, the legislature may reestablish any such office as elective and, in that event, shall prescribe qualifications.

Section 21. Public Service Commission

Section 21. (A) Composition; Term; Domicile. There shall be a Public Service Commission in the executive branch. It shall consist of five members, who shall be elected for overlapping terms of six years at the time fixed for congressional elections from single member districts established by law. Each commissioner serving on the effective date of this constitution shall be the commissioner for the new district in which he resides and shall complete the term for which he was elected. The commission annually shall elect one member as chairman. It shall be domiciled at the state capital, but may meet, conduct investigations, and render orders elsewhere in this state.

(B) Powers and Duties. The commission shall regulate all common carriers and public utilities and have such other regulatory authority as provided by law. It shall adopt and enforce reasonable rules, regulations, and procedures necessary for the discharge of its duties, and shall have other powers and perform other duties as provided by law.

(C) Limitation. The commission shall have no power to regulate any common carrier or public utility owned, operated, or regulated on the effective date of this constitution by the governing authority of one or more political subdivisions, except by the approval of a majority of the electors voting in an election held for that purpose; however, a political subdivision may reinvest itself with such regulatory power in the manner in which it was surrendered. This Paragraph shall not apply to safety regulations pertaining to the operation of such utilities.

(D) Applications, Petitions, and Schedules; Protective Bond and Security. (1) Within twenty days after a common carrier or public utility files a proposed rate schedule which would result in a change in rates, it shall give notice thereof by publication in the official state journal and in the official journal of each parish within the geographical area in which the schedule would become applicable.

(2) Within twelve months after the effective filing date, the commission shall render a full decision on each application, petition, and proposed rate schedule.

(3) After the effective filing date of any proposed schedule by a public utility which would result in a rate increase, the commission may permit the proposed schedule to be put into effect, in whole or in part, pending its decision on the application for rate increase and subject to protective bond or security approved by the commission. If no decision is rendered on the application within twelve months after such filing date, the proposed increase may be put into effect, but only if and as provided by law and subject to protective bond or security requirements, until final action by a court of last resort.

(4) If a proposed increase which has been put into effect is finally disallowed, in whole or in part, the utility shall make full refund, with legal interest thereon, within the time and in the manner prescribed by law.

(E) Appeals. Appeal may be taken in the manner provided by law by any aggrieved party or intervenor to the district court of the domicile of the commission. A right of direct appeal from any judgment of the district court shall be allowed to the supreme court. These rights of appeal shall extend to any action by the commission, including but not limited to action taken by the commission or by a public utility under the provisions of Subparagraph (3) of Paragraph (D) of this Section.

ARTICLE V. JUDICIAL BRANCH

Section 1. Judicial Power

Section 1. The judicial power is vested in a supreme court, courts of appeal, district courts, and other courts authorized by this Article.

Section 2. Habeas Corpus, Needful Writs, Orders and Process; Contempt

Section 2. A judge may issue writs of habeas corpus and all other needful writs, orders, and process in aid

of the jurisdiction of his court. Exercise of this authority by a judge of the supreme court or of a court of appeal is subject to review by the whole court. The power to punish for contempt of court shall be limited by law.

Section 3. Supreme Court; Composition; Judgments; Terms

Section 3. The supreme court shall be composed of a chief justice and six associate justices, four of whom must concur to render judgment. The term of a supreme court judge shall be ten years.

Section 4. Supreme Court; Districts

Section 4. The state shall be divided into at least six supreme court districts, and at least one judge shall be elected from each. The districts and the number of judges assigned to each on the effective date of this constitution are retained, subject to change by law enacted by two-thirds of the elected members of each house of the legislature.

Section 5. Supreme Court; Jurisdiction; Rule-Making Power; Assignment of Judges

Section 5. (A) Supervisory Jurisdiction; Rule-Making Power; Assignment of Judges. The supreme court has general supervisory jurisdiction over all other courts. It may establish procedural and administrative rules not in conflict with law and may assign a sitting or retired judge to any court.

(B) Original Jurisdiction. The supreme court has exclusive original jurisdiction of disciplinary proceedings against a member of the bar.

(C) Scope of Review. Except as otherwise provided by this constitution, the jurisdiction of the supreme court in civil cases extends to both law and facts. In criminal matters, its appellate jurisdiction extends only to questions of law.

(D) Appellate Jurisdiction. In addition to other appeals provided by this constitution, a case shall be appealable to the supreme court if (1) a law or ordinance has been declared unconstitutional; (2) the defendant has been convicted of a felony or a fine exceeding five hundred dollars or imprisonment exceeding six months actually has been imposed.

(E) Other Criminal Cases; Review. In all criminal cases not provided in Paragraph (D) (2) of this Section, a defendant has a right of appeal or review, as provided by law.

(F) Appellate Jurisdiction; Civil Cases; Extent. Subject to the provisions in Paragraph (C), the supreme court has appellate jurisdiction over all issues involved in a civil action properly before it.

Section 6. Supreme Court; Chief Justice

Section 6. The judge oldest in point of service on the

supreme court shall be chief justice. He is the chief administrative officer of the judicial system of the state, subject to rules adopted by the court.

Section 7. Supreme Court; Personnel

Section 7. The supreme court may select a judicial administrator, its clerks, and other personnel and prescribe their duties.

Section 8. Courts of Appeal; Circuits; Panels; Judgments; Terms

Section 8. (A) Circuits; Panels. The state shall be divided into at least four circuits, with one court of appeal in each. Each court shall sit in panels of at least three judges selected according to rules adopted by the court.

(B) Judgments. A majority of the judges sitting in a case must concur to render judgment. However, when a judgment of a district court is to be modified or reversed and one judge dissents, the case shall be reargued before a panel of at least five judges prior to rendition of judgment, and a majority must concur to render judgment.

(C) Terms. The term of a court of appeal judge shall be ten years.

Section 9. Courts of Appeal; Circuits and Districts

Section 9. Each circuit shall be divided into at least three districts, and at least one judge shall be elected from each. The circuits and districts and the number of judges as elected in each circuit on the effective date of this constitution are retained, subject to change by law enacted by two-thirds of the elected members of each house of the legislature.

Section 10. Courts of Appeal; Jurisdiction

Section 10. (A) Jurisdiction. Except in cases appealable to the supreme court and except as otherwise provided by this constitution, a court of appeal has appellate jurisdiction of all (1) civil matters decided within its circuit and (2) matters appealed from family and juvenile courts, except criminal prosecutions of persons other than juveniles. It has supervisory jurisdiction over cases in which an appeal would lie to it.

(B) Scope of Review. Except as limited to questions of law by this constitution, or as provided by law in the review of administrative agency determinations, appellate jurisdiction of a court of appeal extends to law and facts.

Section 11. Courts of Appeal; Certification

Section 11. A court of appeal may certify any question of law before it to the supreme court, and the supreme court then may give its binding instruction or decide the case upon the whole record.

Section 12. Courts of Appeal; Chief Judge

Section 12. The judge oldest in point of service on each court of appeal shall be chief judge of that court and shall administer the court subject to rules adopted by it.

Section 13. Courts of Appeal; Personnel

Section 13. Each court of appeal may select its clerk and other personnel and prescribe their duties.

Section 14. District Courts; Judicial Districts

Section 14. The state shall be divided into judicial districts, each composed of at least one parish and served by at least one district judge.

Section 15. Courts; Retention; Jurisdiction; Judicial District Changes; Terms

Section 15. (A) Court Retention; Trial Courts of Limited Jurisdiction. The district, family, juvenile, parish, city, and magistrate courts existing on the effective date of this constitution are retained. Subject to the limitations in Sections 16 and 21 of this Article, the legislature by law may abolish or merge trial courts of limited or specialized jurisdiction. The legislature by law may establish trial courts of limited jurisdiction with parishwide territorial jurisdiction and subject matter jurisdiction which shall be uniform throughout the state. The office of city marshal is continued until the city court he serves is abolished.

(B) Judicial Districts. The judicial districts existing on the effective date of this constitution are retained. Subject to the limitations in Section 21 of this Article, the legislature by law may establish, divide, or merge judicial districts with approval in a referendum in each district and parish affected.

(C) Term. The term of a district, parish, or city court judge shall be six years.

(D) Number of Judges. The legislature may change the number of judges in any judicial district by law enacted by two-thirds of the elected members of each house.

Section 16. District Courts; Jurisdiction

Section 16. (A) Original Jurisdiction. Except as otherwise authorized by this constitution, a district court shall have original jurisdiction of all civil and criminal matters. It shall have exclusive original jurisdiction of felony cases and of cases involving title to immovable property; the right to office or other public position; civil or political rights; probate and succession matters; the state, a political corporation, or political subdivisions, or a succession, as a defendant; and the appointment of receivers or liquidators for corporations or partnerships.

(B) Appellate Jurisdiction. A district court shall have appellate jurisdiction as provided by law.

Section 17. District Courts; Chief Judge

Section 17. Each district court shall elect from its members a chief judge who shall exercise, for a term designated by the court, the administrative functions prescribed by rule of court.

Section 18. Juvenile and Family Courts; Jurisdiction

Section 18. Notwithstanding any contrary provision of Section 16 of this Article, juvenile and family courts shall have jurisdiction as provided by law.

Section 19. Special Juvenile Procedures

Section 19. Except for a person fifteen years of age or older who is alleged to have committed a capital offense or attempted aggravated rape, the determination of guilt or innocence, the detention, and the custody of a person who is alleged to have committed a crime prior to his seventeenth birthday shall be exclusively pursuant to special juvenile procedures which shall be provided by law. However, by law enacted by two-thirds of the elected members of each house, the legislature may (1) lower the maximum ages of persons to whom juvenile procedures would apply and (2) establish a procedure by which the court of original jurisdiction may waive such special juvenile procedures in order that adult procedures would apply in individual cases.

Section 20. Mayors' Courts; Justice of the Peace Courts

Section 20. Mayors' courts and justice of the peace courts existing on the effective date of this constitution are continued, subject to change by law.

Section 21. Judges; Decrease in Terms and Compensation Prohibited

Section 21. The term of office, retirement benefits, and compensation of a judge shall not be decreased during the term for which he is elected.

Section 22. Judges; Election; Vacancy

Section 22. (A) Election. Except as otherwise provided in this Section, all judges shall be elected. Election shall be at the regular congressional election.

(B) Vacancy. A newly-created judgeship or a vacancy in the office of a judge shall be filled by special election called by the governor and held within six months after the day on which the vacancy occurs or the judgeship is established, except when the vacancy occurs in the last six months of an existing term. Until the vacancy is filled, the supreme court shall appoint a person meeting the qualifications for the office, other than domicile, to serve at its pleasure. The appointee shall be ineligible as a candidate at the election to fill the vacancy or the newly-created judicial office. No person serving as an

appointed judge, other than a retired judge, shall be eligible for retirement benefits provided for the elected judiciary.

(C) End of Term. A judge serving on the effective date of this constitution shall serve through December thirty-first of the last year of his term or, if the last year of his term is not in the year of a regular congressional election, then through December thirty-first of the following year. The election for the next term shall be held in the year in which the term expires, as provided above.

Section 23. Judges; Retirement

Section 23. (A) Retirement System. Within two years after the effective date of this constitution, the legislature shall provide for a retirement system for judges which shall apply to a judge taking office after the effective date of the law enacting the system and in which a judge in office at that time may elect to become a member, with credit for all prior years of judicial service and without contribution therefor. The retirement benefits and judicial service rights of a judge in office or retired on the effective date of this constitution shall not be diminished, nor shall the benefits to which a surviving spouse is entitled be reduced.

(B) Mandatory Retirement. Except as otherwise provided in this Section, a judge shall not remain in office beyond his seventieth birthday.

Section 24. Judges; Qualifications

Section 24. A judge of the supreme court, a court of appeal, district court, family court, parish court, or court having solely juvenile jurisdiction shall have been admitted to the practice of law in this state for at least five years prior to his election, and shall have been domiciled in the respective district, circuit, or parish for the two years preceding election. He shall not practice law.

Section 25. Judiciary Commission

Section 25. (A) Composition. The judiciary commission shall consist of

(1) one court of appeal judge and two district court judges selected by the supreme court;

(2) two attorneys admitted to the practice of law for at least ten years and one attorney admitted to the practice of law for at least three years but not more than ten years, selected by the Conference of Court of Appeal Judges or its successor. They shall not be judges, active or retired, or public officials, other than notaries public; and

(3) three citizens, not lawyers, judges active or retired, or public officials, selected by the Louisiana District Judges' Association or its successor.

(B) Term; Vacancy. A member of the commission shall

serve a four-year term and shall be ineligible to succeed himself. His term shall end upon the occurrence of any event which would have made him ineligible for appointment. When a vacancy occurs, a successor shall be appointed for a four-year term by the authority which appointed his predecessor.

(C) Powers. On recommendation of the judiciary commission, the supreme court may censure, suspend with or without salary, remove from office, or retire involuntarily a judge for willful misconduct relating to his official duty, willful and persistent failure to perform his duty, persistent and public conduct prejudicial to the administration of justice that brings the judicial office into disrepute, conduct while in office which would constitute a felony, or conviction of a felony. On recommendation of the judiciary commission, the supreme court may disqualify a judge from exercising any judicial function, without loss of salary, during pendency of proceedings in the supreme court. On recommendation of the judiciary commission, the supreme court may retire involuntarily a judge for disability that seriously interferes with the performance of his duties and that is or is likely to become permanent. The supreme court shall make rules implementing this Section and providing for confidentiality and privilege of commission proceedings.

(D) Other Disciplinary Action. Action against a judge under this Section shall not preclude disciplinary action against him concerning his license to practice law.

Section 26. District Attorneys

Section 26. (A) Election; Qualifications; Assistants. In each judicial district a district attorney shall be elected for a term of six years. He shall have been admitted to the practice of law in the state for at least five years prior to his election and shall have resided in the district for the two years preceding election. A district attorney may select assistants as authorized by law, and other personnel.

(B) Powers. Except as otherwise provided by this constitution, a district attorney, or his designated assistant, shall have charge of every criminal prosecution by the state in his district, be the representative of the state before the grand jury in his district, and be the legal advisor to the grand jury. He shall perform other duties provided by law.

(C) Prohibition. No district attorney or assistant district attorney shall appear, plead, or in any way defend or assist in defending any criminal prosecution or charge. A violation of this Paragraph shall be cause for removal.

Section 27. Sheriffs

Section 27. In each parish a sheriff shall be elected for a term of four years. He shall be the chief law enforcement officer in the parish, except as otherwise provided by this constitution, and shall execute court orders and

process. He shall be the collector of state and parish ad valorem taxes and such other taxes and license fees as provided by law. This Section shall not apply to Orleans Parish.

Section 28. Clerks of Court

Section 28. (A) Powers and Duties; Deputies. In each parish a clerk of the district court shall be elected for a term of four years. He shall be ex officio notary public and parish recorder of conveyances, mortgages, and other acts and shall have other duties and powers provided by law. The clerk may appoint deputies with duties and powers provided by law and, with the approval of the district judges, he may appoint minute clerks with duties and powers provided by law.

(B) Office Hours. The legislature shall establish uniform statewide office hours for clerks of the district courts.

Section 29. Coroners

Section 29. In each parish a coroner shall be elected for a term of four years. He shall be a licensed physician and possess the other qualifications and perform the duties provided by law. The requirement that he be a licensed physician shall be inapplicable in any parish in which no licensed physician will accept the office.

Section 30. Vacancies

Section 30. When a vacancy occurs in the following offices, the duties of the office, until it is filled by election as provided by law, shall be assumed by the persons herein designated: (1) sheriff, by the chief criminal deputy; (2) district attorney, by the first assistant; (3) clerk of a district court, by the chief deputy; (4) coroner, by the chief deputy. If there is no such person to assume the duties when the vacancy occurs, the governing authority or authorities of the parish or parishes concerned shall appoint a qualified person to assume the duties of the office until filled by election.

Section 31. Reduction of Salaries and Benefits Prohibited

Section 31. The salary and retirement benefits of an attorney general, district attorney, sheriff, coroner, or clerk of the district court shall not be diminished during his term of office.

Section 32. Orleans Parish Courts, Officials

Section 32. Except for provisions relating to terms of office as provided elsewhere in this Article, and notwithstanding any other contrary provision of this constitution, the following courts and officers in Orleans Parish are continued, subject to change by law: the civil and criminal district courts; the city, municipal, traffic, and juvenile courts; the clerks of the civil and criminal district courts; the civil and criminal sheriffs; the constables and the clerks of the first and second city courts; the register of conveyances; and the recorder of mortgages.

Section 33. Jurors

Section 33. (A) Qualifications. A citizen of the state who has reached the age of majority is eligible to serve as a juror within the parish in which he is domiciled. The legislature may provide additional qualifications.

(B) Exemptions. The supreme court shall provide by rule for exemption of jurors.

Section 34. Grand Jury

Section 34. (A) Grand Jury. There shall be a grand jury or grand juries in each parish, whose qualifications, duties, and responsibilities shall be provided by law. The secrecy of the proceedings, including the identity of witnesses, shall be provided by law.

(B) Right to Counsel. The legislature may establish by law terms and conditions under which a witness may have the right to the advice of counsel while testifying before the grand jury.

ARTICLE VI. LOCAL GOVERNMENT

PART I. GENERAL PROVISIONS

Section 1. Parishes

Section 1. (A) Parishes and Boundaries Ratified. Parishes and their boundaries as established on the effective date of this constitution are recognized and ratified.

(B) Creation; Dissolution; Merger; Boundaries. The legislature by law may establish and organize new parishes, dissolve and merge parishes, and change parish boundaries

if approved by two-thirds of the electors in each parish affected voting thereon at an election held for that purpose.

(C) Change of Parish Seat. The governing authority of a parish may call an election on the question of changing the parish seat. The parish seat shall be changed if approved by two-thirds of the electors voting thereon.

(D) Adjustment of Assets and Liabilities. When a parish is enlarged or established from contiguous territory, it shall be entitled to a just proportion of the property and assets and shall be liable for a just proportion of the

existing debts and liabilities of the parish or parishes from which the territory is taken.

Section 2. Municipalities

Section 2. The legislature shall provide by general law for the incorporation, consolidation, merger, and government of municipalities. No local or special law shall create a municipal corporation or amend, modify, or repeal a municipal charter. However, a special legislative charter existing on the effective date of this constitution may be amended, modified, or repealed by local or special law.

Section 3. Classification

Section 3. The legislature may classify parishes or municipalities according to population or on any other reasonable basis related to the purpose of the classification. Legislation may be limited in its effect to any of such class or classes.

Section 4. Existing Home Rule Charters and Plans of Government

Section 4. Every home rule charter or plan of government existing or adopted when this constitution is adopted shall remain in effect and may be amended, modified, or repealed as provided therein. Except as inconsistent with this constitution, each local governmental subdivision which has adopted such a home rule charter or plan of government shall retain the powers, functions, and duties in effect when this constitution is adopted. If its charter permits, each of them also shall have the right to powers and functions granted to other local governmental subdivisions.

Section 5. Home Rule Charter

Section 5. (A) Authority to Adopt; Commission. Subject to and not inconsistent with this constitution, any local governmental subdivision may draft, adopt, or amend a home rule charter in accordance with this Section. The governing authority of a local governmental subdivision may appoint a commission to prepare and propose a charter or an alternate charter, or it may call an election to elect such a commission.

(B) Petition to Elect Commission. The governing authority shall call an election to elect such a commission when presented with a petition signed by not less than ten percent of the electors or ten thousand electors, whichever is fewer, who live within the boundaries of the affected subdivision, as certified by the registrar of voters.

(C) Adoption; Amendment; Repeal. A home rule charter shall be adopted, amended, or repealed when approved by a majority of the electors voting thereon at an election held for that purpose.

(D) Adoption by Two or More Local Governmental Subdivisions. Two or more local governmental subdivisions

within the boundaries of one parish may adopt a home rule charter under this Section if approved by a majority of the electors in each affected local governmental subdivision voting thereon in an election held for that purpose. The legislature shall provide by law the method of appointment or election of a commission to prepare and propose a charter consistent with Paragraph (A) of this Section and the method by which the electors may petition for an election consistent with Paragraph (B) of this Section. However, at least one member of the commission shall be elected or appointed from each affected local governmental subdivision.

(E) Structure and Organization; Powers; Functions. A home rule charter adopted under this Section shall provide the structure and organization, powers, and functions of the government of the local governmental subdivision, which may include the exercise of any power and performance of any function necessary, requisite, or proper for the management of its affairs, not denied by general law or inconsistent with this constitution.

(F) Additional Powers and Functions. Except as prohibited by its charter, a local governmental subdivision adopting a home rule charter under this Section shall have the additional powers and functions granted to local governmental subdivisions by other provisions of this constitution.

(G) Parish Officials and School Boards Not Affected. No home rule charter or plan of government shall contain any provision affecting a school board or the offices of district attorney, sheriff, assessor, clerk of a district court, or coroner, which is inconsistent with this constitution or law.

Section 6. Home Rule Charter or Plan of Government; Action by Legislature Prohibited

Section 6. The legislature shall enact no law the effect of which changes or affects the structure and organization or the particular distribution and redistribution of the powers and functions of any local governmental subdivision which operates under a home rule charter.

Section 7. Powers of Other Local Governmental Subdivisions

Section 7. (A) Powers and Functions. Subject to and not inconsistent with this constitution, the governing authority of a local governmental subdivision which has no home rule charter or plan of government may exercise any power and perform any function necessary, requisite, or proper for the management of its affairs, not denied by its charter or by general law, if a majority of the electors voting in an election held for that purpose vote in favor of the proposition that the governing authority may exercise such general powers. Otherwise, the local governmental subdivision shall have the powers authorized by this constitution or by law.

(B) Parish Officials and School Boards Not Affected. Nothing in this Section shall affect the powers and functions of a school board or the offices of district attorney, sheriff, assessor, clerk of a district court, or coroner.

Section 8. Home Rule Parish; Incorporation of Cities, Towns, and Villages

Section 8. No parish plan of government or home rule charter shall prohibit the incorporation of a city, town, or village as provided by general law.

Section 9. Limitations of Local Governmental Subdivisions

Section 9. (A) Limitations. No local governmental subdivision shall (1) define and provide for the punishment of a felony; or (2) except as provided by law, enact an ordinance governing private or civil relationships.

(B) Police Power Not Abridged. Notwithstanding any provision of this Article, the police power of the state shall never be abridged.

Section 10. Codification of Ordinances

Section 10. Within two years after the effective date of this constitution, the governing authority of each political subdivision shall have a code prepared containing all of its general ordinances. When the code is prepared, the governing authority shall make copies available for public distribution. All general ordinances adopted after the approval of the code shall be amendments or additions to the code.

Section 11. Local Officials

Section 11. The electors of each local governmental subdivision shall have the exclusive right to elect their governing authority. Nothing herein shall be construed to prohibit the election of the members from single-member districts.

Section 12. Local Officials; Compensation

Section 12. The compensation or method of fixing the compensation of an elected official of any local governmental subdivision which operates under a home rule charter or plan of government, as provided in Sections 4 and 5 of this Article, shall be provided in its charter. The compensation or method of fixing the compensation of an elected official of any other local governmental subdivision shall be provided by law. Compensation of a local official shall not be reduced during the term for which he is elected.

Section 13. Vacancies

Section 13. (A) Vacancy; Appointment. Except as otherwise provided by this constitution, a vacancy in any

local office filled by election wholly within the boundaries of a local governmental subdivision or a school district shall be filled by appointment by the particular governing authority of the local governmental subdivision or school district in which the vacancy occurs, until it is filled by election as provided by law.

(B) Exception. This Section shall apply to each local governmental subdivision unless otherwise provided by its home rule charter or plan of government.

Section 14. Increasing Financial Burden of Political Subdivisions

Section 14. No law requiring increased expenditures for wages, hours, working conditions, pension and retirement benefits, vacation, or sick leave benefits of political subdivision employees, except a law providing for civil service, minimum wages, working conditions, and retirement benefits for firemen and municipal policemen, shall become effective until approved by ordinance enacted by the governing authority of the affected political subdivision or until the legislature appropriates funds for the purpose to the affected political subdivision and only to the extent and amount that such funds are provided. This Section shall not apply to a school board.

Section 15. Local Governmental Subdivisions; Control Over Agencies

Section 15. The governing authority of a local governmental subdivision shall have general power over any agency heretofore or hereafter created by it, including, without limitation, the power to abolish the agency and require prior approval of any charge or tax levied or bond issued by the agency.

Section 16. Special Districts and Local Public Agencies

Section 16. (A) Consolidation. A local governmental subdivision may consolidate and merge into itself any special district or local public agency, except a school district, situated and having jurisdiction entirely within the boundaries of the local governmental subdivision. Upon the consolidation and merger, the local governmental subdivision shall succeed to and be vested with all of the rights, revenues, resources, jurisdiction, authority, and powers of the special district or local public agency. A consolidation and merger shall become effective only if approved by a majority of the electors voting thereon in the local governmental subdivision as a whole and by a majority of the electors voting thereon in the affected special district. A local public agency shall be consolidated and merged only if approved by a majority of the electors voting thereon in an election held for that purpose in the local governmental subdivision in which the agency is located.

(B) Assumption of Debt. If the special district or local

public agency which is consolidated and merged has outstanding indebtedness, the authority provided by this Section shall not be exercised unless provision is made for the assumption of the indebtedness by the governing authority of the local governmental subdivision involved.

Section 17. Land Use; Zoning; Historic Preservation

Section 17. Subject to uniform procedures established by law, a local governmental subdivision may (1) adopt regulations for land use, zoning, and historic preservation, which authority is declared to be a public purpose; (2) create commissions and districts to implement those regulations; (3) review decisions of any such commission; and (4) adopt standards for use, construction, demolition, and modification of areas and structures. Existing constitutional authority for historic preservation commissions is retained.

Section 18. Industrial Areas

Section 18. (A) Authorization. The legislature by law may authorize parishes to create and define industrial areas within their boundaries in accordance with procedures and subject to regulations which it determines. An industrial area shall not be a political subdivision of the state.

(B) Access by Public Road; Police Protection. When an industrial area is so created, provision shall be made for access by public road to each entrance to the premises of every plant in the area, which is provided for use by employees of the company, or for use by employees of independent contractors working on the premises, or for delivery of materials or supplies, other than by rail or water transportation, to the premises. Police protection provided by any plant in an industrial area shall be confined to the premises of that plant.

Section 19. Special Districts; Creation

Section 19. Subject to and not inconsistent with this constitution, the legislature by general law or by local or special law may create or authorize the creation of special districts, boards, agencies, commissions, and authorities of every type, define their powers, and grant to the special districts, boards, agencies, commissions, and authorities so created such rights, powers, and authorities as it deems proper, including, but not limited to, the power of taxation and the power to incur debt and issue bonds.

Section 20. Intergovernmental Cooperation

Section 20. Except as otherwise provided by law, a political subdivision may exercise and perform any authorized power and function, including financing, jointly or in cooperation with one or more political subdivisions, either within or without the state, or with the United States or its agencies.

Section 21. Assistance to Local Industry

Section 21. (A) Authorization. In order to (1) induce and encourage the location of or addition to industrial enterprises therein which would have economic impact upon the area and thereby the state, (2) provide for the establishment and furnishing of such industrial plant, or (3) provide movable or immovable property, or both, for pollution control facilities, the legislature by law may authorize, subject to restrictions it may impose, any political subdivision, deep-water port commission, or deep-water port, harbor, and terminal district to

(a) issue bonds, subject to approval by the State Bond Commission or its successor, and use the funds derived from the sale of the bonds to acquire and improve industrial plant sites and other property necessary to the purposes thereof;

(b) acquire, through purchase, donation, exchange, and (subject to Article I, Section 4) expropriation, and improve industrial plant buildings and industrial plant equipment, machinery, furnishings, and appurtenances; and

(c) sell, lease, lease-purchase, or demolish all or any part of the foregoing.

(B) Property Expropriated; Sale to Aliens Prohibited. No property expropriated under the authority of this Section shall ever, directly or indirectly, be sold or donated to any foreign power, any alien, or any corporation in which the majority of the stock is controlled by any foreign power, alien corporation, or alien.

(C) Exception. This Section shall not apply to a school board.

Section 22. Procedure for Certain Special Elections

Section 22. When an election is required in a political subdivision under the provisions of this constitution which require submission to the electors of a proposition or question, the election shall be called, conducted, and the returns thereof canvassed, in accordance with the procedures established by the law then in effect pertaining to elections for incurring bonded indebtedness and special taxes relative to local finance, or as may be otherwise provided by law.

Section 23. Acquisition of Property

Section 23. Subject to and not inconsistent with this constitution and subject to restrictions provided by general law, political subdivisions may acquire property for any public purpose by purchase, donation, expropriation, exchange, or otherwise.

Section 24. Servitudes of Way; Acquisition by Prescription

Section 24. The public, represented by local governmental subdivisions, may acquire servitudes of way by prescription in the manner prescribed by law.

Section 25. Courts Not Affected

Section 25. Notwithstanding any provision of this Article, courts and their officers may be established or affected only as provided in Article V of this constitution.

PART II. FINANCE

Section 26. Parish Ad Valorem Tax

Section 26. (A) Parish Tax for General Purposes; Millage Limits; Increase. The governing authority of a parish may levy annually an ad valorem tax for general purposes not to exceed four mills on the dollar of assessed valuation. However, in Orleans Parish the limitation shall be seven mills, and in Jackson Parish the limitation shall be five mills. Millage rates may be increased in any parish when approved by a majority of the electors voting thereon in an election held for that purpose.

(B) Millage Increase Not for General Purposes. When the millage increase is for other than general purposes, the proposition shall state the specific purpose or purposes for which the tax is to be levied and the length of time the tax is to remain in effect. All proceeds of the tax shall be used solely for the purpose or purposes set forth in the proposition.

(C) Parish Tax in Municipality. The amount of the parish tax for general purposes which any parish, except Orleans Parish, may levy, without a vote of the electors, on property located wholly within any municipality which has a population exceeding one thousand inhabitants according to the last federal decennial census, or other census authorized by law, and which provides and maintains a system of street paving, shall not exceed one-half the tax levy for general purposes.

(D) Withdrawal from Parish Taxing Authority. This Section shall not affect the withdrawal of property in a municipality from parish taxing authority, in whole or in part, by a provision of the legislative charter of a municipality in effect on the effective date of this constitution.

Section 27. Municipal Ad Valorem Tax

Section 27. (A) Municipal Tax for General Purposes; Millage Limits; Increase. The governing authority of a municipality may levy annually an ad valorem tax for general purposes not to exceed seven mills on the dollar of assessed valuation. However, if a municipality, by its charter or by law, is exempt from payment of parish taxes or, under legislative or constitutional authority, maintains its own public schools, it may levy an annual tax not to exceed ten mills on the dollar of assessed valuation. Millage rates may be increased in any municipality when approved by a majority of the electors voting thereon in an election held for that purpose.

(B) Millage Increase Not for General Purposes. When

the millage increase is for other than general purposes, the proposition shall state the specific purpose or purposes for which the tax is to be levied and the length of time the tax is to remain in effect. All proceeds of the tax shall be used solely for the purpose or purposes set forth in the proposition.

(C) Exception. This Section shall not apply to the city of New Orleans.

Section 28. Local Governmental Subdivisions; Occupational License Tax

Section 28. The governing authority of a local governmental subdivision may impose an occupational license tax not greater than that imposed by the state. Those who pay a municipal occupational license tax shall be exempt from a parish occupational license tax in the amount of the municipal tax. The governing authority of a local governmental subdivision may impose an occupational license tax greater than that imposed by the state when authorized by law enacted by the favorable vote of two-thirds of the elected members of each house of the legislature.

Section 29. Local Governmental Subdivisions and School Boards; Sales Tax

Section 29. (A) Sales Tax Authorized. Except as otherwise authorized in a home rule charter as provided for in Section 4 of this Article, the governing authority of any local governmental subdivision or school board may levy and collect a tax upon the sale at retail, the use, the lease or rental, the consumption, and the storage for use or consumption, of tangible personal property and on sales of services as defined by law, if approved by a majority of the electors voting thereon in an election held for that purpose. The rate thereof, when combined with the rate of all other sales and use taxes, exclusive of state sales and use taxes, levied and collected within any local governmental subdivision, shall not exceed three percent.

(B) Additional Sales Tax Authorized. However, the legislature, by general or by local or special law, may authorize the imposition of additional sales and use taxes by local governmental subdivisions or school boards, if approved by a majority of the electors voting thereon in an election held for that purpose.

(C) Bonds; Security. Nothing in this Section shall affect any sales or use tax authorized or imposed on the effective date of this constitution or affect or impair the security of any bonds payable from the proceeds of the tax.

(D) Exemptions; Protection of Bonds. Except when bonds secured thereby have been authorized, the legislature by law may uniformly exempt or exclude any goods, tangible personal property, or services from sales or use taxes levied by local governmental subdivisions, school boards, and the state.

Section 30. Political Subdivisions; Taxing Power

Section 30. A political subdivision may exercise the power of taxation, subject to limitations elsewhere provided by this constitution, under authority granted by the legislature for parish, municipal, and other local purposes, strictly public in their nature. This Section shall not affect similar grants to political subdivisions under self-operative sections of this constitution.

Section 31. Taxes; Ratification

Section 31. Any tax validly being levied by a political subdivision under prior legislative or constitutional authority on the effective date of this constitution is ratified.

Section 32. Special Taxes; Authorization

Section 32. For the purpose of acquiring, constructing, improving, maintaining, or operating any work of public improvement, a political subdivision may levy special taxes when authorized by a majority of the electors in the political subdivision who vote thereon in an election held for that purpose.

Section 33. Political Subdivisions; General Obligation Bonds

Section 33. (A) Authorization. Subject to approval by the State Bond Commission or its successor, general obligation bonds may be issued only after authorization by a majority of the electors voting on the proposition at an election in the political subdivision issuing the bonds. Bonds to refund outstanding indebtedness at the same or at a lower effective rate of interest, even though payable solely from ad valorem taxes, need not be authorized at an election if the indebtedness refunded is paid or cancelled at the time of the delivery of the refunding bonds, or if money, or securities made eligible for such purpose by law, are deposited in escrow in an adequate amount, with interest, to be utilized solely to retire the refunded indebtedness or bonds and to pay interest thereon and redemption premiums, if any, to the time of retirement.

(B) Full Faith and Credit. The full faith and credit of a political subdivision is hereby pledged to the payment of general obligation bonds issued by it under this constitution or the statute or proceedings pursuant to which they are issued. The governing authority of the issuing political subdivision shall levy and collect or cause to be levied and collected on all taxable property in the political subdivision ad valorem taxes sufficient to pay principal and interest and redemption premiums, if any, on such bonds as they mature.

Section 34. Limitations on Bonded Indebtedness

Section 34. The legislature by law shall fix the limita-

tion on bonded indebtedness payable solely from ad valorem taxes levied by political subdivisions.

Section 35. Contesting Political Subdivision Bonds

Section 35. (A) Contesting Election; Time Limit. For sixty days after promulgation of the result of an election held to incur or assume debt, issue bonds, or levy a tax, any person in interest may contest the legality of the election, the bond issue provided for, or the tax authorized, for any cause. After that time no one shall have any cause or right of action to contest the regularity, formality, or legality of the election, tax provisions, or bond authorization, for any cause whatsoever. If the validity of any election, tax, debt assumption, or bond issue authorized or provided for is not raised within the sixty days, the authority to incur or assume debt, levy the tax, or issue the bonds, the legality thereof, and the taxes and other revenues necessary to pay the same shall be conclusively presumed to be valid, and no court shall have authority to inquire into such matters.

(B) Contesting Ordinance or Resolution; Time Limit. Every ordinance or resolution authorizing the issuance of bonds or other debt obligation by a political subdivision shall be published at least once in the official journal of the political subdivision or, if there is none, in a newspaper having general circulation therein. For thirty days after the date of publication, any person in interest may contest the legality of the ordinance or resolution and of any provision therein made for the security and payment of the bonds. After that time, no one shall have any cause of action to test the regularity, formality, legality, or effectiveness of the ordinance or resolution, and provisions thereof for any cause whatever. Thereafter, it shall be conclusively presumed that every legal requirement for the issuance of the bonds or other debt obligation, including all things pertaining to the election, if any, at which the bonds or other debt obligation were authorized, has been complied with. No court shall have authority to inquire into any of these matters after the thirty days.

Section 36. Local Improvement Assessments

Section 36. (A) Authorization. The legislature shall provide by general law or by local or special law the procedures by which a political subdivision may levy and collect local or special assessments on real property for the purpose of acquiring, constructing, or improving works of public improvement.

(B) Certificates of Indebtedness; Security. Certificates of indebtedness may be issued to cover the cost of any such public improvement. They shall be secured by the pledge of the local or special assessments levied therefor and may be further secured by the pledge of the full faith and credit of the political subdivision.

(C) Exception. This Section shall not apply to a school board.

Section 37. Revenue-Producing Property

Section 37. (A) Authorization. The legislature by law may authorize political subdivisions to issue bonds or other debt obligations to construct, acquire, extend, or improve any revenue-producing public utility or work of public improvement. The bonds or other debt obligations may be secured by mortgage on the lands, buildings, machinery, and equipment or by the pledge of the income and revenues of the public utility or work of public improvement. They shall not be a charge upon the other income and revenues of the political subdivision.

(B) Exception. This Section shall not apply to a school board.

PART III. LEEVE DISTRICTS

Section 38. Levee Districts

Section 38. (A) Retention; Reorganization; Consolidation. Levee districts as organized and constituted on January 1, 1974 shall continue to exist, except that

(1) The legislature may provide by law for the consolidation, division, or reorganization of existing levee districts or may create new levee districts. However, the members of the board of commissioners of a district heretofore or hereafter created shall be appointed or elected from among residents of the district, as provided by law.

(2) A levee district whose flood control responsibilities are limited to and which is situated entirely within one parish may be consolidated and merged into such parish under the terms and conditions and in the manner provided in Section 16 of this Article.

(B) Obligation of Contract Affirmed. No action taken under this Section shall impair the obligation of outstanding bonded indebtedness or of any other contract of a levee district.

Section 39. Levee District Taxes

Section 39. (A) District Tax; Millage Limit. For the purpose of constructing and maintaining levees, levee drainage, flood protection, hurricane flood protection, and for all other purposes incidental thereto, the governing authority of a levee district may levy annually a tax not to exceed five mills, except the Board of Levee Commissioners of the Orleans Levee District which may levy annually a tax not to exceed two and one-half mills, on the dollar of the assessed valuation of all taxable property situated within the alluvial portions of the district subject to overflow.

(B) Millage Increase. If the necessity to raise additional funds arises in any levee district for any purpose set forth in Paragraph (A), or for any other purpose related to its authorized powers and functions as specified by law, the tax may be increased. However, the necessity and the rate of the increase shall be submitted to the electors of the district, and the tax increase shall take effect only if

approved by a majority of the electors voting thereon in an election held for that purpose.

Section 40. Bond Issues

Section 40. (A) Authorization. Subject to approval by the State Bond Commission or its successor, the governing authority of a levee district may fund the proceeds of its taxes or other revenues into bonds or other evidences of indebtedness. Proceeds thus derived shall be used for the purposes mentioned in Part III of this Article or for the funding or payment of any outstanding indebtedness.

(B) Sale. Bonds issued under the authority of Paragraph (A) shall be sold as provided by law concerning the issuance of bonds by levee districts.

Section 41. Cooperation with Federal Government

Section 41. The governing authority of any levee district may cooperate with the federal government in constructing and maintaining levees in this state, under terms and conditions provided by the federal authorities and accepted by the governing authority.

Section 42. Compensation for Property Used or Destroyed; Tax

Section 42. (A) Compensation. Notwithstanding any contrary provision of this constitution, lands and improvements thereon hereafter actually used or destroyed for levees or levee drainage purposes shall be paid for as provided by law. However, nothing contained in this Paragraph with respect to compensation for lands and improvements shall apply to bature or to property the control of which is vested in the state or any political subdivision for the purpose of commerce. If the district has no other funds or resources from which the payment can be made, it shall levy on all taxable property within the district a tax sufficient to pay for property used or destroyed to be used solely in the district where collected.

(B) Appropriation. Nothing in this Section shall prevent the appropriation of such property before payment.

PART IV. PORT COMMISSIONS AND DISTRICTS

Section 43. Port Commissions and Districts

Section 43. All deep-water port commissions and all deep-water port, harbor, and terminal districts as organized and constituted on January 1, 1974, including their powers and functions, structure and organization, and territorial jurisdiction, are ratified and confirmed and shall continue to exist, except that

(1) The legislature by law may grant additional powers and functions to any such commission or district and may create new port commissions or port, harbor, and terminal districts.

(2) Only by law enacted by the favorable vote of two-

thirds of the elected members of each house, may the legislature consolidate or abolish any such commission or district or diminish, reduce, or withdraw from any such commission or district any of its powers and functions and affect the structure and organization, distribution, and redistribution of the powers and functions of any such commission or district, including additions to or reductions of its territorial jurisdiction.

(3) The legislature shall enact laws with respect to the membership of the commissions provided in this Section. Once the law with respect to membership is enacted, it may be changed only by law enacted by the favorable vote of two-thirds of the elected members of each house.

PART V. DEFINITIONS

Section 44. Terms Defined

Section 44. As used in this Article:

(1) "Local governmental subdivision" means any parish or municipality.

(2) "Political subdivision" means a parish, municipal-

ity, and any other unit of local government, including a school board and a special district, authorized by law to perform governmental functions.

(3) "Municipality" means an incorporated city, town, or village.

(4) "Governing authority" means the body which exercises the legislative functions of the political subdivision.

(5) "General law" means a law of statewide concern enacted by the legislature which is uniformly applicable to all persons or to all political subdivisions in the state or which is uniformly applicable to all persons or to all political subdivisions within the same class.

(6) "General obligation bonds" means those bonds, the principal and interest of which are secured by and payable from ad valorem taxes levied without limitation as to rate or amount.

(7) "Deep-water port commissions" and "deep-water port, harbor, and terminal districts" mean those commissions or districts within whose territorial jurisdiction exist facilities capable of accommodating vessels of at least twenty-five feet of draft and of engaging in foreign commerce.

ARTICLE VII. REVENUE AND FINANCE

PART I. GENERAL PROVISIONS

Section 1. Power to Tax; Public Purpose

Section 1. Except as otherwise provided by this constitution, the power of taxation shall be vested in the legislature, shall never be surrendered, suspended, or contracted away, and shall be exercised for public purposes only.

Section 2. Power to Tax; Limitation

Section 2. The levy of a new tax, an increase in an existing tax, or a repeal of an existing tax exemption shall require the enactment of a law by two-thirds of the elected members of each house of the legislature.

Section 3. Collection of Taxes

Section 3. The legislature shall prohibit the issuance of process to restrain the collection of any tax. It shall provide a complete and adequate remedy for the prompt recovery of an illegal tax paid by a taxpayer.

Section 4. Income Tax; Severance Tax; Political Subdivisions

Section 4. (A) Income Tax. Equal and uniform taxes may be levied on net incomes, and these taxes may be graduated according to the amount of net income. How-

ever, the state individual and joint income tax schedule of rates shall never exceed the rates set forth in Title 47, Section 32 of the Louisiana Revised Statutes on January 1, 1974. Federal income taxes paid shall be allowed as a deductible item in computing state income taxes for the same period.

(B) Severance Tax. Taxes may be levied on natural resources severed from the soil or water, to be paid proportionately by the owners thereof at the time of severance. Natural resources may be classified for the purpose of taxation. Such taxes may be predicated upon either the quantity or value of the products at the time and place of severance. No further or additional tax or license shall be levied or imposed upon oil, gas, or sulphur leases or rights. No additional value shall be added to the assessment of land by reason of the presence of oil, gas, or sulphur therein or their production therefrom. However, sulphur in place shall be assessed for ad valorem taxation to the person, firm, or corporation having the right to mine or produce the same in the parish where located, at no more than twice the total assessed value of the physical property subject to taxation, excluding the assessed value of sulphur above ground, as is used in sulphur operations in such parish. Likewise, the severance tax shall be the only tax on timber; however, standing timber shall be liable equally with the land on which it stands for ad valorem taxes levied on the land.

(C) Severance Tax; Political Subdivisions. A political

subdivision of the state shall not levy a severance tax, income tax, or tax on motor fuel.

(D) Severance Tax Allocation. One-third of the sulphur severance tax, but not to exceed one hundred thousand dollars; one-fifth of the severance tax on all natural resources, other than sulphur or timber, but not to exceed five hundred thousand dollars; and three-fourths of the timber severance tax shall be remitted to the governing authority of the parish in which severance or production occurs.

(E) Royalties Allocation. One-tenth of the royalties from mineral leases on state-owned land, lake and river beds and other water bottoms belonging to the state or the title to which is in the public for mineral development shall be remitted to the governing authority of the parish in which severance or production occurs. A parish governing authority may fund these royalties into general obligation bonds of the parish in accordance with law. The provisions of this Paragraph shall not apply to properties comprising the Russell Sage Wildlife and Game Refuge.

Section 5. Motor Vehicle License Tax

Section 5. The legislature shall impose an annual license tax of three dollars on automobiles for private use, and on other motor vehicles, an annual license tax based upon horsepower, carrying capacity, weight, or any of these. No parish or municipality may impose a license fee on motor vehicles.

Section 6. State Debt; Full Faith and Credit Obligations

Section 6. (A) Authorization. Unless otherwise authorized by this constitution, the state shall have no power, directly or indirectly, or through any state board, agency, commission, or otherwise, to incur debt or issue bonds except by law enacted by two-thirds of the elected members of each house of the legislature. The debt may be incurred or the bonds issued only if the funds are to be used to repel invasion; suppress insurrection; provide relief from natural catastrophes; refund outstanding indebtedness at the same or a lower effective interest rate; or make capital improvements, but only in accordance with a comprehensive capital budget, which the legislature shall adopt.

(B) Capital Improvements. If the purpose is to make capital improvements, the nature and location and, if more than one project, the amount allocated to each and the order of priority shall be stated in the comprehensive capital budget which the legislature adopts.

(C) Full Faith and Credit. The full faith and credit of the state shall be pledged to the repayment of all bonds or other evidences of indebtedness issued by the state directly or through any state board, agency, or commission pursuant to the provisions of Paragraphs (A) and (B) hereof. The full faith and credit of the state is not hereby pledged to the repayment of bonds of a levee dis-

trict, political subdivision, or local public agency. In addition, any state board, agency, or commission authorized by law to issue bonds, in the manner so authorized and with the approval of the State Bond Commission or its successor, may issue bonds which are payable from fees, rates, rentals, tolls, charges, grants, or other receipts or income derived by or in connection with an undertaking, facility, project, or any combination thereof, without a pledge of the full faith and credit of the state. Such revenue bonds may, but are not required to, be issued in accordance with the provisions of Paragraphs (A) and (B) hereof. If issued other than as provided in Paragraphs (A) and (B), such revenue bonds shall not carry the pledge of the full faith and credit of the state and the issuance of the bonds shall not constitute the incurring of state debt under this constitution. The rights granted to deep-water port commissions or deep-water port, harbor, and terminal districts under this constitution shall not be impaired by this Section.

(D) Referendum. The legislature, by law enacted by two-thirds of the elected members of each house, may propose a statewide public referendum to authorize incurrence of debt for any purpose for which the legislature is not herein authorized to incur debt.

(E) Exception. Nothing in this Section shall apply to any levee district, political subdivision, or local public agency unless the full faith and credit of the state is pledged to the payment of the bonds of the levee district, political subdivision, or local public agency.

Section 7. State Debt; Interim Emergency Board

Section 7. (A) Composition. The Interim Emergency Board is created. It shall be composed of the governor, lieutenant governor, state treasurer, presiding officer of each house of the legislature, chairman of the Senate Finance Committee, and chairman of the House Appropriations Committee, or their designees.

(B) Powers. Between sessions of the legislature, when the board by majority vote determines that an emergency exists, it may appropriate from the state general fund or borrow on the full faith and credit of the state an amount to meet the emergency. The appropriation may be made or the indebtedness incurred only for a purpose for which the legislature may appropriate funds and then only after the board obtains, as provided by law, the written consent of two-thirds of the elected members of each house of the legislature. For the purposes of this Paragraph, an emergency is an event or occurrence not reasonably anticipated by the legislature.

(C) Limits. The aggregate of indebtedness outstanding at any one time and the amount appropriated from the state general fund for the current fiscal year under the authority of this Section shall not exceed one-tenth of one percent of total state revenue receipts for the previous fiscal year.

(D) Allocation. An amount sufficient to pay indebted-

ness incurred during the preceding fiscal year under the authority of this Section is allocated, as a first priority, each year from the state general fund.

Section 8. State Bond Commission

Section 8. (A) Creation. The State Bond Commission is created. Its membership and authority shall be determined by law.

(B) Approval of Bonds. No bonds or other obligations shall be issued or sold by the state, directly or through any state board, agency, or commission, or by any political subdivision of the state, unless prior written approval of the bond commission is obtained.

(C) Contesting State Bonds. Bonds, notes, certificates, or other evidences of indebtedness of the state (hereafter referred to as "bonds") shall not be invalid because of any irregularity or defect in the proceedings or in the issuance and sale thereof and shall be incontestable in the hands of a bona fide purchaser or holder. The issuing agency, after authorizing the issuance of bonds by resolution, shall publish once in the official journal of the state, as provided by law, a notice of intention to issue the bonds. The notice shall include a description of the bonds and the security therefor. Within thirty days after the publication, any person in interest may contest the legality of the resolution, any provision of the bonds to be issued pursuant to it, the provisions securing the bonds, and the validity of all other provisions and proceedings relating to the authorization and issuance of the bonds. If no action or proceeding is instituted within the thirty days, no person may contest the validity of the bonds, the provisions of the resolution pursuant to which the bonds were issued, the security of the bonds, or the validity of any other provisions or proceedings relating to their authorization and issuance, and the bonds shall be presumed conclusively to be legal. Thereafter no court shall have authority to inquire into such matters.

Section 9. State Funds

Section 9. (A) Deposit in State Treasury. All money received by the state or by any state board, agency, or commission shall be deposited immediately upon receipt in the state treasury, except that received:

(1) as a result of grants or donations or other forms of assistance when the terms and conditions thereof or of agreements pertaining thereto require otherwise;

(2) by trade or professional associations;

(3) by the employment security administration fund or its successor;

(4) by retirement system funds;

(5) by state agencies operating under authority of this constitution preponderantly from fees and charges for the shipment of goods in international maritime trade and commerce; and

(6) by a state board, agency, or commission, but

pledged by it in connection with the issuance of revenue bonds as provided in Paragraph (C) of Section 6 of this Article, other than any surplus as may be defined in the law authorizing such revenue bonds.

(B) Bond Security and Redemption Fund. Subject to contractual obligations existing on the effective date of this constitution, all state money deposited in the state treasury shall be credited to a special fund designated as the Bond Security and Redemption Fund, except money received as the result of grants or donations or other forms of assistance when the terms and conditions thereof or of agreements pertaining thereto require otherwise. In each fiscal year an amount is allocated from the bond security and redemption fund sufficient to pay all obligations which are secured by the full faith and credit of the state and which become due and payable within the current fiscal year, including principal, interest, premiums, sinking or reserve fund, and other requirements. Thereafter, except as otherwise provided by law, money remaining in the fund shall be credited to the state general fund.

(C) Exception. Nothing in this Section shall apply to a levee district or political subdivision unless the full faith and credit of the state is pledged to the payment of the bonds of the levee district or political subdivision.

Section 10. Expenditure of State Funds

Section 10. (A) Appropriations. Except as otherwise provided by this constitution, money shall be drawn from the state treasury only pursuant to an appropriation made in accordance with law.

(B) Balanced Budget. Total appropriations by the legislature for any fiscal year shall not exceed anticipated state revenues for that fiscal year.

(C) Publication. The legislature shall have published a regular statement of receipts and expenditures of all state money at intervals of not more than one year.

(D) Public Purpose. No appropriation shall be made except for a public purpose.

Section 11. Budgets

Section 11. (A) Operating Budget. The governor shall submit to the legislature, at a time fixed by law, a budget estimate for the next fiscal year setting forth all proposed state expenditures and anticipated state revenues. He shall cause to be submitted a general appropriation bill for proposed ordinary operating expenditures and, if necessary, a bill or bills to raise additional revenues.

(B) Capital Budget. The governor shall submit to the legislature, at each regular session, a proposed five-year capital outlay program and request implementation of the first year of the program. Capital outlay projects approved by the legislature shall be made a part of the comprehensive state capital budget, which shall be adopted by the legislature.

Section 12. Reports and Records

Section 12. Reports and records of the collection, expenditure, investment, and use of state money and those relating to state obligations shall be matters of public record, except returns of taxpayers and matters pertaining to those returns.

Section 13. Investment of State Funds

Section 13. All money in the custody of the state treasurer which is available for investment shall be invested as provided by law.

Section 14. Donation, Loan, or Pledge of Public Credit

Section 14. (A) Prohibited Uses. Except as otherwise provided by this constitution, the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private. Neither the state nor a political subdivision shall subscribe to or purchase the stock of a corporation or association or for any private enterprise.

(B) Authorized Uses. Nothing in this Section shall prevent (1) the use of public funds for programs of social welfare for the aid and support of the needy; (2) contributions of public funds to pension and insurance programs for the benefit of public employees; or (3) the pledge of public funds, credit, property, or things of value for public purposes with respect to the issuance of bonds or other evidences of indebtedness to meet public obligations as provided by law.

(C) Cooperative Endeavors. For a public purpose, the state and its political subdivisions or political corporations may engage in cooperative endeavors with each other, with the United States or its agencies, or with any public or private association, corporation, or individual.

(D) Prior Obligations. Funds, credit, property, or things of value of the state or of a political subdivision heretofore loaned, pledged, dedicated, or granted by prior state law or authorized to be loaned, pledged, dedicated, or granted by the prior laws and constitution of this state shall so remain for the full term as provided by the prior laws and constitution and for the full term as provided by any contract, unless the authorization is revoked by law enacted by two-thirds of the elected members of each house of the legislature prior to the vesting of any contractual rights pursuant to this Section.

Section 15. Release of Obligations to State, Parish, or Municipality

Section 15. The legislature shall have no power to release, extinguish, or authorize the releasing or extinguishing of any indebtedness, liability, or obligation of a corporation or individual to the state, a parish, or a municipality.

However, the legislature, by law, may establish a system under which claims by the state or a political subdivision may be compromised, and may provide for the release of heirs to confiscated property from taxes due thereon at the date of its reversion to them.

Section 16. Taxes; Prescription

Section 16. Taxes, except real property taxes, and licenses shall prescribe in three years after the thirty-first day of December in the year in which they are due, but prescription may be interrupted or suspended as provided by law.

Section 17. Legislation to Obtain Federal Aid

Section 17. The legislature may enact laws to enable the state, its agencies, boards, commissions, and political subdivisions and their agencies to comply with federal laws and regulations in order to secure federal participation in funding capital improvement projects.

PART II. PROPERTY TAXATION

Section 18. Ad Valorem Taxes

Section 18. (A) Assessments. Property subject to ad valorem taxation shall be listed on the assessment rolls at its assessed valuation, which, except as provided in Paragraph (C), shall be a percentage of its fair market value. The percentage of fair market value shall be uniform throughout the state upon the same class of property.

(B) Classification. The classifications of property subject to ad valorem taxation and the percentage of fair market value applicable to each classification for the purpose of determining assessed valuation are as follows:

Classifications	Percentages
1. Land	10%
2. Improvements for residential purposes	10%
3. Other property	15%

(C) Use Value. Bona fide agricultural, horticultural, marsh, and timber lands, as defined by general law, shall be assessed for tax purposes at ten percent of use value rather than fair market value. The legislature may provide by law similarly for buildings of historic architectural importance.

(D) Valuation. Each assessor shall determine the fair market value of all property subject to taxation within his respective parish or district except public service properties, which shall be valued at fair market value by the Louisiana Tax Commission or its successor. Each assessor shall determine the use value of property which is to be so assessed under the provisions of Paragraph (C). Fair market value and use value of property shall be determined in accordance with criteria which shall be established by law and which shall apply uniformly throughout the state.

(E) Review. The correctness of assessments by the assessor shall be subject to review first by the parish governing authority, then by the Louisiana Tax Commission or its successor, and finally by the courts, all in accordance with procedures established by law.

(F) Reappraisal. All property subject to taxation shall be reappraised and valued in accordance with this Section, at intervals of not more than four years.

Section 19. State Property Taxation; Rate Limitation

Section 19. State taxation on property for all purposes shall not exceed an annual rate of five and three-quarter mills on the dollar of assessed valuation.

Section 20. Homestead Exemption

Section 20. (A) Homeowners.

(1) The bona fide homestead, consisting of a tract of land or two or more tracts of land with a residence on one tract and a field, pasture, or garden on the other tract or tracts, not exceeding one hundred sixty acres, buildings and appurtenances, whether rural or urban, owned and occupied by any person, shall be exempt from state, parish, and special ad valorem taxes to the extent of three thousand dollars of the assessed valuation.

(2) By law enacted by two-thirds of the elected members of each house, the legislature may increase this homestead exemption to an amount which shall not exceed five thousand dollars of the assessed valuation.

(3) The homestead exemption of veterans of the armed forces of the United States, honorably discharged or separated from such services or other persons who served in said armed forces, as defined by general law, and of persons sixty-five years of age or older shall be five thousand dollars of the assessed valuation.

(4) The homestead exemption shall extend to the surviving spouse or minor children of a deceased owner and shall apply when the homestead is occupied as such and title to it is in either husband or wife but not to more than one homestead owned by the husband or wife.

(5) This exemption shall not extend to municipal taxes. However, the exemption shall apply (a) in Orleans Parish, to state, general city, school, levee, and levee district taxes and (b) to any municipal taxes levied for school purposes.

(B) Residential Lessees. Notwithstanding any contrary provision in this constitution, the legislature may provide for tax relief to residential lessees in the form of credits or rebates in order to provide equitable tax relief similar to that granted to homeowners through homestead exemptions.

Section 21. Other Property Exemptions

Section 21. In addition to the homestead exemption provided for in Section 20 of this Article, the following pro-

perty and no other shall be exempt from ad valorem taxation:

(A) Public lands; other public property used for public purposes.

(B) (1) Property owned by a nonprofit corporation or association organized and operated exclusively for religious, dedicated places of burial, charitable, health, welfare, fraternal, or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or member thereof and which is declared to be exempt from federal or state income tax;

(2) property of a bona fide labor organization representing its members or affiliates in collective bargaining efforts; and

(3) property of an organization such as a lodge or club organized for charitable and fraternal purposes and practicing the same, and property of a nonprofit corporation devoted to promoting trade, travel, and commerce, and also property of a trade, business, industry or professional society or association, if that property is owned by a nonprofit corporation or association organized under the laws of this state for such purposes.

None of the property listed in Paragraph (B) shall be exempt if owned, operated, leased, or used for commercial purposes unrelated to the exempt purposes of the corporation or association.

(C) (1) Cash on hand or deposit:

(2) stocks and bonds, except bank stocks, the tax on which shall be paid by the banking institution;

(3) obligations secured by mortgage on property located in Louisiana and the notes or other evidence thereof;

(4) loans by life insurance companies to policyholders, if secured solely by their policies;

(5) the legal reserve of domestic life insurance companies;

(6) loans by a homestead or building and loan association to its members, if secured solely by stock of the association;

(7) debts due for merchandise or other articles of commerce or for services rendered;

(8) obligations of the state or its political subdivisions;

(9) personal property used in the home or on loan in a public place;

(10) irrevocably dedicated places of burial held by individuals for purposes of burial of themselves or members of their families;

(11) agricultural products while owned by the producer, agricultural machinery and other implements used exclusively for agricultural purposes, animals on the farm, and property belonging to an agricultural fair association;

(12) property used for cultural, Mardi Gras carnival, or civic activities and not operated for profit to the owners;

(13) rights-of-way granted to the State Department of Highways;

(14) boats using gasoline as motor fuel;

(15) commercial vessels used for gathering seafood for human consumption; and

(16) ships and oceangoing tugs, towboats, and barges engaged in international trade and domiciled in Louisiana ports. However, this exemption shall not apply to harbor, wharf, shed, and other port dues or to any vessel operated in the coastal trade of the states of the United States.

(D) (1) Raw materials, goods, commodities, and articles imported into this state from outside the states of the United States:

(a) so long as the imports remain on the public property of the port authority or docks of the common carrier where they first entered this state;

(b) so long as the imports (other than minerals and ores of the same kind as any mined or produced in this state and manufactured articles) are held in this state in the original form in bales, sacks, barrels, boxes, cartons, containers, or other original packages, and raw materials held in bulk as all or a part of the new material inventory of manufacturers or processors, solely for manufacturing or processing; or

(c) so long as the imports are held by an importer in any public or private storage in the original form in bales, sacks, barrels, boxes, cartons, containers, or other original packages and agricultural products in bulk. This exemption shall not apply to these imports when held by a retail merchant as part of his stock-in-trade for sale at retail.

(2) Raw materials, goods, commodities, and other articles being held on the public property of a port authority, on docks of any common carrier, or in a warehouse, grain elevator, dock, wharf, or public storage facility in this state for export to a point outside the states of the United States.

(3) Goods, commodities, and personal property in public or private storage while in transit through this state which are moving in interstate commerce through or over the territory of the state or which are in public or private storage within Louisiana, having been shipped from outside Louisiana for storage in transit to a final destination outside Louisiana, whether such destination was specified when transportation began or afterward.

Property described in Paragraph (D), whether or not entitled to exemption, shall be reported to the proper taxing authority on the forms required by law.

(E) Motor vehicles used on the public highways of this state, from state, parish, and special ad valorem taxes. This exemption shall not extend to any general or special tax levied by a municipal governing authority, or by a district created by it, unless the governing authority thereof provides for the exemption by ordinance or resolution.

(F) Notwithstanding any contrary provision of this Section, the State Board of Commerce and Industry or its successor, with the approval of the governor, may enter

into contracts for the exemption from ad valorem taxes of a new manufacturing establishment or an addition to an existing manufacturing establishment, on such terms and conditions as the board, with the approval of the governor, deems in the best interest of the state.

The exemption shall be for an initial term of no more than five calendar years, and may be renewed for an additional five years. All property exempted shall be listed on the assessment rolls and submitted to the Louisiana Tax Commission or its successor, but no taxes shall be collected thereon during the period of exemption.

The terms "manufacturing establishment" and "addition" as used herein mean a new plant or establishment or an addition or additions to any existing plant or establishment which engages in the business of working raw materials into wares suitable for use or which gives new shapes, qualities, or combinations to matter which already has gone through some artificial process.

Section 22. No Impairment of Existing Taxes or Obligations

Section 22. This Part shall not be applied in a manner which will (a) invalidate taxes authorized and imposed prior to the effective date of this constitution or (b) impair the obligations, validity, or security of any bonds or other debt obligations authorized prior to the effective date of this constitution.

Section 23. Adjustment of Ad Valorem Tax Millages

Section 23. Prior to the end of the third year after the effective date of this constitution, the assessors and the Louisiana Tax Commission or its successor shall complete determination of the fair market value or the use value of all property subject to taxation within each parish for use in implementing this Article. Except as provided in this Paragraph, the total amount of ad valorem taxes collected by any taxing authority in the year in which Sections 18 and 20 of this Article are implemented shall not be increased or decreased, because of their provisions, above or below ad valorem taxes collected by that taxing authority in the year preceding implementation. To accomplish this result, it shall be mandatory for each affected taxing authority, in the year in which Sections 18 and 20 of this Article are implemented, to adjust millages upwards or downwards without regard to millage limitations contained in this constitution, and the maximum authorized millages shall be increased or decreased, without further voter approval, in proportion to the amount of the adjustment upward or downward. Thereafter, such millages shall remain in effect unless changed as permitted by this constitution. Nothing herein shall prohibit a taxing authority from collecting, in the year in which Sections 18 and 20 of this Article are implemented or in any subsequent year, a larger dollar amount of ad valorem taxes by (a) levying additional or in-

creased millages as provided by law; (b) placing additional property on the tax rolls; or (c) increases in the fair market or use value of property after the first determination of that value to implement this Article. This Section shall not apply to millages required to be levied for the payment of general obligation bonds.

Section 24. Tax Assessors

Section 24. (A) Election; Term. A tax assessor shall be elected by the electors of each parish, Orleans Parish excepted. His term of office shall be four years. His election, duties, and compensation shall be as provided by law.

(B) Orleans Parish. There shall be seven assessors in New Orleans, who shall compose the Board of Assessors for Orleans Parish. One shall be elected from each municipal district of New Orleans, and each shall be a resident of the district from which he is elected. The assessors shall be elected at the same time as the municipal officers of New Orleans, for terms of four years each. Their duties and compensation shall be as provided by law.

(C) Vacancy. When a vacancy occurs in the office of tax assessor, the duties of the office, until filled by election as provided by law, shall be assumed by the chief deputy assessor, except in Orleans Parish where the Board of Assessors shall appoint an interim assessor.

Section 25. Tax Sales

Section 25. (A) Tax Sales. There shall be no forfeiture of property for nonpayment of taxes. However, at the expiration of the year in which the taxes are due, the collector, without suit, and after giving notice to the delinquent in the manner provided by law, shall advertise for sale the property on which the taxes are due. The advertisement shall be published in the official journal of the parish or municipality, or, if there is no official journal, as provided by law for sheriffs' sales, in the manner provided for judicial sales. On the day of sale, the collector shall sell the portion of the property which the debtor points out. If the debtor does not point out sufficient property, the collector shall sell immediately the least quantity of property which any bidder will buy for the amount of the taxes, interest, and costs. The sale shall be without appraisal. A tax deed by a tax collector shall be prima facie evidence that a valid sale was made.

(B) Redemption. The property sold shall be redeemable for three years after the date of recordation of the tax sale, by paying the price given, including costs, five percent penalty thereon, and interest at the rate of one percent per month until redemption.

(C) Annulment. No sale of property for taxes shall be set aside for any cause, except on proof of payment of the taxes prior to the date of the sale, unless the proceeding to annul is instituted within six months after ser-

vice of notice of sale. A notice of sale shall not be served until the final day for redemption has ended. It must be served within five years after the date of the recordation of the tax deed if no notice is given. The fact that taxes were paid on a part of the property sold prior to the sale thereof, or that a part of the property was not subject to taxation, shall not be cause for annulling the sale of any part thereof on which the taxes for which it was sold were due and unpaid. No judgment annulling a tax sale shall have effect until the price and all taxes and costs are paid, and until ten percent per annum interest on the amount of the price and taxes paid from date of respective payments are paid to the purchaser; however, this shall not apply to sales annulled because the taxes were paid prior to the date of sale.

(D) Quieting Tax Title. The manner of notice and form of proceeding to quiet tax titles shall be provided by law.

(E) Movables; Tax Sales. When taxes on movables are delinquent, the tax collector shall seize and sell sufficient movable property of the delinquent taxpayer to pay the tax, whether or not the property seized is the property which was assessed. Sale of the property shall be at public auction, without appraisal, after ten days advertisement, published within ten days after date of seizure. It shall be absolute and without redemption.

If the tax collector can find no corporeal movables of the delinquent to seize, he may levy on incorporeal rights, by notifying the debtor thereof, or he may proceed by summary rule in the courts to compel the delinquent to deliver for sale property in his possession or under his control.

(F) Postponement of Taxes. The legislature may postpone the payment of taxes, but only in cases of overflow, general conflagration, general crop destruction, or other public calamity, and may provide for the levying, assessing, and collecting of such postponed taxes. In such case, the legislature may authorize the borrowing of money by the state on its faith and credit, by bond issue or otherwise, and may levy taxes, or apply taxes already levied and not appropriated, to secure payment thereof, in order to create a fund from which loans may be made through the Interim Emergency Board to the governing authority of the parish where the calamity occurs. The money loaned shall be applied to and shall not exceed the deficiency in revenue of the parish or a political subdivision therein or of which the parish is a part, caused by postponement of taxes. No loan shall be made to a parish governing authority without the approval of the Interim Emergency Board.

PART III. REVENUE SHARING

Section 26. Revenue Sharing Fund

Section 26. (A) Creation of Fund. The Revenue Sharing Fund is created as a special fund in the state treasury.

(B) Annual Allocation. The sum of ninety million dol-

lars is allocated annually from the state general fund to the revenue sharing fund. The legislature may appropriate additional sums to the fund.

(C) Distribution Formula. The revenue sharing fund shall be distributed annually as provided by law solely on the basis of population and number of homesteads in each parish in proportion to population and the number of homesteads throughout the state. Unless otherwise provided by law, population statistics of the last federal decennial census shall be utilized for this purpose. After deductions in each parish for retirement systems and commissions as authorized by law, the remaining funds, to the extent available, shall be distributed by first priority to the tax recipient bodies within the parish, as defined by law, to offset current losses because of homestead exemptions granted in this Article. Any balance remaining in a parish distribution shall be allocated to the municipalities and tax recipient bodies within each parish as provided by law.

(D) Distributing Officer. The funds distributed to each parish as provided in Paragraph (C) shall be distributed

in Orleans Parish by the city treasurer of New Orleans and in all other parishes by the parish tax collector. The funds allocated to the Monroe City School Board or its successor shall be distributed to and by the city treasurer of Monroe.

(E) Bonded Debt. A political subdivision, as defined by Article VI of this constitution, may incur debt by issuing negotiable bonds and may pledge for the payment of all or part of the principal and interest of such bonds the proceeds derived or to be derived from that portion of the funds received by it from the revenue sharing fund, to offset current losses caused by homestead exemptions granted by this Article. Unless otherwise provided by law, no moneys allocated within any parish from the balance remaining in its distribution may be pledged to the payment of the principal or interest of any bonds. Bonds issued under this Paragraph shall be issued and sold as provided by law, and shall require approval of the State Bond Commission or its successor prior to issuance and sale.

ARTICLE VIII. EDUCATION

PREAMBLE

The goal of the public educational system is to provide learning environments and experiences, at all stages of human development, that are humane, just, and designed to promote excellence in order that every individual may be afforded an equal opportunity to develop to his full potential.

Section 1. Public Educational System

Section 1. The legislature shall provide for the education of the people of the state and shall establish and maintain a public educational system.

Section 2. State Superintendent of Education

Section 2. There shall be a superintendent of education for public elementary and secondary education who, subject to provisions for appointment in lieu of election set forth in Article IV, Section 20, of this constitution, shall be elected for a term of four years. If the office is made appointive, the State Board of Elementary and Secondary Education shall make the appointment. He shall be the administrative head of the Department of Education and shall implement the policies of the State Board of Elementary and Secondary Education and the laws affecting schools under its jurisdiction. The qualifications and other powers, functions, duties, and responsibilities of the superintendent shall be provided by law.

Section 3. State Board of Elementary and Secondary Education

Section 3. (A) Creation; Functions. The State Board of Elementary and Secondary Education is created as a body corporate. It shall supervise and control the public elementary and secondary schools, vocational-technical training, and special schools under its jurisdiction and shall have budgetary responsibility for all funds appropriated or allocated by the state for those schools, all as provided by law. The board shall have other powers, duties, and responsibilities as provided by this constitution or by law, but shall have no control over the business affairs of a parish or city school board or the selection or removal of its officers and employees.

(B) Membership; Terms. The board shall consist of eight members elected from single-member districts which shall be determined by law and three members appointed by the governor from the state at large, with consent of the Senate. Members shall serve overlapping terms of six years, following the initial terms which shall be fixed by law.

(C) Vacancy. A vacancy in the office of an elected member, if the remaining portion of the term is more than one year, shall be filled for the remainder of the term by election, as provided by law. Other vacancies shall be filled for the remainder of the term by appointment by the governor.

Section 4. Approval of Private Schools

Section 4. Upon application by a private elementary, secondary, or proprietary school with a sustained curriculum or specialized course of study of quality at least equal to that prescribed for similar public schools, the State Board of Elementary and Secondary Education shall approve the private school. A certificate issued by an approved private school shall carry the same privileges as one issued by a state public school.

Section 5. Board of Regents

Section 5. (A) Creation; Functions. The Board of Regents is created as a body corporate. It shall plan, coordinate, and have budgetary responsibility for all public higher education and shall have other powers, duties, and responsibilities provided in this Section or by law.

(B) Membership; Terms. The board shall consist of fifteen electors appointed by the governor, with consent of the Senate, for overlapping terms of six years, following initial terms which shall be fixed by law. At least one member, but no more than two members, shall be appointed from each congressional district.

(C) Vacancy. A vacancy occurring prior to the expiration of a term shall be filled for the remainder of the unexpired term by appointment by the governor, with consent of the Senate.

(D) Powers. The Board of Regents shall meet with the State Board of Elementary and Secondary Education at least twice a year to coordinate programs of public elementary, secondary, vocational-technical, career, and higher education. The Board of Regents shall have the following powers, duties, and responsibilities relating to public institutions of higher education:

(1) To revise or eliminate an existing degree program, department of instruction, division, or similar subdivision.

(2) To approve, disapprove, or modify a proposed degree program, department of instruction, division, or similar subdivision.

(3) To study the need for and feasibility of any new institution of post-secondary education, including branches of institutions and conversion of two-year institutions to institutions offering longer courses of study. If the creation of a new institution, the addition of another management board, or the transfer of an existing institution from one board to another is proposed, the Board of Regents shall report its written findings and recommendations to the legislature within one year. Only after the report has been filed, or, after one year if no report is filed, may the legislature take affirmative action on such a proposal and then only by law enacted by two-thirds of the elected members of each house.

(4) To formulate and make timely revision of a master plan for higher education. As a minimum, the plan shall include a formula for equitable distribution of funds to the institutions of higher education.

(5) To require that every higher education board submit to it, at a time it specifies, an annual budget proposal for operational needs and for capital needs of each institution under the control of each board. The Board of Regents shall submit its budget recommendations for all institutions of higher education in the state. It shall recommend priorities for capital construction and improvements.

(E) Powers Not Vested. Powers of management over public institutions of higher education not specifically vested by this Section in the Board of Regents are reserved to the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, the Board of Supervisors of Southern University and Agricultural and Mechanical College, the Board of Trustees for State Colleges and Universities, and any other such board created pursuant to this Article, as to the institutions under the control of each.

Section 6. Board of Trustees for State Colleges and Universities

Section 6. (A) Creation; Functions. The Board of Trustees for State Colleges and Universities is created as a body corporate. Subject to powers vested by this Article in the Board of Regents, it shall have supervision and management of state colleges and universities not managed by a higher education board created by or under this Article.

(B) Membership; Terms. The board shall be composed of two members from each congressional district and one member from the state at large, appointed by the governor with consent of the Senate. The members shall serve overlapping terms of six years, following initial terms fixed by law.

(C) Vacancy. A vacancy occurring prior to the expiration of a term shall be filled for the remainder of the unexpired term by appointment by the governor, with consent of the Senate.

Section 7. Board of Supervisors of Louisiana State University and Agricultural and Mechanical College; Board of Supervisors of Southern University and Agricultural and Mechanical College

Section 7. (A) Creation; Powers. The Board of Supervisors of Louisiana State University and Agricultural and Mechanical College and the Board of Supervisors of Southern University and Agricultural and Mechanical College are created as bodies corporate. Subject to powers vested by this Article in the Board of Regents, each shall supervise and manage the institutions, statewide agricultural programs, and other programs administered through its system.

(B) Membership; Terms. Each board shall be composed of two members from each congressional district and one member from the state at large, appointed by the gov-

error with consent of the Senate. The members shall serve overlapping terms of six years, following initial terms fixed by law.

(C) Vacancy. A vacancy occurring prior to the expiration of a term shall be filled for the remainder of the unexpired term by appointment by the governor, with consent of the Senate.

Section 8. Boards; Membership; Compensation

Section 8. (A) Dual Membership. No person shall be eligible to serve simultaneously on more than one board created by or pursuant to this Article.

(B) Student Membership. The legislature may provide for the membership of one student on the boards created by Sections 6 and 7 of this Article. The term of a student member shall not exceed one year, and no student member shall be eligible to succeed himself. A student member shall have all of the privileges and rights of other board members except the right to vote.

(C) Compensation. A member of a board created by or pursuant to this Article shall serve without pay, but per diem and expenses may be provided by law.

Section 9. Parish School Boards; Parish Superintendents

Section 9. (A) Boards. The legislature shall create parish school boards and provide for the election of their members.

(B) Superintendents. Each parish board shall elect a superintendent of parish schools. The State Board of Elementary and Secondary Education shall fix the qualifications and prescribe the duties of the parish superintendent. He need not be a resident of the parish in which he serves.

Section 10. Existing Boards and Systems Recognized; Consolidation

Section 10. (A) Recognition. Parish and city school board systems in existence on the effective date of this constitution are recognized, subject to control and supervision by the State Board of Elementary and Secondary Education and the power of the legislature to enact laws affecting them.

(B) Ouachita Parish and Monroe City School Systems; Board Membership. Only persons residing within the jurisdiction of the Monroe City School Board shall be eligible to vote for or be members of the Monroe City School Board. Only persons residing in that portion of Ouachita Parish outside the jurisdiction of the Monroe City School Board shall be eligible to vote for or be members of the Ouachita Parish School Board. The position of a member of either board shall be vacated when he no longer satisfies the requirements of this Paragraph. Notwithstanding any contrary provision of this constitution, this Paragraph shall become operative upon the election of members to the Ouachita Parish School Board taking

office in 1977 or upon the first reapportionment affecting the Ouachita Parish School Board, whichever occurs earlier.

(C) Consolidation. Subject to approval by a majority of the electors voting, in each system affected, in an election held for that purpose, any two or more school systems may be consolidated as provided by law.

Section 11. Appropriations; State Boards

Section 11. The legislature shall appropriate funds for the operating and administrative expenses of the state boards created by or pursuant to this Article.

Section 12. Appropriations; Higher Education

Section 12. Appropriations for the institutions of higher education shall be made to their managing boards. The funds appropriated shall be administered by the managing boards and used solely as provided by law.

Section 13. Funding; Apportionment

Section 13. (A) Free School Books. The legislature shall appropriate funds to supply free school books and other materials of instruction prescribed by the State Board of Elementary and Secondary Education to the children of this state at the elementary and secondary levels.

(B) Minimum Foundation Program. The legislature shall appropriate funds sufficient to insure a minimum foundation program of education in all public elementary and secondary schools. The funds appropriated shall be equitably allocated to parish and city school systems according to formulas adopted by the State Board of Elementary and Secondary Education and approved by the legislature prior to making the appropriation.

(C) Local Funds. Local funds for the support of elementary and secondary schools shall be derived from the following sources:

First: Each parish school board, Orleans Parish excepted, and each municipality or city school board actually operating, maintaining, or supporting a separate system of public schools, shall levy annually an ad valorem maintenance tax not to exceed five mills on the dollar of assessed valuation on property subject to such taxation within the parish or city, respectively.

Second: The Orleans Parish School Board shall levy annually a tax not to exceed thirteen mills on the dollar of the assessed valuation of property within the city of New Orleans assessed for city taxation, and shall certify the amount of the tax to the governing authority of the city. The governing authority shall have the tax entered on city tax rolls. The tax shall be collected in the manner, under the conditions, and with the interest and penalties prescribed by law for city taxes. The money thus collected shall be paid daily to the Orleans Parish School Board.

Third: For giving additional support to public elemen-

tary and secondary schools, any parish, school district, or sub-school district, or any municipality or city school board which supports a separate city system of public schools may levy an ad valorem tax for a specific purpose, when authorized by a majority of the electors voting in the parish, municipality, district, or subdistrict in an election held for that purpose. The amount, duration, and purpose of the tax shall be in accord with any limitation imposed by the legislature.

(D) Municipal School Systems. For the effects and

purposes of this Section, the municipalities of Monroe in Ouachita Parish, and Bogalusa in Washington Parish, and no others, shall be regarded and treated as parishes and shall have the authority granted parishes.

Section 14. Tulane University

Section 14. The Tulane University of Louisiana in New Orleans is recognized as created and to be developed in accordance with Act No. 43 approved July 5, 1884.

ARTICLE IX. NATURAL RESOURCES

Section 1. Natural Resources and Environment; Public Policy

Section 1. The natural resources of the state, including air and water, and the healthful, scenic, historic, and esthetic quality of the environment shall be protected, conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people. The legislature shall enact laws to implement this policy.

Section 2. Natural Gas

Section 2. (A) Public Policy; Regulation. Natural gas is declared to be affected with a public interest. Notwithstanding any provision of this constitution relative to the powers and duties of the Public Service Commission, the legislature shall provide by law for regulation of natural gas by the regulatory authority it designates. It may designate the Public Service Commission as the regulatory authority.

(B) Pipelines. No intrastate natural gas pipeline or gas gathering line shall be connected with an interstate natural gas pipeline, and no interstate natural gas pipeline shall be connected with an intrastate natural gas pipeline, without a certificate of public convenience and necessity issued as provided by law after application for the connection and hearing thereon.

Section 3. Alienation of Water Bottoms

Section 3. The legislature shall neither alienate nor authorize the alienation of the bed of a navigable water body, except for purposes of reclamation by the riparian owner to recover land lost through erosion. This Section shall not prevent the leasing of state lands or water bottoms for mineral or other purposes. Except as provided in this Section, the bed of a navigable water body may be reclaimed only for public use.

Section 4. Reservation of Mineral Rights; Prescription

Section 4. (A) Reservation of Mineral Rights. The mineral rights on property sold by the state shall be reserved,

except when the owner or person having the right to redeem buys or redeems property sold or adjudicated to the state for taxes.

(B) Prescription. Lands and mineral interests of the state, of a school board, or of a levee district shall not be lost by prescription.

Section 5. Public Notice; Public Bidding Requirements

Section 5. No conveyance, lease, royalty agreement, or unitization agreement involving minerals or mineral rights owned by the state shall be conferred without prior public notice or public bidding as shall be provided by law.

Section 6. Tidelands Ownership

Section 6. Revenues and royalties obtained from minerals located beyond the seaward boundary of the state belong to the state.

Section 7. Wildlife and Fisheries Commission

Section 7. (A) Members; Terms. The control and supervision of the wildlife of the state, including all aquatic life, is vested in the Louisiana Wildlife and Fisheries Commission. The commission shall be in the executive branch and shall consist of seven members appointed by the governor, subject to confirmation by the Senate. Six members shall serve overlapping terms of six years, and one member shall serve a term concurrent with that of the governor. Three members shall be electors of the coastal parishes and representatives of the commercial fishing and fur industries, and four shall be electors from the state at large other than representatives of the commercial fishing and fur industries, as provided by law. No member who has served six years or more shall be eligible for reappointment.

(B) Duties; Compensation. The functions, duties, and responsibilities of the commission, and the compensation of its members, shall be provided by law.

Section 8. Forestry

Section 8. (A) Forestry; Acreage Taxes. Forestry shall be practiced in the state, and the legislature may enact laws therefor. It may authorize parish governing authorities to levy acreage taxes, not to exceed two cents per acre, for the purposes of this Section. The provisions of this constitution exempting homesteads from taxation shall apply to forestry acreage taxes.

(B) Forestry Commission. The practice of forestry is placed under the Louisiana Forestry Commission. The commission shall be in the executive branch and shall consist

of seven members. The head of the Department of Forestry at Louisiana State University and Agricultural and Mechanical College and the director of the Wildlife and Fisheries Commission shall serve ex officio as members. The governor shall appoint the remaining five members, subject to confirmation by the Senate, for overlapping terms of five years, as provided by law.

(C) State Forester. The commission shall appoint a state forester. He shall be a graduate of an accredited school of forestry and have at least four years of forestry experience, as provided by law.

ARTICLE X. PUBLIC OFFICIALS AND EMPLOYEES

PART I. STATE AND CITY CIVIL SERVICE

Section 1. Civil Service Systems

Section 1. (A) State Civil Service. The state civil service is established and includes all persons holding offices and positions of trust or employment in the employ of the state, or any instrumentality thereof, and any joint state and federal agency, joint state and parochial agency, or joint state and municipal agency, regardless of the source of the funds used to pay for such employment. It shall not include persons holding offices and positions of any municipal board of health or local governmental subdivision.

(B) City Civil Service. The city civil service is established and includes all persons holding offices and positions of trust or employment in the employ of each city having over four hundred thousand population and in every instrumentality thereof. However, paid firemen and municipal policemen may be excluded if a majority of the electors in the affected city voting at an election held for that purpose approve their exclusion. The election shall be called by the municipal governing authority within one year after the effective date of this constitution.

Section 2. Classified and Unclassified Service

Section 2. (A) Classified Service. The state and city civil service is divided into the unclassified and the classified service. Persons not included in the unclassified service are in the classified service.

(B) Unclassified Service. The unclassified service shall include the following officers and employees in the state and city civil service:

- (1) elected officials and persons appointed to fill vacancies in elective offices;
- (2) the heads of each principal executive department appointed by the governor, the mayor, or the governing authority of a city;
- (3) city attorneys;

(4) registrars of voters;

(5) members of state and city boards, authorities, and commissions;

(6) one private secretary to the president of each college or university;

(7) one person holding a confidential position and one principal assistant or deputy to any officer, board, commission, or authority mentioned in (1), (2), (4), or (5) above, except civil service departments;

(8) members of the military or naval forces;

(9) teaching and professional staffs, and administrative officers of schools, colleges, and universities of the state, and bona fide students of those institutions employed by any state, parochial, or municipal agency;

(10) employees, deputies, and officers of the legislature and of the offices of the governor, lieutenant governor, attorney general, each mayor and city attorney, of police juries, school boards, assessors, and of all offices provided for in Article V of this constitution except the offices of clerk of the municipal and traffic courts in New Orleans;

(11) commissioners of elections, watchers, and custodians and deputy custodians of voting machines; and

(12) railroad employees whose working conditions and retirement benefits are regulated by federal agencies in accordance with federal law.

Additional positions may be added to the unclassified service and those positions may be revoked by rules adopted by a commission.

Section 3. State Civil Service Commission

Section 3. (A) Composition. The State Civil Service Commission is established and shall be domiciled in the state capital. It shall be composed of seven members who are electors of this state, four of whom shall constitute a quorum. No more than one appointed member shall be from each congressional district.

(B) Appointment. The members shall be appointed

by the governor, as hereinafter provided, for overlapping terms of six years.

(C) Nominations. The presidents of Centenary College at Shreveport, Dillard University at New Orleans, Louisiana College at Pineville, Loyola University at New Orleans, Tulane University of Louisiana at New Orleans, and Xavier University at New Orleans, after giving consideration to representation of all groups, each shall nominate three persons. The governor shall appoint one member of the commission from the three persons nominated by each president. One member of the commission shall be elected by the classified employees of the state from their number as provided by law. A vacancy for any cause shall be filled by appointment or election in accordance with the procedure or law governing the original appointment or election, and from the same source. Within thirty days after a vacancy occurs, the president concerned shall submit the required nominations. Within thirty days thereafter, the governor shall make his appointment. If the governor fails to appoint within thirty days, the nominee whose name is first on the list of nominees automatically shall become a member of the commission. If any nominating authority fails to submit nominees in the time required, or if one of the named institutions ceases to exist, the governor shall make the appointment to the commission.

Section 4. City Civil Service Commission

Section 4. (A) Creation; Membership; Domicile. A city civil service commission shall exist in each city having a population exceeding four hundred thousand. The domicile of each commission shall be in the city it serves. Each commission shall be composed of five members, who are electors of the city, three of whom shall constitute a quorum. The members shall serve overlapping terms of six years as hereinafter provided.

(B) New Orleans; Nomination and Appointment. In New Orleans, the presidents of Dillard University, Loyola University, St. Mary's Dominican College, Tulane University of Louisiana, and Xavier University, after giving consideration to representation of all groups, each shall nominate three persons. The municipal governing authority shall appoint one member of the commission from the three persons nominated by each.

(C) Other Cities; Nomination and Appointment. In each other city subject to this Section, the presidents of any five institutions of higher education in the state, selected by the governing authority of the respective city, each shall nominate three persons, after giving consideration to representation of all groups. The municipal governing authority shall appoint one member of the commission from the three persons nominated by each.

(D) Vacancies. A vacancy shall be filled by appointment in accordance with the procedure for the original appointment and from the same source. Within thirty days after a vacancy occurs, the university president con-

cerned shall submit the required nominations. Within thirty days thereafter, the municipal governing authority shall make the appointment. If the municipal governing authority fails to appoint within the thirty days, the nominee whose name is first on the list of nominees automatically shall become a member of the commission. If one of the nominating authorities fails to submit nominees in the time required, or if one of the named institutions ceases to exist, the municipal governing authority shall make the appointment.

Section 5. Removal

Section 5. A member of the state or of a city civil service commission may be removed by the governor or the governing authority, as the case may be, for cause, after being served with written specifications of the charges against him and being afforded an opportunity for a public hearing thereon by the appointing authority.

Section 6. Department of Civil Service; Directors

Section 6. (A) State Department. A Department of State Civil Service is established in the executive branch of the state government.

(B) City Departments. A department of city civil service shall exist in each city having a population exceeding four hundred thousand.

(C) Directors. Each commission shall appoint a director, after competitive examination, who shall be in the classified service. He shall be the administrative head of his department. Each director shall appoint personnel and exercise powers and duties to the extent prescribed by the commission appointing him.

Section 7. Appointments; Promotions

Section 7. Permanent appointments and promotions in the classified state and city service shall be made only after certification by the appropriate department of civil service under a general system based upon merit, efficiency, fitness, and length of service, as ascertained by examination which, so far as practical, shall be competitive. The number to be certified shall not be less than three; however, if more than one vacancy is to be filled, the name of one additional eligible for each vacancy may be certified. Each commission shall adopt rules for the method of certifying persons eligible for appointment, promotion, reemployment, and reinstatement and shall provide for appointments defined as emergency and temporary appointments if certification is not required.

Section 8. Appeals

Section 8. (A) Disciplinary Actions. No person who has gained permanent status in the classified state or city service shall be subjected to disciplinary action except for cause expressed in writing. A classified employee subjected to such disciplinary action shall have the right of appeal to the appropriate commission. The burden of

proof on appeal, as to the facts, shall be on the appointing authority.

(B) Discrimination. No classified employee shall be discriminated against because of his political or religious beliefs, sex, or race. A classified employee so discriminated against shall have the right of appeal to the appropriate commission. The burden of proof on appeal, as to the facts, shall be on the employee.

Section 9. Prohibitions Against Political Activities

Section 9. (A) Party Membership; Elections. No member of a civil service commission and no officer or employee in the classified service shall participate or engage in political activity; be a candidate for nomination or election to public office except to seek election as the classified state employee serving on the State Civil Service Commission; or be a member of any national, state, or local committee of a political party or faction; make or solicit contributions for any political party, faction, or candidate; or take active part in the management of the affairs of a political party, faction, candidate, or any political campaign, except to exercise his right as a citizen to express his opinion privately, to serve as a commissioner or official watcher at the polls, and to cast his vote as he desires.

(B) Contributions. No person shall solicit contributions for political purposes from any classified employee or official or use or attempt to use his position in the state or city service to punish or coerce the political action of a classified employee.

(C) Political Activity Defined. As used in this Part, "political activity" means an effort to support or oppose the election of a candidate for political office or to support a particular political party in an election. The support of issues involving bonded indebtedness, tax referenda, or constitutional amendments shall not be prohibited.

Section 10. Rules; Investigations; Wages and Hours

Section 10. (A) Rules. (1) Powers. Each commission is vested with broad and general rule-making and subpoena powers for the administration and regulation of the classified service, including the power to adopt rules for regulating employment, promotion, demotion, suspension, reduction in pay, removal, certification, qualifications, political activities, employment conditions, compensation and disbursements to employees, and other personnel matters and transactions; to adopt a uniform pay and classification plan; to require an appointing authority to institute an employee training and safety program; and generally to accomplish the objectives and purposes of the merit system of civil service as herein established. It may make recommendations with respect to employee training and safety. Nothing herein shall prevent the legislature from enacting laws supplementing these uniform pay plans for sworn, commissioned law enforcement

officers of the Division of State Police, Department of Public Safety and regularly commissioned officers of the Enforcement Division of the Department of Wildlife and Fisheries.

(2) Veterans. The state and city civil service departments shall accord a five-point preference in original appointment to each person honorably discharged, or discharged under honorable conditions from the armed forces of the United States who served between the wartime dates of April 6, 1917 through November 11, 1918; or between September 16, 1940 through July 25, 1947; between June 27, 1950 through January 31, 1955; or in the Viet Nam Theater between July 1, 1958 through the date the United States government declares to be the date of termination of service for members of the armed forces to receive credit for the award of the Viet Nam Service Medal; in a peacetime campaign or expedition for which campaign badges are authorized. The state and city civil service departments shall accord a ten-point preference in original appointment to each honorably discharged veteran who served either in peace or in war and who has one or more disabilities recognized as service-connected by the Veterans Administration; to the spouse of each veteran whose physical condition precludes his or her appointment to a civil service job in his or her usual line of work; to the unmarried widow of each deceased veteran who served in a war period, as defined above, or in a peacetime campaign or expedition; or to the unmarried widowed parent of any person who died in active wartime or peacetime service or who suffered total and permanent disability in active wartime or peacetime service; or the divorced or separated parents of any person who died in wartime or peacetime service or who became totally and permanently disabled in wartime or peacetime service. However, only one ten-point preference shall be allowed in the original appointment to any person enumerated above. If the ten-point preference is not used by the veteran, either because of the veteran's physical or mental incapacity which precludes his appointment to a civil service job in his usual line of work or because of his death, the preference shall be available to his spouse, unmarried widow, or eligible parents as defined above, in the order specified. However, any such preference may be given only to a person who has attained at least the minimum score required on each test and who has received at least the minimum rating required for eligibility.

(3) Layoffs; Preference Employees. When a position in the classified service is abolished, or needs to be vacated because of stoppage of work from lack of funds or other causes, preference employees (ex-members of the armed forces and their dependents as described in this Section) whose length of service and efficiency ratings are at least equal to those of other competing employees shall be retained in preference to all other competing employees. However, when any function of a state agency is transferred to, or when a state agency is replaced by, one or

more other state agencies, every preference employee in classifications and performing functions transferred, or working in the state agency replaced, shall be transferred to the replacing state agency or agencies for employment in a position for which he is qualified before that state agency or agencies appoint additional employees for such positions from eligible lists. The appointing authority shall give the director written notice of any proposed lay-off within a reasonable length of time before its effective date, and the director shall issue orders relating thereto which he considers necessary to secure compliance with the rules. No rule, regulation, or practice of the commission, of any agency or department, or of any official of the state or any political subdivision shall favor or discriminate against any applicant or employee because of his membership or non-membership in any private organization; but this shall not prohibit any state agency, department, or political subdivision from contracting with an employee organization with respect to wages, hours, grievances, working conditions, or other conditions of employment in a manner not inconsistent with this constitution, a civil service law, or a valid rule or regulation of a commission.

(4) Effect. Rules adopted pursuant hereto shall have the effect of law and be published and made available to the public. Each commission may impose penalties for violation of its rules by demotion in or suspension or discharge from position, with attendant loss of pay.

(B) Investigations. Each commission may investigate violations of this Part and the rules, statutes, or ordinances adopted pursuant hereto.

(C) Wages and Hours. Any rule or determination affecting wages or hours shall have the effect of law and become effective only after approval by the governor or the appropriate governing authority.

Section 11. Penalties

Section 11. Willful violation of any provision of this Part shall be a misdemeanor punishable by a fine of not more than five hundred dollars or by imprisonment for not more than six months, or both.

Section 12. Appeal

Section 12. Each commission shall have the exclusive power and authority to hear and decide all removal and disciplinary cases, with subpoena power and power to administer oaths. It may appoint a referee to take testimony, with subpoena power and power to administer oaths to witnesses. The decision of a commission shall be subject to review on any question of law or fact upon appeal to the court of appeal wherein the commission is located, upon application filed with the commission within thirty calendar days after its decision becomes final.

Section 13. Appropriations

Section 13. (A) State. The legislature shall make adequate annual appropriations to the State Civil Service Commission and to the Department of State Civil Service to enable them to implement this Part efficiently and effectively. The amount so appropriated shall not be subject to veto by the governor.

(B) Cities. Each city subject to this Part shall make adequate annual appropriations to enable its civil service commission and department to implement this Part efficiently and effectively.

Section 14. Acceptance of Act; Other Cities, Parishes, City and Parish Governed Jointly

Section 14. (A) Local Option. Each city having a population exceeding ten thousand but not exceeding four hundred thousand, each parish, and each parish governed jointly with one or more cities under a plan of government, having a population exceeding ten thousand, according to the latest official decennial federal census, may elect to be governed by this Part by a majority vote of its electors voting at an election held for that purpose. The election shall be ordered and held by the city, the parish, or the city-parish, as the case may be, upon (a) the adoption of an ordinance by the governing authority calling the election; or (b) the presentation to the governing authority of a petition calling for such an election signed by electors equal in number to five percent of the registered voters of the city, the parish, or the city-parish, as the case may be.

(B) Acceptance. If a majority of the electors vote to adopt this Part, its provisions shall apply permanently to the city, the parish, or the city-parish, as the case may be, and shall govern it as if this Part had originally applied to it. In such case, all officers and employees of the city, the parish, or the city-parish, as the case may be, who have acquired civil service status under a civil service system established by legislative act, city charter, or otherwise, shall retain that status and thereafter shall be subject to and be governed by this Part and the rules and regulations adopted under it.

(C) Rejection. If a majority of the electors vote against the adoption of this Part, the question of its adoption shall not be resubmitted to the voters of the political subdivision within one year thereafter.

Section 15. City, Parish Civil Service System; Creation; Prohibition

Section 15. Nothing in this Part shall prevent the establishment by the legislature, or by the respective parish governing authority, of a parish civil service system in one or more parishes, applicable to any or all parish employees, except teaching and professional staffs and administrative officers of schools, or the establishment by the legislature or by the respective municipal governing au-

thority of a municipal civil service system in one or more municipalities having a population of less than four hundred thousand, in any manner now or hereafter provided by law. However, paid firemen and paid municipal policemen in a municipality operating a regularly paid fire and police department and having a population exceeding thirteen thousand, and paid firemen in all parishes and in fire protection districts, are expressly excluded from such a civil service system.

Nothing in this Part shall permit inclusion in the local civil service of officials and employees listed in Section 2 of this Article.

No law enacted after the effective date of this constitution establishing a civil service system applicable to one or more parishes or to one or more municipalities having a population of less than four hundred thousand shall be effective in any parish or in any municipality until approved by ordinance adopted by the governing authority of the parish or municipality.

PART II. FIRE AND POLICE CIVIL SERVICE

Section 16. Establishment of System

Section 16. A system of classified fire and police civil service is created and established. It shall apply to all municipalities having a population exceeding thirteen thousand and operating a regularly paid fire and municipal police department and to all parishes and fire protection districts operating a regularly paid fire department.

Section 17. Appointments and Promotions

Section 17. Permanent appointments and promotions in municipal fire and police civil service shall be made only after certification by the applicable municipal fire and police civil service board under a general system based upon merit, efficiency, fitness, and length of service as provided in Article XIV, Section 15.1 of the Constitution of 1921, subject to change by law enacted by two-thirds of the elected members of each house of the legislature.

Section 18. Prior Provisions

Section 18. Except as inconsistent with this Part, the provisions of Article XIV, Section 15.1 of the Constitution of 1921 are retained and continued in force and effect as statutes. By law enacted by two-thirds of the elected members of each house, the legislature may amend or otherwise modify any of those provisions, but it may not abolish the system of classified civil service for such firemen and municipal policemen or make the system inapplicable to any municipality having a population exceeding thirteen thousand according to the latest decennial federal census

or to any parish or fire protection district operating a regularly paid fire department. However, in a municipality having a population exceeding four hundred thousand, paid firemen and municipal policemen shall be included if a majority of the electors therein voting at an election held for that purpose approve their inclusion. Such an election shall be called by the governing authority of the affected city within one year after the effective date of this constitution.

Section 19. Exclusion

Section 19. Nothing in Part I of this Article authorizing cities or other political subdivisions to be placed under the provisions of said Part by election, act of the legislature, or ordinance of the local governing authority shall authorize the inclusion in a city civil service system of firemen and policemen in any municipality having a population greater than thirteen thousand but fewer than four hundred thousand and operating a regularly paid fire and municipal police department or in any parish or fire protection district operating a regularly paid fire department. Such firemen and policemen are expressly excluded from any such system.

Section 20. Political Activities

Section 20. Article XIV, Section 15.1, Paragraph 34 of the Constitution of 1921 is retained and continued in force and effect.

PART III. OTHER PROVISIONS

Section 21. Code of Ethics

Section 21. The legislature shall enact a code of ethics for all officials and employees of the state and its political subdivisions. The code shall be administered by one or more boards created by the legislature with qualifications, terms of office, duties, and powers provided by law. Decisions of a board shall be appealable, and the legislature shall provide the method of appeal.

Section 22. Dual Employment and Dual Officeholding

Section 22. The legislature shall enact laws defining and regulating dual employment and defining, regulating, and prohibiting dual officeholding in state and local government.

Section 23. Compensation of Elected Public Officials; Reduction

Section 23. The compensation of an elected public offi-

cial shall not be reduced during the term for which he is elected.

Section 24. Impeachment

Section 24. (A) Persons Liable. A state or district official, whether elected or appointed, shall be liable to impeachment for commission or conviction, during his term of office of a felony or for malfeasance or gross misconduct while in such office.

(B) Procedure. Impeachment shall be by the House of Representatives and trial by the Senate, with senators under oath or affirmation for the trial. The concurrence of two-thirds of the elected senators shall be necessary to convict. The Senate may try an impeachment whether or not the House is in session and may adjourn when it deems proper. Conviction upon impeachment shall result in immediate removal from office. Nothing herein shall prevent other action, prosecution, or punishment authorized by law.

Section 25. Removal by Suit; Officials Subject

Section 25. For the causes enumerated in Paragraph (A) of Section 24 of this Article, the legislature shall provide by general law for the removal by suit of any state, district, parochial, ward, or municipal official except the governor, lieutenant governor, and judges of the courts of record.

Section 26. Recall

Section 26. The legislature shall provide by general law for the recall by election of any state, district, parochial, ward, or municipal official except judges of the courts of record. The sole issue at a recall election shall be whether the official shall be recalled.

Section 27. Filling of Vacancies

Section 27. (A) Gubernatorial Appointment; Election. If no other provision therefor is made by this constitution, by statute, by local government charter, by home rule charter or plan of government, or by ordinance, the governor may fill a vacancy occurring in any elective office. When a vacancy occurs in the office and the unexpired portion of the term exceeds one year, the vacancy shall be filled at an election, as provided by law, and the appointment shall be effective only until a successor takes office.

(B) Qualifications. Nothing in this Section shall change the qualifications for any office, and every appointee must be otherwise eligible to hold the office to which appointed.

Section 28. Definition of Vacancy

Section 28. A vacancy, as used in this Constitution, shall

occur in the event of death, resignation, removal by any means, or failure to take office for any reason.

Section 29. Retirement and Survivor's Benefits

Section 29. (A) Public School Employees. The legislature shall provide for retirement of teachers and other employees of the public educational system through establishment of one or more retirement systems. Membership in such a retirement system shall be a contractual relationship between employee and employer, and the state shall guarantee benefits payable to a member or retiree or to his lawful beneficiary upon his death.

(B) Other Officials and Employees. The legislature shall enact laws providing for retirement of officials and employees of the state, its agencies, and its political subdivisions, including persons employed jointly by state and federal agencies other than those in military service, through the establishment of one or more retirement systems. Membership in any retirement system of the state or of a political subdivision thereof shall be a contractual relationship between employee and employer, and the state shall guarantee benefits payable to a member of a state retirement system or retiree or to his lawful beneficiary upon his death.

(C) Retirement Systems; Change; Notice. No proposal to effect any change in existing laws or constitutional provisions relating to any retirement system for public employees shall be introduced in the legislature unless notice of intention to introduce the proposal has been published, without cost to the state, in the official state journal on two separate days. The last day of publication shall be at least thirty days before introduction of the bill. The notice shall state the substance of the contemplated law or proposal, and the bill shall contain a recital that the notice has been given.

(D) Compensation for Survivors of Law Enforcement Officers and Firemen. The legislature shall establish a system, including the expenditure of public funds, for compensating the surviving spouses and dependent children of law enforcement officers, firemen, and personnel, as defined by law, who die, or who died after June 30, 1972, as a result of injury sustained in the performance of official duties or in the protection of life or property while on or off duty.

Section 30. Oath of Office

Section 30. Every official shall take the following oath or affirmation: "I, . . . , do solemnly swear (or affirm) that I will support the constitution and laws of the United States and the constitution and laws of this state and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as . . . , according to the best of my ability and understanding, so help me God."

ARTICLE XI. ELECTIONS

Section 1. Election Code

Section 1. The legislature shall adopt an election code which shall provide for permanent registration of voters and for the conduct of all elections.

Section 2. Secret Ballot; Absentee Voting; Preservation of Ballot

Section 2. In all elections by the people, voting shall be by secret ballot. The legislature shall provide a method for absentee voting. Proxy voting is prohibited. Ballots shall be counted publicly and preserved inviolate as provided by law until any election contests have been settled. In all elections by persons in a representative capacity, voting shall be viva-voce.

Section 3. Privilege from Arrest

Section 3. While going to and returning from voting and

while exercising the right to vote, an elector shall be privileged from arrest, except for felony or breach of the peace.

Section 4. Prohibited Use of Public Funds

Section 4. No public funds shall be used to urge any elector to vote for or against any candidate or proposition, or be appropriated to a candidate or political organization. This provision shall not prohibit the use of public funds for dissemination of factual information relative to a proposition appearing on an election ballot.

Section 5. Registrar of Voters

Section 5. The governing authority of each parish shall appoint a registrar of voters, whose compensation, removal from office for cause, bond, powers, and functions shall be provided by law. Upon qualifying as a candidate for other public office, a registrar shall forfeit his office. No law shall provide for the removal from office of a registrar by the appointing authority.

ARTICLE XII. GENERAL PROVISIONS

Section 1. State Capital

Section 1. The capital of Louisiana is the city of Baton Rouge.

Section 2. Civilian-Military Relations

Section 2. The military shall be subordinate to the civil power.

Section 3. Right to Direct Participation

Section 3. No person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law.

Section 4. Preservation of Linguistic and Cultural Origins

Section 4. The right of the people to preserve, foster, and promote their respective historic linguistic and cultural origins is recognized.

Section 5. Forced Heirship and Trusts

Section 5. No law shall abolish forced heirship. The determination of forced heirs, the amount of the forced portion, and the grounds for disinheritance shall be provided by law. Trusts may be authorized by law, and a forced portion may be placed in trust.

Section 6. Lotteries; Gambling

Section 6. Neither the state nor any of its political sub-

divisions shall conduct a lottery. Gambling shall be defined by and suppressed by the legislature.

Section 7. State Penal Institutions; Reimbursement of Parish Expense

Section 7. The state shall reimburse a parish in which a state penal institution is located for expenses the parish incurs arising from crime committed in the institution or by an inmate thereof.

Section 8. Welfare, Unemployment Compensation, and Health

Section 8. The legislature may establish a system of economic and social welfare, unemployment compensation, and public health.

Section 9. Exemptions From Seizure and Sale

Section 9. The legislature shall provide by law for exemptions from seizure and sale, as well as waivers of and exclusions from such exemptions. The exemption shall extend to at least fifteen thousand dollars in value of a homestead, as provided by law.

Section 10. Suits Against the State

Section 10. (A) No Immunity in Contract and Tort. Neither the state, a state agency, nor a political subdivision shall be immune from suit and liability in contract or for injury to person or property.

(B) Waiver in Other Suits. The legislature may au-

thorize other suits against the state, a state agency, or a political subdivision. A measure authorizing suit shall waive immunity from suit and liability.

(C) Procedure; Judgments. The legislature shall provide a procedure for suits against the state, a state agency, or a political subdivision. It shall provide for the effect of a judgment, but no public property or public funds shall be subject to seizure. No judgment against the state, a state agency, or a political subdivision shall be exigible, payable, or paid except from funds appropriated therefor by the legislature or by the political subdivision against which judgment is rendered.

Section 11. Continuity of Government

Section 11. The legislature shall provide for orderly and temporary continuity of state government, in periods of emergency, until normal processes of government can be reestablished in accordance with the constitution and laws of the state; and, except as otherwise provided by this constitution, for the prompt and temporary succession to the powers and duties of public offices when incumbents become unavailable to perform their functions.

Section 12. Corporations; Perpetual or Indefinite Duration; Dissolution; Perpetual Franchises or Privileges

Section 12. Neither the state nor any political subdivision shall grant a perpetual franchise or privilege; however, the legislature may authorize the organization of corporations for perpetual or indefinite duration. Every corporation shall be subject to dissolution or forfeiture of its charter or franchise, as provided by general law.

Section 13. Prescription Against State

Section 13. Prescription shall not run against the state in any civil matter, unless otherwise provided in this constitution or expressly by law.

Section 14. Administrative Agency Codes

Section 14. Rules, regulations, and procedures adopted by all state administrative and quasi-judicial agencies, boards, and commissions shall be published in one or more codes and made available to the public.

ARTICLE XIII. CONSTITUTIONAL REVISION

Section 1. Amendments

Section 1. (A) Procedure. An amendment to this constitution may be proposed by joint resolution at any regular session of the legislature, but the resolution shall be prefiled, at least ten days before the beginning of the session, in accordance with the rules of the house in which introduced. An amendment to this constitution may be proposed at any extraordinary session of the legislature if it is within the objects of the call of the session and is introduced in the first five calendar days thereof. If two-thirds of the elected members of each house concur in the resolution, pursuant to all of the procedures and formalities required for passage of a bill except submission to the governor, the secretary of state shall have the proposed amendment published once in the official journal of each parish within not less than thirty nor more than sixty days preceding the election at which the proposed amendment is to be submitted to the electors. Each joint resolution shall specify the statewide election at which the proposed amendment shall be submitted. Special elections for submitting proposed amendments may be authorized by law.

(B) Form of Proposal. A proposed amendment shall have a title containing a brief summary of the changes proposed; shall be confined to one object; and shall set forth the entire article, or the sections or other subdivisions thereof, as proposed to be revised or only the article, sec-

tions, or other subdivisions proposed to be added. However, the legislature may propose, as one amendment, a revision of an entire article of this constitution which may contain multiple objects or changes. A section or other subdivision may be repealed by reference. When more than one amendment is submitted at the same election, each shall be submitted so as to enable the electors to vote on them separately.

(C) Ratification. If a majority of the electors voting on the proposed amendment approve it, the governor shall proclaim its adoption, and it shall become part of this constitution, effective twenty days after the proclamation, unless the amendment provides otherwise. A proposed amendment directly affecting not more than five parishes or areas within not more than five parishes shall become part of this constitution only when approved by a majority of the electors voting thereon in the state and also a majority of the electors voting thereon in each affected parish. However, a proposed amendment directly affecting not more than five municipalities, and only such municipalities, shall become part of this constitution only when approved by a majority of the electors voting thereon in the state and also a majority of the electors voting thereon in each such municipality.

Section 2. Constitutional Convention

Section 2. Whenever the legislature considers it desirable

to revise this constitution or propose a new constitution, it may provide for the calling of a constitutional convention by law enacted by two-thirds of the elected members of each house. The revision or the proposed constitution and any alternative propositions agreed upon by the convention shall be submitted to the people for their ratification or rejection. If the proposal is approved by a

majority of the electors voting thereon, the governor shall proclaim it to be the Constitution of Louisiana.

Section 3. Laws Effectuating Amendments

Section 3. Whenever the legislature shall submit amendments to this constitution, it may at the same session enact laws to carry them into effect, to become operative when the proposed amendments have been ratified.

ARTICLE XIV. TRANSITIONAL PROVISIONS

PART I

Section 1. Board of Regents

Section 1. On the effective date of this constitution, each member of the Louisiana Coordinating Council for Higher Education appointed by the governor whose term has not expired shall become a member of the Board of Regents until his respective term expires. The governor shall appoint additional members required to complete the membership of the board in accordance with and to effectuate Article VIII, Section 5.

Section 2. Board of Supervisors of Louisiana State University and Agricultural and Mechanical College

Section 2. On the effective date of this constitution, each member of the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College whose term has not expired shall become a member of the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College until his term expires. The governor shall appoint additional members required in accordance with and to effectuate Article VIII, Section 7.

Section 3. Board of Supervisors of Southern University

Section 3. At the next session of the legislature following the effective date of this constitution, the governor shall submit to the Senate for its consent the names of his appointees to the Board of Supervisors of Southern University and Agricultural and Mechanical College in accordance with and to effectuate Article VIII, Section 7.

Section 4. State Board of Elementary and Secondary Education; Board of Trustees for State Colleges and Universities

Section 4. On the effective date of this constitution, each member of the State Board of Education whose term has not expired may elect to become a member of either the State Board of Elementary and Secondary Education or the Board of Trustees for State Colleges and Universities.

He shall serve until the expiration of the term for which he was elected. The legislature shall provide by law the procedures by which this right shall be exercised, the secretary of state notified of those elections which must be held, and the governor notified of the appointments which must be made to complete the membership of the boards. The elections and appointments shall be made in accordance with and to effectuate Article VIII, Sections 3 and 6.

Section 5. Boards; New Appointments

Section 5. In making new appointments to a board created by Sections 5, 6, or 7 of Article VIII, the governor shall consider appropriate representation on the board by alumni of the institutions under the control of the board.

Section 6. Mandatory Reorganization of State Government

Section 6. The legislature shall allocate, within not more than twenty departments, the functions, powers, duties, and responsibilities of all departments, offices, agencies, and other instrumentalities within the executive branch, except those allocated by this constitution. The allocation, which shall not be subject to veto by the governor, shall become operative not later than December 31, 1977.

Section 7. Legislative Sessions

Section 7. The legislature shall provide, by rule or otherwise, for a recess, during the 1975 and 1976 regular annual sessions, which shall be for at least eight calendar days immediately after the first fifteen calendar days of the session.

Section 8. Civil Service Commission; State; Cities

Section 8. (A) State Commission. Each person who, on the effective date of this constitution, is a member of the State Civil Service Commission shall continue in such position for the remainder of the term to which he was appointed. Within thirty days after the effective date of this constitution, the president of Xavier University of

Louisiana shall submit three names to the governor for appointment to the commission as provided in Article X, Section 3. Within ninety days after the effective date of this constitution, one member of the commission shall be elected by the classified employees of the state from their number as provided by law. The term of these appointees shall be six years. Within thirty days after the expiration of the term of the present member nominated by the president of Louisiana State University and Agricultural and Mechanical College, the president of Dillard University shall submit three names to the governor for appointment to the commission as provided in Article X, Section 3. The term of this appointee shall be six years.

(B) City Commission. Each person who, on the effective date of this constitution, is a member of the New Orleans City Civil Service Commission shall continue in such position for the remainder of the term to which he was appointed. Within thirty days after the effective date of this constitution, the presidents of St. Mary's Dominican College and Xavier University of Louisiana each shall submit three names to the governing body of the city for appointment to the commission as provided in Article X, Section 4. Within thirty days after the expiration of the term of the present member nominated by the governing body of the city, the president of Dillard University shall submit three names to the governing body of the city for appointment to the New Orleans City Civil Service Commission as provided in Article X, Section 4. The term of these appointees shall be six years.

Section 9. Civil Service Officers; Employees; State; Cities

Section 9. Upon the effective date of this constitution, all officers and employees of the state and of the cities covered hereunder who have status in the classified service shall retain said status in the position, class, and rank that they have on such date and shall thereafter be subject to and governed by the provisions of this constitution and the rules and regulations adopted under the authority hereof.

Section 10. Offshore Mineral Revenues; Use of Funds

Section 10. Funds derived from offshore mineral leases and held in escrow under agreement between the state and the United States pending settlement of the dispute between the parties shall be deposited in the state treasury when received. Upon such settlement, these funds and the interest from their investment, except the portion otherwise allocated or dedicated by this constitution, shall be used by the state treasurer to purchase, retire, or pay in advance of maturity the existing bonded indebtedness of the state or shall be invested for that purpose. If any of these funds cannot be so expended within one year, the legislature may appropriate annually, for capital improvements or for the purchase of land, ten percent of the

remaining funds, not to exceed ten million dollars in one year.

Section 11. Prescription; Tidelands Taxes

Section 11. No state, district, parish, or other tax, license, fee, or assessment of any kind, and interest charges and penalties attaching thereto, which are imposed, due, or collectible on any property, minerals or the severance thereof, or due or payable by any person, firm, or corporation on any business operation or activity within the tidelands area in dispute between the state and the United States and within the state's historic gulfward boundary three leagues from coast, as established and defined by the Act of Congress of April 8, 1812, which admitted this state into the Union, and as redefined in Louisiana Act No. 33 of 1954, shall prescribe until three years after the thirty-first day of December in the year in which the controversy existing between the United States and this state over the state gulfward boundary is finally resolved and settled in accordance with law. However, no interest charge or penalty shall be assessed or collected on any such tax, license, fee, or assessment if it is paid within one year after the thirty-first day of December in the year in which the controversy is finally resolved and settled.

Section 12. Forfeitures Prior to 1880

Section 12. Whenever any immovable property has been forfeited or adjudicated to the state for nonpayment of taxes due prior to January 1, 1880, and the state did not sell or dispose of it or dispossess the tax debtor or his heirs, successors, or assigns prior to the adoption of the Constitution of 1921, it shall be presumed conclusively that the forfeiture or adjudication was irregular and null or that the property has been redeemed. The state and its assigns shall be estopped forever from claiming any title to the property because of such forfeiture or adjudication.

Section 13. Effective Date of Property Tax Provisions

Section 13. Section 18 and Section 20 of Article VII shall become effective January 1 of the year following the end of three years after the effective date of this constitution. Until that date, the provisions of the Constitution of 1921 governing matters covered by those Sections shall continue to apply, notwithstanding any contrary expiration date stated in any provision thereof concerning the veterans' homestead exemption.

PART II

Section 14. Limitation on Transitional Provisions

Section 14. Nothing in this Part shall be construed or applied in such a manner as to supersede or invalidate, or

limit or change the meaning of any provision of the foregoing Articles of this constitution, but only to provide for an orderly transition from the Constitution of 1921.

Section 15. Existing Officials

Section 15. A person holding an office by election shall continue to exercise his powers and duties until his office is abolished, his successor takes office or the office is vacated, as provided by law. A person holding an office by appointment shall continue to exercise his powers and duties until his office is abolished, his term ends, or he is removed or replaced under the provisions of this constitution or by law. Each public body shall continue to exercise its powers and duties until changed as provided by this constitution or by law.

Section 16. Provisions of 1921 Constitution Made Statutory

Section 16. (A) Provisions Continued as Statutes. Subject to change by law or as otherwise provided in this constitution, and except as any of them conflicts with this constitution, the following provisions of the Constitution of 1921 are continued as statutes, but restricted to the same effect as on the effective date of this constitution:

1. Article IV, Sections 2(c), 12-b, and 12-c.
2. Article V, Sections 2, 7, 18, 20, and 21.
3. Article VI, Sections 1, 1 (A-1), 11.1, 19, 19.2, 19.3, 19.4, 22(1), 23 except any dedications contained therein, 23.1, 26, 28, 31, 32, 33, 35, 36.1, and 39.
4. Article VI-A, Sections 1 through 14, except any dedications therein contained.
5. Article VII, Sections 7, 8, 9, 12.1, 13, 20, 21, 28, 31, 31.1, 31.2, 33, 46 through 51, 51(a), 52, 53, 55, 80, 81, 82, 83, 85, 89 through 92, and 94 through 97.
6. Article IX, Section 4.
7. Article X, Sections 1, 2, 6, 7, 9, 10A, 15, 16, and 23; except any dedications contained therein.
8. Article X-A, Sections 3 and 4.
9. Article XII, Sections 18, 19 through 22, 25, and 26.
10. Article XIV, Sections 3(b), 3(d) (first), 6, 10, 12, 14, 19, 21, 23, 23.1 through 23.43, 24, 24.2 through 24.23, 25, 25.1, 26 through 28, 30, 30.1, 30.3, 30.4, 30.5, 31, 31.3, 31.6, 31.7, 32, 33, 34, 35, 36, 37.1, 38, 38, 38.1, 39, 39.1, 43, 44, 44.1, 45, 47, and 48.
11. Article XV, Sections 1, 3, and 4.
12. Article XVI, Sections 1, 4, 6, 7, 8, and 8(a).
13. Article XVII, Sections 3 and 4.
14. Article XVIII, Sections 4, 8, and 13.
15. Article XIX, Sections 6, 19, 19(a), 20, and 27.

(B) Arrangement. The provisions made statutory in this Article shall be arranged in proper statutory form and recommendations made for additional laws and modifications as provided in R.S. 24:201 through 256, or as otherwise provided by law.

Section 17. Provisions of Constitution of 1921 Repealed

Section 17. Except to the extent provided in this Article and except as retained in Articles I through XIII of this constitution, the provisions of the Constitution of 1921 are repealed.

Section 18. Existing Laws

Section 18. (A) Retention. Laws in force on the effective date of this constitution, which were constitutional when enacted and are not in conflict with this constitution, shall remain in effect until altered or repealed or until they expire by their own limitation.

(B) Expiration of Conflicting Law. Laws which are in conflict with this constitution shall cease upon its effective date.

Section 19. Ports; Transition to Statutes

Section 19. All provisions of Article VI, Sections 16, 16.1, 16.2, 16.3, 16.4, 16.5, 16.6, 17, 29, 29.1, 29.2, 29.3, 29.4, 33.1, 34 and Article XIV, Section 30.2 of the Constitution of 1921 shall become statutes subject to amendment or repeal only as provided in Article VI, Section 43 of this constitution.

Section 20. Public Service Commission

Section 20. At its next extraordinary or regular session, the legislature shall divide the state into five single-member districts as required by Article IV, Section 21(A) and shall provide for a special election at which the two additional members of the commission shall be elected, the initial term to be served by each, and other matters necessary to effectuate said Section 21(A).

PART III

Section 21. References to 1921 Constitution

Section 21. Whenever reference is made in this constitution to the Constitution of 1921, it shall mean the Louisiana Constitution of 1921, as amended.

Section 22. Effect of Titles

Section 22. No title or sub-title, heading or sub-heading, marginal note, index, or table printed in or with this constitution shall be considered or construed to be a part of this constitution, but to be inserted only for convenience in reference.

Section 23. Continuation of Actions and Rights

Section 23. All writs, actions, suits, proceedings, civil or criminal liabilities, prosecutions, judgments, sentences, orders, decrees, appeals, rights or causes of action, contracts, obligations, claims, demands, titles, and rights existing on the effective date of this constitution shall continue unaffected. All sentences as punishment for crime shall be executed according to their terms.

Section 24. Protection of Existing Taxes

Section 24. All taxes, penalties, fines, and forfeitures owing to the state or any political subdivision levied and collectible under the Constitution of 1921 and valid laws enacted thereunder shall inure to the entity entitled thereto.

Section 25. Impairment of Debt Obligations Prohibited

Section 25. Nothing in this constitution shall be construed or applied in such a manner as to impair the obligation, validity, or security of any bonds or other debt obligations authorized under the Constitution of 1921.

Section 26. Constitution Not Retroactive

Section 26. Except as otherwise specifically provided in this constitution, this constitution shall not be retroactive and shall not create any right or liability which did not exist under the Constitution of 1921 based upon actions or matters occurring prior to the effective date of this constitution.

Section 27. Legislative Provisions

Section 27. (A) President of Senate. The lieutenant governor in office on the effective date of this constitution shall continue to serve as president of the Senate until his term expires in 1976.

(B) First Session. The provisions of Article III of this constitution shall become effective for the first session of the legislature to be held in 1975 and each session thereafter. However, in 1976, the legislature shall convene in regular session at twelve o'clock noon on the second Monday in May, at which time the members elected at the statewide election in 1976 shall take office; otherwise, the legislature shall conduct that session as provided in Article III of this constitution.

(C) Legislative Auditor. The legislative auditor shall continue to exercise the powers and perform the functions set forth in Article VI, Section 26(2) of the Constitution of 1921 until otherwise provided by law.

(D) Legislative Reapportionment. The requirement for legislative reapportionment in Section 6 of Article III of this constitution shall apply to the reapportionment of the legislature following the decennial census of 1980, and thereafter.

Section 28. Judiciary Commission

Section 28. The members of the judiciary commission in office on the effective date of this constitution shall serve until the expiration of their terms. Within thirty days after the effective date of this constitution, the additional two citizen members shall be selected as required by Article V, Section 25. A lawyer member, as thereby required, shall be selected to succeed the judge of a court of record other than a court of appeal whose term as a member of

the commission first expires. Thereafter, when a vacancy occurs, the successor to the position shall be selected in accordance with Article V, Section 25.

Section 29. Statewide Elected Officials

Section 29. Officials elected statewide in 1976 under the provisions of this constitution shall take office on the second Monday in May of that year. Thereafter, statewide elected officials shall take office on the second Monday in March as provided in this constitution.

Section 30. Commissioner of Elections

Section 30. The commissioner of elections, as provided by Article IV, first elected under this constitution shall be elected to take office in 1976. The custodian of voting machines in office on the effective date of this constitution shall continue to exercise the functions of that office, without change, until the expiration of his term.

Section 31. Pardon Board

Section 31. Until a pardon board is appointed under the terms of this constitution, the lieutenant governor, attorney general, and presiding judge of the sentencing court shall continue to serve as a board of pardons.

Section 32. Levee Districts; Compensation for Property

Section 32. The provisions of Article XVI, Section 6 of the Constitution of 1921 shall be continued as a statute, subject to change by the legislature, and the amount of compensation therein required to be paid for property used or destroyed for levee or levee drainage purposes shall be paid as provided in Section 6 of Article XVI of the Constitution of 1921 until the legislature enacts a law to effectuate Article VI, Section 42 of this constitution.

Section 33. Suits Against the State; Effective Date

Section 33. The provisions of Article XII, Section 10 waiving the immunity of the state, its agencies, or political subdivisions from suit and liability in contract or for injury to person or property only shall apply to a cause of action arising after the effective date of this constitution.

Section 34. Exemption from Seizure and Sale

Section 34. The provisions of Article XI of the Constitution of 1921 shall be continued as a statute until the legislature enacts the law required by Article XII, Section 9 of this constitution, but the amount of the exemption shall be fifteen thousand dollars in value until otherwise fixed by law.

Section 35. Effective Date

Section 35. This constitution shall become effective at

twelve o'clock midnight on December 31, 1974. The secretary of state shall promulgate the results of the election by publication in the official state journal on the thirtieth day prior thereto; however, he shall announce the results of the election within thirty days after the date of the election at which the constitution is submitted to the people.

Section 36. Effect of Adoption

Section 36. Notwithstanding any contrary provision of any law or the prior constitution, this constitution when approved by the electors of this state shall be the Constitution of the State of Louisiana upon the effective date as provided in Section 35 of this Article.

Section 37. Severability Clause

Section 37. If any provision of this constitution is declared invalid for any reason, that provision shall not affect the validity of the entire constitution or any other provision thereof.

PART IV

Section 38. Alternative Proposition

Section 38. There shall be submitted to the people for the ratification of the proposed new constitution an official ballot containing the following propositions and instructions to voters:

OFFICIAL BALLOT

(Instructions to voters: Place an "X" in the boxes which express your preferences. The full text of the proposed constitution and the alternative propositions are available for inspection at the polling place. If the proposed constitution receives a majority of the votes cast thereon and Alternative A below receives a majority of the votes cast on the alternative propositions, the proposed constitution shall become the Constitution of Louisiana. If the proposed constitution receives a majority of the votes cast thereon and Alternative B receives a majority of the votes cast on the alternative propositions, the proposed constitution shall become the Constitution of Louisiana, except that Article VIII of the proposed Constitution shall be deleted therefrom and Alternative Article VIII shall be inserted in lieu thereof. If the proposed constitution fails to receive a majority of the votes cast thereon, both of the alternative propositions shall also fail.)

Do you favor or oppose the adoption of the proposed 1974 Constitution?

(Vote for one)

FOR adoption of the proposed 1974 Constitution . 1 ☐

or

AGAINST adoption of the proposed 1974 Constitution. 2 ☐

ALTERNATIVE PROPOSITIONS

If the proposed 1974 Constitution is adopted, do you

prefer (A) the governance of higher education by a Board of Regents and management boards for the LSU system, the Southern University system, and all other state colleges and universities, or (B) the governance of higher education solely by a Board of Regents?

(Vote for one)

ALTERNATIVE A For governance of higher education by a Board of Regents and management boards for the LSU system, the Southern University system, and all other state colleges and universities

3 ☐

or

ALTERNATIVE B For governance of higher education solely by a Board of Regents 4 ☐

Section 39. (A) If Alternative B concerning education boards is approved by the electors and if the proposed constitution is approved by the electors, then the following Article shall become Article VIII of the new constitution and Article VIII as set forth in the proposed new constitution shall be null, void and of no effect and shall be deemed stricken from the proposed constitution. Alternative Article VIII shall be as follows:

"ARTICLE VIII. EDUCATION

Preamble

The goal of the public educational system is to provide learning environments and experiences, at all stages of human development, that are humane, just, and designed to promote excellence in order that every individual may be afforded an equal opportunity to develop to his full potential.

Section 1. Public Educational System

Section 1. The legislature shall provide for the education of the people of the state and shall establish and maintain a public educational system.

Section 2. State Superintendent of Education

Section 2. There shall be a superintendent of education who, subject to provisions for appointment in lieu of election set forth in Article IV, Section 20, of this constitution, shall be elected for a term of four years. If the office is made appointive, the State Board of Elementary and Secondary Education and the Board of Regents shall make the appointment. He shall be the administrative head of the Department of Education and the Board of Regents and shall implement the policies of the State Board of Elementary and Secondary Education and the Board of Regents and the laws affecting schools under their jurisdiction. The qualifications and other powers, functions, duties, and responsibilities of the superintendent shall be provided by law.

Section 3. State Board of Elementary and Secondary Education

Section 3. (A) Creation; Functions. The State Board of Elementary and Secondary Education is created as a body corporate. It shall supervise and control the public elementary and secondary schools, post-secondary vocational-technical schools, special schools under its jurisdiction and shall have budgetary responsibility for all funds appropriated or allocated by the state for those schools, all as provided by law. The board shall have other powers, duties, and responsibilities as provided by this constitution or by law, but shall have no control over the business affairs of a parish or city school board or the selection or removal of its officers and employees.

(B) Membership; Terms. The board shall consist of eight members elected from single-member districts which shall be determined by law and three members appointed by the governor from the state at large, with consent of the Senate. Members shall serve overlapping terms of six years, following the initial terms which shall be fixed by law.

(C) Vacancy. A vacancy in the office of an elected member, if the remaining portion of the term is more than one year, shall be filled for the remainder of the term by election, as provided by law. Other vacancies shall be filled for the remainder of the term by appointment by the governor.

Section 4. Approval of Private Schools

Section 4. Upon application by a private elementary, secondary, or proprietary school with a sustained curriculum or specialized course of study of quality at least equal to that prescribed for similar public schools, the State Board of Elementary and Secondary Education shall approve the private school. A certificate issued by an approved private school shall carry the same privileges as one issued by a state public school.

Section 5. Board of Regents

Section 5. (A) Creation; Functions. The Board of Regents is created as a body corporate. It shall plan, coordinate, and have budgetary responsibility for all public higher education and shall have other powers, duties, and responsibilities provided in this Section or by law.

(B) Membership; Terms. The board shall consist of eight members elected from single-member districts which shall be determined by law and seven members appointed by the governor from the state at large, with consent of the Senate. Members shall serve overlapping terms of six years, following the initial terms which shall be fixed by law.

(C) Vacancy. A vacancy occurring prior to the expiration of a term shall be filled for the remainder of the unexpired term by appointment by the governor, with consent of the Senate.

(D) Powers. The Board of Regents shall meet with the State Board of Elementary and Secondary Education at least twice a year to coordinate programs of public elementary, secondary, vocational-technical, career, and higher education. The Board of Regents shall have the following powers, duties, and responsibilities relating to public institutions of higher education:

(1) To revise or eliminate an existing degree program, department of instruction, division, or similar subdivision.

(2) To approve, disapprove, or modify a proposed degree program, department of instruction, division, or similar subdivision.

(3) To study the need for and feasibility of any new institution of higher education, including branches of institutions and conversion of two-year institutions to institutions offering longer courses of study. If the creation of a new institution, or a management board for an institution or group of institutions is proposed, addition of another management board, or the transfer of an existing institution from one board to another is proposed, the Board of Regents shall report its written findings and recommendations to the legislature within one year. Only after the report has been filed, or, after one year if no report is filed, may the legislature take affirmative action on such a proposal and then only by law enacted by two-thirds of the elected members of each house.

(4) To formulate and make timely revision of a master plan for higher education. As a minimum, the plan shall include a formula for equitable distribution of funds to the institutions of higher education.

(5) To require that every institution of higher education submit to it, at a time it specifies, an annual budget proposal for operational needs and for capital needs of each institution under the control of each board. The Board of Regents shall submit its budget recommendations for all institutions of higher education in the state. It shall recommend priorities for capital construction and improvements.

Section 6. Boards; Membership; Compensation

Section 6. (A) Dual Membership. No person shall be eligible to serve simultaneously on more than one board created by or pursuant to this Article.

(B) Compensation. A member of a board created by or pursuant to this Article shall serve without pay, but per diem and expenses may be provided by law.

Section 7. Parish School Boards; Parish Superintendents

Section 7. (A) Boards. The legislature shall create parish school boards and provide for the election of their members.

(B) Superintendents. Each parish board shall elect a superintendent of parish schools. The State Board of Elementary and Secondary Education shall fix the qualifications and prescribe the duties of the parish superintendent.

tendent. He need not be a resident of the parish in which he serves.

Section 8. Existing Boards and Systems Recognized; Consolidation

Section 8. (A) Recognition. Parish and city school board systems in existence on the effective date of this constitution are recognized, subject to control and supervision by the State Board of Elementary and Secondary Education and the power of the legislature to enact laws affecting them.

(B) Ouachita Parish and Monroe City School Systems; Board Membership. Only persons residing within the jurisdiction of the Monroe City School Board shall be eligible to vote for or be members of the Monroe City School Board. Only persons residing in that portion of Ouachita Parish outside the jurisdiction of the Monroe City School Board shall be eligible to vote for or be members of the Ouachita Parish School Board. The position of a member of either board shall be vacated when he no longer satisfies the requirements of this Paragraph. Notwithstanding any contrary provision of this constitution, this Paragraph shall become operative upon the election of members to the Ouachita Parish School Board taking office in 1977 or upon the first reapportionment affecting the Ouachita Parish School Board, whichever occurs earlier.

(C) Consolidation. Subject to approval by a majority of the electors voting, in each system affected, in an election held for that purpose, any two or more school systems may be consolidated as provided by law.

Section 9. Appropriations; State Boards

Section 9. The legislature shall appropriate funds for the operating and administrative expenses of the state boards created by or pursuant to this Article.

Section 10. Appropriations; Higher Education

Section 10. Appropriations for the institutions of higher education and post-secondary vocational-technical training and career education shall be made and administered as provided by law.

Section 11. Funding; Apportionment

Section 11. (A) Free School Books. The legislature shall appropriate funds to supply free school books and other materials of instruction prescribed by the State Board of Elementary and Secondary Education to the children of this state at the elementary and secondary levels.

(B) Minimum Foundation Program. The legislature shall appropriate funds sufficient to insure a minimum foundation program of education in all public elementary and secondary schools. The funds appropriated shall be equitably allocated to parish and city school systems accord-

ing to formulas adopted by the State Board of Elementary and Secondary Education and approved by the legislature prior to making the appropriation.

(C) Local Funds. Local funds for the support of elementary and secondary schools shall be derived from the following sources:

First: Each parish school board, Orleans Parish excepted, and each municipality or city school board actually operating, maintaining, or supporting a separate system of public schools, shall levy annually an ad valorem maintenance tax not to exceed five mills on the dollar of assessed valuation on property subject to such taxation within the parish or city, respectively.

Second: The Orleans Parish School Board shall levy annually a tax not to exceed thirteen mills on the dollar of the assessed valuation of property within the city of New Orleans assessed for city taxation, and shall certify the amount of the tax to the governing authority of the city. The governing authority shall have the tax entered on city tax rolls. The tax shall be collected in the manner, under the conditions, and with the interest and penalties prescribed by law for city taxes. The money thus collected shall be paid daily to the Orleans Parish School Board.

Third: For giving additional support to public elementary and secondary schools, any parish, school district, or sub-school district, or any municipality or city school board which supports a separate city system of public schools may levy an ad valorem tax for a specific purpose, when authorized by a majority of the electors voting in the parish, municipality, district, or subdistrict in an election held for that purpose. The amount, duration, and purpose of the tax shall be in accord with any limitation imposed by the legislature.

(D) Municipal School Systems. For the effects and purposes of this Section, the municipalities of Monroe in Ouachita Parish, and Bogalusa in Washington Parish, and no others, shall be regarded and treated as parishes and shall have the authority granted parishes.

Section 12. Tulane University

Section 12. The Tulane University of Louisiana in New Orleans is recognized as created and to be developed in accordance with Act No. 43 approved July 5, 1884."

(B) If Alternative B concerning education boards is not approved by the electors but the proposed constitution is approved by the electors then no change shall be made therein.

Section 40. Transition to Board of Regents and State Board of Elementary and Secondary Education

Section 40. (A) If Alternative B concerning education boards is approved by the electors and if the proposed constitution is approved by the electors, then the following Section shall become Section 1 of Article XIV of the new constitution and Sections 1, 2, 3, 4, and 5 of Article

XIV shall be null, void, and of no effect. If the alternative proposition is not approved, this Section shall be null and void and of no effect.

"Section 1. Educational Boards

Section 1. (1) On the effective date of this constitution, each member of the Louisiana Coordinating Council for Higher Education whose term has not expired shall become a member of the Board of Regents. The legislature shall provide by law the procedure to effectuate the transition to the board, the secretary of state notified of those elections which must be held, and the governor notified of the appointments which must be made to complete the membership of the board.

The elections and appointments shall be made in accordance with and to effectuate Article VIII, Section 5 of the alternative proposition as set forth in Sections 38 and 39 of this Article.

(2) On the effective date of this constitution, each member of the State Board of Education whose term has not expired may elect to become a member of either the State Board of Elementary and Secondary Education or the Board of Regents. He shall serve until the expiration of the term for which he was elected. The legislature shall provide by law the procedures by which this right shall be exercised, the secretary of state notified of those

elections which must be held, and the governor notified of the appointments which must be made to complete the membership of the boards. The elections and appointments shall be made in accordance with and to effectuate Article VIII, Sections 3 and 5 of the alternative proposition.

(3) On the effective date of this constitution the Louisiana Coordinating Council for Higher Education is abolished, and on such date all powers, duties, and functions thereof not inconsistent with this constitution shall be merged and consolidated into the Board of Regents.

(4) On the effective date of this constitution, all functions of the State Board of Education with respect to the governance, supervision, management, administration, and direction of institutions of higher education not inconsistent with this constitution shall be transferred to the Board of Regents, and in all other respects the functions of the State Board of Education not inconsistent with this constitution shall be transferred to and be exercised by the State Board of Elementary and Secondary Education.

(5) Subject to change by law and except as in conflict with this Alternative Proposition and Act 2 of 1972, the provisions of Article XII, Section 7A of the Constitution of 1921 are continued as a statute, but the powers of the board shall be limited to the management of the daily operations of the Louisiana State University System."

Chapter II

Convention Instruments Relative to the Administration of Criminal Justice

1 **COMMITTEE PROPOSAL No. 2—**

2 Introduced by Delegate Jackson, Chairman, on behalf of
3 the Committee on Bill of Rights and Elections, and Delegates
4 Dunlap, Guarisco, Jenkins, Roy, Soniat, Stinson, Vick, Wall
5 and Weiss:

6 **A PROPOSAL**

7 To provide a preamble and a declaration of rights to the
8 constitution.

9 Be it adopted by the Constitutional Convention of Louisi-
10 ana of 1973:

11 **A PREAMBLE**

12 We, the people of Louisiana, grateful to Almighty God for
13 the civil, political, economic, and religious liberties we enjoy,
14 and desiring to protect individual rights to life, liberty, and
15 property; afford opportunity for the fullest development of
16 the individual; assure equality of rights; provide for the
17 health, safety, education, and welfare of the people; main-
18 tain a representative and orderly government; ensure do-
19 mestic tranquility; provide for the common defense; and
20 secure the blessings of freedom and justice to ourselves and
21 our posterity, do ordain and establish this constitution.

22 **ARTICLE I. DECLARATION OF RIGHTS**

23 **Section 1. Origin and Purpose of Government**

24 Section 1. All government, of right, originates with the
25 people, is founded on their will alone, and is instituted to pro-
26 tect the rights of the individual and for the good of the whole.
27 Its only legitimate ends are to secure justice for all, preserve
28 peace, and promote and protect the rights, happiness, and
29 general welfare of the people. The rights enumerated in this
30 Article are inalienable and shall be preserved inviolate.

31 **Section 2. Due Process of Law**

32 Section 2. No person shall be deprived of life, liberty, prop-

1 erty, or other rights without substantive and procedural due
2 process of law.

3 **Section 3. Right to Individual Dignity.**

4 Section 3. No person shall be denied the equal protection
5 of the laws nor shall any law discriminate against a person
6 in the exercise of his rights on account of birth, race, sex,
7 social origin or condition, or political or religious ideas.
8 Slavery and involuntary servitude are prohibited, except in
9 the latter case as a punishment for crime.

10 **Section 4. Right to Property**

11 Section 4. Every person has the right to acquire by volun-
12 tary means, to own, to control, to enjoy, to protect, and to
13 dispose of private property. This right is subject to the
14 reasonable exercise of the police power and to the law of
15 forced heirship. Property shall not be taken or damaged
16 except for a public and necessary purpose and with just
17 compensation previously paid to the owner or into court for
18 his benefit. The owner shall be compensated to the full extent
19 of his loss and has the right to a trial by jury to determine
20 such compensation. No business enterprise or any of its
21 assets shall be taken for the purpose of operating that enter-
22 prise or for the purpose of halting competition with govern-
23 ment enterprises, nor shall the intangible assets of any
24 business enterprise be taken. Unattached movable property
25 shall not be expropriated except when necessary in emer-
26 gencies to save lives or property, and personal effects, other
27 than contraband, shall never be taken. The issue of whether
28 the contemplated purpose be public and necessary shall be a
29 judicial question, and determined as such without regard to
30 any legislative assertion.

31 **Section 5. Right to Privacy**

32 Section 5. Every person shall be secure in his person,

1 property, communications, houses, papers, and effects against
 2 unreasonable searches, seizures, or invasions of privacy. No
 3 warrant shall issue without probable cause, supported by oath
 4 or affirmation particularly describing the place to be searched,
 5 the persons or things to be seized, and the lawful purpose or
 6 reason for the search. Any person adversely affected by a
 7 search or seizure conducted in violation of this section shall
 8 have standing to raise the illegality of that search or seizure
 9 in the appropriate court of law.

10 Section 6. Freedom from Intrusion

11 Section 6. No person shall be quartered in any house with-
 12 out the consent of the owner or lawful occupant.

13 Section 7. Freedom from Discrimination

14 Section 7. All persons shall be free from discrimination
 15 on the basis of race, color, creed, national ancestry, and sex
 16 in access to public accommodations or in the sale or rental of
 17 property by persons or agents who derive a substantial in-
 18 come from such business activity. Nothing herein shall be
 19 construed to impair freedom of association.

20 Section 8. Trial by Jury in Civil Cases

21 Section 8. In all civil cases, except, summary, domestic,
 22 and adoption cases, the right to trial by jury shall not be
 23 abridged. No fact determined by a judge or jury shall be
 24 reexamined on appeal. Determination of facts by an admin-
 25 istrative body shall be subject to review.

26 Section 9. Freedom of Expression

27 Section 9. No law shall abridge the freedom of every per-
 28 son to speak, write, publish, photograph, illustrate, or broad-
 29 cast on any subject or to gather, receive, or transmit knowl-
 30 edge or information, but each person shall be responsible for
 31 the abuse of that liberty; nor shall such activities ever be
 32 subject to censorship, licensure, registration, control, or

1 special taxation.

2 Section 10. Freedom of Religion

3 Section 10. No law shall be enacted respecting an estab-
 4 lishment of religion or prohibiting the free exercise thereof.

5 Section 11. Freedom of Assembly and Movement

6 Section 11. No law shall impair the right of every person
 7 to assemble peaceably, to petition government for a redress
 8 of grievances, to travel freely within the state, and to enter
 9 and leave the state. Nothing herein shall prohibit quaran-
 10 tines or restrict the authority of the state to supervise persons
 11 subject to parole or probation.

12 Section 12. Rights of the Accused

13 Section 12. When a person has been detained, he shall im-
 14 mediately be advised of his legal rights and the reason for
 15 his detention. In all criminal prosecutions, the accused shall
 16 be precisely informed of the nature and cause of the accusa-
 17 tion against him. At all stages of the proceedings, every
 18 person shall be entitled to assistance of counsel of his choice,
 19 or appointed by the court in indigent cases if charged with
 20 a serious offense.

21 Section 13. Initiation of Prosecution

22 Section 13. Prosecution of felonies shall be initiated by
 23 indictment or information, provided that no person shall be
 24 held to answer for a capital crime or a felony necessarily
 25 punishable by hard labor, except on indictment by a grand
 26 jury. No person shall be twice placed in jeopardy for the
 27 same offense, except on his own application for a new trial
 28 or where there is a mistrial or motion in arrest of judgment
 29 is sustained.

30 Section 14. Grand Jury Proceedings

31 Section 14. At all stages of the grand jury proceedings,
 32 after arrest, the accused shall have the right to the advice

C. P. No. 2

of counsel while testifying, to compulsory process for presenting witnesses to the grand jury for interrogation, and to any transcribed testimony of any witnesses appearing before the grand jury in his case.

Section 15. Fair Trial

Section 15. Every person charged with a crime shall be presumed innocent until proven guilty, and shall be entitled to a speedy, public, and impartial trial in the parish where the offense or an element of the offense occurred, unless venue be changed in accordance with law. No person shall be compelled to give evidence against himself. An accused shall be entitled to confront and cross-examine the witnesses against him, to compel the attendance of witnesses, to present a defense, and to take the stand in his own behalf.

Section 16. Trial by Jury in Criminal Cases

Section 16. Any person charged with an offense or set of offenses punishable by imprisonment of more than six months may demand a trial by jury. In cases involving a crime necessarily punishable by hard labor, the jury shall consist of twelve persons, all of whom must concur to render a verdict in capital cases or cases in which no parole or probation is permitted, and ten of whom must agree in others. In cases not necessarily punishable by hard labor, the jury may consist of a smaller number of persons, all of whom must concur to render a verdict. The accused shall have the right to voir dire and to challenge jurors peremptorily.

Section 17. Right to Bail

Section 17. Excessive bail shall not be required. Before and during trial, a person shall be bailable by sufficient sureties, unless charged with a capital offense and the proof is evident and the presumption is great. After conviction and before sentencing, a person shall be bailable if the maxi-

C. P. No. 2

mum sentence which may be imposed is less than five years and, the judge may grant bail if the maximum sentence which may be imposed is greater. After sentencing and until final judgment, persons shall be bailable if the sentence actually imposed is less than five years, and the judge may grant bail if the sentence actually imposed is greater.

Section 18. Right to Humane Treatment

Section 18. No person shall be subjected to torture or to cruel, unusual, or excessive punishments or treatments, and full rights shall be restored by termination of state or federal supervision for any offense.

Section 19. Right to Vote

Section 19. No person eighteen years of age or older who is a resident or domiciliary of the state shall be denied the right to register and to vote, except that this right may be suspended while a person is judicially committed and institutionalized, or under an order of imprisonment for conviction of a felony.

Section 20. Right to Keep and Bear Arms

Section 20. A well-regulated militia is necessary to the security of a free state. The right of each person to keep and bear arms and ammunition shall not be abridged, but this provision shall not prevent the passage of laws to prohibit the carrying of concealed weapons.

Section 21. Writ of Habeas Corpus

Section 21. The writ of habeas corpus shall not be suspended.

Section 22. Access to Courts

Section 22. All courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay for actual or threatened injury to him in his person, prop-

C. P. No. 2

erty, reputation, or other rights. Neither the state, its political subdivisions, nor any private person shall be immune from suit.

Section 23. Prohibited Laws

Section 23. No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall be enacted.

Section 24. Freedom of Commerce

Section 24. No law shall impair the right of every person to engage in commerce by arbitrarily limiting the practice of any occupation to a certain class of persons, by controlling the production or distribution of goods, by dictating the quality or price of products, or by requiring any business to open or close at a given time, except that the legislature may enact reasonable laws regulating commerce when necessary to protect the public health and safety.

Section 25. Unenumerated Rights

Section 25. The enumeration in this constitution of certain rights shall not be construed to deny or disparage other rights retained by each person.

Constitutional Convention of Louisiana of 1973

CC-1000

1 COMMITTEE PROPOSAL No. 3—

2 Introduced by Delegate Blair, Chairman, on behalf of the
3 Committee on Legislative Powers and Functions, and Delegates Casey, Fayard, Fulco, Ginn, Juneau, Kilpatrick, Landrum, LeBreton and O'Neill:

A PROPOSAL

7 Making provisions for the legislative branch of government,
8 impeachment and removal of officials, and necessary provisions with respect thereto.

10 Be it adopted by the Constitutional Convention of Louisiana of 1973:

12 ARTICLE III. LEGISLATIVE DEPARTMENT

* * *

25 Section 12. Local or Special Laws

26 Section 12. The legislature shall pass no local or special
27 law when a general law is or can be made applicable.

* * *

Page 5

* * *

Reprinted as Reengrossed.

* * *

23 Section 12. Local or Special Laws

24 Section 12. The legislature shall pass no local or special
25 law when a general law is or can be made applicable.

* * *

COMMITTEE PROPOSAL No. 4—

Introduced by Delegate Stagg, Chairman, on behalf of
the Committee on Executive Department:

A PROPOSAL

Providing for the executive branch of government, for the
filling of vacancies in certain public offices, and with
respect to dual office-holding, a code of ethics, and
impeachment.

Be it adopted by the Constitutional Convention of Louisiana
of 1973:

ARTICLE IV. EXECUTIVE DEPARTMENT

Page 1

* * *

Section 5. Powers and Duties of Governor

Page 1

* * *

(F) Pardon, Commutation, Reprieve, Remission. Except
in cases of conviction upon impeachment, the governor may
reprieve, may grant commutation of sentence, and may par-
don those convicted of offenses against the state and may
remit fines and forfeitures imposed for such offenses. In
addition, the legislature may provide additional methods for
the foregoing and other post-conviction remedies.

Page 4

* * *

Section 8. Powers and Duties of the Attorney General

Section 8. There shall be a department of justice, headed
by the attorney general who shall be the state's chief legal
officer. As may be necessary for the assertion or protection
of the rights and interests of the state, the attorney general
shall have authority to:

(1) institute, and prosecute or intervene in any legal
actions or other proceedings, civil or criminal;

(2) exercise supervision over the several district attorneys
throughout the state; and

(3) for cause, supersede any attorney representing the
state in any civil or criminal proceeding.

He shall have such other powers and perform such other
duties as may be authorized by this constitution or pro-
vided by statute.

Page 7

* * *

Reprinted as Reengrossed.

COMMITTEE PROPOSAL No. 4—

Introduced by Delegate Stagg, Chairman, on behalf of the Committee on Executive Department, and Delegates Abraham, Alexander, Arnette, Brien, Dennery, Duval, Gravel, Stovall and Tapper:

A PROPOSAL

Providing for the executive branch of government, for the filling of vacancies in certain public offices, and with respect to dual office-holding, a code of ethics, and impeachment.

Be it adopted by the Constitutional Convention of Louisiana of 1973:

ARTICLE IV. EXECUTIVE BRANCH

Page 1

* * *

Section 5. Powers and Duties of Governor

Page 3

* * *

(F) Pardon, Commutation, Reprieve, Remission. Except in cases of conviction upon impeachment, the governor may reprieve, may grant commutation of sentence, and may pardon those convicted of offenses against the state and may remit fines and forfeitures imposed for such offenses. In addition, the legislature may provide additional methods for the foregoing and other post-conviction remedies.

Page 4

* * *

Section 8. Powers and Duties of the Attorney General

Page 6

CC-1054

Section 8. There shall be a department of justice, headed by the attorney general who shall be the state's chief legal officer. As may be necessary for the assertion or protection of the rights and interests of the state, the attorney general shall have authority to:

(1) institute, and prosecute or intervene in any legal actions or other proceedings, civil or criminal;

(2) exercise supervision over the several district attorneys throughout the state; and

(3) for cause, supersede any attorney representing the state in any civil or criminal proceeding.

He shall have such other powers and perform such other duties as may be authorized by this constitution or provided by statute.

Page 7

* * *

2 COMMITTEE PROPOSAL NUMBER 4

3 Introduced by Delegate Staggs, Chairman, on behalf of the
4 Committee on Executive Department, and Delegates Abraham, Alexander,
5 Arnette, Brien, Denny, Duval, Gravel, Stovall, and Tapper:

6 A PROPOSAL

7 Providing for the executive branch of government, for
8 the declaration and determination of inability
9 of statewide elective officers, and related matters.
10 Be it adopted by the Constitutional Convention of Louisiana
11 of 1973:

12 ARTICLE IV. EXECUTIVE BRANCH

* * *

22 Section 5. Powers and Duties of Governor

* * *

11 (F) Pardon, Commutation, Reprieve, and Remission;

12 Board of Pardons. (1) The governor shall have the power
13 to grant reprieves to those convicted of offenses against the
14 state and upon the recommendation of the Board of Pardons
15 may grant commutation of sentence, may pardon those con-
16 victed of offenses against the state and may remit fines and
17 forfeitures imposed for such offenses; provided, however,
18 that each first offender who has never previously been con-
19 victed of a felony shall be eligible for pardon automatically
20 upon completion of his sentence without the aforementioned
21 recommendation.

22 (2) The Board of Pardons shall consist of five electors
23 appointed by the governor, subject to confirmation by the
24 Senate. Members of such board shall serve a term concurrent
25 with that of the governor appointing them.

Page 3

* * *

22 Section 8. Powers and Duties of the Attorney General

23 Section 8. There shall be a department of justice headed
24 by the attorney general who shall be the state's chief legal officer.

Page 5

* * *

FINAL ENROLLMENT

Constitution of the State of Louisiana of 1973

OFFICIAL ENROLLMENT, ARTICLE 4

Introduced by DeLoatch Stagg, Chairman, on behalf of the

Committee on Executive Department, and Delegates Abraham, Alexander,
Arnette, Brien, Denney, Duval, Gravel, Stovall, and Tappet:

A PROPOSAL

Providing for the executive branch of government, for
the declaration and determination of inability
of statewide elective officers, and related matters.

Be it adopted by the Constitutional Convention of Louisiana
of 1973:

ARTICLE IV. EXECUTIVE BRANCH

* * *

Section 5. Governor; Powers and Duties

* * *

(F) Pardon, Commutation, Reprieve, and Remission; Board of Pardons.

(1) The governor may grant reprieves to persons convicted of offenses against the state and, upon recommendation of the Board of Pardons, may commute sentences, pardon those convicted of offenses against the state, and remit fines and forfeitures imposed for such offenses. However, a first offender never previously convicted of a felony shall be pardoned automatically upon completion of his sentence, without a recommendation of the Board of Pardons and without action by the governor.

(2) The Board of Pardons shall consist of five electors appointed by the governor, subject to confirmation by the Senate. Each member of the board shall serve a term concurrent with that of the governor appointing him.

* * *

Section 8. Attorney General; Powers and Duties

Section 8. There shall be a Department of Justice, headed by the attorney general, who shall be the chief legal officer of the state. The attorney general shall be elected for a term of four years at the state general election. The assistant attorneys general shall be appointed by the attorney general to serve at his pleasure.

As necessary for the assertion or protection of any right or interest of the state, the attorney general shall have authority (1) to institute, prosecute, or intervene in any civil action or proceeding; (2) upon the written request of a district attorney, to advise and assist in the prosecution of any criminal case; and (3) for cause, when authorized by the court which would have original jurisdiction and subject to judicial review, (a) to institute, prosecute, or intervene in any criminal action or proceeding, or (b) to supersede any attorney representing the state in any civil or criminal action.

The attorney general shall exercise other powers and perform other duties authorized by this constitution or by law.

*

*

*

COMMITTEE PROPOSAL No. 6—

Introduced by Delegate Dennis, Chairman, on behalf of the Committee on the Judiciary and Delegates Avant, Bel, Bergeron, Burns, Deshotels, Drew, Gauthier, Kelly, Kilbourne, Landry, Martin, Ourso, Sandoz, Tate, Tobias and Vesich:

A PROPOSAL

Making provisions for the judiciary branch of government and necessary provisions with respect thereto.

Be it adopted by the Constitutional Convention of Louisiana of 1973:

ARTICLE V. JUDICIARY DEPARTMENT

Section 1. Judicial Power

Section 1. The judicial power shall be vested in a supreme court, courts of appeal, district courts, and such other courts as this constitution may authorize.

Section 2. Needful Writs, Habeas Corpus, Orders and Process

Section 2. A judge may issue a writ of habeas corpus and all other needful writs, orders and process in aid of the jurisdiction of his court. Exercise of this authority by a judge of the supreme court or court of appeal is subject to review by the whole court. The power of a court to punish for contempt shall be limited by law.

Section 3. Supreme Court; Membership; Terms

Section 3. The supreme court shall be composed of a chief justice and six associate justices, four of whom must concur to render judgment. The term of a judge of the supreme court shall be fourteen years.

Section 4. Supreme Court; Districts

Section 4. The state shall be divided into at least six supreme court districts, with at least one judge elected from each. The present districts and the number of judges as-

signed to each are retained, subject to change by a two-thirds vote of the elected members of each house of the legislature.

Section 5. Supreme Court; Supervisory, Original, and Appellate Jurisdiction; Rule-Making Power; Assignment of Judges

Section 5. (A) The supreme court has general supervisory jurisdiction over all other courts. It may promulgate procedural and administrative rules not in conflict with law. It may assign a sitting or retired judge to another court.

(B) The supreme court has exclusive original jurisdiction of disciplinary proceedings involving members of the bar.

(C) In civil cases, the supreme court's jurisdiction extends to both the law and the facts except as otherwise provided in this constitution. In criminal matters, its appellate jurisdiction extends to questions of law only.

(D) The following cases shall be appealable to the supreme court:

(1) A case in which a state law has been declared unconstitutional;

(2) A criminal case in which the penalty of death or imprisonment at hard labor may be imposed, or in which a fine exceeding five hundred dollars or imprisonment exceeding six months has been actually imposed.

(E) Subject to the provisions of Subsection (C), the supreme court has appellate jurisdiction over all other issues involved in any civil action properly before it.

Section 6. Supreme Court; the Chief Justice

Section 6. (A) When a vacancy in the office of chief justice occurs, the judge oldest in point of service on the court, below the age of sixty-five years, shall succeed to the office.

(B) The chief justice shall be chief administrative officer of the judicial system of the state, subject to rules adopted by the court.

Section 7. Supreme court; Judicial Administrator, Clerk, and Staff

Section 7. The supreme court shall have authority to select a judicial administrator, its clerks, and other personnel, and prescribe their duties.

Section 8. Courts of Appeal; Panels; Number Necessary to Decision; Term

Section 8. The state shall be divided into at least four circuits, with one court of appeal in each circuit. Each court shall sit in panels of at least three judges selected according to rules adopted by the court. A majority of the judges sitting in a case must concur to render judgment. The term of a court of appeal judge shall be twelve years.

Section 9. Courts of Appeal; Circuits and Districts

Section 9. Each circuit shall be divided into at least three districts, with at least one judge elected from each. One or more judges may be elected at large from within the circuit. The present circuits and districts and the number of judges as elected in each circuit are retained, subject to change by a two-thirds vote of the elected members in each house of the legislature.

Section 10. Courts of Appeal; Appellate and Supervisory Jurisdiction

Section 10. (A) Except in those cases appealable to the supreme court and as otherwise provided in this constitution, a court of appeal has appellate jurisdiction of all civil cases decided within its circuit. It has appellate jurisdiction of all matters appealed from the family and juvenile courts, except criminal prosecutions of persons other than

juveniles. It has supervisory jurisdiction over all cases in which an appeal would lie to that court.

(B) Except where limited to questions of law by this constitution or, as provided by law in the case of review of administrative agency determinations, its appellate jurisdiction extends to both the law and the facts.

Section 11. Courts of Appeal; Certifications to Supreme Court of Questions of Law; Determination

Section 11. A court of appeal may certify to the supreme court any question of law before it, whereupon the supreme court may give its binding instruction, or consider and decide the case upon the whole record.

Section 12. Courts of Appeal; Chief Judge; Duties

Section 12. When a vacancy in the office of chief judge of a court of appeal occurs, the judge oldest in point of service on the court, below the age of sixty-five years, shall succeed to the office and shall administer the court, subject to rules adopted by the court.

Section 13. Courts of Appeal; Clerks and Staff

Section 13. Each court of appeal shall have authority to select its clerk and other personnel and prescribe their duties.

Section 14. District Courts; Judicial Districts

Section 14. The state shall be divided into judicial districts, each composed of one or more parishes and served by one or more district judges.

Section 15. District Courts; Judicial Districts; Changes; Terms

Section 15. (A) The district courts, the civil and criminal district courts, and the judicial districts existing at the time of the adoption of this constitution are retained. The legislature, by a majority vote of the elected members of

1 each house, with approval in a referendum in each district
 2 or parish affected, may establish or merge judicial districts
 3 or may merge a criminal and a civil district court in a
 4 parish, subject to the limitations of Section 23 of this Article.

5 (B) The term of a district judge shall be six years. Terms
 6 established for judgeships existing at the time of the adop-
 7 tion of this constitution are retained; however, the legis-
 8 lature by a majority vote of the elected members of each
 9 house, with approval in a referendum in the parish affected,
 10 may reduce the term for district judges in a parish to not
 11 less than six years.

12 Section 16. District Courts; Original Jurisdiction

13 Section 16. (A) Unless otherwise provided or authorized in
 14 this constitution, a district court shall have original jurisdic-
 15 tion in all civil and criminal matters. It shall have exclu-
 16 sive original jurisdiction of all felony cases involving the
 17 title to immovable property; the right to office or other pub-
 18 lic position; civil or political rights; probate and succes-
 19 sion matters; the state, a political corporation, or a suc-
 20 cession, as a party defendant, regardless of the amount in
 21 dispute; and the appointment of receivers or liquidators to
 22 corporations or partnerships.

23 (B) A civil district court shall have civil jurisdiction as
 24 provided for in Subsection (A) and a criminal district court
 25 shall have criminal jurisdiction as provided for in Subsec-
 26 tion (A).

27 Section 17. District Courts; Chief Judge

28 Section 17. Each district court may elect from its members
 29 a chief judge who shall exercise such administrative func-
 30 tions as prescribed by rule of court.

31 Section 18. Juvenile Courts; Jurisdiction

32 Section 18. The jurisdiction of a juvenile court shall be as

1 provided by law.

2 Section 19. Courts of Special and Limited Jurisdiction

3 Section 19. Parish, city, municipal, traffic, family, and ju-
 4 venile courts existing at the time of the adoption of this
 5 constitution are retained. The legislature, by a majority
 6 vote of the elected members of each house, and with approval
 7 in a referendum in each district, parish, or portion affected
 8 may establish, abolish, or merge trial courts of limited or
 9 specialized jurisdiction subject to the limitations in Sections
 10 16 and 23 of this Article.

11 Section 20. Parish Courts

12 Section 20. (A) Notwithstanding the provisions of Sections
 13 15 and 19 to the contrary, the legislature may, by a majority
 14 vote of the elected members of each house, and with ap-
 15 proval in a referendum in the parish affected, establish in
 16 that parish, a parish court. Other courts of limited or
 17 specialized jurisdiction in the parish may be simultaneously
 18 abolished.

19 (B) The jurisdiction of parish courts shall be uniform
 20 throughout the state and such courts shall be limited to the
 21 trial of misdemeanors, and of civil matters not exceeding
 22 the value or sum of three thousand five hundred dollars, ex-
 23 clusive of interest and costs. A judge of said court shall be
 24 elected for a term of six years.

25 Section 21. Mayors' Courts; Justices of the Peace; Con- 26 tinued

27 Section 21. A mayor's court or justice of the peace exist-
 28 ing at the time of the adoption of this constitution is con-
 29 tinued subject to change by the legislature.

30 Section 22. Recording of Proceedings; All Courts

31 Section 22. All proceedings in all courts in this state shall
 32 be recorded when requested.

Section 23. Judges; Term of Office or Compensation May
Not Be Decreased

Section 23. The term of office or compensation of a judge shall not be decreased during the term for which he is elected.

Section 24. Judges; Election; Vacancy in Office

Section 24. (A) The election of judges shall be held at the regular congressional election.

(B) A newly-created judgeship or a vacancy in the office of any judge shall be filled by a special election which shall be called by the governor, and held within six months of the day the vacancy occurs or the judgeship is created, except when the vacancy occurs in the last six months of an existing term. Until the vacancy is filled, the supreme court shall appoint a person meeting the qualifications for judge to the office, to serve at its pleasure, who shall be ineligible to be a candidate for election to the judgeship.

(C) All judges serving on the date of adoption of this constitution shall continue in office for the term to which elected and shall serve through December thirty-first of the last year of their term or, if the last year of their term is not in the even-numbered year of a general judicial election, then through December thirty-first of the year next succeeding. The election for next term in the office will be held in a general judicial election of the year the term expires, as provided above.

Section 25. Retirement of Judges

Section 25. (A) A judge shall not remain in office beyond his seventieth birthday, except as otherwise provided herein.

(B) A judge or judicial administrator in office or retired at the time of the adoption of this constitution, shall not have diminished any retirement benefits or judicial ser-

vice rights, including the right to remain in office, as judge, during his present term, provided under the previous constitution or laws, nor shall the benefits to which his surviving spouse thereof was entitled be reduced.

(C) The legislature shall provide a retirement system for judges which shall apply to a judge taking office after the effective date of the statute enacting the system, and which a judge in office at the time of its adoption may elect to join.

(D) Until the legislature enacts the retirement system authorized in Subsection (C), a judge taking office after the adoption of this constitution and a judge in office who so elects within ninety days of the adoption of this constitution by notifying the secretary of state, shall be entitled to the following retirement benefits:

(1) This subsection applies to a judge of a court authorized by this constitution, except mayors and justices of the peace.

(2) A judge with sixteen years of judicial service may retire; a judge with twelve years of judicial service is eligible for retirement benefits at the age of sixty. On retirement, a judge shall receive annually as retirement benefits that portion of his annual average compensation for his three highest years which the number of years served bears to twenty-five, but not more than seventy-five percent.

(3) A judge who is physically or mentally incapacitated to perform his duties, as determined by the supreme court upon the advice of two physicians appointed by the court, shall be retired. He shall receive as annual retirement benefits two-thirds of his annual salary, or that portion of his average annual salary for the three highest years which

the number of years served bears to twenty-five, whichever is greater.

(4) Upon the death of a judge, in office or retired, the surviving spouse, until remarriage, shall be entitled to one-third of his annual salary as judge prior to death or retirement, or one-half the retirement benefits he was receiving or entitled to receive at the time of his death, whichever is greater. If the judge is not survived by a spouse, or if the spouse dies, his unmarried children shall be entitled to the benefits provided in this subsection until the age of eighteen.

(5) Benefits provided herein shall be paid from the same sources as was his compensation as judge. The legislature and the political subdivisions shall provide for the payment of these benefits.

(6) To receive the benefits provided in this subsection, the judge shall contribute a total of six percent of his salary to the paying authorities.

Section 26. Judges; Qualifications; Practice of Law Prohibited

Section 26. A judge of the supreme court, court of appeal, district court, or parish court shall have been admitted to the practice of law for at least five years prior to his election, shall have been domiciled in the respective circuit, district, or parish for at least two years immediately preceding election, and shall not practice law.

Section 27. Judiciary Commission; Membership; Terms; Vacancy; Grounds for Removal; Powers

(A) The Judiciary Commission shall consist of one court of appeal judge and two district court judges selected by the supreme court; three attorneys admitted to the practice of law for at least ten years who are not

judges, active or retired, nor public officials, selected by the Louisiana Conference of Court of Appeal Judges' Association or its successor; and three citizens, not lawyers, judges active or retired, nor public officials, appointed by the Louisiana District Judges' Association or its successor.

(B) A member of the commission shall serve a four-year term and shall not be eligible to succeed himself.

(C) A member's term shall terminate when he loses the status causing his appointment or when any event occurs which would have made him ineligible for appointment.

(D) When a vacancy occurs, a successor shall be appointed for a four-year term by the appointing authority for the position for which the vacancy occurred.

(E) On recommendation of the Judiciary Commission, the supreme court may censure, suspend with or without salary, remove from office, or retire involuntarily a judge for willful misconduct relating to his official duty, willful and persistent failure to perform his duty, persistent and public conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or conduct while in office which would constitute a felony, or conviction of a felony. On recommendation of the Judiciary Commission, the supreme court may disqualify a judge from exercising any judicial function, without loss of salary, during the pendency of the proceedings in the supreme court. On recommendation of the Judiciary Commission, the supreme court may retire involuntarily a judge for disability that seriously interferes with the performance of his duties and that is, or is likely to become, of a permanent character. The supreme court shall make rules implementing this section and providing for confidentiality and privilege of proceedings.

Section 28. Department of Justice; Composition; Attorney

General; Election and Assistants

Section 28. There shall be a department of justice consisting of an attorney general, a first and second attorney general, and other necessary assistants and staff. The attorney general shall be elected for a term of four years at the state general election, and the assistants shall be appointed by the attorney general to serve at his pleasure.

Section 29. Attorney General; Qualifications; Powers and Duties; Vacancy

Section 29. The attorney general and the first and second assistants shall have resided in this state and been admitted to the practice of law for at least five years preceding their selection. The attorney general shall attend to, and have charge of all legal matters in which the state has an interest, or to which the state is a party, with power and authority to institute and prosecute or to intervene in any and all suits or other proceedings, civil or criminal, as shall be necessary for the assertion or protection of the rights and interests of the state.

In case of a vacancy in the office of attorney general, the first assistant attorney general shall perform the duties of the attorney general until his successor is elected and qualified.

Section 30. District Attorney; Election; Qualifications; Assistants

Section 30. In each judicial district a district attorney shall be elected by the qualified electors of the district for a term of six years. He shall have been admitted to the practice of law in the state for at least five years prior to his election and shall have resided in the district for the two years immediately preceding election. A district attorney may select his assistants and other personnel and

prescribe their duties.

Section 31. Defense of Criminal Prosecution; Removal

Section 31. No district attorney or assistant district attorney shall appear, plead or in any way defend, or assist in defending any criminal prosecution or charge. A violation shall be cause for removal.

Section 32. Sheriff; Duties; Tax Collector

Section 32. In each parish, a sheriff shall be elected for a term of four years. He shall be the chief law enforcement officer in the parish, except as otherwise provided by this constitution, and shall execute court orders and process. He shall be the collector of state and parish ad valorem taxes and such other taxes and licenses as provided by law.

Section 33. Clerks; Election; Powers and Duties; Duties; Office Hours

Section 33. (A) In each parish, a clerk of the district court shall be elected by the qualified electors of the parish for a term of four years. He shall be ex officio notary public and parish recorder of conveyances, mortgages, and other acts and shall have such other duties and powers as may be prescribed by law. The clerk may appoint deputies with such duties and powers as may be prescribed by law and he may appoint, with the approval of the district judges, minute clerks with such duties and powers as may be prescribed by law.

(B) The legislature shall establish statewide uniform office hours for all clerks of district courts.

Section 34. Coroner; Election; Term; Qualifications; Duties

Section 34. In each parish, a coroner shall be elected for a term of four years with such qualifications and duties

1 as may be prescribed by law.

2 Section 35. Vacancies

3 Section 35. Until filled by election as provided by law,
4 when a vacancy occurs in the following offices, the duties
5 of the office shall be assumed by: in the case of sheriff,
6 the chief criminal deputy; district attorney, the first as-
7 sistant; clerk of a district court, the chief deputy; coroner,
8 the chief deputy. If there is no such person to assume the
9 duties at the time of the vacancy, the governing authority
10 or authorities of the parish or parishes concerned shall
11 appoint a qualified person to assume the duties of the office
12 until filled by election.

13 Section 36. Reduction of Salaries and Benefits Prohibited

14 Section 36. The attorney general, a district attorney, a
15 sheriff, or a clerk of the district court shall have neither
16 his salary nor retirement benefits diminished during his
17 term of office.

18 Section 37. Orleans Parish, Officials; Continued

19 Section 37. Notwithstanding any provisions of Sections 32
20 and 33 of this Article to the contrary, the following officers
21 in Orleans Parish are continued, subject to change by a
22 majority vote of the elected members of each house of the
23 legislature and by approval in a referendum in the parish:
24 the clerks of the civil and criminal district courts, the civil
25 and criminal sheriffs, the constables and the clerks of the
26 first and second city courts, the register of conveyances,
27 and the recorder of mortgages, all of which shall be elected
28 for four-year terms with such duties and powers as pro-
29 vided by the legislature. Their terms of office, retirement
30 benefits, or compensation shall not be reduced during their
31 terms of office.

32 Section 38. Jurors; Qualifications; Selection

1 Section 38. A citizen of the state who has reached
2 majority is eligible to serve as a juror. The supreme court
3 by rule shall provide for the selection of jurors.

4 Section 39. Grand Jury

5 Section 39. There shall be a grand jury or grand juries
6 in each parish whose duties and responsibilities shall be
7 provided by law and whose qualifications shall be as pro-
8 vided in Section 38 of this Article. The secrecy of the
9 proceedings, including the identity of the witnesses appear-
10 ing, shall be provided for by law.

COMMITTEE PROPOSAL No. 12—

Introduced by Delegate Aertker, Chairman, on behalf of the Committee on Education and Welfare, and Delegates Armentor, Carmouche, Corne, Cowen, Flory, Grier, Haynes, Hernandez, Landry, Leithman, Lennox, Rachal, Riecke, Robinson, Segura, Silverberg, Sutherland, Thistlethwaite, Toca and Wisham:

A PROPOSAL

Making provisions for human resources by prohibiting the leasing of convicts and the employment of convicts in competition with private enterprise and by providing for reimbursement to parishes for expenses incurred resulting from crimes committed in penal institutions. Be it adopted by the Constitutional Convention of Louisiana of 1973:

**ARTICLE VII, SECTION 1. PENAL
INSTITUTIONS AND CONVICT LABOR**

Section 1. (A) State Penal Institutions; Reimbursement of Parish Expense. In parishes in which are located penal institutions of the State of Louisiana, the expenses incurred by the parish arising from crimes committed in such institutions or by the inmates or employees thereof shall be reimbursed by the state.

(B) Convict Labor. No convict sentenced to the state penitentiary shall ever be leased, or hired to any person or persons, or corporation, private or public, or quasipublic. No convict sentenced to the state penitentiary shall ever be employed in any enterprise in competition with private enterprise.

FIRST ENROLLMENT

1 Constitutional Convention of Louisiana of 1973
2 COMMITTEE PROPOSAL NUMBER 12
3 Introduced by Delegate Arttker, Chairman, on behalf of
4 the Committee on Education and Welfare, and Delegates
5 Armentor, Carmouche, Corne, Cowen, Flory, Grier, Haymes,
6 Hernandez, Landry, Leithman, Lennox, Rachal, Riecke,
7 Robinson, Segura, Silverberg, Sutherland, Thistlethwaite,
8 Toca, and Wisham

9

10 A PROPOSAL

11

12 Making provisions for human resources by prohibiting the
13 leasing of convicts and the employment of convicts
14 in competition with private enterprise and by pro-
15 viding for reimbursement to parishes for expenses
16 incurred resulting from crimes committed in penal
17 institutions.

18 Be it adopted by the Constitutional Convention of Louisiana
19 of 1973:

20 ARTICLE VII. HUMAN RESOURCES

21 Section 1. Penal Institutions

22 Section 1 (A). State Penal Institutions; Reimbursement
23 of Parish Expense. In parishes in which are located penal
24 institutions of the State of Louisiana, the expenses incurred
25 by the parish arising from crimes committed in such institutions
26 or by the inmates thereof shall be reimbursed by the state.

27

28

29

30

31

32

33

34

35

FINAL ENROLLMENT

Constitutional Convention of Louisiana of 1973

CONSTITUTIONAL PROPOSAL NUMBER 12

Introduced by Delegate Acertker, Chairman, on behalf of
the Committee on Education and Welfare, and Delegates
Armentor, Carmouche, Corne, Cowen, Flory, Grier, Haynes,
Hernandez, Landry, Leithman, Lennox, Rachal, Riecke,
Robinson, Segura, Silverberg, Sutherland, Thistlethwaite,
Toca, and Wisham

A PROPOSAL

Making provisions for human resources by prohibiting the
leasing of convicts and the employment of convicts
in competition with private enterprise and by pro-
viding for reimbursement to parishes for expenses
incurred resulting from crimes committed in penal
institutions.

Be it adopted by the Constitutional Convention of Louisiana
of 1973:

ARTICLE VII. HUMAN RESOURCES

Section 1. State Penal Institutions; Reimbursement
of Parish Expense

Section 1. The state shall reimburse a parish in
which a state penal institution is located for expenses the
parish incurs arising from crime committed in the institution
or by an inmate thereof.

CHAIRMAN OF THE CONSTITUTIONAL CONVENTION

ATTEST:

90

SECRETARY OF THE CONSTITUTIONAL CONVENTION

1 **COMMITTEE PROPOSAL No. 17—**

2 Introduced by Delegate Perez, Chairman, on behalf of the
3 Committee on Local and Parochial Government, and Delegates
4 Burson, Cannon, Chatelain, Conino, D'Gerolamo, Fowler, Giar-
5 russo, Hayes, Heine, J. Jackson, Kean, Lanier, Reeves, Shan-
6 non, Stephenson, Taylor, Toomy, Ullo, and Zervigon:

7 **A PROPOSAL**

8 Making general provisions for local and parochial government,
9 levee districts, and ports, the financing thereof, and neces-
10 sary provisions with respect thereto.

11 Be it adopted by the Constitutional Convention of Louisiana
12 of 1973:

13 **ARTICLE VI. LOCAL GOVERNMENT**

14 **PART I. GENERAL PROVISIONS**

* * *

26 **Section 12. Limitations of Local Governmental Subdivisions**
27 **Section 12. Local governmental subdivisions shall not: (1)**
28 **incur debt payable from ad valorem tax receipts maturing**
29 **more than forty years from the time it is incurred; (2) de-**
30 **fine and provide for the punishment of a felony; or (3) enact**
31 **private or civil ordinances governing civil relationships.**
32 **Section 13. Local Officials**

Page 6

* * *

1 Constitutional Convention of Louisiana of 1973
2 COMMITTEE PROPOSAL NUMBER 17
3 Introduced by Delegate Perez, Chairman, on behalf of the Com-
4 mittee on Local and Parochial Government, and Delegates
5 Burson, Cannon, Chatelain, Conino, D'Gerolamo, Fowler,
6 Giarrusso, Hayes, Heine, J. Jackson, Kean, Lanier,
7 Reeves, Shannon, Stephenson, Taylor, Toomy, Ullo,
8 and Zervigon

9
10 A PROPOSAL

11
12 Making general provisions for local and parochial government,
13 levee districts, and ports, the financing thereof, and
14 necessary provisions with respect thereto.
15 Be it adopted by the Constitutional Convention of Louisiana
16 of 1973:

17
18 ARTICLE VI. LOCAL GOVERNMENT

* * *

19 Section 12. Limitations of Local Governmental

20 Subdivisions

21
22 Section 12. (A) Local governmental subdivisions shall
23 not: (1) define and provide for the punishment of a felony;
24 or (2) except as may be provided by law, enact private or
25 civil ordinances governing civil relationships.

26 (B) Notwithstanding any provision of this Article, the
27 police power of the state shall never be abridged.

28 Section 12.1. Codification of Ordinances

29 Section 12.1. The governing authority of each political
30 subdivision shall within two years of the effective date of
31 the adoption of this constitution, cause a code to be prepared
32 containing all of the ordinances of the political subdivision
33 of general application which are appropriate for continuation
34 as law. When the code shall have been prepared the governing
35 authority of the political subdivision shall cause copies of

Reprinted As Engrossed

COMMITTEE PROPOSAL No. 21—

Introduced by Delegate Dennis, Chairman, on behalf of the Committee on the Judiciary and Delegates Avant, Bel, Bergeron, Burns, Deshotels, Drew, Gauthier, Kelly, Kilbourne, Landry, Martin, Ourso, Sandoz, Tate and Vesich (A Substitute for Committee Proposal No. 6) :

A PROPOSAL

Making provisions for the judiciary branch of government and necessary provisions with respect thereto.

Be it adopted by the Constitutional Convention of Louisiana of 1973:

ARTICLE V. JUDICIARY DEPARTMENT

Section 1. Judicial Power

Section 1. The judicial power shall be vested in a supreme court, courts of appeal, district courts, and other courts authorized by this constitution.

Section 2. Habeas Corpus, Needful Writs, Orders and Process

Section 2. A judge may issue writs of habeas corpus and all other needful writs, orders and process in aid of the jurisdiction of his court. Exercise of this authority by a judge of the supreme court or court of appeal is subject to review by the whole court. The power to punish for contempt of court shall be limited by law.

Section 3. Supreme Court; Composition; Judgments; Terms

Section 3. The supreme court shall be composed of a chief justice and six associate justices, four of whom must concur to render judgment. The term of a judge of the supreme court shall be fourteen years.

Section 4. Supreme Court; Districts

Section 4. The state shall be divided into at least six supreme court districts, with at least one judge elected from each. The present districts and the number of judges assigned to each are retained, subject to change by a two-thirds vote of the elected members of each house of the legislature.

Section 5. Supreme Court; Supervisory, Original, and Appellate Jurisdiction; Rule-Making Power; Assignment of Judges

Section 5. (A) The supreme court has general supervisory jurisdiction over all other courts. It may establish procedural and administrative rules not in conflict with law. It may assign a sitting or retired judge to any court.

(B) The supreme court has exclusive original jurisdiction of disciplinary proceedings against members of the bar.

(C) Except as otherwise provided in this constitution, the supreme court's jurisdiction in civil cases extends to both the law and the facts. In criminal matters, its appellate jurisdiction extends only to questions of law.

(D) In addition to appeals provided for elsewhere in this constitution, the following cases shall be appealable to the supreme court:

(1) A case in which a law or ordinance has been declared unconstitutional;

(2) A criminal case in which the death penalty or imprisonment at hard labor may be imposed or in which a fine exceeding five hundred dollars or imprisonment exceeding six months has been actually imposed. In other criminal cases, an accused shall have a right of appeal or review, as provided by law or by rule of the supreme court not inconsistent therewith.

(E) Subject to the provisions of Subsection (C), the su-

preme court has appellate jurisdiction over all issues involved in any civil action properly before it.

Section 6. Supreme Court; the Chief Justice

(A) When a vacancy in the office of chief justice occurs, the judge oldest in point of service on the court, below the age of sixty-five years, shall succeed to the office.

(B) The chief justice is the chief administrative officer of the judicial system of the state, subject to rules adopted by the court.

Section 7. Supreme Court; Judicial Administrator, Clerks and Staff

The supreme court has authority to select a judicial administrator, its clerks, and other personnel, and prescribe their duties and compensation.

Section 8. Courts of Appeal; Panels; Number Necessary to Decision; Terms

The state shall be divided into at least four circuits, with one court of appeal in each circuit. Each court shall sit in panels of at least three judges selected according to rules adopted by the court. A majority of the judges sitting in a case must concur to render judgment. The term of a court of appeal judge shall be twelve years.

Section 9. Courts of Appeal; Circuits and Districts

Each circuit shall be divided into at least three districts, with at least one judge elected from each. One or more judges may be elected at large from within the circuit. The present circuits and districts and the number of judges as elected in each circuit are retained, subject to change by two-thirds vote of the elected members in each house of the legislature.

Section 10. Courts of Appeal; Appellate and Supervisory

1 Jurisdiction

Section 10. (A) Except in those cases appealable to the supreme court and as otherwise provided in this constitution, a court of appeal has appellate jurisdiction of all civil cases decided within its circuit. It has appellate jurisdiction of all matters appealed from the family and juvenile courts, except criminal prosecutions of persons other than juveniles. It has supervisory jurisdiction over all cases in which an appeal would lie to that court.

(B) Except as limited to questions of law by this constitution or as provided by law in the case of review of administrative agency determinations, its appellate jurisdiction extends to law and facts.

Section 11. Courts of Appeal; Certification to Supreme Court; Determination

Section 11. A court of appeal may certify any question of law before it to the supreme court, whereupon the supreme court may give its binding instruction, or consider and decide the case upon the whole record.

Section 12. Courts of Appeal; Chief Judge; Duties

Section 12. When a vacancy in the office of chief judge of a court of appeal occurs, the judge oldest in point of service on the court, below the age of sixty-five years, shall succeed to the office and shall administer the court, subject to rules adopted by the court.

Section 13. Courts of Appeal; Clerks and Staff

Section 13. Each court of appeal has authority to select its clerk and other personnel and prescribe their duties and compensation.

Section 14. District Courts; Judicial Districts

Section 14. The state shall be divided into judicial districts, each composed of one or more parishes and served

1 by one or more district judges.

2 Section 15. Courts; Continued; Jurisdiction; Judicial Dis-
3 tricts Changes; Terms

4 Section 15. (A) The district, parish, city, family, and ju-
5 venile courts existing at the time of the adoption of this
6 constitution are retained. Except as provided in Section 35
7 of this Article, the legislature may abolish or merge trial
8 courts of limited jurisdiction subject to the limitations in
9 Sections 16 and 21 of this Article. Except as provided in
10 Section 35 of this Article, the legislature may establish
11 trial courts of limited jurisdiction which shall have parish-
12 wide territorial jurisdiction and subject matter jurisdiction
13 which shall be uniform throughout the state. The office of
14 city marshal is continued until such time as the city court
15 he serves is abolished by the legislature.

16 (B) The judicial districts existing at the time of the adop-
17 tion of this constitution are retained. The legislature, by a
18 majority vote of the elected members of each house, with
19 approval in a referendum in each district or parish affected,
20 may establish or merge judicial districts, subject to the
21 limitations of Section 21 of this Article.

22 (C) The term of district judge shall be six years. Terms
23 established for judgeships existing at the time of the adop-
24 tion of this constitution are retained; however, the legisla-
25 ture by a majority vote of the elected members of each
26 house, with approval in a referendum in the parish affected,
27 may reduce the terms of district judges in a parish to not
28 less than six years.

29 Section 16. District Courts; Original Jurisdiction

30 Section 16. (A) Unless otherwise authorized by this con-
31 stitution, a district court shall have original jurisdiction in
32 all civil and criminal matters. It shall have exclusive origi-

1 nal jurisdiction of felony cases; cases involving the title to
2 immovable property; the right to office or other public
3 position; civil or political rights; probate and succession
4 matters; the state, a political corporation, or a succession,
5 as a party defendant, regardless of the amount in dispute;
6 and the appointment of receivers or liquidators to corpora-
7 tions or partnerships.

8 (B) A district court shall have appellate jurisdiction as
9 provided by law.

10 Section 17. District Courts; Chief Judge

11 Section 17. Each district court shall elect from its mem-
12 bers a chief judge who shall exercise, for the term desig-
13 nated by the court, the administrative functions as pre-
14 scribed by rule of court.

15 Section 18. Juvenile Courts; Jurisdiction

16 Section 18. The jurisdiction of a juvenile court shall be
17 as provided by law.

18 Section 19. Mayors' Courts; Justices of the Peace; Con-
19 tinued

20 Section 19. Mayors' courts and justice of the peace courts
21 existing at the time of the adoption of this constitution are
22 continued subject to change by the legislature.

23 Section 20. Preservation of Evidence

24 Section 20. Evidence shall be preserved in all trials. The
25 method of preservation shall be provided by law or by rule
26 of the supreme court not inconsistent therewith.

27 Section 21. Judges; Term of Office or Compensation May
28 Not Be Decreased

29 Section 21. No judge's term of office or compensation shall
30 be decreased during the term for which he is elected.

31 Section 22. Judges; Election; Vacancy in Office

32 Section 22. (A) Election of judges shall be at the regular

congressional election.

(B) A newly-created judgeship or a vacancy in the office of any judge shall be filled by a special election which shall be called by the governor, and held within six months of the day on which the vacancy occurs or the judgeship is established, except when the vacancy occurs in the last six months of an existing term. Until the vacancy is filled, the supreme court shall appoint a person meeting the qualifications for judge to the office, to serve at its pleasure, who shall be ineligible as a candidate for election to the judgeship.

(C) A judge serving on the date of adoption of this constitution shall continue in office for the term to which elected and shall serve through December thirty-first of the last year of his term or, if the last year of his term is not in the even-numbered year of a general judicial election, then through December thirty-first of the following year. The election for the next term in the office will be held in a general judicial election of the year in which the term expires as provided above.

Section 23. Retirement of Judges

Section 23. (A) A judge shall not remain in office beyond his seventieth birthday, except as otherwise provided herein.

(B) A judge or judicial administrator in office or retired at the time of the adoption of this constitution, shall not have diminished any retirement benefits or judicial service rights, including the right to remain in office, as judge, during his present term, as provided under the previous constitution or laws, nor shall the benefits to which his surviving spouse was entitled be reduced.

(C) A judge taking office after the adoption of this constitution and a judge in office who so elects within ninety

days of the adoption of this constitution by notifying the secretary of state, shall be vested and entitled to the following retirement benefits:

(1) This subsection applies to a judge of a court authorized by this constitution, except mayors and justices of the peace.

(2) A judge with sixteen years of judicial service may retire at any age; a judge of twelve years of judicial service may retire with benefits commencing at the age of fifty-five. On retirement, a judge shall receive annually as retirement benefits four percent of his salary times the number of years served, but not more than ninety percent.

(3) A judge who is physically or mentally incapacitated to perform his duties shall be retired. He shall receive as annual retirement benefits two-thirds of his annual salary, or four percent of his salary times the number of years served, whichever is greater, not to exceed the maximum amount provided in paragraph (2).

(4) Upon the death of a judge, in office or retired, the surviving spouse, until remarriage, shall be entitled to one-half of his annual salary as judge prior to death or retirement. If the judge is not survived by a spouse, or if the spouse dies, his unmarried children shall be entitled to the benefits provided in this subsection until the age of eighteen.

(5) Benefits provided herein shall be paid from the same sources as was his compensation as judge. The legislature and the political subdivisions shall provide for the payment of these benefits.

(6) To receive the benefits provided in this subsection, the judge shall contribute a total of six percent of his salary to the paying authorities.

Section 24. Judges; Qualifications; Practice of Law Pro-

1 hibited.

2 Section 24. A judge of the supreme court, court of appeal,
3 district court, family court, parish court, or court having
4 solely juvenile jurisdiction shall have been admitted to the
5 practice of law in this state for at least five years prior
6 to his election, shall have been domiciled in the respective
7 circuit or parish for at least two years immediately preced-
8 ing election, and shall not practice law.

9 Section 25. Judiciary Commission; Composition; Terms;
10 Vacancy; Grounds for Removal; Powers

11 Section 25. (A) The Judiciary Commission shall consist
12 of one court of appeal judge and two district court judges
13 selected by the supreme court; three attorneys admitted to
14 the practice of law for at least ten years who are not
15 judges, active or retired, nor public officials, selected by
16 the Louisiana Conference of Court of Appeal Judges' Asso-
17 ciation or its successor; and three citizens, not lawyers,
18 judges active or retired, nor public officials, appointed by
19 the Louisiana District Judges' Association or its successor.

20 (B) A member of the commission shall serve a four-year
21 term and shall not be eligible to succeed himself.

22 (C) A member's term shall terminate when he loses the
23 status causing his appointment or when any event occurs
24 which would have made him ineligible for appointment.

25 (D) When a vacancy occurs, a successor shall be appointed
26 for a four-year term by the authority which appointed his
27 predecessor.

28 (E) On recommendation of the Judiciary Commission, the
29 supreme court may censure, suspend with or without salary,
30 remove from office, or retire involuntarily a judge for will-
31 ful misconduct relating to his official duty, willful and
32 persistent failure to perform his duty, persistent and public

1 conduct prejudicial to the administration of justice that
2 brings the judicial office into disrepute, conduct while in
3 office which would constitute a felony, or conviction of a
4 felony. On recommendation of the Judiciary Commission, the
5 supreme court may disqualify a judge from exercising any
6 judicial function, without loss of salary, during the pendency
7 of the proceedings in the supreme court. On recommenda-
8 tion of the Judiciary Commission, the supreme court may
9 retire involuntarily a judge for disability that seriously in-
10 terferes with the performance of his duties and that is, or
11 is likely to become, of a permanent character. The supreme
12 court shall make rules implementing this section and pro-
13 viding for confidentiality and privilege of proceedings.

14 (F) Action against a judge under this Section shall not
15 preclude disciplinary action against him with respect to his
16 license to practice law.

17 Section 26, Department of Justice; Composition; Attorney
18 General; Election and Assistants

19 Section 26. There shall be a department of justice con-
20 sisting of an attorney general, first and second attorney
21 general, and other necessary assistants and staff. The attor-
22 ney general shall be elected for a term of four years at the
23 state general election, and the assistants shall be appointed
24 by the attorney general to serve at his pleasure.

25 Section 27. Attorney General; Powers and Duties; Va-
26 cancy

27 Section 27. (A) The attorney general shall be the state's
28 chief legal officer. As may be necessary for the assertion or
29 protection of the rights and interests of the state, the attor-
30 ney general shall have authority to:

31 (1) institute and prosecute or intervene in any civil ac-
32 tions or proceedings;

(2) advise and assist, upon request of a district attorney, in the prosecution of a criminal case; and

(3) for cause when authorized by the court of original jurisdiction in which any proceeding is pending, subject to judicial review, supercede any attorney representing the state in any civil or criminal action.

He shall have such other powers and perform such other duties as may be authorized by this constitution or provided by statute.

(B) In case of a vacancy in the office of attorney general, the first assistant attorney general shall perform the duties of the office until his successor is elected and qualified.

Section 28. District Attorney; Election; Qualifications; Assistants

Section 28. In each judicial district a district attorney shall be elected by the qualified electors of the district for a term of six years. He shall have been admitted to the practice of law in the state for at least five years prior to his election and shall have resided in the district for the two years immediately preceding election. A district attorney may select his assistants and other personnel and prescribe their duties.

Section 29. Defense of Criminal Prosecution; Removal

Section 29. No district attorney or assistant district attorney shall appear, plead or in any way defend, or assist in defending any criminal prosecution or charge. A violation shall be cause for removal.

Section 30. Sheriff; Duties; Tax Collector

Section 30. In each parish, a sheriff shall be elected for a term of four years. He shall be the chief law enforcement officer in the parish, except as otherwise provided by this

constitution, and shall execute court orders and process.

He shall be the collector of state and parish ad valorem taxes and such other taxes and licenses as provided by law.

Section 31. Clerks; Election; Powers and Duties; Deputies; Office Hours

Section 31. (A) In each parish, a clerk of the district court shall be elected by the qualified electors of the parish for term of four years. He shall be ex officio notary public and parish recorder of conveyances, mortgages, and other acts and shall have such other duties and powers as may be prescribed by law. The clerk may appoint deputies with such duties and powers as may be prescribed by law and he may appoint, with the approval of the district judges, minute clerks with such duties and powers as may be prescribed by law.

(B) The legislature shall establish statewide uniform office hours for all clerks of district courts.

Section 32. Coroner; Election; Term; Qualifications; Duties

Section 32. In each parish, a coroner shall be elected for a term of four years with such qualifications and duties as may be prescribed by law.

Section 33. Vacancies

Section 33. When a vacancy occurs in the following offices, the duties of the office, until it is filled by election as provided by law, shall be assumed by: in the case of sheriff, the chief criminal deputy; district attorney, the first assistant; clerk of a district court, the chief deputy; coroner, the chief deputy. If there is no such person to assume the duties at the time of the vacancy, the governing authority or authorities of the parish or parishes concerned shall appoint a qualified person to assume the duties of the office

1 until filled by election.

2 Section 34. Reduction of Salaries and Benefits Prohibited
3

4 Section 34. No attorney general, district attorney, sheriff,
5 or clerk of the district court shall have his salary or retirement
6 benefits diminished during his term of office.

7 Section 35. Orleans Parish Courts, Officials; Continued

8 Section 35. Notwithstanding any provision of this Article
9 to the contrary, the following courts and officers in Orleans
10 Parish are continued, subject to change by a majority vote
11 of the elected members of each house of the legislature and
12 by approval in a referendum in the parish: the civil and
13 criminal district courts, the city, municipal, traffic and juvenile
14 courts, the clerks of the civil and criminal district
15 courts, the civil and criminal sheriffs, the constables and
16 the clerks of the first and second city courts, the register
17 of conveyances, and the recorder of mortgages. These officers
18 shall be elected for four-year terms with such duties
19 and powers as provided by the legislature and terms of
20 office, retirement benefits, or compensation shall not be
21 reduced during their terms of office.

22 The civil district court shall have civil jurisdiction as provided
23 in Section 16 of this Article and the criminal district
24 court shall have criminal jurisdiction as provided in Section
25 16 of this Article.

26 The judicial expense fund of Orleans Parish as existing at
27 the time of the adoption of this constitution is retained
28 subject to change by two-thirds vote of the elected members
29 of each house of the legislature.

30 Section 36. Jurors; Qualifications; Exemptions

31 Section 36. The supreme court by rule shall provide for
32 qualification and exemption of jurors.

1 Section 37. Grand Jury

2 Section 37. There shall be a grand jury or grand juries
3 in each parish whose duties and responsibilities shall be
4 provided by law and whose qualifications shall be as provided
5 in Section 6 of this Article. The secrecy of the proceedings,
6 including the identity of the witnesses appearing,
7 shall be provided for by law.

8 Section 38. Fees; Orleans Parish

9 Section 38. The judges of the civil district court and the
10 city courts of Orleans Parish shall set the fees for civil
11 cases filed in their respective courts.

FIRST ENROLLMENT

CC-1157

1 CONSTITUTIONAL CONVENTION OF LOUISIANA OF 1973
2 COMMITTEE PROPOSAL NUMBER 21

3 Introduced by Delegate Dennis, Chairman, on behalf of
4 the Committee on the Judiciary, and Delegates Avant, Bel,
5 Bergeron, Burns, Deshotels, Drew, Gauthier, Kelly, Kilbourne,
6 Landry, Martin, Ourso, Sandoz, Tate, and Vesich (A Substitute
7 for Committee Proposal No. 6)

8

9 A PROPOSAL

10

11 Making provisions for the judiciary branch of government
12 and necessary provisions with respect thereto.
13 Be it adopted by the Constitutional Convention of Louisiana
14 of 1973:

15 ARTICLE V. JUDICIAL BRANCH

16 Section 1. Judicial Power

17 Section 1. The judicial power shall be vested in a
18 supreme court, courts of appeal, district courts, and other
19 courts authorized by this constitution.

20 Section 2. Habeas Corpus, Needful Writs, Orders and
21 Process

22 Section 2. A judge may issue writs of habeas corpus
23 and all other needful writs, orders and process in aid of
24 the jurisdiction of his court. Exercise of this authority
25 by a judge of the supreme court or court of appeal is sub-
26 ject to review by the whole court. The power to punish for
27 contempt of court shall be limited by law.

28 Section 3. Supreme Court; Composition; Judgments;
29 Terms

30 Section 3. The supreme court shall be composed of a
31 chief justice and six associate justices, four of whom must
32 concur to render judgment. The term of a judge of the supreme
33 court shall be ten years.

34 Section 4. Supreme Court; Districts

35 Section 4. The state shall be divided into at least

1 six supreme court districts, with at least one judge elected
2 from each. The present districts and the number of judges
3 assigned to each are retained, subject to change by a two-
4 thirds vote of the elected members of each house of the
5 legislature.

6 Section 5. Supreme Court; Supervisory, Original, and
7 Appellate Jurisdiction; Rule-Making Power; Assignment of
8 Judges

9 Section 5. (A) The supreme court has general super-
10 visory jurisdiction over all other courts. It may establish
11 procedural and administrative rules not in conflict with law.
12 It may assign a sitting or retired judge to any court.

13 (B) The supreme court has exclusive original
14 jurisdiction of disciplinary proceedings against members of
15 the bar.

16 (C) Except as otherwise provided in this constitution, the
17 supreme court's jurisdiction in civil cases extends to both
18 the law and the facts. In criminal matters, its appellate
19 jurisdiction extends only to questions of law.

20 (D) In addition to appeals provided for elsewhere in
21 this constitution, the following cases shall be appealable to
22 the supreme court:

23 (1) A case in which a law or ordinance has been declared
24 unconstitutional;

25 (2) Cases in which the defendant has been convicted of
26 a felony or in which a fine exceeding five hundred dollars or
27 imprisonment exceeding six months has been actually imposed.

28 (E) Subject to the provisions of Paragraph (C), the
29 supreme court has appellate jurisdiction over all issues in-
30 volved in any civil action properly before it.

31 (F) In all criminal cases not provided for in subsection
32 (D) (2) of this Section an accused shall have a right of appeal
33 or review, as provided by law.

34 Section 6. Supreme Court; the Chief Justice

35 Section 6. (A) When a vacancy in the office of chief

1 justice occurs, the judge oldest in point of service on the
2 court, shall succeed to the office.

3 (B) The chief justice is the chief administrative
4 officer of the judicial system of the state, subject to rules
5 adopted by the court.

6 Section 7. Supreme Court; Judicial Administrator,
7 Clerks and Staff

8 Section 7. The supreme court has authority to select
9 a judicial administrator, its clerks, and other personnel,
10 and prescribe their duties.

11 Section 8. Courts of Appeal; Panels; Number Necessary
12 to Decision; Terms

13 Section 8. The state shall be divided into at least
14 four circuits, with one court of appeal in each circuit.
15 Each court shall sit in panels of at least three judges selected
16 according to rules adopted by the court. A majority of the
17 judges sitting in a case must concur to render judgment. However,
18 when the judgment of the district court is to be modified or
19 reversed, and one judge dissents, the case shall be reargued,
20 before a panel of at least five judges, prior to rendition
21 of judgment, and a majority must concur to render judgment. The
22 term of a court of appeal judge shall be ten years.

23 Section 9. Courts of Appeal; Circuits and Districts

24 Section 9. Each circuit shall be divided into at least
25 three districts, with at least one judge elected from each.
26 After January 1, 1975, no judge shall be elected at large from
27 within the circuit. The present circuits and districts and the
28 number of judges as elected in each circuit are retained, subject
29 to change by two-thirds vote of the elected members in each
30 house of the legislature.

31 Section 10. Courts of Appeal; Appellate and Supervisory
32 Jurisdiction

33 Section 10. (A) Except in those cases appealable to the
34 supreme court and as otherwise provided in this constitution, a
35 court of appeal has appellate jurisdiction of all civil cases

1 decided within its circuit. It has appellate jurisdiction of all
2 matters appealed from the family and juvenile courts, except criminal
3 prosecutions of persons other than juveniles. It has supervisory
4 jurisdiction over all cases in which an appeal would lie to that court.

5 (B) Except as limited to questions of law by this
6 constitution or as provided by law in the case of review of
7 administrative agency determinations, its appellate jurisdiction
8 extends to law and facts.

9 Section 11. Courts of Appeal; Certification to Supreme
10 Court; Determination

11 Section 11. A court of appeal may certify any question
12 of law before it to the supreme court, whereupon the supreme
13 court may give its binding instruction, or consider and decide
14 the case upon the whole record.

15 Section 12. Courts of Appeal; Chief Judge; Duties

16 Section 12. There shall be a chief judge of each court of
17 appeal who shall be the judge oldest in point of service on the
18 court and who shall administer the court subject to rules adopted
19 by the court.

20 Section 13. Courts of Appeal; Clerks and Staff

21 Section 13. Each court of appeal has authority to select
22 its clerk and other personnel and prescribe their duties.

23 Section 14. District Courts; Judicial Districts

24 Section 14. The state shall be divided into judicial
25 districts, each composed of one or more parishes and served by
26 one or more district judges.

27 Section 15. Courts; Continued; Jurisdiction; Judicial
28 Districts Changes; Terms

29 Section 15. (A) The district, parish, magistrate, city,
30 family, and juvenile courts existing at the time of the adoption
31 of this constitution are retained. The legislature may abolish
32 or merge trial courts of limited or specialized jurisdiction
33 subject to the limitations in Sections 16 and 21 of this Article.
34 The legislature may establish trial courts of limited jurisdiction
35 which shall have parishwide territorial jurisdiction and subject

1 matter jurisdiction which shall be uniform throughout the state. The
2 office of city marshal is continued until such time as the city court
3 he serves is abolished by the legislature.

4 (B) The judicial districts existing at the time of the adoption
5 of this constitution are retained. The legislature, by a majority vote
6 of the elected members of each house, with approval in a referendum
7 in each district and parish affected, may establish, divide, or merge
8 judicial districts, subject to the limitations of Section 21 of this
9 Article.

10 (C) The term of a district and parish judges shall be six years.

11 (D) The legislature may increase or decrease the number of judges
12 in any judicial district by a two-thirds vote of the elected membership
13 of each house.

14 Section 15.1. City Court Judges; Terms

15 Section 15.1. A judge of a city court shall be elected for the
16 same term as a district court judge.

17 Section 16. District Courts; Original Jurisdiction

18 Section 16. (A) Unless otherwise authorized by this constitution,
19 a district court shall have original jurisdiction in all civil and criminal
20 matters. It shall have exclusive original jurisdiction: of felony cases
21 and of cases involving: the title to immovable property; the right to
22 office or other public position; civil or political rights; probate
23 and succession matters; the state, a political corporation, or a succession,
24 as a party defendant, regardless of the amount in dispute; and the appointment
25 of receivers or liquidators to corporations or partnerships.

26 (B) A district court shall have appellate jurisdiction as provided
27 by law.

28 Section 17. District Courts; Chief Judge

29 Section 17. Each district court shall elect from its members a
30 chief judge who shall exercise, for the term designated by the court,
31 the administrative functions as prescribed by rule of court.

32 Section 18. Juvenile Courts; Jurisdiction

33 Section 18. Notwithstanding any provision of this Article to the contrary,
34 the juvenile and family courts shall have such jurisdiction as the legislature
35 shall provide by law.

1 Section 19. Mayors' Courts; Justices of the Peace;

2 Continued

3 Section 19. Mayors' courts and justice of the peace
4 courts existing at the time of the adoption of this consti-
5 tution are continued subject to change by the legislature.

6 Section 21. Judges; Term of Office or Compensation
7 May Not Be Decreased

8 Section 21. No judge's term of office or compensation
9 shall be decreased during the term for which he is elected.

10 Section 22. Judges; Election; Vacancy in Office

11 Section 22. (A) Except as otherwise provided in this
12 Section all judges shall be elected. Election of judges
13 shall be at the regular congressional election.

14 (B) A newly-created judgeship or a vacancy in the office
15 of any judge shall be filled by a special election which
16 shall be called by the governor, and held within six months
17 of the day on which the vacancy occurs or the judgeship is
18 established, except when the vacancy occurs in the last six
19 months of an existing term. Until the vacancy is filled,
20 the supreme court shall appoint a person meeting the qualifications,
21 other than domicile, for the office, to serve at its pleasure,
22 who shall be ineligible as a candidate for election to the
23 judgeship at the election to fill the vacancy or the newly
24 created judicial office. For service as an appointed judge,
25 the person appointed to fill the vacancy, other than a retired
26 judge, shall not be eligible for retirement benefits provided
27 for the elected judiciary.

28 (C) A judge serving on the date of adoption of this
29 constitution shall continue in office for the term to which
30 elected and shall serve through December thirty-first of the
31 last year of his term or, if the last year of his term is not

32

33

34

35

1 in the even-numbered year of a regular congressional election,
2 then through December thirty-first of the following year. The
3 election for the next term in the office will be held in the
4 year in which the term expires as provided above.

5 Section 23. Retirement of Judges

6 Section 23. (A) Within two years after the effective
7 date of this constitution, the legislature shall provide for
8 a retirement system for judges which shall apply to a judge
9 taking office after the effective date of the statute enact-
10 ing the system and to which a judge in office at the time
11 of its adoption may elect to join with credit for all prior
12 years of judicial service without contribution therefor;
13 provided, however, a judge in office or retired at the time
14 of adoption of this constitution, shall not have diminished
15 any retirement benefits or judicial service rights, nor shall
16 the benefits to which his surviving spouse is entitled, be
17 reduced.

18 (B) A judge shall not remain in office beyond his
19 seventieth birthday, except as otherwise provided in this
20 Section.

21 Section 24. Judges; Qualifications; Practice of Law
22 Prohibited

23 Section 24. A judge of the supreme court, court of
24 appeal, district court, family court, parish court, or court
25 having solely juvenile jurisdiction shall have been admitted
26 to the practice of law in this state for at least five years
27 prior to his election, shall have been domiciled in the re-
28 spective district, circuit, or parish for at least two years
29 immediately preceding election, and shall not practice law.

30 Section 25. Judiciary Commission; Composition; Terms;
31 Vacancy; Grounds for Removal; Powers

32 Section 25. (A) The Judiciary Commission shall consist
33 of one court of appeal judge and two district court judges
34 selected by the supreme court; two attorneys admitted to
35 the practice of law for at least ten years and one attorney

1 admitted to the practice of law for at least three years
2 but not more than ten years who are not judges, active or
3 retired, nor public officials other than notaries public,
4 selected by the Louisiana Conference of Court of Appeal
5 Judges' Association or its successor; and three citizens, not
6 lawyers, judges active or retired, nor public officials,
7 appointed by the Louisiana District Judges' Association or
8 its successor.

9 (B) A member of the commission shall serve a four-
10 year term and shall not be eligible to succeed himself.

11 (C) A member's term shall terminate when he loses
12 the status causing his appointment or when any event occurs
13 which would have made him ineligible for appointment.

14 (D) When a vacancy occurs, a successor shall be
15 appointed for a four-year term by the authority which
16 appointed his predecessor.

17 (E) On recommendation of the Judiciary Commission,
18 the supreme court may censure, suspend with or without
19 salary, remove from office, or retire involuntarily a
20 judge for willful misconduct relating to his official
21 duty, willful and persistent failure to perform his duty,
22 persistent and public conduct prejudicial to the adminis-
23 tration of justice that brings the judicial office into
24 disrepute, conduct while in office which would constitute
25 a felony, or conviction of a felony. On recommendation
26 of the Judiciary Commission, the supreme court may dis-
27 qualify a judge from exercising any judicial function,
28 without loss of salary, during the pendency of the pro-
29 ceedings in the supreme court. On recommendation of the
30 Judiciary Commission, the supreme court may retire involun-
31 tarily a judge for disability that seriously interferes with
32 the performance of his duties and that is, or is likely to
33 become, of a permanent character. The supreme court shall
34 make rules implementing this section and providing for con-
35 fidentiality and privilege of commission proceedings.

(F) Action against a judge under this Section shall not preclude disciplinary action against him with respect to his license to practice law.

Section 26. Department of Justice; Composition; Attorney General; Election and Assistants

Section 26. There shall be a department of justice consisting of an attorney general, a first assistant attorney general, and other necessary assistants and staff. The attorney general shall be elected for a term of four years at the state general election, and the assistants shall be appointed by the attorney general to serve at his pleasure.

Section 27. Attorney General; Powers and Duties; Vacancy

Section 27.(A) The attorney general shall be the state's chief legal officer. As may be necessary for the assertion or protection of the rights and interests of the state, the attorney general shall have authority to:

(1) institute and prosecute or intervene in any civil actions or proceedings;

(2) advise and assist, upon request of a district attorney, in the prosecution of a criminal case; and

(3) for cause when authorized by the court of original jurisdiction in which any proceeding or affidavit is pending, subject to judicial review, supercede any attorney representing the state in any civil or criminal action.

He shall have such other powers and perform such other duties as may be authorized by this constitution or provided by statute.

Section 28. District Attorney; Election; Qualifications; Assistants

Section 28. In each judicial district a district attorney shall be elected by the qualified electors of the district for a term of six years. He shall have been admitted to the practice of law in the state for at least five years prior to his election and shall have resided in the district for the two years immediately preceding election. A district attorney may select such assistants

1 as may be authorized by law and other personnel.

2 Section 29. Defense of Criminal Prosecution; Removal

3 Section 29. No district attorney or assistant district
4 attorney shall appear, plead or in any way defend, or assist
5 in defending any criminal prosecution or charge. A violation
6 shall be cause for removal.

7 Section 30. Sheriff; Duties; Tax Collector

8 Section 30. In each parish, a sheriff shall be elected for
9 a term of four years. He shall be the chief law enforcement
10 officer in the parish, except as otherwise provided by this
11 constitution, and shall execute court orders and process.
12 He shall be the collector of state and parish ad valorem
13 taxes and such other taxes and licenses as provided by
14 law.

15 This section shall not apply to the parish of Orleans.

16 Section 31. Clerks; Elections; Powers and Duties; Depu-
17 ties; Office Hours

18 Section 31. (A) In each parish, a clerk of the district
19 court shall be elected by the qualified electors of the parish
20 for a term of four years. He shall be ex officio notary
21 public and parish recorder of conveyances, mortgages, and
22 other acts and shall have such other duties and powers as
23 may be prescribed by law. The clerk may appoint deputies
24 with such duties and powers as may be prescribed by law and
25 he may appoint, with the approval of the district judges,
26 minute clerks with such duties and powers as may be prescribed
27 by law.

28 (B) The legislature shall establish statewide uniform
29 office hours for all clerks of district courts.

30 Section 32. Coroner; Election; Term; Qualifications;
31 Duties

32 Section 32. In each parish, a coroner shall be elected
33 for a term of four years. He shall be a licensed physician
34 and possess such other qualifications and perform such duties
35 as are provided by law; however, the requirement that he be

1 a licensed physician shall not apply to any parish in
2 which there is no licensed physician who will accept
3 the office.

4 Section 33. Vacancies

5 Section 33. When a vacancy occurs in the following
6 offices, the duties of the office, until it is filled by
7 election as provided by law, shall be assumed by: in the case
8 of sheriff, the chief criminal deputy; district attorney, the
9 first assistant; clerk of a district court, the chief deputy;
10 coroner, the chief deputy. If there is no such person to
11 assume the duties at the time of the vacancy, the governing
12 authority or authorities of the parish or parishes concerned
13 shall appoint a qualified person to assume the duties of the
14 office until filled by election.

15 Section 34. Reduction of Salaries and Benefits

16 Prohibited

17 Section 34. No attorney general, judge, district attorney,
18 sheriff, coroner, or clerk of the district court shall have his
19 salary or retirement benefits diminished during his term of
20 office.

21 Section 35. Orleans Parish Courts, Officials;

22 Continued

23 Section 35. Except for provisions relating to terms of
24 office as provided elsewhere in this Article and notwithstanding
25 any other provision of this constitution to the contrary, the
26 following courts and officers in Orleans Parish are continued,
27 subject to change by a vote of a majority of the elected
28 members of each house of the legislature: the civil and
29 criminal district courts, the city, municipal, traffic and
30 juvenile courts, the clerks of the civil and criminal district
31 courts, the civil and criminal sheriffs, the constables and
32 the clerks of the first and second city courts, the register
33 of conveyances, and the recorder of mortgages.

34 Section 36. Jurors; Qualifications; Exemptions

35 Section 36. (A) A citizen of the state, who is domiciled

C. P. No. 21

1 within the parish in which he is to serve as a juror and
2 who has reached the age of majority, is eligible to serve
3 as a juror. The legislature may provide additional qualifi-
4 cations.

5 (B) The supreme court by rule shall provide for
6 exemption of jurors.

7 Section 37. Grand Jury

8 Section 37. (A) There shall be a grand jury or grand juries
9 in each parish whose qualifications, duties and responsibilities
10 shall be provided by law. The secrecy of the proceedings, includ-
11 ing the identity of the witnesses appearing, shall be provided for
12 by law.

13 (B) Except as otherwise provided in this constitution,
14 a district attorney, or his designated assistant, shall have
15 charge of every criminal prosecution by the state in his district,
16 shall be the representative of the state in his district before
17 the grand jury, and its legal advisor. He shall perform such
18 other duties as may be provided by law.

19 (C) At all stages of grand jury proceedings, anyone testify-
20 ing in such proceedings shall have the right to the advice of
21 counsel while testifying.

22
23
24
25
26
27
28
29
30
31
32
33
34
35

FINAL ENROLLMENT

CONSTITUTIONAL CONVENTION OF LOUISIANA OF 1973

COMMITTEE PROPOSAL NUMBER 21

Introduced by Delegate Dennis, Chairman, on behalf of the Committee on the Judiciary, and Delegates Avant, Bel, Bergeron, Burns, Deshotels, Drew, Gauthier, Kelly, Kilbourne, Landry, Martin, Ourso, Sandoz, Tate, and Vesich (A Substitute for Committee Proposal No. 6)

A PROPOSAL

Making provisions for the judiciary branch of government and necessary provisions with respect thereto.
Be it adopted by the Constitutional Convention of Louisiana of 1973:

ARTICLE V. JUDICIAL BRANCH

Section 1. Judicial Power

Section 1. The judicial power is vested in a supreme court, courts of appeal, district courts, and other courts authorized by this Article.

Section 2. Habeas Corpus, Needful Writs, Orders and Process; Contempt

Section 2. A judge may issue writs of habeas corpus and all other needful writs, orders, and process in aid of the jurisdiction of his court. Exercise of this authority by a judge of the supreme court or of a court of appeal is subject to review by the whole court. The power to punish for contempt of court shall be limited by law.

Section 3. Supreme Court; Composition; Judgments; Terms

Section 3. The supreme court shall be composed of a chief justice and six associate justices, four of whom must concur to render judgment. The term of a supreme court judge shall be ten years.

Section 4. Supreme Court; Districts

Section 4. The state shall be divided into at least

six supreme court districts, and at least one judge shall be elected from each. The districts and the number of judges assigned to each on the effective date of this constitution are retained, subject to change by law enacted by two-thirds of the elected members of each house of the legislature.

Section 5. Supreme Court; Jurisdiction; Rule-Making
Power; Assignment of Judges

Section 5. (A) Supervisory Jurisdiction; Rule-Making Power; Assignment of Judges. The supreme court has general supervisory jurisdiction over all other courts. It may establish procedural and administrative rules not in conflict with law and may assign a sitting or retired judge to any court.

(B) Original Jurisdiction. The supreme court has exclusive original jurisdiction of disciplinary proceedings against a member of the bar.

(C) Scope of Review. Except as otherwise provided by this constitution, the jurisdiction of the supreme court in civil cases extends to both law and facts. In criminal matters, its appellate jurisdiction extends only to questions of law.

(D) Appellate Jurisdiction. In addition to other appeals provided by this constitution, a case shall be appealable to the supreme court if (1) a law or ordinance has been declared unconstitutional; (2) the defendant has been convicted of a felony or a fine exceeding five hundred dollars or imprisonment exceeding six months actually has been imposed.

(E) Other Criminal Cases; Review. In all criminal cases not provided in Paragraph (D) (2) of this Section, a defendant has a right of appeal or review, as provided by law.

(F) Appellate Jurisdiction; Civil Cases; Extent. Subject to the provisions in Paragraph (C), the supreme court has appellate jurisdiction over all issues involved in a civil action properly before it.

Section 6. Supreme Court; Chief Justice

Section 6. The judge oldest in point of service on the

supreme court shall be chief justice. He is the chief administrative officer of the judicial system of the state, subject to rules adopted by the court.

Section 7. Supreme Court; Personnel

Section 7. The supreme court may select a judicial administrator, its clerks, and other personnel and prescribe their duties.

Section 8. Courts of Appeal; Circuits; Panels; Judgments;

Terms

Section 8. (A) Circuits; Panels. The state shall be divided into at least four circuits, with one court of appeal in each. Each court shall sit in panels of at least three judges selected according to rules adopted by the court.

(B) Judgments. A majority of the judges sitting in a case must concur to render judgment. However, when a judgment of a district court is to be modified or reversed and one judge dissents, the case shall be reargued before a panel of at least five judges prior to rendition of judgment, and a majority must concur to render judgment.

(C) Terms. The term of a court of appeal judge shall be ten years.

Section 9. Courts of Appeal; Circuits and Districts

Section 9. Each circuit shall be divided into at least three districts, and at least one judge shall be elected from each. The circuits and districts and the number of judges as elected in each circuit on the effective date of this constitution are retained, subject to change by law enacted by two-thirds of the elected members of each house of the legislature.

Section 10. Courts of Appeal; Jurisdiction

Section 10. (A) Jurisdiction. Except in cases appealable to the supreme court and except as otherwise provided by this constitution, a court of appeal has appellate jurisdiction of all (1) civil matters decided within its circuit and (2) matters appealed from family and juvenile courts, except criminal pro-

secutions of persons other than juveniles. It has supervisory jurisdiction over cases in which an appeal would lie to it.

(B) Scope of Review. Except as limited to questions of law by this constitution, or as provided by law in the review of administrative agency determinations, appellate jurisdiction of a court of appeal extends to law and facts.

Section 11. Courts of Appeal; Certification

Section 11. A court of appeal may certify any question of law before it to the supreme court, and the supreme court then may give its binding instruction or decide the case upon the whole record.

Section 12. Courts of Appeal; Chief Judge

Section 12. The judge oldest in point of service on each court of appeal shall be chief judge of that court and shall administer the court subject to rules adopted by it.

Section 13. Courts of Appeal; Personnel

Section 13. Each court of appeal may select its clerk and other personnel and prescribe their duties.

Section 14. District Courts; Judicial Districts

Section 14. The state shall be divided into judicial districts, each composed of at least one parish and served by at least one district judge.

Section 15. Courts; Retention; Jurisdiction; Judicial

District Changes; Terms

Section 15. (A) Court Retention; Trial Courts of Limited Jurisdiction. The district, family, juvenile, parish, city, and magistrate courts existing on the effective date of this constitution are retained. Subject to the limitations in Sections 16 and 20 of this Article, the legislature may abolish or merge trial courts of limited or specialized jurisdiction. The legislature may establish trial courts of limited jurisdiction with parishwide territorial jurisdiction and subject matter jurisdiction which shall be uniform throughout the state. The office of city marshal is continued until the city court he serves is abolished.

(B) Judicial Districts. The judicial districts existing on the effective date of this constitution are retained. Subject to the limitations in Section 20 of this Article, the legislature may establish, divide, or merge judicial districts with approval in a referendum in each district and parish affected.

(C) Term. The term of a district, parish, or city court judge shall be six years.

(D) Number of Judges. The legislature may change the number of judges in any judicial district by law enacted by two-thirds of the elected members of each house.

Section 16. District Courts; Jurisdiction

Section 16. (A) Original Jurisdiction. Except as otherwise authorized by this constitution, a district court shall have original jurisdiction of all civil and criminal matters. It shall have exclusive original jurisdiction of felony cases and of cases involving title to immovable property; the right to office or other public position; civil or political rights; probate and succession matters; the state, a political corporation, or political subdivisions, or a succession, as a defendant; and the appointment of receivers or liquidators for corporations or partnerships.

(B) Appellate Jurisdiction. A district court shall have appellate jurisdiction as provided by law.

Section 17. District Courts; Chief Judge

Section 17. Each district court shall elect from its members a chief judge who shall exercise, for a term designated by the court, the administrative functions prescribed by rule of court.

Section 18. Juvenile Courts; Jurisdiction

Section 18. Notwithstanding any contrary provision of Section 16 of this Article, juvenile and family courts shall have jurisdiction as provided by law.

Section 19. Mayors' Courts; Justice of the Peace Courts

Section 19. Mayors' courts and justice of the peace courts existing on the effective date of this constitution are continued,

subject to change by law.

Section 20. Judges; Decrease in Terms and Compensation

Prohibited

Section 20. The term of office, retirement benefits, and compensation of a judge shall not be decreased during the term for which he is elected.

Section 21. Judges; Election; Vacancy

Section 21. (A) Election. Except as otherwise provided in this Section, all judges shall be elected. Election shall be at the regular congressional election.

(B) Vacancy. A newly-created judgeship or a vacancy in the office of a judge shall be filled by special election called by the governor and held within six months after the day on which the vacancy occurs or the judgeship is established, except when the vacancy occurs in the last six months of an existing term. Until the vacancy is filled, the supreme court shall appoint a person meeting the qualifications for the office, other than domicile, to serve at its pleasure. The appointee shall be ineligible as a candidate at the election to fill the vacancy or the newly-created judicial office. No person serving as an appointed judge, other than a retired judge, shall be eligible for retirement benefits provided for the elected judiciary.

(C) End of Term. A judge serving on the effective date of this constitution shall serve through December thirty-first of the last year of his term or, if the last year of his term is not in the year of a regular congressional election, then through December thirty-first of the following year. The election for the next term shall be held in the year in which the term expires, as provided above.

Section 22. Judges; Retirement

Section 22. (A) Retirement System. Within two years after the effective date of this constitution, the legislature shall provide for a retirement system for judges which shall apply to a judge taking office after the effective date of the law enacting

the system and in which a judge in office at that time may elect to become a member, with credit for all prior years of judicial service and without contribution therefor. The retirement benefits and judicial service rights of a judge in office or retired on the effective date of this constitution shall not be diminished, nor shall the benefits to which a surviving spouse is entitled be reduced.

(B) Mandatory Retirement. Except as otherwise provided in this Section, a judge shall not remain in office beyond his seventieth birthday.

Section 23. Judges; Qualifications

Section 23. A judge of the supreme court, a court of appeal, district court, family court, parish court, or court having solely juvenile jurisdiction shall have been admitted to the practice of law in this state for at least five years prior to his election, and shall have been domiciled in the respective district, circuit, or parish for the two years preceding election. He shall not practice law.

Section 24. Judiciary Commission

Section 24. (A) Composition. The judiciary commission shall consist of

(1) one court of appeal judge and two district court judges selected by the supreme court;

(2) two attorneys admitted to the practice of law for at least ten years and one attorney admitted to the practice of law for at least three years but not more than ten years, selected by the Conference of Court of Appeal Judges or its successor. They shall not be judges, active or retired, or public officials, other than notaries public; and

(3) three citizens, not lawyers, judges active or retired, or public officials, selected by the Louisiana District Judges' Association or its successor.

(B) Term; Vacancy. A member of the commission shall serve a four-year term and shall be ineligible to succeed himself. His term shall end upon the occurrence of any event which would have

made him ineligible for appointment. When a vacancy occurs, a successor shall be appointed for a four-year term by the authority which appointed his predecessor.

(C) Powers. On recommendation of the judiciary commission, the supreme court may censure, suspend with or without salary, remove from office, or retire involuntarily a judge for willful misconduct relating to his official duty, willful and persistent failure to perform his duty, persistent and public conduct prejudicial to the administration of justice that brings the judicial office into disrepute, conduct while in office which would constitute a felony, or conviction of a felony. On recommendation of the judiciary commission, the supreme court may disqualify a judge from exercising any judicial function, without loss of salary, during pendency of proceedings in the supreme court. On recommendation of the judiciary commission, the supreme court may retire involuntarily a judge for disability that seriously interferes with the performance of his duties and that is or is likely to become permanent. The supreme court shall make rules implementing this Section and providing for confidentiality and privilege of commission proceedings.

(D) Other Disciplinary Action. Action against a judge under this Section shall not preclude disciplinary action against him concerning his license to practice law.

Section 25. Department of Justice; Attorney General;

Assistants

Section 25. There shall be a Department of Justice consisting of an attorney general, a first assistant attorney general, and other necessary assistants and staff. The attorney general shall be elected for a term of four years at the state general election. He shall appoint assistants to serve at his pleasure.

Section 26. Attorney General; Powers and Duties

Section 26. The attorney general shall be the chief legal officer of the state. As necessary for the assertion or protection of the rights and interests of the state, the attorney general may

(1) institute and prosecute or intervene in any civil action or proceeding;

(2) advise and assist, upon request of a district attorney, in the prosecution of a criminal case; and

(3) for cause, when authorized by the court of original jurisdiction in which any proceeding or affidavit is pending and subject to judicial review, supersede any attorney representing the state in any civil or criminal action.

He shall have other powers and perform other duties authorized by this constitution or provided by law.

Section 27. District Attorneys

Section 27. (A) Election; Qualifications; Assistants.

In each judicial district a district attorney shall be elected for a term of six years. He shall have been admitted to the practice of law in the state for at least five years prior to his election and shall have resided in the district for the two years preceding election. A district attorney may select assistants as authorized by law, and other personnel.

(B) Powers. Except as otherwise provided by this constitution, a district attorney, or his designated assistant, shall have charge of every criminal prosecution by the state in his district, be the representative of the state before the grand jury in his district, and be the legal advisor to the grand jury. He shall perform other duties provided by law.

(C) Prohibition. No district attorney or assistant district attorney shall appear, plead, or in any way defend or assist in defending any criminal prosecution or charge. A violation of this Paragraph shall be cause for removal.

Section 28. Sheriffs

Section 28. In each parish a sheriff shall be elected for a term of four years. He shall be the chief law enforcement officer in the parish, except as otherwise provided by this constitution, and shall execute court orders and process. He shall be the collector of state and parish ad valorem taxes and such other taxes and license fees as provided by law.

This Section shall not apply to Orleans Parish.

Section 29. Clerks of Court

Section 29. (A) Powers and Duties; Deputies. In each parish a clerk of the district court shall be elected for a term of four years. He shall be ex officio notary public and parish recorder of conveyances, mortgages, and other acts and shall have other duties and powers provided by law. The clerk may appoint deputies with duties and powers provided by law and, with the approval of the district judges, he may appoint minute clerks with duties and powers provided by law.

(B) Office Hours. The legislature shall establish uniform statewide office hours for clerks of the district courts.

Section 30. Coroners

Section 30. In each parish a coroner shall be elected for a term of four years. He shall be a licensed physician and possess the other qualifications and perform the duties provided by law. The requirement that he be a licensed physician shall be inapplicable in any parish in which no licensed physician will accept the office.

Section 31. Vacancies

Section 31. When a vacancy occurs in the following offices, the duties of the office, until it is filled by election as provided by law, shall be assumed by the persons herein designated: (1) sheriff, by the chief criminal deputy; (2) district attorney, by the first assistant; (3) clerk of a district court, by the chief deputy; (4) coroner, by the chief deputy. If there is no such person to assume the duties when the vacancy occurs, the governing authority or authorities of the parish or parishes concerned shall appoint a qualified person to assume the duties of the office until filled by election.

Section 32. Reduction of Salaries and Benefits Prohibited

Section 32. The salary and retirement benefits of an attorney general, district attorney, sheriff, coroner, or clerk of the district court shall not be diminished during his term of office.

Section 33. Orleans Parish Courts, Officials

Section 33. Except for provisions relating to terms of office as provided elsewhere in this Article, and notwithstanding any other contrary provision of this constitution, the following courts and officers in Orleans Parish are continued, subject to change by law: the civil and criminal district courts; the city, municipal, traffic, and juvenile courts; the clerks of the civil and criminal district courts; the civil and criminal sheriffs; the constables and the clerks of the first and second city courts; the register of conveyances; and the recorder of mortgages.

Section 34. Jurors

Section 34. (A) Qualifications. A citizen of the state who has reached the age of majority is eligible to serve as a juror within the parish in which he is domiciled. The legislature may provide additional qualifications.

(B) Exemptions. The supreme court shall provide by rule for exemption of jurors.

Section 35. Grand Jury

Section 35. (A) Grand Jury. There shall be a grand jury or grand juries in each parish, whose qualifications, duties, and responsibilities shall be provided by law. The secrecy of the proceedings, including the identity of witnesses, shall be provided by law.

(B) Right to Counsel. A person testifying at any stage in grand jury proceedings shall have the right to the advice of counsel while testifying.

CHAIRMAN OF THE CONSTITUTIONAL CONVENTION

ATTEST:

SECRETARY OF THE CONSTITUTIONAL CONVENTION

1 **COMMITTEE PROPOSAL No. 25—**

2 Introduced by Delegate Jackson, Chairman, Committee on
3 Bill of Rights and Elections (Substitute for Committee
4 Proposal No. 2, by Delegate Jackson, Chairman, on behalf
5 of the Committee on Bill of Rights and Elections, and Dele-
6 gates Dunlap, Guarisco, Jenkins, Roy, Soniat, Stinson, Vick,
7 Wall and Weiss):

8 **A PROPOSAL**

9 To provide a preamble and a declaration of rights to the
10 constitution.

11 Be it adopted by the Constitutional Convention of Louisi-
12 ana of 1973:

13 **A PREAMBLE**

14 We, the people of Louisiana, grateful to Almighty God
15 for the civil, political, economic, and religious liberties we
16 enjoy, and desiring to protect individual rights to life, lib-
17 erty, and property; afford opportunity for the fullest develop-
18 ment of the individual; assure equality of rights; promote
19 the health, safety, education, and welfare of the people;
20 maintain a representative and orderly government; ensure
21 domestic tranquility; provide for the common defense; and
22 secure the blessings of freedom and justice to ourselves and
23 our posterity, do ordain and establish this constitution.

24 **ARTICLE I. DECLARATION OF RIGHTS**

25 **Section 1. Origin and Purpose of Government**

26 Section 1. All government, of right, originates with the
27 people, is founded on their will alone, and is instituted to
28 protect the rights of the individual and for the good of the
29 whole. Its only legitimate ends are to secure justice for all,
30 preserve peace, and promote and protect the rights, happi-
31 ness, and general welfare of the people. The rights enumer-
32 ated in this Article are inalienable and shall be preserved

1 inviolate

2 **Section 2. Due Process of Law**

3 Section 2. No person shall be deprived of life, liberty,
4 property, or other rights without substantive and procedural
5 due process of law.

6 **Section 3. Right to Individual Dignity**

7 Section 3. No person shall be denied the equal protection
8 of the laws nor shall any law discriminate against a person
9 in the exercise of rights on account of birth, race, age, sex,
10 social origin, physical condition, or political or religious
11 ideas. Slavery and involuntary servitude are prohibited,
12 except in the latter case as a punishment for crime.

13 **Section 4. Right to Property**

14 Section 4. Every person has the right to acquire by volun-
15 tary means, to own, to control, to enjoy, to protect, and to
16 dispose of private property. This right is subject to the rea-
17 sonable exercise of the police power and to the law of forced
18 heirship. Property shall not be taken or damaged except for a
19 public and necessary purpose and with just compensation
20 paid to the owner or into court for his benefit. The owner
21 shall be compensated to the full extent of his loss and has the
22 right to a trial by jury to determine such compensation. No
23 business enterprise or any of its assets shall be taken for the
24 purpose of operating that enterprise or for the purpose of
25 halting competition with government enterprises, and per-
26 sonal effects, other than contraband, shall never be taken.
27 The issue of whether the contemplated purpose be public
28 and necessary shall be a judicial question, and determined
29 as such without regard to any legislative assertion.

30 **Section 5. Right to Privacy**

31 Section 5. Every person shall be secure in his person, prop-
32 erty, communications, houses, papers, and effects against

1 unreasonable searches, seizures, or invasions of privacy.
 2 No warrant shall issue without probable cause supported by
 3 oath or affirmation particularly describing the place to be
 4 searched, the persons or things to be seized, and the lawful
 5 purpose or reason for the search. Any person adversely
 6 affected by a search or seizure conducted in violation of
 7 this Section shall have standing to raise the illegality of
 8 that search or seizure in the appropriate court of law.

9 Section 6. Freedom from Intrusion

10 Section 6. No person shall be quartered in any house
 11 without the consent of the owner or lawful occupant.

12 Section 7. Freedom from Discrimination

13 Section 7. All persons shall be free from discrimination on
 14 the basis of race, color, creed, national ancestry, and sex in
 15 access to public accommodations or in the sale or rental of
 16 property by persons or agents who derive a substantial in-
 17 come from such business activity. Nothing herein shall be
 18 construed to impair freedom of association.

19 Section 8. Trial by Jury in Civil Cases

20 Section 8. In all civil cases, except, summary, domestic,
 21 and adoption cases, the right to trial by jury shall not be
 22 abridged. No fact determined by a judge or jury shall be re-
 23 examined on appeal. Determination of facts by an adminis-
 24 trative body shall be subject to review.

25 Section 9. Freedom of Expression

26 Section 9. No law shall abridge the freedom of every per-
 27 son to speak, write, publish, photograph, illustrate, or broad-
 28 cast on any subject or to gather, receive, or transmit knowl-
 29 edge or information, but each person shall be responsible
 30 for the abuse of that liberty; nor shall such activities ever
 31 be subject to censorship, licensure, registration, control, or
 32 special taxation.

1 Section 10. Freedom of Religion

2 Section 10. No law shall be enacted respecting an estab-
 3 lishment of religion or prohibiting the free exercise thereof.

4 Section 11. Freedom of Assembly and Movement

5 Section 11. No law shall impair the right of every person
 6 to assemble peaceably, to petition government for a redress
 7 of grievances, to travel freely within the state, and to enter
 8 and leave the state. Nothing herein shall prohibit quaran-
 9 tines or restrict the authority of the state to supervise
 10 persons subject to parole or probation.

11 Section 12. Rights of the Accused

12 Section 12. When a person has been detained, he shall
 13 immediately be advised of his legal rights and the reason
 14 for his detention. In all criminal prosecutions, the accused
 15 shall be precisely informed of the nature and cause of the
 16 accusation against him. At all stages of the proceedings,
 17 every person shall be entitled to assistance of counsel of his
 18 choice, or appointed by the court in indigent cases if charged
 19 with an offense punishable by imprisonment.

20 Section 13. Initiation of Prosecution

21 Section 13. Prosecution of felonies shall be initiated by
 22 indictment or information, provided that no person shall be
 23 held to answer for a capital crime or a felony necessarily
 24 punishable by hard labor, except on indictment by a grand
 25 jury. No person shall be twice placed in jeopardy for the
 26 same offense, except on his own application for a new trial
 27 or when a mistrial is declared or a motion in arrest of
 28 judgment is sustained.

29 Section 14. Grand Jury Proceedings

30 Section 14. At all stages of the grand jury proceedings,
 31 after arrest, the accused, if permitted to testify, shall have
 32 the right to the advice of counsel while testifying, to compul-

1 sory process for presenting witnesses to the grand jury for
2 interrogation, and to the transcribed testimony of any wit-
3 nesses appearing before the grand jury in his case.

4 Section 15. Fair Trial

5 Section 15. Every person charged with a crime shall be
6 presumed innocent until proven guilty, and shall be entitled
7 to a speedy, public, and impartial trial in the parish where the
8 offense or an element of the offense occurred, unless venue
9 be changed in accordance with law. No person shall be
10 compelled to give evidence against himself. An accused shall
11 be entitled to confront and cross-examine the witnesses
12 against him, to compel the attendance of witnesses, to pre-
13 sent a defense, and to take the stand in his own behalf.

14 Section 16. Trial by Jury in Criminal Cases

15 Section 16. Any person charged with an offense or set of
16 offenses punishable by imprisonment of more than six
17 months may demand a trial by jury. In cases involving a
18 crime necessarily punishable by hard labor, the jury shall
19 consist of twelve persons, all of whom must concur to
20 render a verdict in capital cases or cases in which no parole
21 or probation is permitted, and ten of whom must agree in
22 others. In cases not necessarily punishable by hard labor,
23 the jury may consist of a smaller number of persons, all of
24 whom must concur to render a verdict. The accused shall
25 have the right to voir dire and to challenge jurors peremp-
26 torily.

27 Section 17. Right to Bail

28 Section 17. Excessive bail shall not be required. Before
29 and during a trial, a person shall be bailable by sufficient
30 sureties, unless charged with a capital offense and the
31 proof is evident and the presumption is great. After con-
32 viction and before sentencing, a person shall be bailable if

1 the maximum sentence which may be imposed is less than
2 five years, and the judge may grant bail if the maximum
3 sentence which may be imposed is greater. After sentencing
4 and until final judgment, persons shall be bailable if the
5 sentence actually imposed is less than five years, and the
6 judge may grant bail if the sentence actually imposed is
7 greater.

8 Section 18. Right to Humane Treatment

9 Section 18. No person shall be subjected to euthanasia,
10 torture, or cruel, unusual, or excessive punishments or
11 treatments, and full rights shall be restored by termination
12 of state or federal supervision for any offense.

13 Section 19. Right to Vote

14 Section 19. No person eighteen years of age or older who
15 is a citizen and resident of the state shall be denied the right
16 to register and to vote, except that this right may be sus-
17 pended while a person is interdicted and judicially declared
18 mentally incompetent, or under an order of imprisonment
19 for conviction of a felony.

20 Section 20. Right to Keep and Bear Arms

21 Section 20. The right of each citizen to keep and bear
22 arms shall not be abridged, but this provision shall not pre-
23 vent the passage of laws to prohibit the carrying of con-
24 cealed weapons.

25 Section 21. Writ of Habeas Corpus

26 Section 21. The writ of habeas corpus shall not be sus-
27 pended.

28 Section 22. Access to Courts

29 Section 22. All courts shall be open, and every person
30 shall have an adequate remedy by due process of law and
31 justice, administered without denial, partiality, or unrea-
32 sonable delay for actual or threatened injury to him in his

1 person, property, reputation, or other rights. Neither the
2 state, its political subdivisions, nor any private person shall
3 be immune from suit and liability.

4 Section 23. Prohibited Laws

5 Section 23. No bill of attainder, ex post facto law, or law
6 impairing the obligation of contracts shall be enacted.

7 Section 24. Freedom of Commerce

8 Section 24. No law shall impair the right of each person to
9 engage in commerce by controlling the production, distri-
10 bution, or price of goods, except when necessary to protect
11 public health and safety.

12 Section 25. Unenumerated Rights

13 Section 25. The enumeration in this constitution of cer-
14 tain rights shall not be construed to deny or disparage other
15 rights retained by the individual citizens of the state.

FIRST ENROLLMENT

CC-1196

1 Constitutional Convention of Louisiana of 1973
2 COMMITTEE PROPOSAL NUMBER 25
3 Introduced by Delegate Jackson, Chairman, Committee on
4 Bill of Rights and Elections (Substitute for
5 Committee Proposal No. 2, by Delegate Jackson,
6 Chairman, on behalf of the Committee on Bill of
7 Rights and Elections, and Delegates Dunlap,
8 Guarisco, Jenkins, Roy, Soniat, Stinson, Vick,
9 Wall and Weiss)

A PROPOSAL

10
11
12
13 To provide a preamble and a declaration of rights to the
14 constitution.
15 Be it adopted by the Constitutional Convention of
16 Louisiana of 1973:

A PREAMBLE

17
18
19 We, the people of Louisiana, grateful to Almighty God
20 for the civil, political, economic, and religious liberties
21 we enjoy, and desiring to protect individual rights to life,
22 liberty, and property; afford opportunity for the fullest
23 development of the individual; assure equality of rights;
24 promote the health, safety, education, and welfare of the
25 people; maintain a representative and orderly government;
26 ensure domestic tranquility; provide for the common defense;
27 and secure the blessings of freedom and justice to ourselves
28 and our posterity, do ordain and establish this constitution.

ARTICLE I. DECLARATION OF RIGHTS.

Section 1. Origin and Purpose of Government

29
30
31 Section 1. All government, of right, originates with the
32 people, is founded on their will alone, and is instituted to
33 protect the rights of the individual and for the good of the
34 whole. Its only legitimate ends are to secure justice for all,
35 preserve peace, protect the rights, and promote the happiness,

1 and general welfare of the people. The rights enumerated in
2 this Article are inalienable by the state and shall be preserved
3 inviolate by the state.

4 Section 2. Due Process of Law

5 Section 2. No person shall be deprived of life, liberty or
6 property, except by due process of law.

7 Section 3. Right to Individual Dignity

8 Section 3. No person shall be denied the equal protection of
9 the law. No law shall discriminate against a person on account of
10 race or religious ideas, religious beliefs, or religious affilia-
11 tions. No law shall arbitrarily, capriciously, or unreasonably
12 discriminate against any person by reason of birth, age, sex,
13 culture, physical condition, political ideas or political
14 affiliation. Slavery and involuntary servitude are prohibited,
15 except in the latter case as a punishment for crime.

16 Section 4. Right to Property

17 Section 4. Every person has the right to acquire, control,
18 own, use, enjoy, protect, and dispose of private property. This
19 right is subject to reasonable statutory restrictions and the
20 reasonable exercise of the police power. Property shall not be
21 taken or damaged by the state or its political subdivisions except
22 for public purposes and with just compensation paid to the owner or
23 into court for his benefit. Property shall not be taken or damaged
24 by any private entity authorized by law to expropriate property,
25 except for a public and necessary purpose and with just compensa-
26 tion paid to the owner and, in such proceedings, the issue of
27 whether the purpose is public and necessary shall be a judicial
28 question. In all expropriations, any party shall have the right
29 to trial by jury to determine compensation and the owner shall be
30 compensated to the full extent of his loss. No business enter-
31 prise or any of its assets shall be taken for the purpose of
32 operating that enterprise or for the purpose of halting competi-
33 tion with government enterprises, except that municipalities may
34 expropriate utilities within their jurisdiction. Personal effects,
35 other than contraband, shall never be taken. The provisions of

C. P. No. 25

1 this Section shall not apply to appropriation of property
2 necessary for levee and levee drainage purposes.

3 Section 5. Right to Privacy

4 Section 5. Every person shall be secure in his person, prop-
5 erty, communications, houses, papers, and effects against unrea-
6 sonable searches, seizures, or invasions of privacy. No warrant
7 shall issue without probable cause supported by oath or affirma-
8 tion particularly describing the place to be searched, the persons
9 or things to be seized, and the lawful purpose or reason for the
10 search. Any person adversely affected by a search or seizure
11 conducted in violation of this Section shall have standing to
12 raise the illegality of that search or seizure in the appropriate
13 court of law.

14 Section 6. Freedom from Intrusion

15 Section 6. No person shall be quartered in any house with-
16 out the consent of the owner or lawful occupant.

17 Section 9. Liberty of Speech and Freedom of the Press

18 Section 9. No law shall ever be passed to curtail or
19 restrain the liberty of speech or freedom of the press; any
20 person may speak, write and publish his sentiments on all
21 subjects, being responsible for the abuse of that liberty or
22 freedom.

23 Section 10. Freedom of Religion

24 Section 10. No law shall be enacted respecting an establish-
25 ment of religion or prohibiting the free exercise thereof.

26 Section 11. Freedom of Assembly and Movement

27 Section 11. No law shall impair the right of every person to
28 assemble peaceably or to petition government for a redress of
29 grievances.

30 Section 12. Rights of the Accused

31 Section 12. When any person has been arrested or detained
32 in connection with the investigation or commission of any offense,
33 he shall be advised fully of the reason for his arrest or deten-
34 tion, his right to remain silent, his right against self
35 incrimination, his right to the assistance of counsel and, to

1 court appointed counsel, if indigent. In all criminal
2 prosecutions, the accused shall be informed of the nature
3 and cause of the accusation against him. At all stages of
4 the proceedings, every person shall be entitled to assistance
5 of counsel of his choice, or appointed by the court in indigent
6 cases if charged with an offense punishable by imprisonment.
7 The legislature shall provide for a uniform system for securing
8 counsel for indigents, including qualifications and compensation.
9 No person shall be subjected to imprisonment or forfeiture
10 of his rights or property without the right of judicial review
11 based upon a complete record of all evidence upon which such
12 judgment is based. The cost of the transcription of such record
13 shall be paid as provided by law. This right may be intelligently
14 waived.

15 Section 13. Initiation of Prosecution

16 Section 13. Prosecution of felonies shall be initiated by
17 indictment or information, provided that no person shall be
18 held to answer for any capital crime or any crime punishable
19 by life imprisonment, except on indictment by a grand jury. No
20 person shall be twice placed in jeopardy for the same offense,
21 except on his own application for a new trial or when a mistrial
22 is declared or a motion in arrest of judgment is sustained.

23 Section 15. Fair Trial

24 Section 15. Every person charged with a crime shall be
25 presumed innocent until proven guilty, and shall be entitled to
26 a speedy, public, and impartial trial in the parish where the
27 offense or an element of the offense occurred, unless venue be
28 changed in accordance with law. No person shall be compelled to
29 give evidence against himself. An accused shall be entitled to
30 confront and cross-examine the witnesses against him, to compel
31 the attendance of witnesses, to present a defense, and to testify
32 in his own behalf.

33 Section 16. Trial by Jury in Criminal Cases

34 Section 16. Criminal cases in which the punishment may be
35 capital shall be tried before a jury of twelve persons, all of

C. P. No. 25

1 whom must concur to render a verdict; cases in which the
2 punishment is necessarily confinement at hard labor shall be
3 tried before a jury of twelve persons, ten of whom must
4 concur to render a verdict. Cases in which the punishment
5 may be confinement at hard labor or confinement without hard
6 labor of more than six months, shall be tried before a jury
7 of six persons, five of whom must concur to render a verdict.
8 Except in capital cases, a defendant may knowingly and intel-
9 ligently waive his right to a trial by jury. In all criminal
10 prosecutions tried by a jury the accused shall have the right
11 to full voir dire examination of prospective jurors and to
12 challenge jurors peremptorily. The number of challenges shall
13 be fixed by law.

14 Section 17. Right to Bail

15 Section 17. Excessive bail shall not be required. Before
16 and during a trial, a person shall be bailable by sufficient
17 sureties, unless charged with a capital offense and the proof
18 is evident and the presumption of guilt is great. After convic-
19 tion and before sentencing, a person shall be bailable if the
20 maximum sentence which may be imposed is imprisonment of five
21 years or less. The judge may grant bail if the maximum sentence
22 which may be imposed is imprisonment in excess of five years.
23 After sentencing and until final judgment, persons shall be
24 bailable if the sentence actually imposed is five years or less
25 and the judge in his discretion may grant bail if the sentence
26 actually imposed is in excess of five years imprisonment.

27 Section 18. Right to Humane Treatment

28 Section 18. No law shall subject any person to euthanasia.
29 torture, cruel, excessive, or unusual punishments. Full rights
30 of citizenship shall be restored upon termination of state and
31 federal supervision following conviction for any offense.

32 Section 19. Right to Vote

33 Section 19. Every citizen of the state, upon reaching
34 eighteen years of age shall have the right to register and vote,
35 except that this right may be suspended while a person is

1 interdicted and judicially declared mentally incompetent, or
2 under an order of imprisonment for conviction of a felony.

3 Section 20. Right to Keep and Bear Arms

4 Section 20. The right of each citizen to keep and bear
5 arms shall not be abridged, but this provision shall not pre-
6 vent the passage of laws to prohibit the carrying of weapons
7 concealed on the person.

8 Section 21. Writ of Habeas Corpus

9 Section 21. The writ of habeas corpus shall not be suspended.

10 Section 22. Access to Courts

11 Section 22. All courts shall be open, and every person shall
12 have an adequate remedy by due process of law and justice, adminis-
13 tered without denial, partiality, or unreasonable delay for injury
14 to him in his person, property, reputation, or other rights.

15 Section 23. Prohibited Laws

16 Section 23. No bill of attainder, ex post facto law, or
17 law impairing the obligation of contracts shall be enacted.

18 Section 25. Unenumerated Rights

19 Section 25. The enumeration in this constitution of certain
20 rights shall not be construed to deny or disparage other rights
21 retained by the individual citizens of the state.

22 Section 26. Freedom from Discrimination

23 Section 26. In access to public areas, accommodations,
24 and facilities every person shall have the right to be free from
25 discrimination based on race, religion, or national ancestry and
26 from arbitrary, capricious, or unreasonable discrimination based
27 on age, sex, or physical condition.

28 Section 27. Right to Preliminary Examination

29 Section 27. In all felony cases, except those indicted by
30 a grand jury, the right to a preliminary examination shall not
31 be denied.

32

33

34

35

FINAL ENROLLMENT

Constitutional Convention of Louisiana of 1973

COMMITTEE PROPOSAL NUMBER 25

Introduced by Delegate Jackson, Chairman, Committee on

Bill of Rights and Elections (Substitute for
Committee Proposal No. 2, by Delegate Jackson,
Chairman, on behalf of the Committee on Bill of
Rights and Elections, and Delegates Dunlap,
Guarisco, Jenkins, Roy, Soniat, Stinson, Vick,
Wall and Weiss)

A PROPOSAL

To provide a preamble and a declaration of rights to the
constitution.

Be it adopted by the Constitutional Convention of
Louisiana of 1973:

PPEAMBLE

We, the people of Louisiana, grateful to Almighty God
for the civil, political, economic, and religious liberties
we enjoy, and desiring to protect individual rights to life,
liberty, and property; afford opportunity for the fullest
development of the individual; assure equality of rights;
promote the health, safety, education, and welfare of the
people; maintain a representative and orderly government;
ensure domestic tranquility; provide for the common defense;
and secure the blessings of freedom and justice to ourselves
and our posterity, do ordain and establish this constitution,

ARTICLE I. DECLARATION OF RIGHTS

Section 1. Origin and Purpose of Government

Section 1. All government, of right, originates with the
people, is founded on their will alone, and is instituted to
protect the rights of the individual and for the good of the
whole. Its only legitimate ends are to secure justice for all,
preserve peace, protect the rights, and promote the happiness

and general welfare of the people. The rights enumerated in this Article are inalienable by the state and shall be preserved inviolate by the state.

Section 2. Due Process of Law

Section 2. No person shall be deprived of life, liberty, or property, except by due process of law.

Section 3. Right to Individual Dignity

Section 3. No person shall be denied the equal protection of the laws. No law shall discriminate against a person because of race or religious ideas, beliefs, or affiliations. No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations. Slavery and involuntary servitude are prohibited, except in the latter case as punishment for crime.

Section 4. Right to Property

Section 4. Every person has the right to acquire, own, control, use, enjoy, protect, and dispose of private property. This right is subject to reasonable statutory restrictions and the reasonable exercise of the police power.

Property shall not be taken or damaged by the state or its political subdivisions except for public purposes and with just compensation paid to the owner or into court for his benefit. Property shall not be taken or damaged by any private entity authorized by law to expropriate, except for a public and necessary purpose and with just compensation paid to the owner; in such proceedings, whether the purpose is public and necessary shall be a judicial question. In every expropriation, a party has the right to trial by jury to determine compensation, and the owner shall be compensated to the full extent of his loss. No business enterprise or any of its assets shall be taken for the purpose of operating that enterprise or halting competition with a government enterprise. However, a municipality may expropriate a utility within its jurisdiction. Personal effects, other than contraband, shall never be taken.

This Section shall not apply to appropriation of property necessary for levee and levee drainage purposes.

Section 5. Right to Privacy

Section 5. Every person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy. No warrant shall issue without probable cause supported by oath or affirmation, and particularly describing the place to be searched, the persons or things to be seized, and the lawful purpose or reason for the search. Any person adversely affected by a search or seizure conducted in violation of this Section shall have standing to raise its illegality in the appropriate court.

Section 6. Freedom from Intrusion

Section 6. No person shall be quartered in any house without the consent of the owner or lawful occupant.

Section 7. Freedom of Expression

Section 7. No law shall curtail or restrain the freedom of speech or of the press. Every person may speak, write, and publish his sentiments on any subject, but is responsible for abuse of that freedom.

Section 8. Freedom of Religion

Section 8. No law shall be enacted respecting an establishment of religion or prohibiting the free exercise thereof

Section 9. Right of Assembly and Petition

Section 9. No law shall impair the right of any person to assemble peaceably or to petition government for a redress of grievances.

Section 10. Right to Vote

Section 10. Every citizen of the state, upon reaching eighteen years of age, shall have the right to register and vote, except that this right may be suspended while a person is interdicted and judicially declared mentally incompetent or is under an order of imprisonment for conviction of a felony.

Section 11. Right to Keep and Bear Arms

Section 11. The right of each citizen to keep and bear arms shall not be abridged, but this provision shall not prevent the passage of laws to prohibit the carrying of weapons concealed on the person.

Section 12. Freedom from Discrimination

Section 12. In access to public areas, accommodations, and facilities, every person shall be free from discrimination based on race, religion, or national ancestry and from arbitrary, capricious, or unreasonable discrimination based on age, sex, or physical condition.

Section 13. Rights of the Accused

Section 13. When any person has been arrested or detained in connection with the investigation or commission of any offense, he shall be advised fully of the reason for his arrest or detention, his right to remain silent, his right against self incrimination, his right to the assistance of counsel and, if indigent, his right to court appointed counsel. In a criminal prosecution, an accused shall be informed of the nature and cause of the accusation against him. At each stage of the proceedings, every person is entitled to assistance of counsel of his choice, or appointed by the court if he is indigent and charged with an offense punishable by imprisonment. The legislature shall provide for a uniform system for securing and compensating qualified counsel for indigents.

Section 14. Right to Preliminary Examination

Section 14. The right to a preliminary examination shall not be denied in felony cases except when the accused is indicted by a grand jury.

Section 15. Initiation of Prosecution

Section 15. Prosecution of a felony shall be initiated by indictment or information, but no person shall be held to answer for a capital crime or a crime punishable by life imprisonment except on indictment by a grand jury. No person shall be twice placed in jeopardy for the same offense, except on his application for a new trial, when a mistrial is declared, or when a motion in arrest of judgment is sustained.

Section 16. Right to a Fair Trial

Section 16. Every person charged with a crime is presumed innocent until proven guilty and is entitled to a speedy, public, and impartial trial in the parish where the offense or an element of the offense occurred, unless venue is changed in accordance with law. No person shall be compelled to give evidence against himself. An accused is entitled to confront and cross-examine the witnesses against him, to compel the attendance of witnesses, to present a defense, and to testify in his own behalf.

Section 17. Jury Trial in Criminal Cases

Section 17. A criminal case in which the punishment may be capital shall be tried before a jury of twelve persons, all of whom must concur to render a verdict. A case in which the punishment is necessarily confinement at hard labor shall be tried before a jury of twelve persons, ten of whom must concur to render a verdict. A case in which the punishment may be confinement at hard labor or confinement without hard labor for more than six months shall be tried before a jury of six persons, five of whom must concur to render a verdict. The accused shall have the right to full voir dire examination of prospective jurors and to challenge jurors peremptorily. The number of challenges shall be fixed by law. Except in capital cases, a defendant may knowingly and intelligently waive his right to a trial by jury.

Section 18. Right to Bail

Section 18. Excessive bail shall not be required. Before and during a trial, a person shall be bailable by sufficient surety, except when he is charged with a capital offense and the proof is evident and the presumption of guilt is great. After conviction and before sentencing, a person shall be bailable if the maximum sentence which may be imposed is imprisonment for five years or less; and the judge may grant bail if the maximum sentence which may be imposed is imprisonment exceeding five years. After sentencing and until final judgment, a person shall be bailable if the sentence actually imposed is five years or less; and the judge may

grant bail if the sentence actually imposed exceeds imprisonment for five years.

Section 19. Right to Judicial Review

Section 19. No person shall be subjected to imprisonment or forfeiture of rights or property without the right of judicial review based upon a complete record of all evidence upon which the judgment is based. This right may be intelligently waived. The cost of transcribing the record shall be paid as provided by law.

Section 20. Right to Humane Treatment

Section 20. No law shall subject any person to euthanasia, to torture, or to cruel, excessive, or unusual punishment. Full rights of citizenship shall be restored upon termination of state and federal supervision following conviction for any offense.

Section 21. Writ of Habeas Corpus

Section 21. The writ of habeas corpus shall not be suspended.

Section 22. Access to Courts

Section 22. All courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay, for injury to him in his person, property, reputation, or other rights.

Section 23. Prohibited Laws

Section 23. No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall be enacted.

Section 24. Unenumerated Rights

Section 24. The enumeration in this constitution of certain rights shall not deny or disparage other rights retained by the individual citizens of the state.

CHAIRMAN OF THE CONSTITUTIONAL CONVENTION

ATTEST:

SECRETARY OF THE CONSTITUTIONAL CONVENTION

COMMITTEE PROPOSAL No. 38—

Introduced by Delegate Zervigon, Chairperson, Committee on Legislative Liaison and Transitional Measures, and Delegates Casey, Comar, D'Geralamo, Drew, Hardee, J. Jackson, Jones, Lanier, Rayburn, Smith, Thompson, Vick and Womack:

A PROPOSAL

Making provisions relative to transitional provisions.

Be it adopted by the Constitutional Convention of Louisiana of 1973:

ARTICLE XIV. TRANSITIONAL PROVISIONS

* * *

Section 5. Continuation of Actions and Rights

Section 5. All writs, actions, suits, proceedings, civil or criminal liabilities, prosecutions, judgments, sentences, orders, decrees, appeals, rights or causes of action, contracts, obligations, claims, demands, titles, and rights existing on the effective date of this constitution shall continue unaffected except as modified in accordance with this constitution. All sentences as punishment for crime shall be executed according to their terms.

Page 2

* * *

Section 11. Existing Laws

Section 11. (A) Retention. Laws in force on the effective date of this constitution, which were constitutional when enacted and are not inconsistent with this constitution, shall remain in effect until altered or repealed by the authority which enacted them or until they expire by their own limitation.

Page 4

(B) Expiration of Inconsistent Law. Laws which are inconsistent with this constitution shall cease upon its effective date. However, a law which is inconsistent with a provision of this constitution requiring legislation to implement it shall remain in effect for three years after the effective date of this constitution, unless sooner repealed by the legislature.

Section 12. Constitution Not Retroactive

Section 12. Except as otherwise specifically provided in this constitution, this constitution shall not be retroactive and shall not create any right or liability which did not exist under the Constitution of 1921 based upon actions or matters occurring prior to the effective date of this constitution.

Page 5

* * *

Section 21. Pardon Board

Section 21. Until a pardon board is appointed under the terms of this constitution, the lieutenant governor, attorney general, and presiding judge of the sentencing court shall continue to serve as a board of pardons.

Page 7

* * *

FIRST ENROLLMENT

1 Constitutional Convention of Lower Louisiana of 1973
2 CONSTITUTIONAL PROPOSAL NUMBER 38
3 Introduced by Delegate Zervigon, Chairperson, Committee on
4 Legislative Liaison and Transitional Measures, and
5 Delegates Casey, Comar, D'Coriolamo, Drew, Hardee, J. Jackson,
6 Jones, Lanier, Rayburn, Smith, Thompson, Vick, and Romack

A PROPOSAL

9
10 Making provisions relative to transitional provisions.
11 Be it adopted by the Constitutional Convention of Louisiana
12 of 1973:

ARTICLE XIV. TRANSITIONAL PROVISIONS

* * *

31 Section 5. Continuation of Actions and Rights
32 Section 5. All writs, actions, suits, proceedings, civil
33 or criminal liabilities, prosecutions, judgments, sentences,
34 orders, decrees, appeals, rights or causes of action, contracts,
35 obligations, claims, demands, titles, and rights existing on the

(1)

1 effective date of this constitution shall continue unaffected.
2 All sentences as punishment for crime shall be executed according to
3 their terms.

Page 2

* * *

C.P. 20, 31

1 Section 11. (A) Continuation. Laws in force on the effective
2 date of this constitution, which were constitutional when enacted
3 and are not in conflict with this constitution, shall remain in
4 effect until altered or repealed or until they expire by their own
5 limitation.

6 (B) Expiration of Conflicting Law. Laws which are in
7 conflict with this constitution shall cease upon its effective
8 date.

PART III

Section 12. Constitution Not Retroactive

Section 12. Except as otherwise specifically provided in this constitution, this constitution shall not be retroactive and shall not create any right or liability which did not exist under the Constitution of 1921 based upon actions or matters occurring prior to the effective date of this constitution.

Page 4

* * *

Section 21. Pardon Board

Section 21. Until a pardon board is appointed under the terms of this constitution, the lieutenant governor, attorney general, and presiding judge of the sentencing court shall continue to serve as a board of pardons.

Page 6

* * *

DELEGATE PROPOSAL No. 2—

Introduced by Dr. Asseff:

A PROPOSAL

To protect the sources of information of news reporters.
Article, Section, Reporters of news, protection
of sources of information.

A. No news reporter shall be compelled to disclose the
identity of any informant or any source of information
obtained by him while acting as a news reporter except
in a prosecution for a capital offense or offense necessarily
punishable at hard labor.

B. For the purposes of this article a news reporter is
a person who for a period of at least five years has been
regularly engaged in the business of collecting and writing
news for publication through a news media.

CC-1165

DELEGATE PROPOSAL No. 13—

Introduced by Delegate Burson:

A PROPOSAL

Making provisions for the selection of jurors and necessary
provisions with respect thereto.

Be it adopted by the Constitutional Convention of Louisiana of 1973:

Article VII, Section 41. Selection of Jurors; Women Jurors;
Trial by Judge; Trial by Jury

Section 41. The legislature shall provide for the election
and drawing of competent and intelligent jurors for the
trial of civil and criminal cases; provided, however, that no
woman shall be drawn for jury service unless she shall have
previously filed with the clerk of the district court a written
declaration of her desire to be subject to such service. All
cases in which the punishment may not be at hard labor
shall, until otherwise provided by law, be tried by the judge
without a jury. Cases, in which the punishment may be at
hard labor, shall be tried by a jury of five, all of whom
must concur to render a verdict; cases, in which the punishment
is necessarily at hard labor, by a jury of twelve,
nine of whom must concur to render a verdict; cases in
which the punishment may be capital, by a jury of twelve,
all of whom must concur to render a verdict.

1 **DELEGATE PROPOSAL No. 22—**

2 Introduced by Delegates Conroy and Newton:

3 **A PROPOSAL**

4 To provide for the prohibition of certain enumerated local
5 and special laws.

6 Be it adopted by the Constitutional Convention of Louisi-
7 ana of 1973:

8 Article III, Section 12. Local and Special Laws; Prohibi-
9 tion Against Enactment

10 Section 12. Except as otherwise provided in this constitu-
11 tion, the legislature shall not pass any local or special law:

12 (1) For the holding and conducting of elections, or fixing
13 or changing the place of voting.

14 (2) Changing the names of persons; authorizing the
15 adoption or legitimization of children or the emancipation of
16 minors; affecting the estates of minors or persons under
17 disabilities; granting divorces; changing the law of descent
18 or succession; giving effect to informal or invalid wills or
19 deeds or to any illegal disposition of property.

20 (3) Concerning any civil or criminal actions, including
21 changing the venue in civil or criminal cases, or regulating
22 the practice or jurisdiction of any court, or changing the
23 rules of evidence in any judicial proceeding or inquiry be-
24 fore courts, or providing or changing methods for the col-
25 lection of debts or the enforcement of judgments, or pre-
26 scribing the effects of judicial sales.

27 (4) Authorizing the laying out, opening, closing, altering,
28 or maintaining of roads, highways, streets, or alleys; re-
29 lating to ferries and bridges, or incorporating bridge or
30 ferry companies, except for the erection of bridges cross-
31 ing streams which form boundaries between this and any
32 other state; authorizing the constructing of street passenger

1 railroads in any incorporated town or city.

2 (5) Exempting property from taxation; extending the
3 time for the assessment or collection of taxes; for the re-
4 lief of any assessor or collector of taxes from the perfor-
5 mance of his official duties or of his sureties from liability;
6 remitting fines, penalties, and forfeitures; or refunding
7 moneys legally paid into the treasury.

8 (6) Regulating labor, trade, manufacturing, or agricul-
9 ture; fixing the rate of interest.

10 (7) Creating private corporations, or amending, renew-
11 ing, extending, or explaining the charters thereof; grant-
12 ing to any private corporation, association, or individual any
13 special or exclusive right, privilege, or immunity.

14 (8) Regulating the management of public schools, the
15 building or repairing of schoolhouses and the raising of
16 money for such purposes.

17 (9) Legalizing the unauthorized or invalid acts of any
18 officer, employee, or agent of the state, its agencies, or
19 political subdivisions.

1 Constitutional Convention of Louisiana of 1973

2 DELEGATE PROPOSAL NUMBER 22

3 Introduced by Delegates Conroy and Newton

4

5 A PROPOSAL

6

7 To provide for the prohibition of certain enumerated local and
8 special laws.

9 Be it adopted by the Constitutional Convention of Louisiana of
10 1973:

11

12 ARTICLE III. LEGISLATIVE BRANCH

13

* * *

14 Section 12. Prohibited Local and Special Laws

15 Section 12. (A) Except as otherwise provided in this
16 constitution, the legislature shall not pass any local or special
17 law:

18 (1) For the holding and conducting of elections, or fixing
19 or changing the place of voting.

20 (2) Changing the names of persons; authorizing the adoption
21 or legitimation of children or the emancipation of minors; affecting
22 the estates of minors or persons under disabilities; granting divorces;
23 changing the law of descent or succession; giving effect to informal
24 or invalid wills or deeds or to any illegal disposition of property.

25 (3) Concerning any civil or criminal actions, including
26 changing the venue in civil or criminal cases, or regulating the
27 practice or jurisdiction of any court, or changing the rules of
28 evidence in any judicial proceeding or inquiry before courts, or
29 providing or changing methods for the collection of debts or the
30 enforcement of judgments, or prescribing the effects of judicial
31 sales.

32 (4) Authorizing the laying out, opening, closing, altering,
33 or maintaining of roads, highways, streets, or alleys; relating
34 to ferries and bridges, or incorporating bridge or ferry companies,
35 except for the erection of bridges crossing streams which form

D. P. No. 22

1 boundaries between this and any other state; authorizing the
2 constructing of street passenger railroads in any incorporated
3 town or city.

4 (5) Exempting property from taxation; extending the time for
5 the assessment or collection of taxes; for the relief of any assessor
6 or collector of taxes from the performance of his official duties or
7 of his sureties from liability; remitting fines, penalties, and for-
8 feitures; or refunding moneys legally paid into the treasury.

9 (6) Regulating labor, trade, manufacturing, or agriculture;
10 fixing the rate of interest.

11 (7) Creating private corporations, or amending, renewing,
12 extending, or explaining the charters thereof; granting to any
13 private corporation, association, or individual any special or
14 exclusive right, privilege, or immunity.

15 (8) Regulating the management of parish or city public
16 schools, the building or repairing of parish or city schoolhouses
17 and the raising of money for such purposes.

18 (9) Legalizing the unauthorized or invalid acts of any of-
19 ficer, employee, or agent of the state, its agencies, or political
20 subdivisions.

21 (10) Defining any crime.

22 (B) The legislature shall not indirectly enact special or
23 local laws by the partial repeal or suspension of a general law.

24

25

26

27

28

29

30

31

32

33

34

35

FINAL ENROLLMENT

Constitutional Convention of Louisiana of 1973

DELEGATE PROPOSAL NUMBER 22

Introduced by Delegates Conroy and Newton

A PROPOSAL

To provide for the prohibition of certain enumerated local and special laws.

Be it adopted by the Constitutional Convention of Louisiana of 1973:

ARTICLE III. LEGISLATIVE BRANCH

★ ★ ★

Section 12. Prohibited Local and Special Laws

Section 12. (A) Prohibitions. Except as otherwise provided in this constitution, the legislature shall not pass a local or special law:

- (1) For the holding and conducting of elections, or fixing or changing the place of voting.
- (2) Changing the names of persons; authorizing the adoption or legitimation of children or the emancipation of minors; affecting the estates of minors or persons under disabilities; granting divorces; changing the law of descent or succession; giving effect to informal or invalid wills or deeds or to any illegal disposition of property.
- (3) Concerning any civil or criminal actions, including changing the venue in civil or criminal cases, or regulating the practice or jurisdiction of any court, or changing the rules of evidence in any judicial proceeding or inquiry before courts, or providing or changing methods for the collection of debts or the enforcement of judgments, or prescribing the effects of judicial sales.
- (4) Authorizing the laying out, opening, closing, altering, or maintaining of roads, highways, streets, or alleys; relating to ferries and bridges, or incorporating bridge or ferry companies, except for the erection of bridges crossing streams which form

boundaries between this and any other state; authorizing the constructing of street passenger railroads in any incorporated town or city.

(5) Exempting property from taxation; extending the time for the assessment or collection of taxes; relieving an assessor or collector of taxes from the performance of his official duties or of his sureties from liability; remitting fines, penalties, and forfeitures; refunding moneys legally paid into the treasury.

(6) Regulating labor, trade, manufacturing, or agriculture; fixing the rate of interest.

(7) Creating private corporations, or amending, renewing, extending, or explaining the charters thereof; granting to any private corporation, association, or individual any special or exclusive right, privilege, or immunity.

(8) Regulating the management of parish or city public schools, the building or repairing of parish or city schoolhouses, and the raising of money for such purposes.

(9) Legalizing the unauthorized or invalid acts of any officer, employee, or agent of the state, its agencies, or political subdivisions.

(10) Defining any crime.

(B) Additional Prohibition. The legislature shall not indirectly enact special or local laws by the partial repeal or suspension of a general law.

CHAIRMAN OF THE CONSTITUTIONAL CONVENTION

ATTEST:

SECRETARY OF THE CONSTITUTIONAL CONVENTION

1 **DELEGATE PROPOSAL No. 32—**

2 By Delegate Drew:

8 A PROPOSAL

4 To provide with respect to the court of appeal circuits and
5 districts.

6 Be it adopted by the Constitutional Convention of Louisi-
7 ana of 1973:

8 Article V, Section 9. Courts of Appeal; Circuits and Dis-
9 tricts

10 Section 9. Each circuit shall be divided into at least three
11 districts, with at least one judge elected from each. The
12 present circuits and districts and the number of judges as
13 elected in each circuit are retained, subject to change by
14 two-thirds vote of the elected members in each house of the
15 legislature.

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

FIRST ENROLLMENT

CC-1197

1 Constitutional Convention of Louisiana of 1973

2 DELEGATE PROPOSAL NUMBER 32

3 By Delegate Drew

4

5

A PROPOSAL

6 To provide with respect to the court of appeal circuits and
7 districts.

8 Be it adopted by the Constitutional Convention of Louisiana
9 of 1973:

10

ARTICLE V.

11

* * *

12

Section 9. Courts of Appeal; Circuits and Districts

13

14 three districts, with at least one judge elected from each.
15 The present circuits and districts and the number of judges
16 as elected in each circuit are retained, subject to change
17 by two-thirds vote of the elected members in each house of
18 the legislature.

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

1 **DELEGATE PROPOSAL No. 43—**

2 Introduced by Delegates J. Jackson, A. Jackson, Warren,
3 Ray, Gravel, Stovall, Pugh, and Gauthier:

4 **A PROPOSAL**

5 Providing for juvenile courts having exclusive original ju-
6 risdiction with the exception for offenses of murder,
7 aggravated kidnapping, armed robbery, or aggravated
8 rape.

9 Be it adopted by the Constitutional Convention of Louisi-
10 ana of 1973:

11 Article____, Section____. Juvenile Courts; Jurisdiction
12 Section____. Juvenile courts including district courts and
13 parish and city courts when sitting as ex officio juvenile
14 courts, shall have exclusive original jurisdiction of all of-
15 fenses committed by persons under the age of seventeen,
16 except that the criminal district courts in the parish of
17 Orleans and the several district courts in the other parishes
18 of the state shall have exclusive original jurisdiction of
19 persons who at the time of the commission of the offense
20 are over the age of fifteen years and who have been indicted
21 by a grand jury for the offenses of murder, aggravated
22 kidnapping, armed robbery, or aggravated rape committed
23 within their respective jurisdictions.

24

25

26

27

28

29

30

31

32

FIRST ENROLLMENT

1 Constitutional Convention of Louisiana of 1973
2 DELEGATE PROPOSAL NUMBER 43
3 Introduced by Delegates J. Jackson, Gauthier, Gravel, A. Jackson,
4 Pugh, Roy, Stovall, and Warren

A PROPOSAL

6
7
8 Providing for special juvenile procedures.
9 Be it adopted by the Constitutional Convention of Louisiana of

10 1973:

11 Article____, Section____. Special Juvenile Procedures
12 Section____. Except for a person fifteen years of age or
13 older who is alleged to have committed a capital offense or
14 attempted aggravated rape, the determination of guilt or in-
15 nocence, the detention, and the custody of a person who is
16 alleged to have committed a crime prior to his seventeenth
17 birthday shall be exclusively pursuant to special juvenile
18 procedures which shall be provided by law. However, by law
19 enacted by a two-thirds vote of the elected members of each
20 house, the legislature may (1) lower the maximum ages of
21 persons to whom juvenile procedures would apply and (2)
22 establish a procedure by which the court of original juris-
23 diction may waive such special juvenile procedures in order
24 that adult procedures would apply in individual cases.

FINAL ENROLLMENT

Constitutional Convention of Louisiana of 1973

DELEGATE PROPOSAL NUMBER 43

Introduced by Delegates J. Jackson, Gauthier, Gravel, A. Jackson,

Fugh, Roy, Stovall, and Warren

A PROPOSAL

Providing for special juvenile procedures.

Be it adopted by the Constitutional Convention of Louisiana of
1973:

Article____, Section____. Special Juvenile Procedures

Section____. Except for a person fifteen years of age or
older who is alleged to have committed a capital offense or
attempted aggravated rape, the determination of guilt or in-
nocence, the detention, and the custody of a person who is
alleged to have committed a crime prior to his seventeenth
birthday shall be exclusively pursuant to special juvenile
procedures which shall be provided by law. However, by law
enacted by two-thirds of the elected members of each
house, the legislature may (1) lower the maximum ages of
persons to whom juvenile procedures would apply and (2)
establish a procedure by which the court of original juris-
diction may waive such special juvenile procedures in order
that adult procedures would apply in individual cases.

CHAIRMAN OF THE CONSTITUTIONAL CONVENTION

ATTEST:

SECRETARY OF THE CONSTITUTIONAL CONVENTION

1 **DELEGATE PROPOSAL No. 44—**

2 Introduced by Delegate Vick:

3 **A PROPOSAL**

4 Making provision for the powers, duties, and qualifications
5 for the state attorney general.

6 Be it adopted by the Constitutional Convention of Louisi-
7 ana of 1973:

8 Article____, Section____. Powers, Duties, and Qualifica-
9 tions of the Attorney General

10 Section____ (A) There shall be a department of justice,
11 headed by the attorney general who shall be the state's chief
12 legal officer. As may be necessary for the assertion or pro-
13 tection of the rights and interests of the state, the attorney
14 general shall have authority to:

15 (1) institute, and prosecute or intervene in any legal
16 actions or other proceedings, civil or criminal and make
17 such investigations as he may consider necessary, including
18 full participation in grand jury investigations;

19 (2) exercise supervision over the several district attor-
20 neys throughout the state; and

21 (3) for cause, supersede any attorney representing the
22 state in any civil or criminal proceeding.

23 He shall have such other powers and perform such other
24 duties as may be authorized by this constitution or provided
25 by statute.

26 (B) The attorney general shall have been admitted to
27 the practice of law in this state for at least the five years
28 immediately preceding his election.

1 **DELEGATE PROPOSAL No. 46—**

2 Introduced by Delegate Tobias:

3 **A PROPOSAL**

4 Providing for the continuance of Orleans Parish courts and
5 officials.

6 Be it adopted by the Constitutional Convention of Louisi-
7 ana of 1973:

8 Article____, Section____. Orleans Parish Courts, Officials;
9 Continued

10 Section____. Except for provisions relating to terms of
11 office as provided elsewhere in this Article and notwith-
12 standing any other provision of this constitution to the con-
13 trary, the following courts and officers in Orleans Parish
14 are continued, subject to change by a vote of a majority of
15 the elected members of each house of the legislature: the
16 civil and criminal district courts, the city, municipal, traffic
17 and juvenile courts, the clerks of the civil and criminal dis-
18 trict courts, the civil and criminal sheriffs, the constables
19 and the clerks of the first and second city courts, the register
20 of conveyances, and the recorder of mortgages.

DELEGATE PROPOSAL No. 62—

Introduced by Delegate Burson:

A PROPOSAL

Making provisions for the grand jury.

Be it adopted by the Constitutional Convention of Louisiana of 1973:

Article V, Section _____. Grand Jury

Section _____. (A) There shall be a grand jury or grand juries in each parish whose qualifications, duties and responsibilities shall be provided by law. The secrecy of the proceedings, including the identity of the witnesses appearing, shall be provided for by law.

(B) Except as otherwise provided in this constitution, a district attorney, or his designated assistant, shall have charge of every criminal prosecution by the state in his district before the grand jury, and its legal advisor. He shall perform such other duties as may be provided by law.

DELEGATE PROPOSAL No. 75—

Introduced by Delegate Burson:

A PROPOSAL

Providing with respect to trial by jury in criminal cases.

Be it adopted by the Constitutional Convention of Louisiana of 1973:

Article I, Section _____. Trial by Jury in Criminal Cases

Section _____. Any person charged with an offense or set of offenses punishable by imprisonment of more than six months may demand a trial by jury. In cases involving a crime necessarily punishable by hard labor, the jury shall consist of twelve persons, all of whom must concur to render a verdict in capital cases, and nine of whom must agree in others. In cases not necessarily punishable by hard labor, the jury may consist of five persons, all of whom must concur to render a verdict. The accused shall have the right to voir dire and to challenge jurors peremptorily.

DELEGATE PROPOSAL No. 76—

Introduced by Delegate Burson:

A PROPOSAL

For initiation of the prosecution of felonies.

Be it adopted by the Constitutional Convention of Louisiana
of 1973:

Article V, Section _____. Initiation of Prosecution

Section _____. Prosecution of felonies shall be initiated by
indictment or information, provided that no person shall be
held to answer for a capital crime, except on indictment by
a grand jury. No person shall be twice placed in jeopardy
for the same offense, except on his own application for a new
trial or when a mistrial is declared or a motion in arrest of
judgment is sustained.

DELEGATE PROPOSAL No. 93—

Introduced by Delegate Burson:

A PROPOSAL

Providing with respect to grand jury proceedings.

Be it adopted by the Constitutional Convention of Louisiana
of 1973:

Article V, Section _____. Grand Jury Proceedings

Section _____. Whenever the grand jury is investigating
criminal charges previously filed against any person, that
person may have counsel present in the jury room for the sole
purpose of advising him while he is testifying. If he cannot
employ counsel, the court shall appoint counsel for him. No
other witness before the grand jury shall be entitled to have
counsel present in the jury room.

1 DELEGATE PROPOSAL No. 96—

2 Introduced by Delegates Vick, Abraham, Bel, Berry, Casey,
 3 Dennery, Goldman, Guarisco, Haynes, A. Jackson, J. Jack-
 4 son, LeBreton, Lennox, Miller, Pugh, Rachal, Riecke, Soniat,
 5 Stovall, Sutherland, Velazquez, and Weiss:

6 A PROPOSAL

7 Providing for the powers and duties of the attorney general.

8 Be it adopted by the Constitutional Convention of Louisiana
 9 of 1973:

10 Article V, Section _____. Attorney General; Powers and
 11 Duties

12 Section _____. (A) The attorney general shall be the state's
 13 chief legal officer. As may be necessary for the assertion or
 14 protection of the rights and interests of the state, the attorney
 15 general shall have authority to:

16 (1) institute and prosecute in any civil or criminal actions
 17 or proceedings;

18 (2) advise and assist, upon request of a district attorney, in
 19 the prosecution of a criminal case; and

20 (3) for cause when authorized by the court of original
 21 jurisdiction in which any proceeding or affidavit is pending,
 22 subject to judicial review, supersede any attorney representing
 23 the state in any civil or criminal action.

24 He shall have such other powers and perform such other
 25 duties as may be authorized by this constitution or provided
 26 by statute.

1 DELEGATE PROPOSAL No. 99—

2 Introduced by Delegates Vick, Abraham, Aertker, Alex-
 3 ander, Arnette, Asseff, Avant, Badeaux, Bel, Bergeron, Bol-
 4 linger, Brown, Carmouche, Casey, DeBlieux, Dennery, Den-
 5 nis, Derbes, Duval, Elkins, Flory, Fulco, Giarrusso, Goldman,
 6 Grier, Guarisco, Hardee, Haynes, A. Jackson, J. Jackson,
 7 Jones, Juneau, Landrum, A. Landry, E. J. Landry, Leithman,
 8 McDaniel, Maybuce, Miller, Riecke, Roemer, Roy, Sandoz,
 9 Schmitt, Shannon, Singletary, Soniat, Staggs, Stovall, Suther-
 10 land, Tapper, Thistlethwaite, Tobias, Velazquez, Warren,
 11 Wisham and Zervigon:

12 A PROPOSAL

13 To provide with respect to an alternative provision relative
 14 to the Judicial Branch.

15 Be it adopted by the Constitutional Convention of Lou-
 16 isiana of 1973:

17 Section 1. Section 26 of Article V as set forth in Com-
 18 mittee Proposal Number 21 as finally enrolled, being Section
 19 27 of said Article V as originally adopted by this convention
 20 is hereby deleted from said proposal.

21 Section 2. There shall be placed on the ballot submitted
 22 to the people for the ratification of the proposed new con-
 23 stitution, as an alternative, the following propositions:

24 ☐ 2A. FOR authorizing the attorney general to institute,
 25 prosecute, or intervene in *both civil and criminal*
 26 suits to protect the interests of the state.

27 ☐ 2B. FOR authorizing the attorney general to institute,
 28 prosecute, or intervene in *only civil* suits to pro-
 29 tect the interests of the state.

30 Section 3. (A) If Alternative Proposition No. 2A authori-
 31 zing the attorney general to institute, prosecute, or intervene
 32 in both civil and criminal suits to protect the interests of

the state is approved by the electors and if the proposed constitution is approved by the electors, then the following section shall become Section 26 of Article V of the new constitution:

"ARTICLE VI. JUDICIAL BRANCH

* * *

Section 26. Attorney General; Qualifications; Powers and Duties; Vacancies

Section 26. The attorney general and the assistants shall be learned in the law and shall have actually resided and practiced law, as duly licensed attorneys, in the state for at least five years preceding their election and appointment. They, or one of them, shall attend to, and have charge of all legal matters in which the state has an interest, or to which the state is a party, with power and authority to institute and prosecute or to intervene in any and all suits or other proceedings, civil or criminal, as they may deem necessary for the assertion or protection of the rights and interests of the state. They shall exercise supervision over the several district attorneys throughout the state, and perform all other duties imposed by law.

In case of a vacancy in the office of attorney general, the first assistant attorney general shall perform the duties of the attorney general until his successor shall have been duly elected and qualified."

(B) If Alternative Proposition No. 2B authorizing the attorney general to institute, prosecute, or intervene in only civil suits to protect the interests of the state is approved by the electors and if the proposed constitution is approved by the electors, then the following section shall become Section 26 of Article V of the new constitution:

"ARTICLE V. JUDICIAL BRANCH

Page 2

* * *

Section 26. Attorney General; Powers and Duties

Section 26. The attorney general shall be the chief legal officer of the state. As necessary for the assertion or protection of the rights and interests of the state, the attorney general may

(1) institute and prosecute or intervene in any civil action or proceeding;

(2) advise and assist, upon request of a district attorney, in the prosecution of a criminal case; and

(3) for cause, when authorized by the court of original jurisdiction in which any proceeding or affidavit is pending and subject to judicial review, supersede any attorney representing the state in any civil or criminal action.

He shall have other powers and perform other duties authorized by this constitution or provided by law."

Page 3

DELEGATE PROPOSAL No. 102—

Introduced by Delegates Vick, Abraham, Aertker, Alexander, Arnette, Asseff, Avant, Badeaux, Bel, Bergeron, Bolinger, Brown, Carmouche, Casey, De Blieux, Dennery, Dennis, Derbes, Duval, Elkins, Flory, Fulco, Giarrusso, Goldman, Grier, Guarisco, Hardee, Haynes, A.Jackson, J.Jackson, Jones, Juneau, Landrum, A.Landry, E.J. Landry, Leithman, McDaniel, Maybuce, Miller, Riecke, Roemer, Roy, Sandoz, Schmitt, Shannon, Singletary, Soniat, Stagg, Stovall, Sutherland, Tapper, Thistlethwaite, Tobias, Velazquez, Warren, Wisham and Zervigon:

A PROPOSAL

To provide with respect to an alternative provision relative to the Judicial Branch.

Be it adopted by the Constitutional Convention of Louisiana of 1973:

Section 1. Section 8 of Article IV as set forth in Committee Proposal Number 4 as finally enrolled is hereby deleted from said proposal.

Section 2. There shall be placed on the ballot submitted to the people for the ratification of the proposed new constitution, as an alternative, the following propositions:

☐ 2A. FOR authorizing the attorney general to institute, prosecute, or intervene in *both civil and criminal* suits to protect the interests of the state.

☐ 2B. FOR authorizing the attorney general to institute, prosecute, or intervene in *only civil* suits to protect the interests of the state.

Section 3. (A) If Alternative Proposition No. 2A authorizing the attorney general to institute, prosecute, or intervene in both civil and criminal suits to protect the interests of the state is approved by the electors and if the proposed

Page 1

constitution is approved by the electors, then the following section shall become Section 8 of Article IV of the new constitution:

"ARTICLE IV. EXECUTIVE BRANCH

• • •

Section 8. Attorney General; Qualifications; Powers and Duties; Vacancies

Section 8. The attorney general and the assistants shall be learned in the law and shall have actually resided and practiced law, as duly licensed attorneys, in the state for at least five years preceding their election and appointment. They, or one of them, shall attend to, and have charge of all legal matters in which the state has an interest, or to which the state is a party, with power and authority to institute and prosecute or to intervene in any and all suits or other proceedings, civil or criminal, as they may deem necessary for the assertion or protection of the rights and interests of the state. They shall exercise supervision over the several district attorneys throughout the state, and perform all other duties imposed by law.

In case of a vacancy in the office of attorney general, the first assistant attorney general shall perform the duties of the attorney general until his successor shall have been duly elected and qualified."

(B) If Alternative Proposition No. 2B authorizing the attorney general to institute, prosecute, or intervene in only civil suits to protect the interests of the state is approved by the electors and if the proposed constitution is approved by the electors, then the following section shall become

Section 8 of Article IV of the new constitution:

"ARTICLE IV. EXECUTIVE BRANCH

• • •

Page 2

Section 8. Attorney General; Powers and Duties

Section 8. There shall be a Department of Justice, headed by the attorney general, who shall be the chief legal officer of the state. The attorney general shall be elected for a term of four years at the state general election. The assistant attorneys general shall be appointed by the attorney general to serve at his pleasure.

As necessary for the assertion or protection of any right or interest of the state, the attorney general may

(1) institute, prosecute, or intervene in any civil action or proceeding;

(2) advise and assist, upon the written request of a district attorney, in the prosecution of any criminal case; and

(3) for cause, when authorized by the court which would have original jurisdiction and subject to judicial review,

(a) institute, prosecute, or intervene in any criminal action or proceeding, or (b) supersede any attorney representing the state in any civil or criminal action.

The attorney general shall exercise other powers and perform other duties authorized by this constitution or by law."

Chapter III

Official Journal and Calendar Entries Relative to the Administration of Criminal Justice

PAGE 5

10th Days Proceedings—July 5, 1973

★ COMMITTEE PROPOSAL No. 2—

Introduced by Delegate Jackson, Chairman, on behalf of the Committee on Bill of Rights and Elections and Delegates Dunlap, Guarisco, Jenkins, Roy, Soniat, Stinson, Vick, Wall and Weiss:

A PROPOSAL

To provide a preamble and a declaration of rights to the constitution.

Read.

Lies over under the rules.

COMMITTEE PROPOSAL No. 3—

Introduced by Delegate Blair, Chairman, on behalf of the Committee on Legislative Powers and Functions, and Delegates Casey, Fayard, Fulco, Ginn, Jureau, Kilpatrick, Landrum, LeBreton and O'Neill:

A PROPOSAL

Making provisions for the legislative branch of government, impeachment and removal of officials, and necessary provisions with respect thereto.

Read.

Lies over under the rules.

COMMITTEE PROPOSAL No. 4—

Introduced by Delegate Staggs, Chairman, on behalf of the Committee on Executive Department:

A PROPOSAL

Providing for the executive branch of government, for the filling of vacancies in certain public offices, and with respect to dual office-holding, a code of ethics, and impeachment.

Read.

Lies over under the rules.

COMMITTEE PROPOSAL No. 5—

Introduced by Delegate Staggs, Chairman, on behalf of the Committee on Executive Department:

A PROPOSAL

Making provisions for the Public Service Commission and necessary provisions with respect thereto.

Read.

Lies over under the rules.

★ COMMITTEE PROPOSAL No. 6—

Introduced by Delegate Dennis, Chairman, on behalf of the Committee on the Judiciary and Delegates Avant, Bel, Bergeron, Burns, Deshotels, Drew, Gauthier, Kelly, Kilbourne, Landry, Martin, Ourso, Sandoz, Tate, Tobias and Vesich:

A PROPOSAL

Making provisions for the judiciary branch of government and necessary provisions with respect thereto.

Read.

Lies over under the rules.

COMMITTEE PROPOSAL No. 7—

Introduced by Delegate Aertker, Chairman, on behalf of the Committee on Education and Welfare and Delegates Armentor, Carmouche, Corne, Cowen, Flory, Grier, Haynes, Hernandez, Landry, Leithman, Lennox, Rachal, Riecke, Robinson, Segura, Silverberg, Sutherland, Thistlethwaite, Toca and Wisham:

A PROPOSAL

Making provisions for education and necessary provisions with respect thereto.

Read.

Lies over under the rules.

COMMITTEE PROPOSAL No. 8—

Introduced by Delegate Perez, on behalf of the Committee on Local and Parochial Government, and Delegates Burson,

Cannon, Chatelain, Conino, D'Gerolamo, Fowler, Giarrusso, Hayes, Heine, J. Jackson, Kean, Lanier, Reeves, Shannon, Stephenson, Taylor, Toomy, Uilo and Zervigon:

A PROPOSAL

Making provisions for local and parochial government and necessary provisions with respect thereto.

Read.

Lies over under the rules.

COMMITTEE PROPOSAL No. 9—

Introduced by Delegate Aertker, Chairman, on behalf of the Committee on Education and Welfare, and Delegates Armentor, Carmouche, Corne, Cowen, Flory, Grier, Haynes, Hernandez, Landry, Leithman, Lennox, Rachal, Riecke, Robinson, Segura, Silverberg, Sutherland, Thistlethwaite, Toca and Wisham:

A PROPOSAL

Making provisions for human resources by providing for state and city civil service.

Read.

Lies over under the rules.

COMMITTEE PROPOSAL No. 10—

Introduced by Delegate Aertker, Chairman, on behalf of the Committee on Education and Welfare, and Delegates Armentor, Carmouche, Corne, Cowen, Flory, Grier, Haynes, Hernandez, Landry, Leithman, Lennox, Rachal, Riecke, Robinson, Segura, Silverberg, Sutherland, Thistlethwaite, Toca and Wisham:

A PROPOSAL

Making provisions for human resources by providing for municipal fire and police civil service.

Read.

Lies over under the rules.

COMMITTEE PROPOSAL No. 11—

Introduced by Delegate Aertker, Chairman, on behalf of the Committee on Education and Welfare, and Delegates Armentor, Carmouche, Corne, Cowen, Flory, Grier, Haynes, Hernandez, Landry, Leithman, Lennox, Rachal, Riecke, Robinson, Segura, Silverberg, Sutherland, Thistlethwaite, Toca and Wisham:

A PROPOSAL

Making provisions for human resources by providing for retirement and survivors' benefits.

Read.

Lies over under the rules.

COMMITTEE PROPOSAL No. 12—

Introduced by Delegate Aertker, Chairman, on behalf of the Committee on Education and Welfare, and Delegates Armentor, Carmouche, Corne, Cowen, Flory, Grier, Haynes, Hernandez, Landry, Leithman, Lennox, Rachal, Riecke, Robinson, Segura, Silverberg, Sutherland, Thistlethwaite, Toca and Wisham:

A PROPOSAL

Making provisions for human resources by prohibiting the leasing of convicts and the employment of convicts in competition with private enterprise and by providing for reimbursement to parishes for expenses incurred resulting from crimes committed in penal institutions.

Read.

Lies over under the rules.

COMMITTEE PROPOSAL No. 13—

Introduced by Delegate Aertker, Chairman, on behalf of the Committee on Education and Welfare, and Delegates Armentor, Carmouche, Corne, Cowen, Flory, Grier, Haynes, Hernandez, Landry, Leithman, Lennox, Rachal, Riecke, Robinson, Segura, Silverberg, Sutherland, Thistlethwaite, Toca and Wisham:

A PROPOSAL

Making provisions for human resources by providing for the settlement of disagreements through arbitration.

Read.

Lies over under the rules.

PAGE 2

11th Days Proceedings—July 6, 1973

diction as sponsors. The secretary of state shall within thirty days assign a title and a number to the proposal, place it in proper form, and certify that it is open for signatures. Denial of certification is subject to judicial review.

Source: New; see, for example, Alaska Const. Art. XI, §2 (1956).

Comment: To assure that an initiative proposal is in proper form before being included in petitions to be circulated, it is first submitted to the secretary of state. The requirement that it bear at least one hundred sponsors is in accord with the Alaska provision to eliminate frivolous applications.

Section 6. Initiative Petitions

To be valid, petitions endorsing such proposal must be filed within one year after certification with the secretary of state who shall attest to their legality within thirty days after each is received. Petitions must be signed by a number of electors of the jurisdiction equal to at least fifteen percent of the largest vote cast in any election in the jurisdiction in the previous ten years. The legislature may provide that fewer signatures are required in any instance. All petitions must comply substantially with such reasonable formalities as may be established by the secretary of state.

Source: New; see, for example, Ore. Const. Art. IV, §1(2b) (1859).

Comment: The 15 percent figure required for an initiative proposal is much higher than the figure needed in most states. Oregon, for example, permits an initiative by six percent of the votes cast in the last gubernatorial election. The figure for most of the states is 5 to 10 percent. However, since this is a new proposal for Louisiana, a high figure should be used to discourage initiatives until the extent of their popularity is established. For example, based on the record turnout of 1,184,614 voters in November 1971, it would require 177,693 signatures to get a statewide initiative proposal on the ballot. The section provides that the legislature may lower the percentage in any instance.

Section 7. Initiative Elections

The proposal shall appear on the ballot with its title and a brief description containing not more than twenty-five words prepared by the interested party. It shall be voted on during the next general election at least ninety days after a sufficient number of petitions have been filed with the secretary of state, or during a special election called for that purpose by the governor or by the local governing authority, provided that the proposal shall have been published once, at least forty-five days before the election, at the expense of the interested party, in the official journal of the state and, in the case of local matters, in the official journal of the local governing authority.

Source: New; see, for example, Ark. Const. Art. V, §1 (1874).

Comment: Gives the interested party initiating a proposal the right to describe it on the ballot and the obligation of publishing it at least once before the election.

Section 8. Enactment of Initiative Proposals

The proposal shall become law thirty days after approval by a majority of the electors who vote for or against the proposal or at such later date as the proposal may provide.

Source: New; see, for example, Alaska Const. Art. XI, §6 (1956).

Comment: None

Section 9. Limitations of the Initiative

No proposal shall embrace more than one subject nor shall it appropriate money or levy, repeal, or dedicate any tax. An initiative proposal defeated by the electors shall not be reactivated for two years after its defeat.

Source: New; see, however, Alaska Const. Art. XI, §7 (1956).

Comment: This section essentially prohibits use of the initiative for fiscal measures which standing alone might seriously imbalance the budget of a governing body.

Section 10. Execution of Initiative Provisions

Initiative provisions are self-executing but laws may be

enacted to facilitate the use of the initiative. No legislation shall be enacted to impair powers herein reserved to the people.

Source: New; see, for example, Ark. Const. Art. I, §1 (1874).

Comment: The legislature may aid but not detract from the reserved power of the people to use the initiative.

Section 11. Right to Direct Participation

No person shall be denied the right to observe the deliberations of public bodies and examine public documents except in cases established by law in which the demands of privacy exceed the merits of public disclosure.

Source: New; see, however, Mont. Const. Art. II, §9 (1972).

Comment: This provision considers that basic political rights include not only the right to vote but also the right to participate personally and directly in government by observing public bodies and examining public documents.

Section 12. Oath of Office

All officers before entering upon the duties of their respective offices shall take the following oath or affirmation: "I, (A B), do solemnly swear (or affirm) that I will support the constitution and laws of the United States and the constitution and laws of this state and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _____ according to the best of my ability and understanding, so help me God."

Source: La. Const. Art. XIX, §1 (1921).

Comment: The section is virtually identical to the 1921 provision except that the words "except as otherwise provided in the Constitution" have been deleted as unnecessary since there have been no exceptions to the oath of office.

Section 13. State Capital

The capital of Louisiana is the city of Baton Rouge.

Source: New; see however, La. Const. Art. XIX, §2, (1921).

Comment: This complies with Act 2 of the 1972 Regular Session.

COMMITTEE REPORT WITH RESPECT TO COMMITTEE PROPOSAL No. 2—

A PREAMBLE

We, the people of Louisiana, grateful to Almighty God for the civil, political, economic, and religious liberties we enjoy, and desiring to protect individual rights to life, liberty, and property; afford opportunity for the fullest development of the individual; assure equality of rights; provide for the health, safety, education, and welfare of the people; maintain a representative and orderly government; ensure domestic tranquility; provide for the common defense; and secure the blessings of freedom and justice to ourselves and our posterity, do ordain and establish this constitution.

Source: La. Const. Preamble (1921) and III. Const. Preamble (1970).

Comment: The 1921 preamble stressed liberty; the proposed preamble stresses both individual rights and the general interest of the people in establishing the constitution. The preamble is not a legally binding part of the constitution; it is not a source of power for any department of the government. Instead, the preamble indicates the general purposes for which the people ordain and establish a constitution. Jacobson v. Massachusetts, 197 US 11, 22 (1904).

ARTICLE I. DECLARATION OF RIGHTS

Section 1. Origin and Purpose of Government

Section 1. All government, of right, originates with the people, is founded on their will alone, and is instituted to protect the rights of the individual and for the good of the whole. Its only legitimate ends are to secure justice for all, preserve peace, and promote and protect the rights, happiness, and general welfare of the people. The rights enumerated in this article are inalienable and shall be preserved inviolate.

Source: La. Const. Art. I, §1 (1921).

Comment: The 1921 provision has been changed to emphasize that the purpose of government is to protect both individual rights and the general welfare of the people and that rights are inalienable.

Section 2. Due Process of Law

Section 2. No person shall be deprived of life, liberty, property, or other rights without substantive and procedural due process of law.

Source: La. Const. Art. I, §2 (1921).

Comment: The 1921 provision was changed to emphasize that due process is a protection for all rights and substantive

PAGE 3

11th Days Proceedings—July 6, 1973

due process is protected as well as fair procedures. The 1921 provisions on expropriation are expanded in a separate section on the Right to Property.

Section 3. Right to Individual Dignity

Section 3. No person shall be denied the equal protection of the laws nor shall any law discriminate against a person in the exercise of his rights on account of birth, race, sex, social origin or condition, or political or religious ideas. Slavery and involuntary servitude are prohibited, except in the latter case as a punishment for crime.

Source: New; see, however, Mont. Const. Art. II, §4, (1972) and U.S. Const. Amend. 13.

Comment: The purpose of this section is to prohibit direct state action which unreasonably discriminates against any person because of birth, race, sex, social origin or condition, or political or religious beliefs. It does not interfere with the right to discriminate in private affairs, nor is it intended to prohibit harmless state action. Rather, this provision is intended both to prohibit forced segregation and to outlaw new forms of "reverse discrimination" such as the imposition of quotas. Its only purpose is to insure that the State of Louisiana will treat each person within its jurisdiction as an individual who will be judged solely according to his own merit and worth.

Section 4. Right to Property

Section 4. Every person has the right to acquire by voluntary means, to own, control, use, enjoy, to protect, and to dispose of private property. This right is subject to the reasonable exercise of the police power and to the law of forced heirship. Property shall not be taken or damaged except for a public and necessary purpose and with just compensation previously paid to the owner or into court for his benefit. The owner shall be compensated to the full extent of his loss and has the right to trial by jury to determine such compensation. No business enterprise or any of its assets shall be taken for the purpose of operating that enterprise or for the purpose of halting competition with government enterprises, nor shall the intangible assets of any business enterprise be taken. Unattached movable property shall not be expropriated except when necessary in emergencies to save lives or property, and to control effects, other than contraband, shall never be taken. The issue of whether the contemplated purpose be public and necessary shall be a judicial question, and determined as such without regard to any legislative assertion.

Source: New; see, however, La. Const. Art. I, §2; Art. II, §37; Art. IV, §§19, 19.1 (1921); Ariz. Const. Art. I, §1 (1912); Calif. Const. Art. I, §1, 14 (1879); Colo. Const. Art. II, §2 (1876); Ill. Const. Art. I, §15 (1970); Mont. Const. Art. I, §29 (1972); Nev. Const. Art. I, §1 (1864); N. Dak. Const. Art. I, §31, 14 (1889); Amer. Conv. on Human Rights Art. XXI, §1 (1969).

Comment: The first sentence of the section contains language paralleling that used by the U.S. Supreme Court in *Lynch v. Household Insurance Corp.*, 32 S. Ct. 1113, 1118 (1972) in upholding a right to property by virtue of the due process clause of the Fourteenth Amendment to the U.S. Constitution. Similar provisions are contained in the California, Colorado, and Nevada Constitutions and the American Convention on Human Rights. See source above. The right to property is to be limited in this section, however, by the laws of forced heirship. The term "full extent of the loss" (See Mont. Const. Art. I, §29) is intended to permit the owner whose property has been taken to remain in equivalent financial circumstances after the taking. It is intended that a business shall not be taken over for the purpose of operating it, although presumably a business could be terminated in an orderly manner. Personal effects are intended to include money, stocks, bonds, objects of art, books, papers, essential tools of trade, and clothing. Contraband, however, is excepted from the prohibition against taking personal effects. The reservation of trial by jury is not intended to interfere with a "quick-taking" statute since compensation could initially be paid into court. The term "taking" is to apply to both "expropriation" and "appropriation" so that "appropriation" would no longer have the status in Louisiana law. Finally, determination of the purpose for the taking would be a judicial question without regard to legislative assertions,

just as it is in the Arizona and Colorado Constitutions cited above.

Section 5. Right to Privacy

Section 5. Every person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy. No warrant shall issue without probable cause, supported by oath or affirmation particularly describing the place to be searched, the persons or things to be seized, and the lawful purpose or reason for the search. Any person adversely affected by a search or seizure conducted in violation of this section shall have standing to raise the illegality of that search or seizure in the appropriate court of law.

Source: New; see, however, La. Const. Art. I, §7 (1921).

Comment: The 1921 provisions have been changed to stress that communications and property are included in the right to privacy. A search warrant is to include the lawful purpose or reason for the search. In addition, persons protected against illegal searches and seizures include not only the person whose house or property has been illegally searched but also any other person adversely affected by the illegal search.

Section 6. Freedom from Intrusion

Section 6. No person shall be quartered in any house without the consent of the owner or lawful occupant.

Source: La. Const. Art. XIX, §7 (1921).

Comment: The 1921 provision is broadened to include any "person" in lieu of "soldier, sailor, or marine," to include "owner or lawful occupant" in lieu of "owner," and to eliminate the exception during time of war.

Section 7. Freedom from Discrimination

Section 7. All persons shall be free from discrimination on the basis of race, color, creed, national ancestry, and sex in access to public accommodations or in the sale or rental of property by persons or agents who derive a substantial income from such business activity. Nothing herein shall be construed to impair freedom of association.

Source: New; see, however, Ill. Const. Art. I, §17 (1970).

Comment: This section asserts the right to be free from private discrimination in certain activities. Federal law presently prohibits discrimination in public accommodations (42 U.S.C. §2000) and in the sale or rental of housing (42 U.S.C. §3604) except in the case of a single-family house sold without advertising and in the case of rooms or apartments in an owner's own home (42 U.S.C. §3603).

The prohibitions intended to those "who derive a substantial income from such business activity" as opposed to an individual homeowner selling or renting his own home.

Section 8. Trial by Jury in Civil Cases

Section 8. In all civil cases, except summary, domestic, and adoption cases, the right to trial by jury shall not be abridged. No fact determined by a judge or jury shall be re-examined on appeal. Determination of facts by an administrative body shall be subject to review.

Source: New; see, however, U.S. Const. Amend. 7, La. Const. Art. VII, §29 (1921).

Comment: This section abandons the practice of appellate court review of the facts determined by the judge or jury in the lower court. It enlarges the right to trial by jury in civil cases. La. Const. Art. VII, §29 (1921).

Section 9. Freedom of Expression

Section 9. No law shall abridge the freedom of every person to speak, write, publish, photograph, illustrate, or broadcast on any subject or to gather, receive, or transmit knowledge or information, but each person shall be responsible for the abuse of that liberty; shall such activities ever be subject to censorship, licensure, registration, control, or special taxation.

Source: New; see, however, U.S. Const. Amend. 1.

Comment: The section is intended to be a strong assertion of the right to free speech. Under the section, suits for libel and slander would still be permitted, however, and truth would be a defense in such suits.

Section 10. Freedom of Religion

Section 10. No law shall be enacted respecting an establishment of religion or prohibiting the free exercise thereof.

Source: La. Const. Art. I, §4 (1921).

Comment: Modernization of language. No substantive change.

Section 11. Freedom of Assembly and Movement

Section 11. No law shall impair the right of every person to peaceably petition the government for a redress of grievances, to travel freely within the state, and to enter and leave the state. Nothing herein shall prohibit quarantines

PAGE 4

11th Days Proceedings—July 6, 1973

or restrict the authority of the state to supervise persons subject to parole or probation.

Source: New; see, however, La. Const. Art. I, § 5 (1921).

Comment: The section is intended to strengthen the traditional freedom of assembly provision and to add a provision recognizing freedom of movement. The latter provision would not affect restrictions on the freedom of movement of convicted persons on parole. Under the section on Right to Humane Treatment, the rights of persons not convicted are not fully restored until the termination of state or federal supervision for any offense and this section is not inconsistent with that provision. The section also does not restrict movement of persons under quarantine for medical reasons or in other emergency situations.

Section 12. Rights of the Accused

Section 12. When a person has been detained, he shall immediately be advised of his legal rights and the reason for his detention. In all criminal prosecutions, the accused shall be precisely informed of the nature and cause of the accusation against him. At all stages of the proceedings, every person shall be entitled to assistance of counsel of his choice, or appointed by the court in indigent cases if charged with a serious offense.

Source: New; see, however, La. Const. Art. I, § 9, 10, 11, 12; Art. VII, § 441, 42 (1921).

Comment: This section and the six sections that follow are a rearrangement of the provisions on criminal procedure rights contained in the 1921 Constitution. The provisions are arranged in the chronological order which the rights are exercised.

The accused is entitled to be informed of his relevant legal rights and the reason for his detention as soon as he is detained. In being informed of accusations against him, he is to be precisely informed. Also, he is entitled to the early assistance of counsel in indigent cases.

Section 13. Initiation of Prosecution

Section 13. Prosecution of felonies shall be initiated by indictment or information, provided that a person shall be held to answer for a capital crime or a felony necessarily punishable by hard labor, except on indictment by a grand jury. No person shall be twice placed in jeopardy for the same offense, except on his own application for a new trial or where there is a mistrial or a motion in arrest of judgment is sustained.

Source: New; see, however, La. Const. Art. I, § 9; Art. VII, § 441 (1921); U. S. Const. Amend. 5.

Comment: The section requires grand jury indictments for felonies necessarily punishable by hard labor as well as capital crimes.

Section 14. Grand Jury Proceedings

Section 14. At all stages of the grand jury proceedings, after arrest, the accused shall have the right to the advice of counsel while testifying, to compulsory process for presenting witnesses to the grand jury for interrogation, and to any transcribed testimony of any witnesses appearing before the grand jury in his case.

Source: New; see, however, La. Const. Art. I, § 9 (1921); U. S. Const. Amend. 6.

Comment: No change with respect to the secrecy of the grand jury is anticipated. The "accused" is a person who has been arrested or otherwise booked with an offense requiring an indictment and who is permitted to appear before the grand jury. In such cases he shall have the right to the advice of counsel while testifying. The attorney's role may be strictly limited to "advising" his client. The accused also has the right to present witnesses to the grand jury on his own behalf but the grand jury is under no obligation to interrogate them. Finally, if testimony in the grand jury room is transcribed, the accused is entitled to a transcript of such testimony of witnesses appearing in his case.

Section 15. Fair Trial

Section 15. Every person charged with a crime shall be presumed innocent until proven guilty, and shall be entitled to a speedy, public, and impartial trial in the parish where the offense or an element of the offense occurred, unless the venue be changed in accordance with law. No person shall be compelled to give evidence against himself. An accused shall be entitled to confront and cross-examine the witnesses

against him, to compel the attendance of witnesses, to present a defense, and to take the stand in his own behalf. Source: New; see, however, La. Const. Art. I, § 9, 11 (1921). Comment: The 1921 provisions provide explicitly for exceptions with respect to self-incrimination and do not state that a person may take the stand in his own behalf.

Section 16. Trial by Jury in Criminal Cases

Section 16. Any person charged with an offense or set of offenses punishable by imprisonment of more than six months may demand a trial by jury. In cases involving a crime necessarily punishable by hard labor, the jury shall consist of twelve persons, all of whom must concur to render a verdict in capital cases or cases in which no parole or probation is permitted, and ten of whom must agree in others. In cases not necessarily punishable by hard labor, the jury may consist of a smaller number of persons, all of whom must concur to render a verdict. The accused shall have the right to voir dire and to challenge jurors peremptorily. Source: New; see, however, La. Const. Art. I, § 8; Art. VII, § 41 (1921).

Comment: This section strengthens the right to trial by jury by incorporating the rule in *Duncan v. Louisiana*, 391 US 145 (1968) which recognizes the right to a trial by jury in cases in which the potential punishment is imprisonment for six months or more. The provision would also include the right to a jury trial when a set of offenses may result in imprisonment for six months or more. The latter may be beyond the federal requirement. The requirement for a unanimous jury verdict in cases in which no parole is permitted is a change from the 1921 provision and the number needed to convict in lesser cases is raised from nine to 10. The right to voir dire or to challenge witnesses for cause, is expressly stated in this section for the first time.

Section 17. Right to Bail

Section 17. Excessive bail shall not be required. Before and during trial, a person shall be bailable by sufficient sureties, unless charged with a capital offense and the proof is evident and the presumption great. After conviction and before sentencing, a person shall be bailable if the maximum sentence which may be imposed is less than five years and, the judge may grant bail if the maximum sentence which may be imposed is greater. After sentencing and until final judgment, persons shall be bailable if the sentence actually imposed is less than five years, and the judge may grant bail if the sentence actually imposed is greater.

Source: New; see, however, La. Const. Art. I, § 12 (1921).

Comment: This section represents a departure from the 1921 Constitution in permitting bail at the discretion of the judge in certain situations where it was not permitted before. It permits bail after conviction and before sentencing as well as after sentencing and before final judgment.

Section 18. Right to Humane Treatment

Section 18. No person shall be subjected to torture or to cruel, unusual, or excessive punishments or treatments, and full rights shall be restored by termination of state or federal supervision for any offense.

Source: New; see, however, La. Const. Art. I, § 12 (1921).

Comment: The 1921 provision is revised to include "excessive" as well as "cruel and unusual" punishments, and "treatments" are included as well as "punishments." The provision on restoration of full rights is intended to mean convicted person automatically recovers all rights recognized in this "Declaration of Rights" at the point at which supervision ceases. It does not erase his past record; for example, a multiple offender could still receive a harsher penalty than a first offender.

Section 19. Right to Vote

Section 19. No person eighteen years of age or older who is a resident or domiciliary of the state shall be denied the right to register and to vote, except that this right may be suspended while a person is judicially committed and institutionalized, or under an order of imprisonment for conviction of a felony.

Source: New; see, however, Ill. Const. Art. III, § 51, 2 (1970); Montana Const. Art. IV, § 1 (1972).

Comment: Voting is included in the "Declaration of Rights" because it is regarded as a basic political right rather than a privilege. As a right, it should be suspended only in the most serious cases. The Illinois provision does not even except interdicted persons. The Montana provision excepts persons "of unsound mind, as determined by a

court". This provision also recognizes a right to register as long as registration is a prerequisite to voting.

Section 20. Right to Keep and Bear Arms
Section 20. A well regulated militia is necessary to the security of a free state. The right of each person to keep and bear arms and ammunition shall not be abridged, but this provision shall not prevent the passage of laws to prohibit the carrying of concealed weapons.

Source: La. Const. Art. I, § 8 (1921).

Comment: The section is adopted with virtually no change in substance. The provision is necessary to the security of the militia is set out as a separate sentence. The right to bear arms is connected with the provision permitting laws to prohibit the carrying of concealed weapons.

Section 21. Writ of Habeas Corpus

Section 21. The writ of habeas corpus shall not be suspended.

Source: La. Const. Art. I, § 13 (1921).

Comment: The 1921 provision is revised to recognize the writ of habeas corpus as a right rather than a privilege and to eliminate the exception for suspending it. Emergencies and other times of disorder are precisely the times when the writ is most needed as a right of redress.

Section 22. Access to Courts

Section 22. All courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay for actual or threatened injury to him in his person, property, reputation, or other rights. Neither the state, its political subdivisions, nor any private person shall be immune from suit.

Source: New, see, however, La. Const. Art. I, § 6; Art. III, § 35; Art. XIX, § 13 (1921).

Comment: This provision is intended to broaden the general right of redress recognized in the 1921 provision. The right of redress is recognized for "threatened" as well as "actual" injury or violation of any right of a person. No private person is to be immune from suit. Sovereign immunity is abolished, but the legislature may provide for immunity for the governor or other "public persons" in connection with the performance of their official duties.

COMMITTEE REPORT WITH RESPECT TO COMMITTEE PROPOSAL No. 3—

ARTICLE III. LEGISLATIVE DEPARTMENT

Section 1. Legislative Power of State; Vesting: Continuous Body

Section 1. (A) The legislative power of the state is vested in the legislature, consisting of a Senate and a House of Representatives.

(B) The legislature shall be a continuous body during the term for which its members are elected.

Source: La. Const. Art. III, § 1 (1921).

Comment: Paragraph (A) rewards without substantive change the present provisions.

Paragraph (B) is new. Term "continuous body" is distinguished from "continuous session." Term "continuous body" means that legislature is a viable and ongoing body for the duration of each of the four-year terms of its members rather than a year to year body. At present legislature acts as a body only when convened in actual session and all other resolutions and proceedings cease at the end of the session, unless otherwise extended. Unlike the judicial and executive branches of government, the legislature at present is restricted in the number of days it can operate and can only function while it is in session for a limited period each year, while the other branches operate throughout the year. Leaves no doubt as to authority or its readiness to argue itself, elect its officers, and establish its standing committees for four-year term of its members. Allows legislature to adopt procedures to operate through its standing committees year-round for continuing study and analysis of needed or proposed legislative action. Eliminates necessity for creation of interim committees to meet between sessions. Permits legislature to act readily to manage its own operations when not actually in session by allowing it to provide for: 1) prefilling of bills, 2) formal introduction of

bills prior to convening in regular or extraordinary session, 3) assignment of such bills to committees, 4) pre-session committee hearings and determination of reports; and otherwise to exercise its functions year-round and from year to year in an effort to provide more time for informed and deliberative decision-making, benefiting the state and its people.

Note "continuous body" is not synonymous with "continuous session" and the legislature could only meet in actual session as permitted by Section 2 below.

Section 2. Sessions; Annual; Extraordinary

Section 2. (A) The legislature shall meet in regular annual sessions. In each year the regular session shall not extend for more than sixty legislative days within a one hundred and twenty day period; however, upon the consent of a majority of the elected members of each house, the legislature may extend the regular session in any year for not to exceed fifteen legislative days within the one hundred and twenty day period.

(B) The legislature may be convened at other times by the governor or, at the written request of a majority of the elected members of each house, by the presiding officers of both houses. The governor or presiding officers of both houses, as the case may be, shall issue a proclamation convening the legislature into extraordinary session. The proclamation shall state the object or objects for convening the legislature in extraordinary sessions, the date on which the legislature is to be convened, and the number of days for which the legislature is convened. The power to legislate, under the penalty of nullity, shall be limited to the objects specifically enumerated in the proclamation convening the extraordinary session, and the session shall be limited to the number of days named therein, which shall never exceed thirty calendar days.

Source: La. Const. Art. III, § 8; Art. V, § 14 (1921).

Comment: Requires legislature to meet in regular annual session, with no restriction as to fiscal matters in odd-year sessions as at present. Establishes limits of regular sessions at 60 legislative days held within 120-day period. Allows for extension of regular session by consent of majority of elected members for up to 15 legislative days within same 120-day period. Term "legislative days" is new. It refers to exact number of days legislature actually meets, sometimes referred to as "working days." Some states either by constitution or statute use "legislative day" concept. It most generally is defined or interpreted to mean, any day on which either or both houses is in session. (See Indiana Statutes 34-226 (e) and Opinions of the Justices, 257 So. 2d 336 (Ala. 1972).) Thus, a session by one house, the other house not sitting, comprises a legislative day to be deducted from the total 60 days permitted by this section. However, if neither house is in session but having adjourned or recessed to a later date, meetings of committees of one or both houses would not constitute legislative days.

Continues existing authority of governor and legislature to call extraordinary sessions, but reduces vote necessary for legislature to call itself into session from two-thirds to a majority of elected members of each house. Changes method of legislative calling itself into session by providing that presiding officers of both houses are to issue call or proclamation. Present provision places primary responsibility on governor to call legislature into session when petitioned to do so.

Rewords without substantive change present provision relative to issuance of proclamation and enumeration of objects to be considered.

Retains without substantive change present provision relative to restriction on power to legislate and limitation on maximum number of days of an extraordinary session.

Makes no constitutional provision for a convening date, leaving this to be fixed by statute. Note: provision for date of convening date after new constitution is adopted likely could be included in a transitional or schedule provision.

Section 3. Size

Section 3. The number of members of the legislature shall be provided by law, but the number of Senate members shall not exceed forty-one and the number of House members shall not exceed one hundred and eleven.

Source: La. Const. Art. III, §§ 3, 4, 5 (1921).

Comment: Establishes a maximum number of members for

PAGE 10

11th Days Proceedings—July 6, 1973

Comment: The 1921 Constitution sets the salaries of constitutional officers, and provides that the salary of any public officer may be changed by a two-thirds vote of the membership of each house of the legislature. The present constitution also provides that the lieutenant governor when discharging the duties of governor shall receive the same compensation as the governor.

The proposed revision authorizes the legislature to fix the salary of each elected official within the executive branch. The revision prohibits an increase or decrease in salary for the term for which the official is elected. The proposed section further provides that no state official shall receive a salary in excess of that paid to the governor.

The proposed section also provides that compensation of constitutional successors to elected officials in the event of vacancies, absences, or inability shall be the same as that of the elected official.

Section 5. Powers and Duties of Governor

Section 5. (A) Executive Authority. The governor shall be the chief executive officer of the state and shall faithfully support the constitution and laws of the state.

Source: La. Const. Art. V, §12, 14 (1921).

Comment: This paragraph changes the source provision that the "supreme executive power" is vested in the governor and, instead, designates him as the state's "chief executive officer". The source provision requiring the governor to take care that the "laws be faithfully executed" is changed to require him to "faithfully support the constitution and laws of the state".

(B) Legislative Reports and Recommendations. The governor shall be heard at each regular session of the legislature, and may at other times, make reports and recommendations and give information to the legislature concerning the affairs of state, including its complete financial condition.

Source: La. Const. Art. V, §13 (1921).

Comment: The 1921 Constitution requires the governor to give periodic reports to the legislature concerning affairs of the state and to recommend measures for its consideration.

The proposed section requires the governor to make such reports and recommendations to the legislature at the beginning of each regular session, including information on the financial condition of the state. He may make such reports and recommendations at other times.

(C) Reports and Information. All department heads shall provide the governor with reports and information in writing or otherwise request by him on any subject relating to their respective departments excepting matters relating to investigations of the governor's office.

Source: La. Const. Art. V, §13; Art. VI, §39 (1921).

Comment: The 1921 Constitution permits the governor to require written information and financial reports from all agencies in the executive branch of state government and from certain local units of government.

The proposed section requires "department heads" to provide the governor with information on their departments when so requested. Information on matters relating to investigations of the governor's office is excepted from the requirement.

Operating Budget. The governor shall prepare the state's annual operating budget, and shall transmit copies thereof to the legislature at least two weeks prior to the first day of each annual session. Upon adoption of the operating budget by the legislature, it shall become the official state budget and shall be executed and administered by the governor. Total appropriations for the year shall not exceed annual revenues as anticipated by the governor in the operating budget.

SOURCE: New.

Comment: The provision requires the governor to prepare, execute, and administer the state budget which he is to present to the legislature at least two weeks before the first day of each annual session. Total annual appropriations shall not exceed annual anticipated revenues as determined by the governor in the operating budget.

(E) Capital Budget. The governor shall prepare annually a five-year capital budget and shall submit to each regular

session of the legislature a proposed capital budget as provided by statute implementing the first year of any program. All capital projects approved by the legislature shall be made a part of the capital budget, and the operating budget for each year shall provide for amortization of the cost of each such capital project.

Source: New.

Comment: The provision requires the governor to prepare annually a five-year capital program and a capital budget which shall include all capital projects. The annual operating budget is to provide funds for amortization of capital costs.

(F) Pardon, Commutation, Reprieve, Remission. Except in cases of conviction upon impeachment, the governor may reprieve, may grant commutation of sentence, and may pardon in cases of conviction of offenses against the state and remit fines and forfeitures imposed for such offenses. In addition, the legislature may provide additional methods for the foregoing and other post-conviction remedies.

Source: La. Const. Art. V, §10 (1921).

Comment: The 1921 Constitution grants the governor power to grant reprieves for all offenses against the state. Except in cases of impeachment or conviction of a crime, the governor may grant pardons, commute sentences, and remit fines and forfeitures on recommendation of a majority of a pardon board consisting of the lieutenant governor, attorney general, and the presiding judge of the sentencing court. The governor may, under present law, grant temporary reprieves for treason, but the final pardoning power for this crime is vested in the legislature. The source provision requires automatic pardons for first-offender felons upon completion of their sentence.

The proposed section permits the governor to reprieve, grant commutation of sentence, and pardon those convicted of offenses against the state, except in cases of conviction upon impeachment. The governor also may remit fines and forfeitures. The legislature is authorized to provide additional methods for post-conviction remedies. The provision for a three-man pardon board is deleted from the present source.

(G) Signature on Bills; Veto. The date and time when each bill passed by the legislature is delivered to the governor shall be entered thereon. He shall then have thirty calendar days within which to act on it. If he approves, he shall sign it. If he disapproves, he shall return it giving his reason therefor, and if the legislature is in session, he shall return it to the house in which it originated within twenty-four hours. If he fails to veto within the time otherwise provided by this constitution, it shall become law.

Source: La. Const. Art. III, §82; Art. V, §§15, 17 (1921).

Comment: The source provisions require that the governor sign all bills passed by both houses of the legislature. Certain legislative documents, such as resolutions and proposed constitutional amendments, are specifically exempted from requiring his signature. Presently, the governor must act on a bill within ten days after he receives it; otherwise, it becomes law. Procedural details for vetoing, overriding vetoes, and promulgation of signed legislation are set forth in the source provision.

The proposed section revises the present law by deleting all references to legislative action on vetoes, with the understanding that these provisions will appear in the proposed article dealing with the legislature. It is also assumed that the provision exempting legislative documents from gubernatorial signature will be included in the legislative article. As in the present law, the proposed section provides that bills sent to the governor must be documented on receipt of their delivery to the governor, and reasons must be given for his vetoes. Under the new provision the governor has thirty rather than ten days in which to act; if he fails to act within the time limit, the bill becomes law.

(H) Appropriation Bills. (1) The governor may veto any line item in an appropriation bill. The items vetoed shall be void unless the veto is overridden as prescribed for the passage of any bill over a veto.

(2) The governor shall either veto line items, or use other means provided in the bill, in order that total appropriations for the year shall not exceed anticipated revenues for the year.

Source: La. Const. Art. V, §16 (1921).

Comment: Paragraph (1) which permits the governor to veto line items in an appropriation bill restates the source provision without substantive change. Paragraph (2) requires the governor either to veto line items in an ap-

PAGE 12

11th Days Proceedings—July 6, 1973

visory Board. It also sets forth in various provisions a number of ministerial duties of the secretary relative to the publication of legislation, countersigning of commissions, receiving and recording of public notices, petitions, and election returns.

The proposed section is a new provision which creates a department of state, headed by the secretary of state. It sets forth the duties of the secretary which are similar to his present constitutional and statutory duties, except that the secretary is given constitutional authority to administer election laws, including the voting machine law. Since 1960 the custodian of voting machines, a statewide elected official, has administered the state's voting machine law. From 1940 to 1960, the law was administered by a board of voting machines and a custodian, who was the secretary of state. The secretary of state was a member of the board from 1940 to 1959.

★ Section 8. Powers and Duties of the Attorney General
Section 8. There shall be a department of justice, headed by the attorney general who shall be the state's chief legal officer. As may be necessary for the assertion or protection of the rights and interests of the state, the attorney general shall have authority to:

(1) institute, and prosecute or intervene in any legal actions or other proceedings, civil or criminal;

(2) exercise supervision over the several district attorneys throughout the state; and

(3) for cause, supersede any attorney representing the state in any civil or criminal proceeding.

He shall have such other powers and perform such other duties as may be authorized by this constitution or provided by statute.

Source: La. Const. Art. III, §31; Art. V, §10; Art. VI, §22(e); Art. VII, §§55, 56 (1921).

Comment: The 1921 Constitution creates the office of attorney general as a statewide elective official in the judicial branch. His powers and duties are established in various constitutional articles. Primarily, the attorney general is to institute, prosecute, and intervene in criminal or civil suits in which the state has an interest, and to supervise district attorneys. The official is also made a member of the State Highway Advisory Board, the Legislative Bureau, and the State Pardon Board.

The proposed section places the attorney general and the department of justice in the executive branch. The attorney general is made the state's "chief legal officer" and, in addition to the duties presently granted, he is given authority to supersede, for cause and when necessary for the interest of the state, any attorney representing the state in a civil or criminal proceeding.

The revision of this Section will serve to void the ruling in *Kemp v. Stanley*, 204 La. 110, 15 So. 2d 1 (1943) which limited the authority of the attorney general to intervene in legal matters in which the state has an interest.

Section 9. Powers and Duties of the Treasurer

Section 9. There shall be a department of treasury headed by the state treasurer who shall be responsible for the custody, investment, and disbursement of the public funds of the state. He shall report annually to the governor and the legislature one month in advance of the regular session on the financial condition of the state, and shall have such other powers and perform such other duties as may be authorized by this constitution or provided by statute.

Source: Art. IV, §1(a); Art. VI, §22(e) (1921).

Comment: Fiscal duties of the treasurer are set forth in various articles and sections of the present constitution. The treasurer is a constitutional member of the State Highway Advisory Board and the Board of Liquidation of State Debt.

The proposed section creates a treasury department to be headed by a state treasurer. The treasurer is responsible for the "custody", investment, and disbursement of state funds. He is required to make an annual financial report to the governor and the legislature.

Section 10. First Assistants

Section 10. Each statewide elected official, except the governor and lieutenant governor, shall each appoint a first assistant, subject to confirmation by the Senate, and may remove him at his pleasure. The official shall submit such

appointment to the Senate in the same manner in which the governor submits appointments, and shall be subject to the same procedures and limitations in connection therewith as are imposed upon the governor. The first assistant shall possess the same qualifications as those required for election to that office.

Source: La. Const. Art. V, §18; Art. VII, §55 (1921).

Comment: The 1921 Constitution permits a number of statewide elected officials to appoint and remove assistants who, under certain conditions, have authority to perform acts and duties of the elected official.

The proposed section requires Senate confirmation of the appointed assistants of the secretary of state, attorney general, and treasurer, with provision for their removal at the pleasure of the appointing officer. The first assistant is required to have the same qualifications as are required for those elected to the office.

Section 11. Vacancy in Office of Governor

Section 11. The order of succession in the office of governor in the event of vacancy shall be (1) the elected lieutenant governor, (2) the elected secretary of state, (3) the elected attorney general, (4) the elected treasurer, (5) the presiding officer of the Senate, (6) the speaker of the House of Representatives, and then as may be provided by statute. Successors shall serve the remaining term for which the governor was elected.

Source: La. Const. Art. V, §6 (1921).

Comment: The 1921 Constitution establishes the following order of succession in case of vacancy in the office of governor: lieutenant governor, president pro tempore of the Senate, secretary of state acting until a president pro tempore is elected.

In the proposed section the first priority in the event of a vacancy in the office of governor is given to statewide elected officials, followed by legislative officers and thereafter, as the legislature may provide by law. Successors are to serve the unexpired term for which the governor was elected.

Section 12. Vacancy in Office of Lieutenant Governor

Section 12. Whenever there is a vacancy in the office of the lieutenant governor, the governor shall nominate a lieutenant governor, who shall take office upon confirmation by a majority vote of the elected members of each house of the legislature.

Source: La. Const. Art. V, §9 (1921).

Comment: The 1921 Constitution provides that in the event of a vacancy in the office of the lieutenant governor, the president pro tempore of the Senate shall discharge the duties of the office.

The proposed section requires that a vacancy in the office of lieutenant governor be filled by an appointee of the governor confirmed by the legislature.

Section 13. Vacancies in Other Statewide Elective Offices

Section 13. The order of succession in any other statewide elective office, in the event of a vacancy in such office, shall be the appointed first assistant in such office. Successors to such officials shall serve for the remainder of the term for which the official was elected.

Source: La. Const. Art. V, §18; Art. VII, §56 (1921).

Comment: The 1921 Constitution provides that the attorney general shall appoint a first assistant who, in case of a vacancy in the office of attorney general, shall perform the duties of the office until another attorney general has been elected and qualified.

The 1921 Constitution also provides that statewide elective officials, exclusive of the governor, lieutenant governor, commissioner of agriculture, and register of the state land office, are each authorized to appoint and remove an assistant who may perform duties of the office when the elected official is absent or unable to act.

The proposed section provides that appointed first assistants of elected officials, exclusive of the governor and lieutenant governor, shall succeed to the elective offices in the event of vacancies in these offices. As successor, the assistant will serve the unexpired term for which the official was elected.

Section 14. Other Vacancies

Section 14. (A) Where no other provision therefor is made by this constitution, by statute, or by local government charged, or by ordinance, the governor shall have the power to fill any vacancy occurring in any elective office. If, at the time a vacancy occurs in such office, and the unexpired portion of the term of office is more than one year, the vacancy shall be filled at an election within six months, as may be provided by statute. The appointment provided

PAGE 15

11th Days Proceedings—July 6, 1973

twelve months from the date such application, petition, or proposed schedule is filed.

(2) If its decision is not rendered within six months from the filing date of any proposed rate schedule, it shall be deemed to be tentatively approved and, pending final approval, modification, or rejection may be put into effect subject to such protective bond or security requirements as may be provided by statute. If the commission disapproves the proposed schedule, in whole or in part, the carrier or utility may place or continue the schedule in effect under the bond or security, subject to any appeal and final action by a court of last resort, to cover any refund that may be finally directed. Refund claims therefor in the manner provided by statute shall be filed within one year after such final action.

(3) Any utility filing a proposed rate schedule shall, within twenty days, give notice thereof by publication in the official state journal and in the official journal of each parish within the geographical area in which the schedule would become applicable. Any person affected by the proposed rate schedule may intervene and may, should the commission not render its decision within twelve months, appeal as if such decision had been rendered.

Source: La. Const. Art. VI, §5, 6 (1921).

Comment: The 1921 Constitution provides that orders of the Public Service Commission establishing common carrier or public utility rates shall go into effect when fixed by the commission and remain until set aside by the commission or the courts. Conditions for issuance of temporary restraining orders are given. Orders of the commission are enforced subject to constitutional penalties.

The proposal provides that rate schedules become tentatively approved, subject to statutory bond or security requirements, if the commission does not act within six months from the time the schedule is filed. If the commission fails to act within 12 months, persons affected by rate schedules may intervene and file suit as if the decision had been rendered. If the commission disapproves the schedule, the rates may be placed in effect under bond or security pending judicial review. Refund suits may be filed only within one year after court action. There are no penalty provisions in the proposed revision.

(E) Appeals. Appeals from the orders of the Public Service Commission must be filed with the district court, at the domicile of the Public Service Commission, with a direct appeal to the supreme court, as a matter of right.

Source: La. Const. Art. VI, §5 (1921).

Comment: The 1921 Constitution provides that appeals from orders and decrees of the Public Service Commission shall be filed with the Nineteenth Judicial District Court and thereafter directly with the Louisiana Supreme Court. Provisions in the present source relating to trial procedures, delays, and bond requirements when the commission appeals have been deleted from the proposed revision. Otherwise, no substantive changes have been made from the present constitutional provision.

★ COMMITTEE REPORT WITH RESPECT TO COMMITTEE PROPOSAL No. 6—

ARTICLE V. JUDICIARY DEPARTMENT

Section 1. Judicial Power

Section 1. The judicial power shall be vested in a supreme court, courts of appeal, district courts, and such other courts as this constitution may authorize.

Section 2. Needful Writs, Habeas Corpus, Orders and Process

Section 2. A judge may issue a writ of habeas corpus and all other needful writs, orders and process in aid of the jurisdiction of his court. Exercise of this authority by a judge of the supreme court or court of appeal is subject to review by the whole court. The power of a court to punish for contempt shall be limited by law.

Section 3. Supreme Court; Membership; Terms

Section 3. The supreme court shall be composed of a chief justice and six associate justices, four of whom must concur to render judgment. The term of a judge of the supreme court shall be fourteen years.

Section 4. Supreme Court; Districts

Section 4. The state shall be divided into at least six

supreme court districts, with at least one judge elected from each. The present districts and the number of judges assigned to each are retained, subject to change by a two-thirds vote of the elected members of each house of the legislature.

Section 5. Supreme Court; Supervisory, Original, and Appellate Jurisdiction; Rule-Making Power; Assignment of Judges

Section 5. (A) The supreme court has general supervisory jurisdiction over all other courts. It may promulgate procedural and administrative rules not in conflict with law. It may assign a sitting or retired judge to another court.

(B) The supreme court has exclusive original jurisdiction of disciplinary proceedings involving members of the bar.

(C) In each case, the supreme court's jurisdiction extends to both the law and the facts except as otherwise provided in this constitution. In criminal matters, its appellate jurisdiction extends to questions of law only.

(D) The following cases shall be appealable to the supreme court:

(1) A case in which a state law has been declared unconstitutional.

(2) A criminal case in which the penalty of death or imprisonment at hard labor may be imposed, or in which a fine exceeding five hundred dollars or imprisonment exceeding six months has been actually imposed.

(E) Subject to the provisions of Subsection (C), the supreme court has appellate jurisdiction over all other issues involved in any case, except as otherwise provided by law.

Section 6. Supreme Court; The Chief Justice

Section 6. (A) When a vacancy in the office of chief justice occurs, the judge oldest in point of service on the court, below the age of sixty-five years, shall succeed to the office.

(B) The chief justice shall be chief administrative officer of the judicial system of the state, subject to rules adopted by the court.

Section 7. Supreme Court; Judicial Administrator, Clerk, and Staff

Section 7. The supreme court shall have authority to select a judicial administrator, its clerks, and other personnel, and prescribe their duties.

Section 8. Courts of Appeal; Panels; Number Necessary to Decide; Term

Section 8. The state shall be divided into at least four circuits, with one court of appeal in each circuit. Each court shall sit in panels of at least three judges selected according to rules adopted by the court. A majority of the judges sitting in a case must concur to render judgment. The term of a court of appeal judge shall be twelve years.

Section 9. Courts of Appeal; Circuits and Districts

Section 9. Each circuit shall be divided into at least three districts, with at least one judge elected from each. One or more judges may be elected at large from within the circuit. The present circuits and districts and the number of judges as elected in each circuit are retained, subject to change by a two-thirds vote of the elected members in each house of the legislature.

Section 10. Courts of Appeal; Appellate and Supervisory Jurisdiction

Section 10. (A) Except in those cases appealable to the supreme court and as otherwise provided in this constitution, a court of appeal has appellate jurisdiction of all civil cases decided within its circuit. It has appellate jurisdiction of all matters appealed from the family and juvenile courts, except criminal prosecution of persons other than juveniles. It has supervisory jurisdiction over all cases in which an appeal would lie to that court.

(B) Except where limited to questions of law by this constitution or, as provided by law in the case of review of administrative agency determination, its appellate jurisdiction extends to both the law and the facts.

Section 11. Courts of Appeal; Certifications to Supreme Court of Questions of Law; Determination

Section 11. A court of appeal may certify to the supreme court any question of law before it, whereupon the supreme court may give its binding instruction, or consider and decide the case upon the whole record.

Section 12. Courts of Appeal; Chief Judge; Duties

Section 12. When a vacancy in the office of chief judge of a court of appeal occurs, the judge oldest in point of service on the court, below the age of sixty-five years, shall succeed to the office and shall administer the court, subject to rules adopted by the court.

Section 13. Courts of Appeal; Clerks and Staff

PAGE 16

11th Days Proceedings—July 6, 1973

Section 13. Each court of appeal shall have authority to select its clerk and other personnel and prescribe their duties.

Section 14. District Courts; Judicial Districts
Section 14. The state shall be divided into judicial districts, each composed of one or more parishes and served by one or more district judges.

Section 15. District Courts; Judicial Districts; Changes; Terms

Section 15. (A) The district courts, the civil and criminal district courts, and the judicial districts existing at the time of the adoption of this constitution are retained. The legislature, by a majority vote of the elected members of each house, with approval in a referendum in each district or parish affected, may establish or merge judicial districts or may merge a criminal and a civil district court in a parish, subject to the limitations of Section 23 of this Article.

(B) The term of a district judge shall be six years. Terms established for judgeships existing at the time of the adoption of this constitution are retained; however, the legislature, by a majority vote of the elected members of each house, with approval in a referendum in the parish affected may reduce the term for district judges in a parish to not less than six years.

Section 16. District Courts; Original Jurisdiction

Section 16. (A) Unless otherwise provided or authorized in this constitution, a district court shall have original jurisdiction in all civil and criminal matters which shall have exclusive original jurisdiction of all felony cases involving the title to immovable property; the right to office or other public position; civil or political rights; probate and succession matters; the state; a political corporation, or a succession, as a party defendant, regardless of the amount in dispute; and the appointment of receivers or liquidators to corporations or partnerships.

(B) A civil district court shall have civil jurisdiction as provided in Subsection (A) and a criminal district court shall have criminal jurisdiction as provided for in Subsection (A).

Section 17. District Courts; Chief Judge

Section 17. Each district court may elect from its members a chief judge who shall exercise such administrative functions as prescribed by rule of court.

Section 18. Juvenile Courts; Jurisdiction

Section 18. The jurisdiction of a juvenile court shall be as provided by law.

Section 19. Courts of Special and Limited Jurisdiction

Section 19. Parish, city, municipal, traffic, family, and juvenile courts existing at the time of the adoption of this constitution are retained. The legislature, by a majority vote of the elected members of each house, and with approval in a referendum in each district, parish, or portion affected may establish, abolish, or merge trial courts of limited or specialized jurisdiction subject to the limitations in Sections 16 and 23 of this Article.

Section 20. Parish Courts

Section 20. (A) Notwithstanding the provisions of Sections 15 and 19 to the contrary, the legislature may, by a majority vote of the elected members of each house, and with approval in a referendum in the parish affected, establish in that parish, a parish court. Other courts of limited or specialized jurisdiction in the parish may be simultaneously abolished.

(B) The jurisdiction of parish courts shall be uniform throughout the state and such courts shall be limited to the trial of misdemeanors, and of civil matters not exceeding the value or sum of three thousand five hundred dollars, exclusive of interest and costs. A judge of said court shall be elected for a term of six years.

Section 21. Mayors' Courts; Justices of the Peace; Continued

Section 21. A mayor's court or justice of the peace existing at the time of the adoption of this constitution is continued subject to change by the legislature.

Section 22. Recording of Proceedings; All Courts

Section 22. All proceedings in all courts in this state shall be recorded when requested.

Section 23. Judges; Term of Office or Compensation May Not Be Decreased

Section 23. The term of office or compensation of a judge

shall not be decreased during the term for which he is elected.

Section 24. Judges; Election; Vacancy in Office

Section 24. (A) The election of judges shall be held at the regular congressional election.

(B) A newly-created judgeship or a vacancy in the office of any judge shall be filled by a special election which shall be called by the governor, and held within six months of the day the vacancy occurs or the judgeship is created, except when the vacancy occurs in the last six months of an existing term. Until the vacancy is filled, the supreme court shall appoint a person meeting the qualifications for judge to the office, to serve at its pleasure, who shall be ineligible to be a candidate for election to the judgeship.

(C) All judges serving on the date of adoption of this constitution shall continue in office for the term to which elected and shall serve through December thirty-first of the last year of their term or, if the last year of their term is not in the even-numbered year of a general judicial election, then through December thirty-first of the year next succeeding the election for the next term in the office will be held in a general judicial election of the year the term expires, as provided above.

Section 25. Retirement of Judges

Section 25. (A) A judge shall not remain in office beyond his seventieth birthday, except as otherwise provided herein.

(B) A judge or judicial administrator in office at the time of the adoption of this constitution, shall not have diminished any retirement benefits or judicial service rights, including the right to remain in office, as judge, during his present term, provided under the previous constitution or laws, nor shall the benefits to which his surviving spouse thereof was entitled be reduced.

(C) The legislature shall provide a retirement system for judges which shall apply to a judge taking office after the effective date of the statute enacting the system, and which a judge in office at the time of its adoption may elect to join.

(D) Until the legislature enacts the retirement system authorized in Subsection (C), a judge taking office after the adoption of this constitution and a judge in office who so elects within ninety days of the adoption of this constitution by notifying the secretary of state, shall be entitled to the following retirement benefits:

(1) This subsection applies to a judge of a court authorized by this constitution, except mayors and justices of the peace.

(2) A judge with sixteen years of judicial service may retire: a judge with twelve years of judicial service is eligible for retirement benefits at the age of sixty. On retirement, a judge shall receive annually as retirement benefits that portion of his annual average compensation for his three highest years which the number of years served bears to twenty-five, but not more than seventy-five percent.

(3) A judge who is physically or mentally incapacitated to perform his duties, as determined by the supreme court upon the advice of two physicians appointed by the court, shall be retired. He shall receive as annual retirement benefits two-thirds of his annual salary, or that portion of his average annual salary for the three highest years which the number of years served bears to twenty-five, whichever is greater.

(4) Upon the death of a judge, in office or retired, the surviving spouse, until remarriage, shall be entitled to one-third of his annual salary as judge prior to death or retirement, or one-half the retirement benefits he was receiving or entitled to receive at the time of his death, whichever is greater. If the judge is not survived by a spouse, or if the spouse dies, his unmarried children shall be entitled to the benefits provided in this subsection until the age of eighteen.

(5) Benefits provided herein shall be paid from the same sources as was his compensation as judge. The legislature and the political subdivisions shall provide for the payment of these benefits.

(6) To receive the benefits provided in this subsection the judge shall contribute a total of six percent of his salary to the paying authorities.

Section 26. Judges; Qualifications; Practice of Law Prohibited

Section 26. A judge of the supreme court, court of appeal, district court, or parish court shall have been admitted to the practice of law for at least five years prior to his election, shall have been domiciled in the respective circuit,

PAGE 17

11th Days Proceedings—July 6, 1973

district, or parish for at least two years immediately preceding election, and shall not practice law.

Section 27. Judiciary Commission; Membership; Terms; Vacancy; Grounds for Removal; Powers and Duties. (A) The Judiciary Commission shall consist of one court of appeal judge and two district court judges selected by the supreme court; three attorneys admitted to the practice of law for at least ten years who are not judges, active or retired, nor public officials, selected by the Louisiana Conference of Court of Appeal Judges' Association or its successor; and three attorneys, not lawyers, judges, active or retired, nor public officials, appointed by the Louisiana District Judges' Association or its successor.

(B) A member of the commission shall serve a four-year term and shall not be eligible to succeed himself.

(C) A member's term shall terminate when he loses the status causing his appointment or when any event occurs which would have made him ineligible for appointment.

(D) When a vacancy occurs, a successor shall be appointed for a four-year term by the appointing authority for the position for which the vacancy occurred.

(E) On recommendation of the Judiciary Commission, the supreme court may censure, suspend with or without salary, remove from office, or retire involuntarily a judge for willful misconduct relating to his official duty, willful and persistent failure to perform his duty, persistent and public conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or conduct while in office which would constitute a felony, or conviction of a felony. On recommendation of the Judiciary Commission, the supreme court may disqualify a judge from exercising any judicial function, without loss of salary, during the pendency of the proceedings in the supreme court. On recommendation of the Judiciary Commission, the supreme court may retire involuntarily a judge for disability that seriously interferes with the performance of his duties and that is, or is likely to become, of a permanent character. The supreme court shall make rules implementing this section and providing for confidentiality and privilege of proceedings.

Section 28. Department of Justice; Composition; Attorney General; Election and Assisted; Powers and Duties.

Section 28. There shall be a department of justice consisting of an attorney general, a first and second attorney general, and other necessary assistants and staff. The attorney general shall be elected for a term of four years at the state general election, and the assistants shall be appointed by the attorney general to serve at his pleasure.

Section 29. Attorney General; Qualifications; Powers and Duties; Vacancy.

Section 29. Attorney General; Qualifications; Powers and assistants shall have resided in this state and been admitted to the practice of law for at least five years preceding their selection. The attorney general shall attend to, and have charge of all legal matters in which the state has an interest, or to which the state is a party, with power and authority to constitute a party, or to intervene in any and all suits or other proceedings, civil or criminal, as shall be necessary for the assertion or protection of the rights and interests of the state.

In case of a vacancy in the office of attorney general, the first assistant attorney general shall perform the duties of the attorney general until his successor is elected and qualified.

Section 30. District Attorney; Election; Qualifications; Assistants.

Section 30. In each judicial district a district attorney shall be elected by the qualified electors of the district for a term of six years. He shall have been admitted to the practice of law in the state for at least five years prior to his election and shall have resided in the district for two years immediately preceding election. A district attorney may select his assistants and other personnel and prescribe their duties.

Section 31. Defense of Criminal Prosecution; Removal.

Section 31. No district attorney or assistant district attorney shall appear, plead or in any way defend, or assist in defending any criminal prosecution or charge. A violation shall be cause for removal.

Section 32. Sheriff; Duties; Tax Collector

Section 32. In each parish, a sheriff shall be elected for a term of four years. He shall be the chief law enforcement officer in the parish, except as otherwise provided by this constitution, and shall execute court orders and process. He shall be the collector of state and parish ad valorem taxes and such other taxes and licenses as provided by law.

Section 33. Clerks; Election; Powers and Duties; Deputies; Office Hours.

Section 33. (A) In each parish, a clerk of the district court shall be elected by the qualified electors of the parish for a term of four years. He shall be ex officio notary public and parish recorder of conveyances, mortgages, and other acts and shall have such other duties and powers as may be prescribed by law. The clerk may appoint deputies with such duties and powers as may be prescribed by law and he may appoint, with the approval of the district judges, minute clerks with such duties and powers as may be prescribed by law.

(B) The legislature shall establish statewide uniform office hours for all clerks of district courts.

Section 34. Coroner; Election; Term; Qualifications; Duties.

Section 34. In each parish, a coroner shall be elected for a term of four years with such qualifications and duties as may be prescribed by law.

Section 35. Vacancies.

Section 35. Until filled by election as provided by law, when a vacancy occurs in the following offices, the duties of the office shall be assumed by: in the case of sheriff, the chief criminal deputy; district attorney, the first assistant; clerk of a district court, the chief deputy; coroner, the chief deputy. If there is no such person to assume the duties of the office of the vacancy, the governing authority or authorities of the parish or parishes concerned shall appoint a qualified person to assume the duties of the office until filled by election.

Section 36. Reduction of Salaries and Benefits Prohibited.

Section 36. The attorney general, a district attorney, a sheriff, or a clerk of the district court shall have neither his salary nor retirement benefits diminished during his term of office.

Section 37. Orleans Parish, Officials; Continued.

Section 37. Notwithstanding any provisions of Sections 32 and 33 of this Article to the contrary, the following officers in Orleans Parish are continued, subject to change by a majority vote of the elected members of each house of the legislature and by approval in a referendum in the parish: the clerks of the civil and criminal district courts, the civil and criminal sheriffs, the constables and the clerks of the first and second city courts, the register of conveyances, and the recorder of mortgages, all of which shall be elected for four-year terms with such duties and powers as provided by the legislature. Their terms of office, retirement benefits, or compensation shall not be reduced during their terms of office.

Section 38. Jurors; Qualifications; Selection.

Section 38. A citizen of the state who has reached majority is eligible to serve as a juror. The supreme court by rule shall provide for the selection of jurors.

Section 39. Grand Jury.

Section 39. There shall be a grand jury or grand juries in each parish whose duties and responsibilities shall be provided by law and whose qualifications shall be as provided in Section 38 of this Article. The secrecy of the proceedings, including the identity of the witnesses appearing, shall be provided for by law.

COMMITTEE REPORT WITH RESPECT TO COMMITTEE PROPOSAL NO. 7—

ARTICLE IX. EDUCATION

Section 1. Educational Goals

Section 1. The goal of the public educational system shall be to provide at all stages of human development, learning environments and experiences that are humane, just, and designed to promote excellence in order that every individual may be afforded the opportunity to develop to his full potential.

Source: La. Const. Art. XII, §3 (1921).

Comment: Revises the present provision by defining the purpose of education. Changes the present requirement that there by taught only fundamental branches of study, including instruction upon the constitutional system of state and national government and the duties of citizenship.

of settlements in parishes operating under a home rule charter or home rule plan of government. The Revised Statutes set forth the requirements that must be met before incorporation is possible (R.S. 33:32-33, 51-52).

Section 10. Powers of Other Local Governmental Subdivisions

Section 10. (A) Any local governmental subdivision may exercise and perform any power and function necessary, requisite, or proper for the management of its affairs not denied to it by its charter, by this constitution, or by general law, including but not limited to the power (1) to legislate upon, regulate, conduct, and control all matters of local governmental administration; (2) to define the powers, duties, and qualifications of parochial or municipal employees; (3) to provide for the protection of the public health, safety, morals, and welfare; (4) to create special districts; (5) to license; (6) to tax under the limitations provided in this constitution or the general laws of this state; (7) to incur debt and issue bonds, except as otherwise provided in this constitution.

(B) Any local governmental subdivision may exercise concurrently with the state any power or function pertaining to its government and affairs to the extent that the legislature by general law does not specifically limit the concurrent exercise of any such power or functions or specifically declare the state's exercise of any such power or function to be exclusive except as provided in this Article.

(C) Powers and functions of local governmental subdivisions shall be construed liberally in favor of such local governmental subdivisions.

Source: New

Comment: (a) The provisions in the proposed section grant broad powers of local self-government to local governmental subdivisions which do not operate under a home rule charter. The grant of powers is accomplished in two ways. First, local governmental subdivisions are given general authority to exercise any power and perform any function relating to their government and affairs not denied by its charter, this constitution, or general law. Second, four important powers to regulate, to license, to tax, and to incur indebtedness—are enumerated in the powers given to local governmental subdivisions.

(b) Paragraph (B) allows local governmental subdivisions to exercise concurrent power with the state unless such exercise is prohibited or limited by the legislature.

(c) For a similar provision see the Illinois Constitution, Art. VII, §6(a), 6(b), 6(m) (1970).

Section 11. Limitations of Local Governmental Subdivisions

★ Section 11. Local governmental subdivisions do not have the power (1) to incur debt payable from ad valorem tax receipts maturing more than forty years from the time it is incurred; (2) to define and provide for the punishment of a felony; or (3) to enact private or civil ordinances governing civil relationships.

Source: New

Comment: (a) Enumerates three restrictions on the broad grant of power give local governmental subdivisions in Section 10 of this Article.

(b) For a similar provision, see the Illinois Constitution, Art. VII, §6(d) and Model State Constitutions, Sixth Edition (Revised), Art. VIII, §5.02 (1968).

Section 12. Local Officials

Section 12. The electors of each local governmental subdivision shall have the exclusive right to elect the members of their governing authority and, if a plan, or form of government or home rule charter so provides, their chief executive officer at election; held in accordance with the election laws of the state. Such officials shall not be subject to removal by the legislature. The salaries of these officials shall not be reduced during the terms for which they are elected. Source: La. Const. Art. XIV, §40(b) (1921).

Comment: The proposed section retains the source provision but broadens it to include parish officials.

Section 13. Filling of Vacancies: Appointment; Resignation, or otherwise, in the office of police juror, city council, parish or municipal governing authority, or special district thereof, mayor, and any other local official elected within

the boundaries of the local governmental subdivision, shall be filled by appointment by the governing authority of the local governmental subdivision, unless otherwise provided in this Article.

of the affected local governmental subdivision. Vacancies in the membership of city or parish school boards shall be filled by appointment by the remaining members thereof. A tie vote by the governing authority of the local governmental subdivision or school board shall be broken by its presiding officer regardless of the fact that he may already have voted as a member of the appointing body.

(B) If, at the time a vacancy occurs in the elective office for which appointment is provided in Paragraph A of this Section, the unexpired portion of the term of office is more than one year, a special election to fill the vacancy shall be called by the governing authority, and held without the necessity of a call by the governor, not more than six months nor less than three months, after first receipt of notice of the vacancy by the secretary of state, to be given as hereinafter provided, in the local governmental subdivision or special district thereof in which the vacancy occurred, and in such case the appointment provided for in Paragraph A of this Section shall be effective only until a successor is duly elected and qualified.

(C) Upon being informed of the occurrence of a vacancy in any of the offices specified in Paragraph A of this Section, the clerk or chief clerk of the district court in the parish where the vacancy occurred, and in the parish of Orleans the clerk or chief clerk of the criminal district court, shall, within twenty-four hours after being thus informed, notify the secretary of state in writing by registered or certified mail of the occurrence of the vacancy. Upon receipt of such notice, the secretary of state shall, within twenty-four hours after his receipt of such notice, by registered or certified mail all election officials, including party committees and boards of supervisors of elections, having any duty to perform in connection with a special election to fill such vacancy, of the occurrence of the vacancy.

(D) Nothing in this Section shall be construed as changing the qualifications for the various offices involved and all appointments must be of persons who would otherwise be eligible to hold offices to which appointed.

(E) The provisions of this Section shall apply to all local governmental subdivisions unless otherwise provided by the home rule charter or the home rule plan of government of the affected local governmental subdivision.

(F) Vacancies occasioned by death, resignation, or otherwise in the office of sheriff, assessor, clerk of a district court, or coroner shall be filled by appointment by the governing authority of the parish at the time and in the manner provided in Paragraphs (B) and (C) of Section 14 of this Article.

(G) The provisions of this Section shall not apply to the office of judge of any state court of record or district attorney.

Source: La. Const. Art. VII, §69 (1921).

Comment: (a) The proposed section authorizes the governing authority of the local governmental subdivision wherein the vacancy occurs, rather than the governor, to fill vacancies. Deleted from the source provision are the elected offices of district judge and district attorney.

(b) The proposed section does not apply to local governmental subdivisions operating under a home rule charter.

(c) Other provisions in the proposed section restate the source provision and make no change in the law.

Section 14. Legislation Increasing Financial Burden of Political Subdivisions; Local Approval

Section 14. No law requiring an increase in expenditures, or deductions from the funds of a political subdivision for salaries of local public officials or for wages, hours, working conditions, pension and retirement benefits, vacation or sick leave benefits of political subdivision employees, or an increase in commission of or for local political subdivision offices, except a law providing for civil service, minimum wages, working conditions, and retirement benefits for firemen and policemen, shall have effect until approved by ordinance enacted by the governing authority of the political subdivision affected thereby or until the legislature appropriates funds to the affected political subdivision for that purpose and only to the extent and amount that such funds are provided.

Source: New

Comment: (a) The proposed section allows the legislature

PAGE 43

11th Days Proceedings—July 6, 1973

defined by this Section, suffers death, under the conditions described in Paragraph (A), the legislature shall appropriate the sum of ten thousand dollars, which shall be paid to the surviving spouse of such law enforcement officer, and in addition thereto, should such law enforcement officer be survived by minor children, the legislature shall appropriate the sum of five thousand dollars for each of the said minor children, which sum shall be paid to the duly appointed and qualified tutor or other legal representative of such child.

(4) No such payment shall be made until a judgment of a court of competent jurisdiction has become final and such judgment has decreed that the law enforcement officer did suffer death as a result of the conditions described in Paragraph (A) above.

(5) Suit shall be instituted by the attorney general against the legislative auditor in the district court of the parish in which the state capital is situated in any case where it appears that such a law enforcement officer has suffered death in the circumstances provided by this Section and jurisdiction over such suit is hereby conferred on said court. Any judgment rendered by such court shall be subject to appeal as in other civil matters.

(6) Such suit may be instituted under the laws applicable to declaratory judgments and any such suit shall be regarded as presenting a justiciable controversy between the attorney general and the legislative auditor.

(7) This Section shall be self-operative and no further or additional legislation shall be required to place the provisions hereof in effect.

Source: La. Const. Art. XIV, §15.2 (1921).

Comment: The present provision allows survivors' benefits only where death occurs from physical violence while engaged in direct apprehension of a person during the performance of duty.

The revision authorizes payment of benefits to widows and children of law enforcement officers where death results from injury sustained in the course of the performance of official duties or activities, while on or off duty, undertaken in the protection of life or property.

Expands definition of law enforcement officers to include guards at the State Capitol, guards at state-owned hospitals, and security guards on the campuses of state-owned colleges and universities, enforcement personnel of dock boards and levee boards, and other state employees whose primary responsibility is the full-time protection of state property. It retains the proviso that honorary law enforcement officers, all state probation and parole officers shall not be construed or interpreted to be such law enforcers, including juvenile probation and parole officers for correction officers within the purview of this act.

Retains provision requiring the legislature to appropriate ten thousand dollars which shall be paid to the surviving widow and five thousand dollars to each surviving minor child of a law enforcement officer. The benefits described are allowed only where death is suffered by a law enforcement officer as defined and under the conditions described in this provision.

Retains provision withholding payment until a court of competent jurisdiction issues a final judgment and decrees that the law enforcement officer as defined suffered death under the conditions described herein.

Retains provisions determining the legal procedure without substantive change.

Retains provisions relating to the self-operative nature of this provision.

(D) Retirement Systems; Notice of Intention to Propose Amendments or Change; Publication. No proposal to amend or effect any change in existing laws or provisions of the constitution relating to any retirement system in this state shall be introduced into the legislature unless notice of introduction of such proposal shall have been published, without cost to the state, in the official state journal on three separate days, the last day of which is at least thirty days prior to the convening of the legislature in regular session. This notice shall state the substance of the contemplated law or proposal to amend the constitution. Evidence of publication of the notice shall be exhibited in

the legislature before the bill is passed, and every such bill shall contain a recital that the notice has been given.

Source: La. Const. Art. XIX, §25 (1921).

Comment: Retains present provision without substantive change.

COMMITTEE REPORT WITH RESPECT TO COMMITTEE PROPOSAL No. 12—

Article II, Section 1. Penal Institutions and Convict Labor Section 1. (A) State Penal Institutions; Reimbursement of Parish Expense. In parishes in which are located penal institutions of the State of Louisiana, the expenses incurred by the parish arising from crimes committed in such institutions or by the inmates or employees thereof shall be reimbursed by the state.

Source: La. Const. Art. XIV, §17 (1921).

Comment: Retained without change.

(B) Convict Labor. No convict sentenced to the state penitentiary shall ever be leased, or hired to any person or persons, or corporation, private or public, or quasipublic. No convict sentenced to the state penitentiary shall ever be employed in any enterprise in competition with private enterprise.

Source: La. Const. Art. III, §33 (1921).

Comment: Prohibits the leasing of convicts and the employment of convicts in competition with private enterprise.

The source provision prohibits leasing of convicts to any private, public, quasi-public person, corporation, or board. The legislature may authorize employment, under state supervision, of convicts on public roads or other public works, convict farms or manufactories owned or controlled by the state.

The proposed provision retains the prohibition of convict leasing. Additionally, prohibits the employment of convicts in competition with private enterprise.

COMMITTEE REPORT WITH RESPECT TO COMMITTEE PROPOSAL No. 13—

Article VII, Section 1. Arbitration

Section 1. The legislature shall pass such laws as may be proper and necessary to decide differences, with the consent of the parties by arbitration.

Source: La. Const. Art. III, §36 (1921).

Comment: Rewords the present provision without substantive change. Directs the legislature to pass laws, with the consent of the parties, to provide for the settlement of disagreements by arbitration.

COMMITTEE REPORT WITH RESPECT TO COMMITTEE PROPOSAL No. 14—

Article VII, Section 1. Economic Security, Social Welfare, Unemployment Compensation, and Public Health

Section 1. The legislature shall establish a system of economic security, social welfare, unemployment compensation, and public health.

Source: La. Const. Art. XVIII, §7; Art. VI, §11, 12 (1921).

Comment: Requires the legislature to establish a system of economic security, social welfare, unemployment compensation, and public health. Existing provisions (Art. XVIII, §7) authorize the legislature to establish a system of economic security and social welfare which may include programs of unemployment compensation, promoting the health of mothers and children, care of crippled children, aid to Confederate veterans and their widows, and aid to the needy aged, blind, dependent children, and other individuals. Other existing provisions (Article VI, §11, 12) require the legislature to create state, parish, and municipal boards of health and require the legislature to provide for the interest of state medicine "in all its departments."

COMMITTEE REPORT WITH RESPECT TO COMMITTEE PROPOSAL No. 15—

ARTICLE XI. REVENUE AND FINANCE

Section 1. Power to Tax; Public Purpose

Section 1. The power of taxation shall be vested in the legislature, shall never be surrendered, suspended, or contracted away, and shall be imposed for public purposes only.

Source: La. Const. Art. X, §1, 1 (1921).

Comment: Continues the existing provision vesting the taxing authority in the legislature and imposed the tax only for public purposes. Remainder of the source provision is covered by the property tax provision.

Section 2. Power to Tax; Limitation

PAGE 52

11th Days Proceedings—July 6, 1973

gates Dunlap, Guarisco, Jenkins, Roy, Soniat, Stinson, Vick, Wall and Weiss:

A PROPOSAL

Providing for general governmental provisions.

Read.

Under the rules the above proposal was referred to the Committee on Bill of Rights and Elections.

★ COMMITTEE PROPOSAL No. 2—

Introduced by Delegate Jackson, Chairman, on behalf of the Committee on Bill of Rights and Elections and Delegates Dunlap, Guarisco, Jenkins, Roy, Soniat, Stinson, Vick, Wall and Weiss:

A PROPOSAL

To provide a preamble and a declaration of rights to the constitution.

Read.

Under the rules the above proposal was referred to the Committee on Bill of Rights and Elections.

★ COMMITTEE PROPOSAL No. 3—

Introduced by Delegate Blair, Chairman, on behalf of the Committee on Legislative Powers and Functions, and Delegates Casey, Fayard, Fulco, Ginn, Juneau, Kilpatrick, Landrum, LeBreton and O'Neill:

A PROPOSAL

Making provisions for the legislative branch of government, impeachment and removal of officials, and necessary provisions with respect thereto.

Read.

Under the rules the above proposal was referred to the Committee on Legislative Power and Functions.

★ COMMITTEE PROPOSAL No. 4—

Introduced by Delegate Staggs, Chairman, on behalf of the Committee on Executive Department:

A PROPOSAL

Providing for the executive branch of government, for the filling of vacancies in certain public offices, and with respect to dual office-holding, a code of ethics, and impeachment.

Read by title.

Under the rules the above proposal was referred to the Committee on Executive Department:

COMMITTEE PROPOSAL No. 5—

Introduced by Delegate Staggs, Chairman, on behalf of the Committee on Executive Department:

A PROPOSAL

Making provisions for the Public Service Commission and necessary provisions with respect thereto.

Read.

Under the rules the above proposal was referred to the Committee on Executive Department.

★ COMMITTEE PROPOSAL No. 6—

Introduced by Delegate Dennis, Chairman, on behalf of the Committee on the Judiciary and Delegates Avant, Bel, Bergeron, Burns, Deshotelis, Drew, Gauthier, Kelly, Kilbourne, Landry, Martin, Ourso, Sandoz, Tate, Tobias and Vesich:

A PROPOSAL

Making provisions for the judiciary branch of government and necessary provisions with respect thereto.

Read.

Under the rules the above proposal was referred to the Committee on Judiciary.

COMMITTEE PROPOSAL No. 7—

Introduced by Delegate Aertker, Chairman, on behalf of the Committee on Education and Welfare and Delegates Armentor, Carmouche, Corne, Cowen, Flory, Grier, Haynes,

Hernandez, Landry, Leithman, Lennox, Rachal, Riecke, Robinson, Segura, Silverberg, Sutherland, Thistlethwaite, Toca and Wisham:

A PROPOSAL

Making provisions for education and necessary provisions with respect thereto.

Read.

Under the rules the above proposal was referred to the Committee on Education and Welfare.

COMMITTEE PROPOSAL No. 8—

Introduced by Delegate Perez, on behalf of the Committee on Local and Parochial Government and Delegates Burson, Canon, Chastlain, Conino, D'Gerlamo, Fowler, Giarrusso, Hayes, Heine, J. Jackson, Kean, Lanier, Reeves, Shannon, Stephenson, Taylor, Toomy, Uilo and Zervigon:

A PROPOSAL

Making provisions for local and parochial government and necessary provisions with respect thereto.

Read.

Under the rules the above proposal was referred to the Committee on Local and Parochial Government.

COMMITTEE PROPOSAL No. 9—

Introduced by Delegate Aertker, Chairman, on behalf of the Committee on Education and Welfare, and Delegates Armentor, Carmouche, Corne, Cowen, Flory, Grier, Haynes, Hernandez, Landry, Leithman, Lennox, Rachal, Riecke, Robinson, Segura, Silverberg, Sutherland, Thistlethwaite, Toca and Wisham:

A PROPOSAL

Making provisions for human resources by providing for state city civil service.

Read.

Under the rules the above proposal was referred to the Committee on Education and Welfare.

COMMITTEE PROPOSAL No. 10—

Introduced by Delegate Aertker, Chairman, on behalf of the Committee on Education and Welfare, and Delegates Armentor, Carmouche, Corne, Cowen, Flory, Grier, Haynes, Hernandez, Landry, Leithman, Lennox, Rachal, Riecke, Robinson, Segura, Silverberg, Sutherland, Thistlethwaite, Toca and Wisham:

A PROPOSAL

Making provisions for human resources by providing for municipal fire and police civil service.

Read.

Under the rules the above proposal was referred to the Committee on Education and Welfare.

COMMITTEE PROPOSAL No. 11—

Introduced by Delegate Aertker, Chairman, on behalf of the Committee on Education and Welfare, and Delegates Armentor, Carmouche, Corne, Cowen, Flory, Grier, Haynes, Hernandez, Landry, Leithman, Lennox, Rachal, Riecke, Robinson, Segura, Silverberg, Sutherland, Thistlethwaite, Toca and Wisham:

A PROPOSAL

Making provisions for human resources by providing for retirement and survivors' benefits.

Read.

Under the rules the above proposal was referred to the Committee on Education and Welfare.

COMMITTEE PROPOSAL No. 12—

Introduced by Delegate Aertker, Chairman, on behalf of the Committee on Education and Welfare, and Delegates Armentor, Carmouche, Corne, Cowen, Flory, Grier, Haynes, Hernandez, Landry, Leithman, Lennox, Rachal, Riecke, Robinson, Segura, Silverberg, Sutherland, Thistlethwaite, Toca and Wisham:

A PROPOSAL

Making provisions for human resources by prohibiting the leasing of convicts and the employment of convicts in competition with private enterprise and by providing for reimbursement to parishes for expenses incurred resulting from crimes committed in penal institutions.

Read.

PAGE 2

19th Days Proceedings—July 25, 1973

I am directed by your Committee on Education and Welfare to submit the following report:

★ COMMITTEE PROPOSAL No. 12—

Introduced by Delegate Aertker, Chairman, on behalf of the Committee on Education and Welfare, and Delegates Armentor, Carmouche, Corne, Cowen, Flory, Grier, Haynes, Hernandez, Landry, Leithman, Lennox, Rachal, Riecke, Robinson, Segura, Silverberg, Sutherland, Thistlethwaite, Toca and Wisham:

A PROPOSAL

Making provisions for human resources by prohibiting the leasing of convicts and the employment of convicts in competition with private enterprise and by providing for reimbursement to parishes for expenses incurred resulting from crimes committed in penal institutions.

Reported Favorably.

COMMITTEE PROPOSAL No. 13—

Introduced by Delegate Aertker, Chairman, on behalf of the Committee on Education and Welfare, and Delegates Armentor, Carmouche, Corne, Cowen, Flory, Grier, Haynes, Hernandez, Landry, Leithman, Lennox, Rachal, Riecke, Robinson, Segura, Silverberg, Sutherland, Thistlethwaite, Toca and Wisham:

A PROPOSAL

Making provisions for human resources by providing for the settlement of disagreements through arbitration.

By Substitute.

COMMITTEE PROPOSAL No. 14—

Introduced by Delegate Aertker, Chairman, on behalf of the Committee on Education and Welfare, and Delegates Armentor, Carmouche, Corne, Cowen, Flory, Grier, Haynes, Hernandez, Landry, Leithman, Lennox, Rachal, Riecke, Robinson, Segura, Silverberg, Sutherland, Thistlethwaite, Toca and Wisham:

A PROPOSAL

Making provisions for human resources through a system of economic security, social welfare, unemployment compensation, and public health.

Reported Favorably.

Respectfully submitted,
ROBERT AERTKER,
Chairman.

Resolutions on Second Reading and Referral

The following entitled Committee and Delegate Resolutions on second reading to be referred to Committees were taken up, read, and referred to Committees, as follows:

COMMITTEE RESOLUTION No. 10—

Introduced by Delegate Stovall, Chairman, on behalf of the Committee on Rules, Credentials, and Ethics and Delegates:

A RESOLUTION

To amend and readopt Rule No. 30 of the Standing Rules of the Constitutional Convention to provide for the limitation of debate.

Read.

Under the rules the above Resolution was referred to the Committee on Rules, Credentials and Ethics.

DELEGATE RESOLUTION No. 32—

Introduced by Delegates Gravel, Lanier, Jack and Newton:

A RESOLUTION

To amend and readopt Rule No. 46 of the Standing Rules of the Constitutional Convention to provide that floor amendments be distributed one calendar day before introduction.

Read.

Under the rules the above Resolution was referred to the Committee on Rules, Credentials and Ethics.

Proposals on Second Reading and Referral

The following entitled Committee and Delegate Proposals on second reading to be referred to committees were taken up, read, and referred to committees, as follows:

COMMITTEE PROPOSAL No. 17—

Introduced by Delegate Perez, Chairman, on behalf of the Committee on Local and Parochial Government, and Delegates Bursom, Cannon, Chatelain, Conino, D'Gerolamo, Fowler, Giarrusso, Hayes, Heine, J. Jackson, Kenn, Lanier, Reeves, Shannon, Stephenson, Taylor, Toomy, Uilo and Zervigon:

A PROPOSAL

Making general provisions for local and parochial government, levee districts, and ports, the financing thereof, and necessary provisions with respect thereto.

Read.

Under the rules the above Proposal was referred to the Committee on Local and Parochial Government

DELEGATE PROPOSAL No. 15—

Introduced by Delegate Avant:

A PROPOSAL

To provide for making appeals from the Public Service Commission.

Read.

Under the rules the above Proposal was referred to the Committee on the Executive Department.

DELEGATE PROPOSAL No. 16—

Introduced by Delegates Alario, Chehardy, Edwards, Mire, Rayburn, Nunez, Winchester, Maubert, Slay and Planchar:

A PROPOSAL

Making provisions for homestead exemptions.

Read.

Under the rules the above Proposal was referred to the Committee on Revenue, Finance and Taxation.

Unfinished Business

The following unfinished business in which the House was engaged at the time of its adjournment on yesterday was taken up and acted on:

Proposals Delegate and Committee

The following entitled Delegate and Committee Proposals were taken up on their third reading and final passage.

COMMITTEE PROPOSAL No. 3—

Introduced by Delegate Blair, Chairman, on behalf of the Committee on Legislative Powers and Functions, and Delegates Casey, Fayard, Fulco, Ginn, Juneau, Kilpatrick, Landrum, LeBreton and O'Neill:

A PROPOSAL

Making provisions for the legislative branch of government, impeachment and removal of officials, and necessary provisions with respect thereto.

Read.

Section 5. Legislative Apportionment; Judicial Review; Apportionment by Supreme Court

Section 5. (A) Not later than the end of the first year following the year in which the population of this state is reported to the president of the United States for each decennial federal census, the legislature shall apportion the representation in each house on the basis of the total state population as shown by the census. Within ten days after the legislature adopts an apportionment plan the presiding officers of the two houses shall submit the plan to the supreme court for review.

(B) If the legislature fails to apportion itself, the supreme court, upon petition therefor, by the attorney general within ten days after the close of the year above specified shall apportion each house thereof as provided in Paragraph (A) of this Section.

PAGE 2

20th Days Proceedings—July 26, 1973

the Constitutional Convention, relative to limits on debate.

Reported without action.

Respectfully submitted,

W. GREGORY ARNETTE, JR.,
Vice-Chairman.

Resolutions on Second Reading and Referral

The following entitled Committee and Delegate Resolutions on second reading to be referred to Committees were taken up, read, and referred to Committees, as follows:

DELEGATE RESOLUTION No. 33—

By Delegate Leithman:

A RESOLUTION

To provide for the numbering sequence in Rule No. 66 of the Rules of Procedure.

Read.

Under the rules the above Resolution was referred to the Committee on Rules, Credentials and Ethics.

Proposals on Second Reading and Referral

The following entitled Committee and Delegate Proposals on second reading to be referred to committees were taken up, read, and referred to committees, as follows:

DELEGATE PROPOSAL No. 17—

Introduced by Delegate Planchard:

A PROPOSAL

Making provisions prohibiting lotteries.

Read.

Under the rules the chair ruled that the proposal should be referred to the Committee on Revenue, Finance and Taxation.

Delegate Casey objected and otherwise moved that the Proposal be referred to the Committee on Legislative Powers and Functions.

Delegate Smith objected.

By a vote of 49 yeas and 51 nays the Convention refused to refer the proposal to the Committee on Legislative Powers and Functions.

Therefore under the rules the above Proposal was referred to the Committee on Revenue, Finance and Taxation.

DELEGATE PROPOSAL No. 18—

Introduced by Delegates Casey, Alario, Dennery and Gravel:

A PROPOSAL

Providing for meeting of the legislature for the next three years following the adoption of this constitution.

Read.

Under the rules the above Proposal was referred to the Committee on Legislative Powers and Functions.

Delegate and Committee Proposals on Second Reading Reported by Committees

The following entitled Delegate and Committee Proposals were taken up and acted upon as follows:

★ COMMITTEE PROPOSAL No. 12—

Introduced by Delegate Aertker, Chairman, on behalf of the Committee on Education and Welfare, and Delegates Armentor, Carmouche, Corne, Cowen, Flory, Grier, Haynes, Hernandez, Landry, Leithman, Lennox, Rachal, Riecke, Rob-

inson, Segura, Silverberg, Sutherland, Thistlethwaite, Toca and Wisham:

A PROPOSAL

Making provisions for human resources by prohibiting the leasing of convicts and the employment of convicts in competition with private enterprise and by providing for reimbursement to parishes for expenses incurred resulting from crimes committed in penal institutions.

Read.

Reported favorably by the Committee on Education and Welfare.

Ordered engrossed and passed to its third reading.

COMMITTEE PROPOSAL No. 13—

Introduced by Delegate Aertker, Chairman, on behalf of the Committee on Education and Welfare, and Delegates Armentor, Carmouche, Corne, Cowen, Flory, Grier, Haynes, Hernandez, Landry, Leithman, Lennox, Rachal, Riecke, Robinson, Segura, Silverberg, Sutherland, Thistlethwaite, Toca and Wisham:

A PROPOSAL

Making provisions for human resources by providing for the settlement of disagreements through arbitration.

Read.

Reported by substitute by the Committee on Education and Welfare.

The title to the substitute was read as follows:

COMMITTEE PROPOSAL No. 18—

Introduced by Delegate Aertker, Chairman, on behalf of the Committee on Education and Welfare, and Delegates Armentor, Carmouche, Corne, Cowen, Flory, Grier, Haynes, Hernandez, Landry, Leithman, Lennox, Rachal, Riecke, Robinson, Segura, Silverberg, Sutherland, Thistlethwaite, Toca and Wisham, substitute for Committee Proposal No. 13, by Delegate Aertker.

A PROPOSAL

Making provisions for human resources by prohibiting compulsory arbitration.

On motion of Delegate Aertker the substitute was adopted and became Committee Proposal No. 18 by Delegate Aertker, Chairman, on behalf of the Committee on Education and Welfare, substitute for Committee Proposal No. 13, by Delegate Aertker, chairman on behalf of the Committee on Education and Welfare.

Read.

Returned to the Calendar under the rules.

COMMITTEE PROPOSAL No. 14—

Introduced by Delegate Aertker, Chairman, on behalf of the Committee on Education and Welfare, and Delegates Armentor, Carmouche, Corne, Cowen, Flory, Grier, Haynes, Hernandez, Landry, Leithman, Lennox, Rachal, Riecke, Robinson, Segura, Silverberg, Sutherland, Thistlethwaite, Toca and Wisham:

A PROPOSAL

Making provisions for human resources through a system of economic security, social welfare, unemployment compensation, and public health.

Read.

Reported favorably by the Committee on Education and Welfare.

Ordered engrossed and passed to its third reading.

Motion

On motion of Delegate Juneau, the Convention altered the Order of Business to take up Resolutions on Third Reading and Final Passage at this time.

Resolutions Delegate and Committee

The following entitled Delegate and Committee Resolutions were taken up on their third reading and final passage:

PAGE 8

23rd Days Proceedings—August 1, 1973

By a vote of 52 yeas and 59 nays the Convention refused to postpone further action on Section 1 at this time.

Motion

On motion of Delegate Jack, the Convention altered the Order of Business to take up Introduction of Proposals at this time.

Introduction of Proposals

The following named delegates and committees introduced the following entitled Delegate and Committee Proposals which were read by their titles and placed on the Calendar for their second reading.

DELEGATE PROPOSAL No. 20—

Introduced by Delegate Jack.

A PROPOSAL

Limiting the number of proposed constitutional amendments that may be submitted to the voters at any one election.

Read.

Lies over under the rules.

DELEGATE PROPOSAL No. 21—

Introduced by Delegate Jack.

A PROPOSAL

Making provisions for a deduction in state income taxes for federal income tax payments made during the same period.

Read.

Lies over under the rules.

★ DELEGATE PROPOSAL No. 22—

Introduced by Delegates Conroy and Newton.

A PROPOSAL

To provide for the prohibition of certain enumerated local and special laws.

Read.

Lies over under the rules.

Motion

On motion of Delegate Stagg the rules were suspended in order to call a meeting of the Committee on Executive Department without giving the required twenty-four hour notice.

COMMITTEE NOTICE

Delegate Stagg, chairman of the Committee on the Executive Department, sent up the following notice:

The Committee on the Executive Department will meet on Thursday, August 2, 1973, at 9:00 o'clock a.m. in Committee Room 205 and will consider the following agenda:

AGENDA

To continue its meeting of Thursday, July 26.

Respectfully submitted,

TOM STAGG,
Chairman of the Committee on the
Executive Department

The above notice was read in open session and publicly posted as provided by the Rules of Procedure of the Convention.

Leave of Absence

Delegate Perkins—4 Days.

Adjournment

Delegate Fulco moved that the Convention do now adjourn until Thursday, August 2, 1973 at 1:00 o'clock P.M.

Which motion was agreed to.

And Chairman Henry declared the Convention adjourned to Thursday, August 2, 1973 at 1:00 o'clock P.M.

MOISE W. DENNERY
Secretary

DAVID R. POYNTER
Chief Clerk

PAGE 2

24th Days Proceedings—August 2, 1973

I am directed by your Committee on Local and Parochial Government to submit the following report:

DELEGATE PROPOSAL No. 1—

Introduced by Delegate Asseff:

A PROPOSAL

For supplemental pay increases for state policemen.

Reported without action with recommendation that it be recommitted to the Committee on Education and Welfare.

Respectfully submitted,

CHALIN O. PEREZ,
Chairman

Introduction of Proposals

The following named delegates and committees introduced the following entitled Delegate and Committee Proposals which were read by their titles and placed on the Calendar for their second reading.

DELEGATE PROPOSAL No. 23—

Introduced by Delegate Abraham:

A PROPOSAL

Relative to appropriations by the legislature for the state budget.

Read.

Lies over under the rules.

Proposals on Second Reading and Referral

The following entitled Committee and Delegate Proposals on second reading to be referred to committees were taken up, read, and referred to committees, as follows:

COMMITTEE PROPOSAL No. 19—

Introduced by Delegate Stagg, Chairman, on behalf of the Committee on Executive Department and Delegates Abraham, Alexander, Anzalone, Arnette, Asseff, Brien, Denney, Duval, Gravel, Stovall and Tapper:

A PROPOSAL

Making provisions in the Schedule provisions of the Constitution for mandatory reorganization of the executive branch of state government.

Read.

Under the rules the above proposal was referred to the Committee on Executive Department.

DELEGATE PROPOSAL No. 20—

Introduced by Delegate Jack:

A PROPOSAL

Limiting the number of proposed constitutional amendments that may be submitted to the voters at any one election.

Read.

Under the rules the above proposal was referred to the Committee on Bill of Rights and Elections.

DELEGATE PROPOSAL No. 21—

Introduced by Delegate Jack:

A PROPOSAL

Making provisions for a deduction in state income taxes for federal income tax payments made during the same period.

Read.

Under the rules the above proposal was referred to the Committee on Revenue, Finance and Taxation.

★ DELEGATE PROPOSAL No. 22—

Introduced by Delegates Conroy and Newton:

A PROPOSAL

To provide for the prohibition of certain enumerated local and special laws.

Read.

Under the rules the above proposal was referred to the Committee on Legislative Powers and Functions.

Unfinished Business

The following unfinished business in which the House was engaged at the time of its adjournment on yesterday was taken up and acted on:

Proposals Delegate and Committee

The following entitled Delegate and Committee Proposals were taken up on their third reading and final passage:

COMMITTEE PROPOSAL No. 4—

Introduced by Delegate Stagg, Chairman, on behalf of the Committee on Executive Department and Delegate Abraham, Alexander, Arnette, Brien, Duval, Gravel, Stovall and Tapper:

A PROPOSAL

Providing for the executive branch of government, for the filling of vacancies in certain public offices, and with respect to dual office-holding, a code of ethics, and impeachment.

Read.

ARTICLE IV. EXECUTIVE BRANCH

Section 1. Composition

Section 1. (A) The executive branch shall consist of the governor, lieutenant governor, secretary of state, attorney general, treasurer, and all other executive offices, agencies, and instrumentalities.

(B) All offices, agencies, and other instrumentalities of the executive branch of state government and their respective functions, powers, duties, and responsibilities, except for the offices of governor and lieutenant governor, shall be allocated, according to function, within not more than twenty departments.

Read.

The Chairman announced that the Convention had under consideration the following amendment to Committee Proposal No. 4, Section 1, when it adjourned on Wednesday, August 1, 1973, which was taken up and acted upon as follows:

Amendment proposed by Delegates Anzalone, Asseff, Alario, Gauthier, Fowler, LeBleu, Thompson, Reeves, Roemer, Flory, Avant, Jack, Toca, Uilo, Kelly, Deshotels, Winchester, Kilbourne, O'Neill, Bollinger, D'Gerolamo, Grier, Jack, Jenkins, Lowe, Maubert, Ours, Velazquez, Warren and Weiss to Committee Proposal No. 4 by Delegate Stagg, et al.

Amend reprinted as reengrossed Proposal as follows:

AMENDMENT No. 1—

On page 1, delete lines 14 through 19, both inclusive, in their entirety and insert in lieu thereof the following:

"ARTICLE IV. EXECUTIVE BRANCH

Section 1. Composition

Section 1. (A) The executive branch shall consist of the governor, lieutenant governor, secretary of state, treasurer, attorney general, register of the land office, commissioner of insurance, commissioner of agriculture, custodian of voting machines, state superintendent of public education, and all of other executives officers, agencies, and instrumentalities."

Read.

Delegate Anzalone moved the adoption of the amendment.

Delegate Stagg objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Alario	Avant	Blair
Anzalone	Bel	Bollinger
Asseff	Bergeron	Burns



Section 5. Powers and Duties of Governor

Section 5. (A) Executive Authority. The governor shall be the chief executive officer of the state and shall faithfully support the constitution and laws of the state.

(B) Legislative Reports and Recommendations. The governor shall, at the beginning of each regular session of the legislature, and may at other times, make reports and recommendations and give information to the legislature concerning the affairs of state, including its complete financial condition.

(C) Reports and Information. Any department head shall provide the governor with reports and information, in writing or otherwise, when requested by him on any subject relating to such department, excepting matters relating to investigations of the governor's office.

(D) Operating Budget. The governor shall prepare the state's annual operating budget, and shall transmit copies thereof to the legislature at least two weeks prior to the first day of each annual session. Upon adoption of the operating budget by the legislature, it shall become the official state budget and shall be executed and administered by the governor. Total appropriations for the year shall not exceed anticipated annual revenues as projected by the governor in the operating budget.

(E) Capital Budget. The governor shall prepare annually a five-year capital program and shall submit to each regular session of the legislature a proposed capital budget as provided by statute implementing the first year of the program. All capital projects approved by the legislature shall be made a part of the capital budget, and the operating budget for each year shall provide for amortization of the cost of each such capital project.

(F) Pardon, Commutation, Reprieve, Remission. Except in cases of conviction upon impeachment, the governor may receive, may grant commutation of sentence, and may pardon those convicted of offenses against the state and may remit fines and forfeitures imposed for such offenses. In addition, the legislature may provide additional methods for the foregoing and other post-conviction remedies.

(G) Signature on Bills; Veto. The date and time when each bill passed by the legislature is delivered to the governor shall be entered thereon. He shall then have thirty calendar days within which to act on it. If he approves, he shall sign it. If he disapproves, he shall veto it giving his reason therefor, and if the legislature is in session, he shall return it to the house in which it originated within twenty-four hours. If he fails to veto within the time provided by this constitution, it shall become law.

(H) Appropriation Bills. (1) The governor may veto any line item in an appropriation bill. The items vetoed shall be void unless the veto is overridden as prescribed for the passage of any bill over a veto.

(2) The governor shall either veto line items, or use other means provided in the bill, in order that total appropriations for the year shall not exceed anticipated revenues for the year.

(I) Appointments. (1) The governor shall appoint, subject to confirmation by the Senate, the heads of all departments in the executive branch whose election or appointment is not provided for by this constitution and all members of boards and commissions in the executive branch whose election or appointment is not otherwise provided for by this constitution or by statute.

(2) Should the legislature be in session, the governor shall submit for confirmation by the Senate the names of those appointed within forty-eight hours after the appointment is made. Failure of the Senate to confirm, prior to the end of the session, shall constitute rejection of the appointment.

(3) Should the legislature be not in session, the governor may make interim appointments, which shall expire at the end of the next session of the legislature, unless submitted to and confirmed by the Senate during such session.

(4) A person not confirmed by the Senate shall not be appointed to the same office during any recess of the legislature.

(J) Removal. The governor may remove from office those

whom he appoints, except those appointed for a term fixed by this constitution or as may be fixed by statute.

(K) Commander-in-Chief. The governor shall be commander-in-chief of the armed forces of the state, except when they are called into service of the federal government. He may call out the armed forces of the state to preserve law and order, to suppress insurrection, to repel invasion, or in other times of emergency.

(L) Extraordinary Session. (1) The governor may convene the legislature into extraordinary session by issuance of a proclamation to the legislature at least five days prior to the convening of the session. The proclamation shall state the specific subjects to be considered, the date and time the legislature is to convene, and the number of days for which the legislature is convened. The subject matter of the session may be amended, by proclamation to the legislature, until forty-eight hours prior to the hour at which the legislature convenes. The legislature, under the penalty of nullity, shall be limited to the subjects specially enumerated in the latest proclamation convening such extraordinary session. The session shall be limited to the time named therein, and shall not exceed thirty days.

(2) The governor may convene the legislature in extraordinary session without prior notice or proclamation on occasions of public emergencies caused by epidemics, attacks by the enemy, or public catastrophe.

Read.

Delegate Stovall sent up floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Stovall to Committee Proposal No. 4 by Delegate Stagg, et al.

Amend reprinted as reengrossed Proposal as follows:

AMENDMENT NO. 1—

On page 3, line 9, after the word "shall," delete the word "faithfully" and delete line 10 in its entirety and insert in lieu thereof the following: "cause the constitution and laws of the state to be faithfully executed and enforced."

Delegate Stovall moved the adoption of the amendment.

Delegate Bollinger objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
De Bileux	Jackson, J.	Schmitt
Dennis	Lanier	Silverberg
Pulco	Lennox	Slay
Gauthier	Rachal	Stovall
Gravel	Reeves	Tobias
Total—15.		

NAYS

Delegates—		
Abraham	D'Gerolamo	Kean
Aertker	Denney	Kelly
Alario	Derbes	Kilbourne
Anzalone	Deshotels	Kilpatrick
Asseff	Drew	Landry, E. J.
Avant	Dunlap	LeBlau
Badeaux	Duval	Leithman
Bel	Flory	Martin
Bergeron	Fonfenot	Mire
Blair	Fowler	Newton
Bollinger	Giarrusso	Nunez
Brien	Ginn	O'Neill
Brown	Grier	Ours
Burns	Guarisco	Planchar
Burson	Guidry	Riecke
Carmouche	Hayes	Robinson
Casey	Heine	Roy
Champagne	Hernandez	Sandoz
Chehardy	Jack	Shannon
Conino	Jackson, A.	Singletary
Conroy	Jenkins	Smith

PAGE 11

25th Days Proceedings—August 3, 1973

Soniat	Toca	Warren
Stagg	Toomy	Willis
Stephenson	Triche	Winchester
Stinson	Uilo	Wisham
Sutherland	Velasquez	Zervigon
Thistlethwaite	Vick	
Thompson	Wall	
Total—82.		

ABSENT

Delegates—	Haynes	Perez
Mr. Chairman	Janeau	Perkins
Alexander	Lambert	Rayburn
Armentor	Landrum	Roemer
Arnette	Landry, A.	Segura
Cannon	LeBreton	Tapper
Chatalein	Leigh	Tate
Corne	Lowe	Taylor
Cowen	McDaniel	Vesich
Edwards	Mauberrert	Weiss
Elkins	Miller	Womack
Fayard	Munson	
Hardee		
Total—35.		

And the amendment was rejected.

Delegate Triche moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Vice Chairman Alexander in the Chair

Delegate Vick sent up floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates Roy, Vick, Tobias to Committee Proposal No. 4 by Delegate Stagg, et al.

Amend reprinted as reengrossed Proposal as follows:

AMENDMENT No. 1—

On page 3, line 10, at the end of the line, delete the period “.” and insert in lieu thereof the following: “and the United States.”

Delegate Vick moved the adoption of the amendment.

Delegate Jenkins objected.

By a vote of 85 yeas, 9 nays the amendment was adopted.

Delegate Vick moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Anzalone sent up floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates Anzalone and Asseff to Committee Proposal No. 4 by Delegate Stagg, et al.

Amend reprinted as reengrossed Proposal as follows:

AMENDMENT No. 1—

On page 3, delete lines 16 through 20, both inclusive, in their entirety and insert in lieu thereof the following:

“(C) Reports and Information. The heads of all departments, executive offices, agencies, and instrumentalities, including all statewide elected officials, when requested to do so by the governor, shall provide him with reports and information in writing or otherwise on any subject relating to their offices excepting matters relative to investigations of the governor’s office.”

On motion of Delegate Anzalone the amendment was withdrawn.

[158]

Chairman Henry in the Chair

Delegate Rayburn sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates Rayburn, Roemer, Lowe, Alario, Planchard, Newton, Conroy, Champagne, Schmitt, Nunez and Brown to Committee Proposal No. 4 by Delegate Stagg, et al.

Amend reprinted as reengrossed Proposal as follows:

AMENDMENT No. 1—

On page 3, delete lines 21 through 29, both inclusive, in their entirety and insert in lieu thereof the following:

“(D) Operating Budget. The governor shall submit to the legislature, at a time fixed by law, a proposed state budget for the next fiscal year setting forth all proposed state expenditures and anticipated state revenues.”

On motion of Delegate Rayburn the amendment was adopted.

Delegate Rayburn moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Rayburn sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegates Rayburn, Roemer, Lowe, Alario, Planchard, Conroy, Champagne, Schmitt, Nunez, Brown and Newton to Committee Proposal No. 4 by Delegate Stagg, et al.

Amend reprinted as reengrossed Proposal as follows:

AMENDMENT No. 1—

On page 3, delete lines 30 through 32, both inclusive, in their entirety and insert in lieu thereof the following:

“(E) Capital Budget. The governor shall submit to each regular session of the legislature a proposed five-year capital outlay program with a request for implementation of the first year of the five-year program.”

AMENDMENT No. 2—

On page 4, delete lines 1 through 5, both inclusive, in their entirety

On motion of Delegate Rayburn the amendments were adopted.

Delegate Rayburn moved to reconsider the vote by which the amendments were adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Sandoz sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Sandoz, Burson, and Thistlethwaite to Committee Proposal No. 4 by Delegate Stagg, et al.

Amend reprinted as reengrossed Proposal as follows:

AMENDMENT No. 1—

On page 4, line 10, after “offenses.” and before “In addition” add the following:

“All these powers except the governor’s power to grant reprieve of a death sentence may be restricted or limited by law.”

Delegate Sandoz moved the adoption of the amendment.

Delegate Gravel objected.

A record vote was asked for and ordered by the Convention

ROLL CALL

The roll was called with the following result:

PAGE 12

25th Days Proceedings—August 3, 1973

YEAS

Delegates—		
Abraham	Fontenot	Planchard
Alario	Fowler	Rayburn
Asseff	Fulco	Roemer
Blair	Ginn	Sandoz
Bollinger	Grier	Shannon
Burns	Heine	Silverberg
Burson	Juneau	Singelary
Champagne	Kean	Stagg
Chatelain	Kilbourne	Stinson
Conroy	Landry, E. J.	Sutherland
Corne	Lanier	Thistlethwaite
Deshotels	LeBleu	Thompson
Drew	Lennox	Uilo
Dunlap	McDaniel	Weiss
Fayard	Mauberret	Winchester
Total—45.		

NAYS

Delegates—		
Alexander	Gauthier	Rachal
Anzalone	Giarrusso	Robinson
Arnetie	Gravel	Roy
Avant	Guarisco	Schmitt
Badeaux	Guidry	Slay
Bel	Hayes	Soniat
Bergeron	Haynes	Stovall
Brien	Hernandez	Tobias
Carmouche	Jack	Toca
Chehardy	Jackson, A.	Toomy
Cosino	Jackson, J.	Triche
D'Gerolamo	Jenkins	Velazquez
De Blieux	Kelly	Vick
Dennery	Martin	Warren
Dennis	Miller	Willis
Derbes	Mire	Zervigon
Duval	Newton	
Flory	Oursou	
Total—52		

ABSENT

Delegates—		
Mr. Chairman	Landrum	Riecke
Aertker	Landry, A.	Segura
Armentor	LeBreton	Smith
Brown	Leigh	Stephenson
Cannon	Leithman	Tapper
Casey	Lowe	Tate
Cowen	Munson	Taylor
Edwards	Nunez	Vesich
Elkins	O'Neill	Wall
Hardee	Perez	Wisham
Kilpatrick	Perkins	Womack
Lambert	Reeves	
Total—35.		

And the amendment was rejected.

Delegate Roy moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Motion

On motion of Delegate Shannon, the Convention altered the Order of Business to take up other orders of business at this time.

COMMITTEE NOTICE

Delegate Lanier, chairman of the Sub-Committee on Transitional Measures of Local and Parochial Government, sent up the following notice:

The Sub-Committee on Transitional Measures of Local and Parochial Government will meet on Thursday, August 9, 1973, at 9:00 o'clock A.M. in Committee Room No. 9 and will consider the following agenda:

AGENDA

Discuss transition of those matters not included in the committee proposal of Local and Parochial Government.

Respectfully submitted,

WALTER I. LANIER, JR.,
Chairman of the Sub-Committee on
Transitional Measures of
Local and Parochial Government

The above notice was read in open session and publicly posted as provided by the Rules of Procedure of the Convention.

COMMITTEE NOTICE

Delegate Aertker, chairman of the Committee on Education and Welfare, sent up the following notice:

The Committee on Education and Welfare cancels its meeting previously scheduled for Thursday, August 9, 1973 at 9:00 o'clock A.M. and will meet on Thursday, August 9, 1973, at 7:00 o'clock P.M. or after adjournment in Committee Room No. 5 of the State Capitol and will consider the following agenda:

AGENDA

Continuation of hearings on education.

Continuation of consideration of proposals referred to the committee to wit:

- Delegate Proposal 8
- Delegate Proposal 9
- Delegate Proposal 10
- Committee Proposal 7

Respectfully submitted,

ROBERT J. AERTKER,
Chairman of the Committee on
Education and Welfare

The above notice was read in open session and publicly posted as provided by the Rules of Procedure of the Convention.

COMMITTEE NOTICE

Delegate Rayburn, chairman of the Committee on Revenue, Finance and Taxation, sent up the following notice:

The Committee on Revenue, Finance and Taxation will meet on Tuesday, August 7, 1973, at 2 o'clock P.M. in Committee Room No. 4, State Capitol and will consider the following agenda:

AGENDA

Public Hearings on Property Taxes

Respectfully submitted,

B. B. RAYBURN,
Chairman of the Committee on
Revenue, Finance and Taxation

The above notice was read in open session and publicly posted as provided by the Rules of Procedure of the Convention.

COMMITTEE NOTICE

Delegate Henry, chairman of the Executive Committee, sent up the following notice:

The Executive Committee will meet on Thursday, August 9, 1973, at 8:30 o'clock A.M. in Committee Room 1, State Capitol and will consider the following agenda:

AGENDA

- (1) Receive status report from Treasurer
- (2) Receive status report from Research Director
- (3) Receive resolutions on General Convention business
- (4) Receive reports on General Convention business

Respectfully submitted,

E. L. HENRY,
Chairman of the Executive Committee

OFFICIAL JOURNAL
OF THE
**CONSTITUTIONAL CONVENTION
OF 1973**

OF THE
STATE OF LOUISIANA

TWENTY-SIXTH DAY'S PROCEEDINGS

Proceedings of the Constitutional Convention of 1973
held in accordance with Act 2 of the 1972
Regular Session of the Legislature

Saturday, August 4, 1973, Baton Rouge, La.

The Convention was called to order at 9:00 o'clock A.M.,
by Hon. E. L. Henry, Chairman of the Convention.

ROLL CALL

The roll being called, the following delegates answered to
their names:

PRESENT

Delegates—	Gauthier	Rachal
Mr. Chairman	Giarrusso	Rayburn
Abraham	Ginn	Reeves
Aertker	Gravel	Riecke
Alario	Grier	Robinson
Alexander	Guarisco	Roemer
Anzalone	Guidry	Roy
Arnette	Hardee	Sandoz
Asseff	Hayes	Schmitt
Avant	Heine	Segura
Badeaux	Hernandez	Shannon
Bel	Jack	Silverberg
Bergeron	Jackson, A.	Singletary
Blair	Jackson, J.	Slay
Bollinger	Jenkins	Smith
Brien	Jumeau	Sonia!
Burns	Kean	Stagg
Burson	Kelly	Stephenson
Carmouche	Kilpatrick	Stinson
Casey	Landrum	Stovall
Champagne	Landry, E. J.	Sutherland
Chatelain	Lanier	Thistlethwaite
Conino	LeBlue	Thompson
Conroy	Leithman	Tobias
Corne	Lennox	Toca
Cowen	Lowe	Toomy
D'Gerolamo	McDaniel	Triche
D'Blieux	Martin	Ulio
Denery	Maubert	Velazquez
Dennis	Miller	Vesich
Deshotels	Mire	Vick
Drew	Munson	Warren
Dunlap	Newton	Weiss
Duval	Nunez	Willis
Fayard	O'Neill	Winchester
Flory	Ourso	Wisham
Fontenot	Planchard	Zervigon
Fowler		
Fulco		
Total—113.		

ABSENT

Delegates—	Kilbourne	Tapper
Armentor	Lambert	Tate
Brown	Landry, A.	Taylor
Cannon	LeBreton	Wall
Cehardy	Leigh	Womack
Derbes	Perez	
Edwards	Perkins	
Elkins		
Total—19.		

The Chairman announced that there were 113 members
present and a quorum.

Prayer

Prayer was offered by Delegate Stovall.

Pledge of Allegiance

Delegate Champagne led the Convention in reciting the
Pledge of Allegiance to the Flag of the United States of
America.

Reading of the Journal

On motion of Delegate Zervigon, the reading of the Journal
was dispensed with.

On motion of Delegate Zervigon, the Journal of yesterday
was adopted.

Morning Hour

Unfinished Business

The following unfinished business in which the House was
engaged at the time of its adjournment on yesterday was
taken up and acted on:

Proposals

Delegate and Committee

The following entitled Delegate and Committee Proposals
were taken up on their third reading and final passage:

COMMITTEE PROPOSAL No. 4—

Introduced by Delegate Staggs, Chairman, on behalf of the
Committee on Executive Department;

A PROPOSAL

Providing for the executive branch of government, for the
filling of vacancies in certain public offices, and with
respect to dual office-holding, a code of ethics, and im-
peachment.

Read.

Section 5. Powers and Duties of Governor

Section 5. (A) Executive Authority. The governor shall be
the chief executive officer of the state and shall faithfully
support the constitution and laws of the state.

(B) Legislative Reports and Recommendations. The gov-
ernor shall, at the beginning of each regular session of the
legislature, and may at other times, make reports and
recommendations and give information to the legislature
concerning the affairs of state, including its complete finan-
cial condition.

(C) Reports and Information. Any department head shall
provide the governor with reports and information, in writ-
ing or otherwise, when requested by him on any subject re-
lating to such department, excepting matters relating to in-
vestigations of the governor's office.

(D) Operating Budget. The governor shall prepare the
state's annual operating budget, and shall transmit copies
thereof to the legislature at least two weeks prior to the
first day of each annual session. Upon adoption of the op-
erating budget by the legislature, it shall become the official
state budget and shall be executed and administered by the
governor. Total appropriations for the year shall not exceed
anticipated annual revenues as projected by the governor in
the operating budget.

(E) Capital Budget. The governor shall prepare annually
a five-year capital program and shall submit to each regular
session of the legislature a proposed capital budget as pro-
vided by statute implementing the first year of the pro-
gram. All capital projects approved by the legislature shall
be made a part of the capital budget, and the operating bud-
get for each year shall provide for amortization of the cost
of each such capital project.

(F) Pardon, Commutation, Reprieve, Remission. Except
in cases of conviction upon impeachment, the governor may
reprieve, may grant commutation of sentence, and may par-
don those convicted of offenses against the state and may
remit fines and forfeitures imposed for such offenses. In ad-
dition, the legislature may provide additional methods for
the foregoing and other post-conviction remedies.

(G) Signature on Bills; Veto. The date and time when
each bill passed by the legislature is delivered to the gov-
ernor shall be entered thereon. He shall then have thirty cal-

PAGE 2

26th Days Proceedings—August 4, 1973

endar days within which to act on it. If he approves, he shall sign it. If he disapproves, he shall veto it, giving his reason therefor, and if the legislature is in session, he shall return it to the house in which it originated within twenty-four hours. If he fails to veto within the time provided by this constitution, it shall become law.

(H) Appropriation Bills. (1) The governor may veto any line item in an appropriation bill. The items vetoed shall be void unless the veto is overridden as prescribed for the passage of any bill over a veto.

(2) The governor shall either veto line items, or use other means provided in the bill, in order that total appropriations for the year shall not exceed anticipated revenues for the year.

(I) Appointments. (1) The governor shall appoint, subject to confirmation by the Senate, the heads of all departments in the executive branch whose election or appointment is not provided for by this constitution and all members of boards and commissions in the executive branch whose election or appointment is not otherwise provided for by this constitution or by statute.

(2) Should the legislature be in session, the governor shall submit for confirmation by the Senate the names of those appointed within forty-eight hours after the appointment is made. Failure of the Senate to confirm, prior to the end of the session, shall constitute rejection of the appointment.

(3) Should the legislature not be in session, the governor may make interim appointments, which shall expire at the end of the next session of the legislature, unless submitted to and confirmed by the Senate during such session.

(4) A person not confirmed by the Senate shall not be appointed to the same office during any recess of the legislature.

(J) Removal. The governor may remove from office those whom he appoints, except those appointed for a term fixed by this constitution or as may be fixed by statute.

(K) Commander-in-Chief. The governor shall be commander-in-chief of the armed forces of the state, except when they are called into service of the federal government. He may call out the armed forces of the state to preserve law and order, to suppress insurrection, to repel invasion, or in other times of emergency.

(L) Extraordinary Session. (1) The governor may convene the legislature into extraordinary session by issuance of a proclamation to the legislature at least five days prior to the convening of the session. The proclamation shall state the specific subjects to be considered, the date and time the legislature is to convene, and the number of days for which the legislature is convened. The subject matter of the session may be amended, by proclamation to the legislature, until forty-eight hours prior to the hour at which the legislature convenes. The power to legislate, under the penalty of nullity, shall be limited to the subjects specially enumerated in the latest proclamation convening such extraordinary session. The session shall be limited to the time named therein, and shall not exceed thirty days.

(2) The governor may convene the legislature in extraordinary session without prior notice or proclamation on occasions of public emergencies caused by epidemics, attacks by the enemy, or public catastrophe.

Read.

Delegate Jack sent up floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Jack, Gravel, Avant, Triche, and Stovall to Committee Proposal No. 4 by Delegate Stagg, et al.

Amend reprinted as reengrossed Proposal as follows:

AMENDMENT No. 1—

On page 4, delete lines 6 through 12, both inclusive, in their entirety, and insert in lieu thereof the following:

(F) Pardon, Commutation, Reprieve, and Remission; Board of Pardons. (1) The governor shall have the power to grant

reprieves to those convicted of offenses against the state and upon the recommendation of the Board of Pardons may grant commutation of sentence, may pardon those convicted of offenses against the state and may remit fines and forfeitures imposed for such offenses; provided, however, that each first offender who has never previously been convicted of a felony shall be eligible for pardon automatically upon completion of his sentence without the aforementioned recommendation.

(2) The Board of Pardons shall consist of five electors appointed by the governor, subject to confirmation by the Senate. Members of such board shall serve a term concurrent with that of the governor appointing them."

Delegate Jack moved the adoption of the amendment.

Delegate De Blieux objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—

Abraham	Ginn	Rachal
Aertker	Gravel	Rayburn
Alario	Grier	Riecke
Alexander	Guarisco	Robinson
Arnette	Guidry	Roemer
Asseff	Hardee	Roy
Avant	Hayes	Sandoz
Badeaux	Haynes	Schmitt
Bel	Heine	Shannon
Bergeron	Hernandez	Shilverberg
Blair	Jack	Singletary
Bollinger	Jackson, A.	Smith
Brien	Jackson, J.	Soniati
Burns	Jenkins	Stagg
Carmouche	Juneau	Stephenson
Casey	Kean	Stinson
Champagne	Kelly	Stovall
Chatalein	Kilpatrick	Stuthall
Conino	Landry, E. J.	Thistlethwaite
Conroy	Lanier	Thompson
Corne	LeBleu	Tobias
Cowen	Leithman	Toca
Denmery	Lennox	Toomy
Dennis	Lowe	Triche
Deshotels	McDaniel	Ullio
Drew	Martin	Velazquez
Dunlap	Maubert	Vick
Duval	Miller	Warren
Flory	Mire	Weiss
Fontenot	Munson	Willis
Fowler	Newton	Winchester
Fulco	Nurez	Wisham
Gauthier	O'Neil	Zervigon
Giarusso	Planchard	
Total—102.		

NAYS

Delegate De Blieux

Total—1.

ABSENT

Delegates—

Mr. Chairman	Elkins	Perkins
Anzalone	Fayard	Reeves
Armentor	Kilbourne	Segura
Brown	Lambert	Tapper
Burson	Landrum	Tate
Cannon	Landry, A.	Taylor
Chehardy	LeBreton	Vesich
D'Gerolamo	Leigh	Wall
Derbes	Ours	Womack
Edwards	Perez	
Total—29.		

And the amendment was adopted.

Delegate Jack moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Burson sent up floor amendment, which was read as follows:

PAGE 3

26th Days Proceedings—August 4, 1973

FLOOR AMENDMENT

Amendment proposed by Delegate Burson to Committee Proposal No. 4 by Delegate Stagg, et al.

Amend reprinted as reengrossed Proposal as follows:

AMENDMENT No. 1—

On page 4, line 12, immediately after the period “” add the following:

“The legislature may restrict or limit by law the exercise of the powers of the governor to reprieve, grant commutation of sentence, or pardon in establishing penalties for any crime punishable by life imprisonment.”

Delegate Burson moved the adoption of the amendment.

Delegate A. Jackson objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Fulco	Rayburn
Abraham	Giarrusso	Riecke
Aertker	Grier	Sandoz
Alario	Guidry	Schmitt
Anzalone	Hardee	Silverberg
Badeaux	Hayes	Singletary
Bel	Juneau	Smith
Bollinger	Kean	Stagg
Burson	Lanier	Stephenson
Casey	LeBleu	Stinson
Champagne	Lennox	Sutherland
Cowen	McDaniel	Thistlethwaite
D'Gerolamo	Mauberrert	Uilo
Deshotels	Miller	Winchester
Fayard	Nunez	
Fontenot	Planchard	
Total—46.		

NAYS

Delegates—	Ginn	Reeves
Alexander	Gravel	Robinson
Arnette	Guarisco	Roemer
Asseff	Haynes	Roy
Avant	Heine	Segura
Bergeron	Hernandez	Slay
Blair	Jack	Soniatt
Brien	Jackson, A.	Stovall
Carmouche	Jackson, J.	Thompson
Chatelain	Jenkins	Tobias
Conino	Kelly	Toca
Conroy	Kilpatrick	Toomy
Corne	Landrum	Triche
De Blieux	Landry, E. J.	Velazquez
Dennery	Leithman	Vesich
Dennis	Martin	Vick
Drew	Mire	Warren
Dunlap	Munson	Weiss
Duval	Newton	Willis
Flory	Newton	Wisham
Fowler	O'Neill	Zervigon
Gauthier	Rachal	
Total—63.		

ABSENT

Delegates—	Kilbourne	Perkins
Mr. Chairman	Lambert	Shannon
Armentor	Landry, A.	Tapper
Brown	LeBreton	Tate
Cannon	Leigh	Taylor
Chehardy	Lowe	Wall
Derbes	Ours	Wornack
Edwards	Perez	
Elkins		
Total—23.		

And the amendment was rejected.

Delegate Triche moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Delegate Juneau sent up floor amendment which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Juneau to Committee Proposal No. 4 by Delegate Stagg, et al.

Amend reprinted as reengrossed Proposal as follows:

AMENDMENT No. 1—

On page 4, line 6, in delegate Floor Amendment No. 1 proposed by Delegate Jack, et al., delete lines 12 and 13 and insert in lieu thereof the following:

“(2) There shall be a board of pardons which shall consist of five persons, one of which shall be the lieutenant governor and four electors appointed by the governor who shall be subject to confirmation by the”

Delegate Juneau moved the adoption of the amendment.

Delegate Gravel objected.

By a vote of 28 yeas, 69 nays the amendment was rejected.

Delegate Gravel moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Delegate De Blieux sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendments proposed by Delegates De Blieux and Fayard to Committee Proposal No. 4 by Delegate Stagg, et al.

Amend reprinted as reengrossed Proposal as follows:

AMENDMENT No. 1—

On page 4, line 6, in Delegate Floor Amendment No. 1, proposed by Delegate Jack, et al. delete lines 12 through 15, both inclusive in their entirety and insert in lieu thereof the following:

“(2) There shall be a Board of Pardons as provided by law.”

Delegate De Blieux moved the adoption of the amendment.

Delegate Gravel objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Drew	Nunez
Abraham	Duval	Planchard
Aertker	Fayard	Rayburn
Arnette	Fontenot	Reeves
Badeaux	Fulco	Sandoz
Bollinger	Hardee	Schmitt
Burns	Hayes	Shannon
Burson	Heine	Singletary
Casey	Juneau	Stephenson
Conino	Kean	Stinson
Conroy	Lanier	Sutherland
Corne	LeBleu	Toomy
De Blieux	McDaniel	Weiss
Dennery	Mauberrert	Winchester
Deshotels	Miller	
Total—42.		

NAYS

Delegates—	Brien	Gauthier
Mr. Chairman	Carmouche	Giarrusso
Alario	Champagne	Gravel
Alexander	Chatelain	Grier
Anzalone	D'Gerolamo	Guarisco
Asseff	Dennis	Guidry
Avant	Dunlap	Hayes
Bel	Flory	Hernandez
Bergeron	Fowler	
Blair		

PAGE 4

26th Days Proceedings—August 4, 1973

Jack Jackson, A. Jackson, J. Jenkins Kelly Kilpatrick Landrum Landry, E. J. Leithman Lennox Marian Total—60.	Mire Newton Rschal Riecke Robinson Roemer Roy Segura Slay Smith Soniat	Stagg Stovall Tobias Toca Triche Ullo Vesich Warren Willis Wisham Zervigon
---	--	--

ABSENT

Delegates— Armentor Brown Canon Chehardy Cowen Derbes Edwards Elkins Ginn Kilbourne Total—30.	Lambert Landry, A. LeBreton Leigh Lowe Munson O'Neill Ourso Perez Perkins	Silverberg Tapper Tate Taylor Thistlethwaite Thompson Velazquez Vick Wall Womack
--	--	---

And the amendment was rejected.

Delegate Gravel moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Delegate Newton sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates Newton and De Blieux to Committee Proposal No. 4 by Delegate Stagg, et al.

Amend reprinted as rengrossed Proposal as follows:

AMENDMENT No. 1—
On page 4, delete lines 13 through 21 in its entirety and insert in lieu thereof the following:

“(G) Receipt of Bills from the Legislature. The date and hour when a bill passed by the legislature is delivered to the governor shall be endorsed thereon.”

On motion of Delegate Newton the amendment was adopted.

Delegate Newton moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Duval sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Duval on behalf of Committee on Executive Department to Committee Proposal No. 4 by Delegate Stagg, et al.

Amend reprinted as rengrossed Proposal as follows:

AMENDMENT No. 1—
On page 4, line 22, after “(H)” and before “(I)” delete “Appropriation Bills,” and insert in lieu thereof “Item Veto.”

On motion of Delegate Duval the amendment was adopted.

Delegate Duval moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Brown sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Brown to Committee Proposal No. 4 by Delegate Stagg, et al.

Amend reprinted as rengrossed Proposal as follows:

AMENDMENT No. 1—

On page 4, line 30, after “Senate,” add “in open session.”

Delegate De Blieux moved the adoption of the amendment.

Delegate Blair objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates— Aertker Alexander Avant Champagne Conino De Blieux Dennis Total—19.	Flory Fulco Jenkins Kelly Lanier Miller	O'Neill Reeves Stovall Velazquez Willis Wisham
--	--	---

NAYS

Delegates— Abraham Alario Anzalone Arnette Asseff Badeaux Bel Bergeron Blair Brien Burns Burson Carmouche Casey Chatelain Conroy Corne Cowen D'Gerolamo Dennery Deshotels Drew Dunlap Duval Fontenot Fowler Gauthier Total—81.	Giarrusso Ginn Gravel Grier Guidry Hardee Hayes Haynes Heine Hernandez Jack Jackson, A. Jackson, J. Janesau Kean Kilpatrick Landry, E. J. LeBleu Lennox Lowe McDaniel Martin Mauberret Mire Newton Nunez Ourso	Planchard Rachal Riecke Robinson Roemer Roy Sandoz Schmitt Segura Shannon Silverberg Slay Smith Soniat Stagg Stephenson Sutherland Thistlethwaite Thompson Tobias Toomy Triche Ullo Vick Weiss Winchester Zervigon
--	--	--

ABSENT

Delegates— Mr. Chairman Armentor Bollinger Brown Canon Chehardy Derbes Edwards Elkins Fayard Guarisco Total—32.	Kilbourne Lambert Landrum Landry, A. LeBreton Leigh Leithman Munson Perez Perkins Rayburn	Singletary Stinson Tapper Tate Taylor Toca Vesich Wall Warren Womack
---	---	---

And the amendment was rejected.

Delegate Roemer moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Delegate Abraham sent up floor amendments, which were read as follows:

PAGE 4

27th Days Proceedings—August 8, 1973

De Blieux	Hardee	Singletary
Dunlap	Juneau	Toomy
Payard	Miller	Triche
Fontenot	Roemer	Warren
Giarrusso	Schmitt	
Guarisco	Segura	
Total—22.		

ABSENT		
Delegates—		
Aertker	Jackson, J.	Reeves
Alexander	Kilpatrick	Smith
Armentor	Lambert	Taylor
Badeaux	LeBreton	Thompson
Brown	Martin	Wall
Cannon	Mauberrert	Womack
Champagne	Mire	
Jack	Perez	
Total—22.		

And the Chair declared that the above Section was passed.

Delegate Staggs moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.



Section 8. Powers and Duties of the Attorney General

Section 8. There shall be a department of justice, headed by the attorney general who shall be the state's chief legal officer. As may be necessary for the assertion or protection of the rights and interests of the state, the attorney general shall have authority to:

- (1) institute, and prosecute or intervene in any legal actions or other proceedings, civil or criminal;
- (2) exercise supervision over the several district attorneys throughout the state; and
- (3) for cause, supersede any attorney representing the state in any civil or criminal proceeding.

He shall have such other powers and perform such other duties as may be authorized by this constitution or provided by statute.

Read.

Delegate Gravel sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Gravel to Committee Proposal No. 4 by Delegate Staggs, et al.

Amend reprinted as reengrossed Proposal as follows:

AMENDMENT No. 1—

On page 7, delete lines 1 through 14, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 8. There shall be a department of justice headed by the attorney general who shall be the state's chief legal officer.

Delegate Gravel moved the adoption of the amendment.

Delegate Giarrusso objected.

By a vote of 93 yeas, 12 nays the amendment was adopted.

Delegate Gravel moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Passage

Committee Proposal No. 4, Section 8, was read, as amended.

Delegate Gravel moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Gauthier	Rayburn
Abraham	Giarrusso	Riecke
Alario	Ginn	Roemer
Arnette	Gravel	Roy
Asseff	Grier	Sandoz
Avant	Guarisco	Schmitt
Bel	Gudry	Segura
Bergeron	Hardee	Shannon
Blair	Hays	Silverberg
Bollinger	Haynes	Singletary
Brien	Heine	Slay
Burns	Hernandez	Soniart
Burson	Jackson, A.	Stagg
Casey	Jenkins	Stephenson
Chatelain	Juneau	Stinson
Chehardy	Kelly	Stovall
Conino	Kilbourne	Sutherland
Conroy	Lambert	Tapper
Corne	Landrum	Tate
Cowen	Landry, A.	Thistlethwaite
D'Gerolamo	Landry, E. J.	Tobias
De Blieux	Lanier	Toa
Dennery	LeBlau	Toomy
Dennis	Leigh	Ullio
Derbes	Leitman	Velazquez
Deshotels	Lennox	Vesich
Drew	Lowe	Vick
Dunlap	McDaniel	Wall
Duval	Mire	Warren
Edwards	Munson	Weiss
Elkins	Newton	Willis
Payard	Nunez	Winchester
Flory	O'Neill	Wisham
Fontenot	Ourso	Zervigon
Fowler	Planchard	
Fulco	Rachal	
Total—106.		

NAYS

Delegates—		
Carmouche	Perkins	Triche
Miller		
Total—4.		

ABSENT

Delegates—		
Aertker	Jack	Reeves
Alexander	Jackson, J.	Robinson
Anzalone	Kean	Smith
Armentor	Kilpatrick	Taylor
Badeaux	LeBreton	Thompson
Brown	Martin	Womack
Cannon	Mauberrert	
Champagne	Perez	
Total—22.		

And the Chair declared that the above Section was passed.

Delegate Gravel moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Section 9. Powers and Duties of the Treasurer

Section 9. There shall be a department of treasury headed by the state treasurer who shall be responsible for the custody, investment, and disbursement of the public funds of the state. He shall report annually to the governor and the legislature one month in advance of the regular session on the financial condition of the state, and shall have such other powers and perform such other duties as may be authorized by this constitution or provided by statute.

Read.

Delegate Anzalone sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegate Anzalone to Committee Proposal No. 4 by Delegate Staggs, et al.

Amend reprinted as reengrossed Proposal as follows:

AMENDMENT No. 1—

On page 7, line 17, after the word "shall" and before the

PAGE 11

29th Days Proceedings—August 10, 1973

On motion of Delegate Abraham the amendments were adopted.

Delegate Abraham moved to reconsider the vote by which the amendments were adopted, and on his own motion, the motion to reconsider was laid on the table.

Passage

Committee Proposal No. 4, Original Section 15, Amended to become Section 18, was read, as amended.

Delegate Anzalone moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Fowler	Ourso
Mr. Chairman	Fulco	Perkins
Abraham	Gauthier	Planchard
Aertker	Giarrusso	Pugh
Alario	Ginn	Rayburn
Alexander	Gravel	Reeves
Anzalone	Grier	Riecke
Arnette	Guarisco	Robinson
Asseff	Hayes	Roy
Avant	Heine	Sandoz
Bel	Hernandez	Schmitt
Bergeron	Jack	Shannon
Blair	Jenkins	Silverberg
Bollinger	Brien	Singletary
Brown	Juneau	Smith
Burns	Jackson, A.	Soniat
Burson	Kean	Stephenson
Carmouche	Kelly	Stinson
Casey	Kilbourne	Stovall
Champagne	Lambert	Sutherland
Chatelein	Landrums	Tapper
Chehardy	Landry, E. J.	Tate
Conino	Lanier	Thistlethwaite
Conroy	LeBleu	Thompson
Corne	LeBreton	Tobias
Cowen	Leigh	Toca
D'Gerolamo	Leithman	Toomy
De Bieux	Lennox	Triche
Dennery	Lowe	Velazquez
Derbes	McDaniel	Vick
Deshotels	Martin	Warren
Drew	Maubert	Weiss
Dunlap	Miller	Willis
Duval	Mire	Winchester
Elkins	Munson	Wisham
Fayard	Newton	Zervigon
Flory	Nunez	
Fontenot	O'Neill	
Total—112.		

NAYS

Total—0.

ABSENT

Delegates—	Jackson, J.	Stagg
Armentor	Kilpatrick	Taylor
Badeaux	Perez	Ullio
Cannon	Rachal	Vesich
Dennis	Roemer	Wall
Edwards	Segura	Womack
Hardee	Slay	
Haynes		
Total—20.		

And the Chair declared that the above Section was passed.

Delegate Anzalone moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Motion

On motion of Delegate Dennis, the Convention altered the

Order of Business to take up Reports of Committees at this time.

Reports of Committees

The following reports of committees were received and read:

Delegate Dennis, chairman, on behalf of the Committee on the Judiciary, submitted the following report:

State of Louisiana
Constitutional Convention
of 1973

August 10, 1973, Baton Rouge, La.

To the Chairman and Delegates of the Constitutional Convention:

I am directed by your Committee on the Judiciary to submit the following report:

COMMITTEE PROPOSAL No. 6—

Introduced by Delegate Dennis, Chairman, on behalf of the Committee on the Judiciary and Delegates Avant, Bel, Bergeron, Burns, Deshotels, Drew, Gauthier, Kelly, Kilbourne, Landry, Martin, Ourso, Sandoz, Tate, Tobias and Vesich:

A PROPOSAL

Making provisions for the judiciary branch of government and necessary provisions with respect thereto.

Reported by substitute.

Respectfully submitted,
JAMES L. DENNIS,
Chairman

Suspension of the Rules

On motion of Delegate Dennis the rules were suspended in order to take up the Committee Proposal contained in the Committee Report at this time.

Reports of Committees Lying Over

Proposals on Second Reading Reported by Committees

The following entitled Committee and Delegate Proposals reported by Committee were taken up and acted on as follows:

COMMITTEE PROPOSAL No. 6—

Introduced by Delegate Dennis, Chairman, on behalf of the Committee on the Judiciary and Delegates Avant, Bel, Bergeron, Burns, Deshotels, Drew, Gauthier, Kelly, Kilbourne, Landry, Martin, Ourso, Sandoz, Tate, Tobias and Vesich:

A PROPOSAL

Making provisions for the judiciary branch of government and necessary provisions with respect thereto.

Read.

Reported by substitute by the Committee on Judiciary.

The title to the substitute was read as follows:

COMMITTEE PROPOSAL No. 21—

Introduced by Delegate Dennis, Chairman, on behalf of the Committee on the Judiciary, and Delegates Avant, Bel, Bergeron, Burns, Deshotels, Drew, Gauthier, Kelly, Kilbourne, Landry, Martin, Ourso, Sandoz, Tate and Vesich (A Substitute for Committee Proposal No. 6):

A PROPOSAL

Making provisions for the judiciary branch of government

On motion of Delegate Dennis the substitute was adopted.

On motion of Delegate Dennis, and under a suspension of the rules, the proposal was ordered engrossed and passed to its third reading.

Motion

On motion of Delegate Gravel, the Convention altered the Order of Business to take up Unfinished Business at this time.

PAGE 2

30th Days Proceedings—August 15, 1973

DELEGATE RESOLUTION No. 36—

Introduced by Delegate Segura:

A RESOLUTION

To amend Rule No. 23 and Rule No. 36 of the Standing Rules of the Constitutional Convention and to allow proxy voting under certain conditions.

Read.

Under the rules the above Resolution was referred to the Committee on Rules, Credentials and Ethics.

Proposals on Second Reading and Referral

The following entitled Committee and Delegate Proposals on second reading to be referred to committees were taken up, read, and referred to committees, as follows:

DELEGATE PROPOSAL No. 25—

Introduced by Delegate Asseff:

A PROPOSAL

To prohibit favoritism in the law towards women.

Read.

The Chair ruled that under the rules the proposal should be referred to the Committee on Bill of Rights and Elections.

Delegate Womack objected and moved that the proposal be otherwise referred to the Committee on Natural Resources.

By a vote of 41 yeas and 65 nays the Convention refused to refer the proposal to the Committee on Natural Resources.

Under the rules the proposal was referred to the Committee on Bill of Rights and Elections.

DELEGATE PROPOSAL No. 26—

Introduced by Delegate Newton:

A PROPOSAL

To establish a Board of Highways, a director, its powers, duties, and functions.

Read.

Under the rules the above proposal was referred to the Committee on the Executive Dept.

Reconsideration

★ COMMITTEE PROPOSAL No. 4—

Introduced by Delegate Stagg Chairman, on behalf of the Committee on Executive Department.

Providing for the executive branch of government, for the filling of vacancies in certain public offices, and with respect to dual office-holding, a code of ethics, and impeachment.

Read.

Delegate Stagg moved to reconsider the vote by which the above proposal failed to pass on yesterday.

Delegate Schmitt objected.

By a vote of 104 yeas and 5 nays the vote by which the above proposal failed to pass on yesterday was reconsidered.

Proposals Delegate and Committee

The following entitled Delegate and Committee Proposals were taken up on their third reading and final passage:

Suspension of the Rules

On motion of Delegate Dennis the rules were suspended in order to take Committee Proposal No. 21 out of its Regular Order, at this time.

COMMITTEE PROPOSAL No. 21—

Introduced by Delegate Dennis, Chairman, on behalf of the Committee on the Judiciary, and Delegates Avant, Bel, Bergeron, Buins, Deshoteis, Drew Gauthier, Kelly, Kilbourne, Landry, Martin, Ourso, Sandoz, Tate and Vesich (A Substitute for Committee Proposal No. 6):

A PROPOSAL

Making provisions for the judiciary branch of government

Read.

Delegate Dennis sent up floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Dennis to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 1, line 13, delete the words "JUDICIARY DEPARTMENT" and insert in lieu thereof "JUDICIAL BRANCH"

On motion of Delegate Dennis the amendment was adopted.

Delegate Dennis moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Section 1. Judicial Power

Section 1. The judicial power shall be vested in a supreme court, courts of appeal, district courts, and other courts authorized by this constitution.

Read.

Passage

Delegate Dennis moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Elkins	Ourso
Abraham	Fayard	Perez
Aertker	Flory	Perkins
Alario	Fontenot	Rachal
Alexander	Fowler	Rayburn
Anzelone	Fulco	Beeves
Arnette	Gauthier	Robinson
Asseff	Giarrusso	Roemer
Badeaux	Ginn	Roy
Bel	Gravel	Sandoz
Bergeron	Grier	Schmitt
Blair	Hardee	Shannon
Bollinger	Hayes	Singletary
Brian	Haynes	Slay
Brown	Heine	Smith
Burns	Hernandez	Soniat
Burson	Jack	Stagg
Carmouche	Jackson, A.	Stephenson
Casey	Juneau	Stovall
Champagne	Kean	Sutherland
Chatelain	Kelly	Tapper
Chehardy	Kilbourne	Tate
Conino	Kilpatrick	Taylor
Conroy	Landrum	Thistlethwaite
Corne	Landry, A.	Thompson
Cowen	Landry, E. J.	Toca
D'Gerolamo	Lanier	Tommy
De Blieux	Leithman	Uilo
Denney	Lennox	Velazquez
Dennis	Lowe	Vick
Derbes	McDaniel	Wall
Deshoteis	Martin	Willis
Drew	Miller	Wisham
Dunlap	Nunez	Womack
Duval	O'Neill	Zervigon
Total—105.		

PAGE 3

30th Days Proceedings—August 15, 1973

NAYS	
Delegates—	
Guarisco	Tobias
Total—2	
ABSENT	
Delegates—	
Armentor	Leigh
Avant	Mauberet
Cannon	Mire
Edwards	Munson
Jackson, J.	Newton
Jenkins	Planchard
Lambert	Pugh
LeBlau	Riecke
LeBreton	Segura
Total—25.	

And the Chair declared that the above Section was passed.

Delegate Dennis moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Section 2. Habeas Corpus, Needful Writs, Orders and Process.

Section 2. A judge may issue writs of habeas corpus and all other needful writs, orders and process in aid of the jurisdiction of his court. Exercise of this authority by a judge of the supreme court or court of appeal is subject to review by the whole court. The power to punish for contempt of court shall be limited by law.

Read.

Passage

Delegate Dennis moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Flory	Ourso
Mr. Chairman	Fontenot	Perez
Abraham	Fowler	Perkins
Aertker	Fulco	Planchard
Alario	Gauthier	Rachal
Alexander	Giarrusso	Rayburn
Anzalone	Ginn	Reeves
Annette	Gravel	Robinson
Asseff	Grier	Roemer
Badeaux	Guarisco	Roy
Bel	Hardee	Sandoz
Bergeron	Hayes	Schmitt
Blair	Haynes	Shannon
Bollinger	Heine	Singletary
Brien	Hernandez	Slay
Brown	Jack	Smith
Burns	Jackson, A.	Soniat
Burson	Juneau	Stagg
Carmouche	Kean	Stephenson
Casey	Kelly	Stovall
Champagne	Kilbourne	Sutherland
Chatelain	Kilpatrick	Tapper
Chehardy	Landrum	Tate
Conino	Landry, A.	Taylor
Conroy	Landry, E. J.	Thistlethwaite
Corne	Lanier	Thompson
Cowen	LeBlau	Tobias
D'Gerolamo	Leithman	Toca
De Blieue	Lennox	Toomy
Dennery	Lowe	Ullo
Dennis	McDaniel	Velazquez
Derbes	Martin	Vick
Deshotels	Miller	Wall
Drew	Mire	Willis
Dunlap	Munson	Wisham
Duval	Nunez	Womack
Elkins	O'Neill	Zervigon
Fayard		
Total—111.		

NAYS		
Total—0.		
ABSENT		
Delegates—		
Armentor	LeBreton	Silverberg
Avant	Leigh	Stinson
Cannon	Mauberet	Triche
Edwards	Newton	Vesich
Jackson, J.	Pugh	Warren
Jenkins	Riecke	Weiss
Lambert	Segura	Winchester
Total—21.		

And the Chair declared that the above Section was passed.

Delegate Dennis moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Section 3. Supreme Court; Composition; Judgments; Terms

Section 3. The supreme court shall be composed of a chief justice and six associate justices, four of whom must concur to render judgment. The term of a judge of the supreme court shall be fourteen years.

Read.

Delegate Lanier sent up floor amendment which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates Lanier, Alario, Reeves and Deshotel to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 1, line 31, immediately after the word "be" and before the word "years" delete "fourteen" and insert in lieu thereof "ten"

Delegate Lanier moved the adoption of the amendment.

Delegate Dennis objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Fontenot	Rayburn
Mr. Chairman	Fowler	Reeves
Aertker	Fulco	Roemer
Alario	Ginn	Roy
Alexander	Guarisco	Shannon
Anzalone	Hayes	Singletary
Asseff	Haynes	Smith
Badeaux	Kilpatrick	Soniat
Blair	Landrum	Stephenson
Bollinger	Landry, A.	Tapper
Brien	Lanier	Taylor
Brown	LeBlau	Thistlethwaite
Champagne	Leithman	Thompson
Chatelain	Lowe	Toca
Conroy	McDaniel	Ullo
Deshotels	Munson	Wall
Dunlap	Nunez	Weiss
Duval	O'Neill	Wisham
Elkins	Perkins	Womack
Fayard		
Flory		
Total—59		

NAYS

Delegates—		
Abraham	Carmouche	De Blieue
Arnette	Casey	Dennery
Bel	Conino	Dennis
Bergeron	Corne	Derbes
Burns	Cowen	Drew
Burson	D'Gerolamo	Gauthier

PAGE 6

30th Days Proceedings—August 15, 1973

FLOOR AMENDMENT

Amendment proposed by Delegate Gauthier to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 2, line 6, at the end of the line add the following: "After January 1, 1975, the legislature, by a majority vote of the elected members of each house shall divide the first supreme court district into two districts with one judge to be elected from each district."

Delegate Gauthier moved the adoption of the amendment.

Delegate Dennis objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Aertker	Fontenot	Planchard
Alario	Fowler	Rayburn
Anzalone	Fulco	Reeves
Asseff	Gauthier	Robinson
Badeaux	Hayes	Sandoz
Bergeron	Heine	Schmitt
Chatelain	Jackson, J.	Shannon
Conino	Juneau	Slay
Conroy	Lanier	Soniat
Corne	LeBleu	Stagg
D'Gerolamo	Leithman	Stinson
De Blieux	Lowe	Sutherland
Deshotels	Miller	Taper
Dunlap	Nunez	Tate
Elkins	O'Neill	Thistlethwaite
Fayard	Ourso	Thompson
Flory	Perkins	Tora
Total—50.		Uilo

NAYS

Delegates—		
Mr. Chairman	Ginn	Reeves
Abraham	Gravel	Robinson
Alexander	Grier	Sandoz
Arnette	Guarisco	Schmitt
Bel	Haynes	Shannon
Blair	Hernandez	Slay
Bollinger	Jack	Soniat
Brien	Jackson, A.	Stagg
Brown	Kean	Stinson
Burns	Kilbourne	Sutherland
Burson	Kilpatrick	Tate
Casey	Landrum	Thistlethwaite
Champagne	Landry, A.	Thompson
Chehardy	Landry, E. J.	Toca
Cowen	Lennox	Velazquez
Dennery	McDaniel	Vesich
Denins	Martin	Vick
Derbes	Mire	Wall
Drew	Perez	Weiss
Duval	Rachal	Womack
Giarrusso	Rayburn	
Total—63.		

ABSENT

Delegates—		
Armentor	Kelly	Pugh
Avant	Lambert	Riecke
Cannon	LeBreton	Segura
Carmouche	Leigh	Silverberg
Edwards	Mauberrert	Triche
Hardee	Munson	
Jenkins	Newton	
Total—19.		

And the amendment was rejected.

Delegate Gravel moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Passage

Committee Proposal No. 21, Section 4, was read.

Delegate Dennis moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Fowler	Planchard
Abraham	Fulco	Rayburn
Aertker	Gauthier	Reeves
Alexander	Giarrusso	Robinson
Anzalone	Ginn	Roemer
Arnette	Gravel	Roy
Asseff	Grier	Sandoz
Badeaux	Hayes	Schmitt
Bel	Haynes	Shannon
Bergeron	Heine	Singletary
Blair	Hernandez	Slay
Bollinger	Jack	Smith
Brien	Jackson, A.	Soniat
Brown	Jackson, J.	Stagg
Burns	Juneau	Stephenson
Burson	Kean	Stinson
Casey	Kelly	Stovall
Champagne	Kilbourne	Sutherland
Chatelain	Kilpatrick	Taper
Chehardy	Lambert	Tate
Conino	Landry, A.	Thistlethwaite
Cowen	Landry, E. J.	Thompson
D'Gerolamo	Lanier	Tora
De Blieux	LeBleu	Uilo
Dennery	Lennox	Velazquez
Dennis	Lowe	Vesich
Derbes	McDaniel	Vick
Deshotels	Martin	Wall
Drew	Mire	Warren
Dunlap	Nunez	Weiss
Duval	O'Neill	Willis
Elkins	Ourso	Winchester
Fayard	Perez	Womack
Flory	Perkins	Zervigon
Fontenot		
Total—103.		

NAYS

Delegates—		
Alario	Leithman	Tobias
Conroy	Miller	Toomy
Guarisco	Taylor	Wisham
Total—9.		

ABSENT

Delegates—		
Armentor	Jenkins	Pugh
Avant	Landrum	Rachal
Cannon	LeBreton	Riecke
Carmouche	Leigh	Segura
Corne	Mauberrert	Silverberg
Edwards	Munson	Triche
Hardee	Newton	
Total—20.		

And the Chair declared that the above Section was passed.

Delegate Dennis moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Section 5. Supreme Court; Supervisory, Original, and Appellate Jurisdiction; Rule-Making Power; Assignment of Judges

Section 5. (A) The supreme court has general supervisory jurisdiction over all other courts. It may establish procedural and administrative rules not in conflict with law. It may assign a sitting or retired judge to any court.

(B) The supreme court has exclusive original jurisdiction of disciplinary proceedings against members of the bar.

(C) Except as otherwise provided in this constitution, the

PAGE 7

30th Days Proceedings—August 15, 1973

supreme court's jurisdiction in civil cases extends to both the law and the facts. In criminal matters, its appellate jurisdiction extends only to questions of law.

(D) In addition to appeals provided for elsewhere in this constitution, the following cases shall be appealable to the supreme court:

(1) A case in which a law or ordinance has been declared unconstitutional;

(2) A criminal case in which the death penalty or imprisonment at hard labor has been imposed or in which a fine exceeding five hundred dollars or imprisonment exceeding six months has been actually imposed. In other criminal cases, an accused shall have a right of appeal or review, as provided by law or by rule of the supreme court not inconsistent therewith.

(E) Subject to the provisions of Subsection (C), the supreme court has appellate jurisdiction over all issues involved in any civil action properly before it.

Read.

Delegate Conino sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates Conino, Toomy, Gauthier, Leithman, Alario, and Perez to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 2, line 11, after the period “.” delete the remainder of the line and delete lines 12 and 13 in their entirety and insert in lieu thereof the following:

“It may assign a sitting or retired judge to any court with his consent and with the consent of a majority of the members of the court in which the judge is assigned.”

Delegate Conino moved the adoption of the amendment.

Delegate Tate objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS		
Delegates—	Fulco	Ours
Alario	Gauthier	Perez
Anzalone	Heine	Perkins
Asseff	Kilbourne	Reeves
Brien	Leithman	Schmitt
Conino	Nunez	Stephenson
Fayard	O'Neill	Toomy
Fowler		
Total—21.		

NAYS

Delegates—	Conroy	Grier
Mr. Chairman	Corne	Guarisco
Abraham	Cowen	Hardee
Aertker	D'Gerolamo	Hayes
Alexander	De Blieux	Haynes
Arnette	Dennery	Hernandez
Avant	Dennis	Jack
Badeaux	Derbes	Jackson, A.
Bel	Deshotels	Jackson, J.
Bergeron	Drew	Juneau
Blair	Dunlap	Kean
Bollinger	Duval	Kelly
Brown	Elkins	Kilpatrick
Burns	Flory	Lambert
Burson	Fontenot	Landrums
Casey	Giarrusso	Landry, A.
Champagne	Ginn	Landry, E. J.
Chatelain	Gravel	Lanier
Chehardy		

LeBleu	Singletary	Tobias
Lonnox	Slay	Toomy
Lowry	Smith	U. S.
McDaniel	Soniat	Velazquez
Miller	Stagg	Vesich
Mire	Stinson	Vick
Munson	Stovall	Wall
Plancahrd	Sutherland	Warren
Rachal	Tapper	Wesich
Rayburn	Tate	Willis
Robinson	Taylor	Winchester
Roemer	Thistlethwaite	Wisham
Roy	Thompson	Zervigon
Sandoz		

Total—94.

ABSENT

Delegates—	Leigh	Segura
Armentor	Martin	Shannon
Cannon	Mauberet	Silverberg
Carmouche	Newton	Triche
Edwards	Pugh	Womack
Jenkins	Riecke	
LeBreton		
Total—17.		

And the amendment was rejected.

Delegate Dennis moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Delegate Roy sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Roy to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 2, line 17, after the word “civil” delete the remainder of the line and delete lines 18 and 19 in their entirety and insert in lieu thereof the following:

“and criminal cases extends only to questions of law.”

Delegate Roy moved the adoption of the amendment.

Delegate Burson objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS		
Delegates—	Guarisco	Schmitt
De Blieux	Haynes	Slay
Dunlap	Jackson, A.	Soniat
Fayard	Lambert	Tapper
Flory	Fulco	Vesich
LeBleu	Roy	Vick
Gravel		
Total—18.		

NAYS

Delegates—	Champagne	Giarrusso
Abraham	Chatelain	Ginn
Aertker	Chehardy	Grier
Alario	Conino	Hardee
Alexander	Conroy	Hayes
Anzalone	Corne	Heine
Arnette	Cowen	Hernandez
Asseff	D'Gerolamo	Jack
Avant	Dennery	Jackson, J.
Badeaux	Dennis	Juneau
Bel	Derbes	Kean
Bergeron	Deshotels	Kelly
Blair	Drew	Kilbourne
Bollinger	Duval	Kilpatrick
Brown	Elkins	Landrums
Burns	Fontenot	Landry, A.
Burson	Fowler	Landry, E. J.
Casey	Gauthier	Lanier

PAGE 8

30th Days Proceedings—August 15, 1973

Leithman	Rayburn	Thompson
Lennox	Reeves	Tobias
Lowe	Robinson	Toca
McDaniel	Roemer	Toomy
Miller	Sandoz	Ullio
Mire	Singletary	Velazquez
Munson	Smith	Wall
Nunez	Stagg	Warren
O'Neill	Stephenson	Weiss
Ourso	Stinson	Willis
Perez	Stovall	Winchester
Perkins	Sutherland	Wisham
Planchard	Tate	Womack
Rachal	Thistlethwaite	Zervigon
Total—96.		

ABSENT

Delegates—	LeBreton	Riecke
Mr. Chairman	Leigh	Segura
Armentor	Martin	Shannon
Cannon	Maubert	Silverberg
Carmouche	Newton	Taylor
Edwards	Pugh	Triche
Jenkins	Total—18.	

And the amendment was rejected.

Delegate Lanier moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Delegate Toomy sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates Conino, Toomy, Gauthier, Leithman, Alario and Perez to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 2, line 12, after the period "." delete the remainder of the line and delete line 13 in its entirety and insert in lieu thereof the following:

"It may assign a sitting or retired judge to any court with his consent and with the consent of a majority of the members of the court in which the judge is assigned."

Delegate Toomy moved the adoption of the amendment.

Delegate Dennis objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Fowler	Perkins
Alario	Fulco	Roy
Alexander	Gauthier	Schmitt
Anzalone	Jackson, J.	Stephenson
Bel	Kilbourne	Tapper
Conino	Nunez	Toomy
Cowen	O'Neill	Ullio
Dunlap	Perez	Wisham
Fayard	Total—25.	
Flory		

NAYS

Delegates—	Badeaux	Burns
Mr. Chairman	Bergeron	Burson
Abraham	Blair	Casey
Aertker	Bollinger	Champagne
Arnette	Brien	Chatelain
Asseff	Brown	Chehardy
Avant		

Conroy	Jack	Sandoz
Corne	Jackson, A.	Singletary
D'Gerolamo	Juneau	Slay
De Blieux	Kean	Smith
Dennery	Kelly	Soniati
Dennis	Kilpatrick	Stagg
Derbes	Lambert	Stinson
Deshotels	Landry, A.	Sutherland
Drew	Landry, E. J.	Tate
Duval	Lanier	Thistlethwaite
Elkins	LeBleu	Thompson
Fontenot	Lennox	Tobias
Giarrusso	Lowe	Toca
Ginn	McDaniel	Velazquez
Gravel	Miller	Vesich
Grier	Mire	Vick
Guarisco	Munson	Wall
Hardee	Ourso	Warren
Hayes	Planchard	Weiss
Haynes	Rachal	Willis
Heine	Robinson	Winchester
Hernandez	Roemer	Zervigon
Total—84.		

ABSENT

Delegates—		
Armentor	Leithman	Segura
Cannon	Martin	Shannon
Carmouche	Maubert	Silverberg
Edwards	Newton	Stovall
Jenkins	Pugh	Taylor
Landrum	Rayburn	Triche
LeBreton	Reeves	Womack
Leigh	Riecke	
Total—23.		

And the amendment was rejected.

Delegate Dennis moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Delegate Weiss sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Weiss to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 2, line 25, after the word "which" and before the word "penalty" delete the words "the death" and insert in lieu thereof the words "a capital crime deterrent"

Delegate Weiss moved the adoption of the amendment.

Delegate Jack objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Landry, E. J.	Schmitt
Abraham	Lanier	Weiss
Bollinger	Total—7.	
Kean		

NAYS

Delegates—	Brown	De Blieux
Aertker	Burns	Dennery
Alario	Burson	Dennis
Alexander	Casey	Derbes
Anzalone	Champagne	Deshotels
Arnette	Chatelain	Drew
Asseff	Chehardy	Dunlap
Avant	Conino	Duval
Badeaux	Conroy	Elkins
Bel	Corne	Fayard
Bergeron	Cowen	Flory
Blair	D'Gerolamo	Fontenot
Brien		

PAGE 9

30th Days Proceedings—August 15, 1973

Fowler	Leithman	Stagg
Fulco	Lennox	Stephenson
Gauthier	Lowe	Stinson
Giarrusso	McDaniel	Stovall
Ginn	Miller	Sutherland
Gravel	Mire	Tapper
Grier	Munson	Tate
Guarisco	Nunez	Thislethwaite
Hardee	O'Neill	Thompson
Hayes	Ourso	Tobias
Haynes	Perez	Toca
Heine	Perkins	Toomy
Hernandez	Planchard	Uilo
Jack	Rachal	Velazquez
Jackson, A.	Reeves	Vesich
Jackson, J.	Robinson	Vick
Juneau	Roemer	Wall
Kelly	Roy	Warren
Kilbourne	Sandoz	Willis
Kilpatrick	Singletary	Winchester
Lambert	Slay	Wisham
Landry, A.	Smith	Womack
LeBleu	Soniati	Zervigon
Total—105.		

ABSENT

Delegates—		
Mr. Chairman	LeBreton	Riecke
Armentor	Leigh	Segura
Cannon	Martin	Shannon
Carmouche	Maubert	Silverberg
Edwards	Newton	Taylor
Jenkins	Pugh	Triche
Landrum	Rayburn	
Total—20.		

And the amendment was rejected.

Delegate Duval moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Delegate Taylor sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates Taylor, J. Jackson, Brown, Stovall, Guarisco, and Roy to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 2, line 25, immediately after "(2)" delete the remainder of the line and on line 26 delete "prisonment at hard labor may be imposed" and insert in lieu thereof "Cases in which the defendant has been convicted of a felony"

Delegate J. Jackson moved the adoption of the amendment.

Delegate Womack objected.

By a vote of 53 yeas and 52 nays the amendment was adopted.

Delegate J. Jackson moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Tate sent up a floor amendment which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Tate to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 2, line 23, immediately after the word "law" and before the word "has" delete the words "or ordinance"

Delegate Tate moved the adoption of the amendment

Delegate Tobias objected.

By a vote of 27 yeas, 82 nays the amendment was rejected.

Delegate Tobias moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Delegate Drew sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegate Drew to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 2, line 28, immediately after the period "." delete the remainder of the line and delete lines 29, 30, and 31 in their entirety

AMENDMENT No. 2—

On page 3, between lines 2 and 3 insert the following: "(F) In all criminal cases not provided for in subsection (D) (2) of this Section an accused shall have a right of appeal or review, as provided by law."

Delegate Drew moved the adoption of the amendment.

Delegate Dennis objected.

By a vote of 60 yeas, 50 nays the amendment was adopted.

Delegate Drew moved to reconsider the vote by which the amendments were adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Dennis sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Dennis, on behalf of the Committee on The Judiciary to Committee Proposal No. 21 by Delegate Dennis et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 2, line 32, immediately after the word "of" and before the letter "(C)" delete the word "Subsection" and insert in lieu thereof the word "Paragraph"

On motion of Delegate Dennis the amendment was adopted.

Delegate Dennis moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Passage

Committee Proposal No. 21, Section 5, was read, as amended.

Delegate Dennis moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Brien	Derbes
Abraham	Brown	Deshoteis
Aertker	Burson	Drew
Alario	Casey	Dunlap
Alexander	Champagne	Duval
Anzalone	Chatelain	Elkins
Arnette	Conino	Fayard
Assett	Conroy	Flory
Avant	Corne	Fontenot
Badeaux	Cowen	Fowler
Bel	D'Gerolamo	Fulco
Bergeron	De Blieux	Gauthier
Blair	Dennery	Giarrusso
Bollinger	Dennis	Ginn

PAGE 10

30th Days Proceedings—August 15, 1973

Gravel	Lowe	Stinson
Grier	McDaniel	Stovall
Guarisco	Miller	Sutherland
Hardee	Mire	Tapper
Hayes	Munson	Tate
Haynes	Nunez	Thistlethwaite
Heine	O'Neill	Thompson
Hernandez	Ourso	Tobias
Jack	Perez	Toca
Jackson, A.	Perkins	Tommy
Jackson, J.	Planchard	Ullio
Juneau	Rachal	Velazquez
Kean	Reeves	Vesich
Kelly	Robinson	Vick
Kilbourne	Roemer	Wall
Kilpatrick	Roy	Warren
Lambert	Sandoz	Weiss
Landrum	Schmitt	Willis
Landry, A.	Singletary	Winchester
Landry, E. J.	Slay	Wisham
Lanier	Smith	Womack
LeBlau	Soniat	Zervigon
Leithman	Stagg	
Lennox	Stephenson	

Total—112.

Total—0.

Delegates—

Armentor	LeBreton
Burns	Leigh
Cannon	Martin
Carmouche	Maubert
Chehardy	Newton
Edwards	Pugh
Jenkins	Rayburn

Total—20.

And the Chair declared that the above Section was passed.

Delegate Dennis moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Motion

On motion of Delegate Burson, the Convention altered the Order of Business to take up Introduction of Resolutions at this time.

Introduction of Resolutions Delegate and Committee Resolution

The following delegates and Chairmen on behalf of their committees introduced the following entitled resolutions:

DELEGATE RESOLUTION No. 37—

Introduced by Delegate Burson:

A RESOLUTION

To amend the Standing Rules of the Constitutional Convention to add a new Rule to require committee action on any proposed new Section to a Committee Proposal.

Read.

Lies over under the rules.

DELEGATE RESOLUTION No. 38—

Introduced by Delegate Burson:

A RESOLUTION

To amend the Standing Rules of the Constitutional Convention to prohibit amendments in conflict with Sections previously adopted by the convention.

Read.

Lies over under the rules.

Motion

On motion of Delegate Stagg, the Convention altered the Order of Business to take up Introduction of Proposals at this time.

Introduction of Proposals

The following named delegates and committees introduced the following entitled Delegate and Committee Proposals which were read by their titles and placed on the Calendar for their second reading.

COMMITTEE PROPOSAL No. 22—

Introduced by Delegate Stagg, Chairman, on behalf of the Committee on Executive Department, and Delegates Abraham, Alexander, Anzalone, Arnette, Brien, Dennery, Duval, Gravel, Stovall, and Tapper:

A PROPOSAL

Making provisions for a code of ethics and the Louisiana Board of Ethics.

Read.

Lies over under the rules.

COMMITTEE PROPOSAL No. 23—

Introduced by Delegate Stagg, Chairman, on behalf of the Committee on Executive Department, and Delegates Abraham, Arnette, Brien, Dennery, Gravel, Stovall, and Tapper:

A PROPOSAL

Prohibiting dual employment and dual officeholding in state and local government.

Read.

Lies over under the rules.

Leave of Absence

Delegate Newton 1—day.

Delegate Segura 2—days.

Delegate Jenkins 1—day.

Delegate Pugh 1—day.

Adjournment

Delegate Reeves moved that the Convention do now adjourn until Thursday August 16, 1973 at 9:00 o'clock A. M.

Which motion was agreed to.

And Chairman Henry declared the Convention adjourned to Thursday, August 16, 1973 at 9:00 o'clock A. M.

MOISE W. DENNERY
Secretary

DAVID R. POYNTER
Chief Clerk

PAGE 6

31st Days Proceedings—August 16, 1973

Delegate Miller sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Miller to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 3, at the end of line 26, delete the words "One or" and at the beginning of line 27, delete the words "more judges may" and insert in lieu thereof the following:
"After January 1, 1975, no judge shall"

Delegate Miller moved the adoption of the amendment.

Delegate Dennis objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Gravel	Planchard
Abraham	Grier	Pugh
Alario	Guarisco	Rachal
Arnette	Hayes	Reeves
Asseff	Haynes	Robinson
Badeaux	Jackson, J.	Roemer
Blair	Juneau	Roy
Brien	Kean	Schmitt
Brown	Landrum	Segura
Burson	Landry, E. J.	Silverberg
Champagne	Lanier	Singletary
Chatelain	LeBleu	Stephenson
Corne	Leigh	Tapper
Cowen	Lennox	Thompson
Dennery	McDaniel	Tobias
Deshotels	Miller	Uilo
Dunlap	Mire	Velazquez
Duval	Newton	Wall
Elkins	Nunez	Warren
Fontenot	Perez	Willis
Fulco	Perkins	Wisham
Giarrusso		
Total—63.		

NAYS

Delegates—	Hardee	Sandoz
Anzalone	Heine	Smith
Avant	Hernandez	Soniat
Bel	Jack	Stagg
Bergeron	Jackson, A.	Stinson
Bollinger	Jenkins	Stovall
Burns	Kelly	Sutherland
Casey	Kilbourne	Tate
Chehardy	Kilpatrick	Thistlethwaite
Conino	Lambert	Toca
Conroy	Landry, A.	Toomy
D'Gerolamo	Leithman	Vesich
De Blieux	Lowe	Vick
Dennis	Mauberret	Weiss
Drew	Munson	Winchester
Fayard	O'Neill	Zervigon
Flory	Rayburn	
Gauthier	Riecke	
Ginn		
Total—52.		

ABSENT

Delegates—	Derbes	Shannon
Mr. Chairman	Edwards	Slay
Aertker	Fowler	Taylor
Alexander	LeBreton	Triche
Armentor	Martin	Womack
Cannon	Orso	
Carmouche		
Total—17.		

And the amendment was adopted.

Delegate Miller moved to reconsider the vote by which the amendment was adopted, and to lay the motion to reconsider on the table.

Delegate Conino objected to tabling the motion to reconsider.

By a vote of 81 yeas and 33 nays the motion to reconsider was tabled.

Passage

Committee Proposal No. 21, Section 9, was read, as amended.

Delegate Dennis moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Gauthier	Pugh
Mr. Chairman	Giarrusso	Rachal
Abraham	Ginn	Rayburn
Alario	Gravel	Reeves
Alexander	Grier	Riecke
Anzalone	Guarisco	Robinson
Arnette	Hardee	Roemer
Asseff	Hayes	Roy
Avant	Haynes	Sandoz
Badeaux	Heine	Schmitt
Bel	Hernandez	Segura
Bergeron	Jackson, A.	Silverberg
Blair	Jackson, J.	Singletary
Bollinger	Juneau	Smith
Brien	Kean	Soniat
Brown	Kelly	Stagg
Burns	Kilpatrick	Stephenson
Burson	Lambert	Stovall
Casey	Landrum	Tapper
Champagne	Landry, A.	Tate
Chatelain	Landry, E. J.	Thistlethwaite
Chehardy	Lanier	Thompson
Conino	LeBleu	Tobias
Corne	LeBreton	Toca
Cowen	Leigh	Toomy
D'Gerolamo	Leithman	Uilo
De Blieux	Lennox	Velazquez
Dennery	Lowe	Vesich
Dennis	McDaniel	Vick
Deshotels	Mauberret	Wall
Drew	Miller	Warren
Dunlap	Mire	Weiss
Duval	Munson	Willis
Elkins	Nunez	Winchester
Fayard	Perez	Wisham
Fontenot	Perkins	Zervigon
Fulco	Planchard	
Total—110.		

NAYS

Delegates—	Kilbourne	Stinson
Conroy	Newton	Sutherland
Jack	O'Neill	
Jenkins		
Total—8.		

ABSENT

Delegates—	Edwards	Slay
Aertker	Fowler	Taylor
Armentor	Martin	Triche
Cannon	Orso	Womack
Carmouche	Shannon	
Derbes		
Total—14.		

And the Chair declared that the above Section was passed.

Delegate Dennis moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Section 10. Courts of Appeal; Appellate and Supervisory

Section 10. (A) Except in those cases appealable to the supreme court and as otherwise provided in this constitution

PAGE 7

31st Days Proceedings—August 16, 1973

tion, a court of appeal has appellate jurisdiction of all civil cases decided within its circuit. It has appellate jurisdiction of all matters appealed from the family and juvenile courts, except criminal prosecutions of persons other than juveniles. It has supervisory jurisdiction over all cases in which an appeal would lie to that court.

(B) Except as limited to questions of law by this constitution or as provided by law in the case of review of administrative agency determinations, its appellate jurisdiction extends to law and facts.

Read.

Delegate Jenkins sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Jenkins, Burson, Avant, Dennery and Guarisco to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 4, delete lines 10 through 13, both inclusive, in their entirety and insert in lieu thereof the following:

"(B) Except as limited to questions of law by this constitution, its appellate jurisdiction extends to law and facts."

Delegate Jenkins moved the adoption of the amendment.

Delegate Flory objected.

By a vote of 49 yeas and 58 nays the amendment was rejected.

Delegate Flory moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Delegate Avant sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Avant to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 4, between lines 13 and 14, add the following paragraph:

"(C) The legislature may provide for administrative agencies and authorize such agencies to make factual determinations which shall not be subject to review if supported by competent evidence following notice and hearing."

Delegate Avant moved the adoption of the amendment.

Delegate Dennis objected.

By a vote of 10 yeas and 101 nays the amendment was rejected.

Delegate Dennis moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Passage

Committee Proposal No. 21, Section 10, was read.

Delegate Dennis moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Alario	Anzalone
Abraham	Alexander	Arnette

Asseff	Haynes
Avant	Heine
Badeaux	Hernandez
Bel	Jack
Bergeron	Jackson, A.
Bollinger	Jackson, J.
Brien	Jenkins
Brown	Janeau
Burns	Kean
Burson	Kelly
Cassy	Kilbourne
Champagne	Kilpatrick
Chatelain	Landrum
Chehardy	Landry, A.
Conroy	Landry, E. J.
Corne	Lanier
Cowen	LeBlau
D'Gerolamo	LeBreton
De Blieux	Leigh
Dennery	Leithman
Dennis	Lennox
Deshotels	Lowe
Drew	McDaniel
Dunlap	Mauberrert
Elkins	Duval
Flory	Mire
Fontenot	Munson
Fowler	Newton
Fulco	Nunez
Giarrusso	O'Neill
Ginn	Perez
Gravel	Perkins
Grier	Pugh
Hardee	Rachal
Hayes	Rayburn
	Reeves

Total—113.

NAYS

Delegate Guarisco
Total—1.

ABSENT

Delegates—	Derbes	Ourso
Aertker	Edwards	Planchard
Armertor	Fayard	Shannon
Blair	Gauthier	Slay
Cannon	Lambert	Taylor
Carmouche	Martin	Triche
Conino		

Total—18.

And the Chair declared that the above Section was passed.

Delegate Dennis moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Section 11. Courts of Appeal; Certification to Supreme Court; Determination

Section 11. A court of appeal may certify any question of law before it to the supreme court, whereupon the supreme court may give its binding instruction, or consider and decide the case upon the whole record.

Read.

Passage

Delegate Dennis moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Bergeron	Conino
Abraham	Bollinger	Conroy
Alario	Brien	Corne
Alexander	Brown	Cowen
Anzalone	Burns	D'Gerolamo
Arnette	Burson	De Blieux
Asseff	Cassy	Dennery
Avant	Champagne	Dennis
Badeaux	Chatelain	Deshotels
Bel	Chehardy	Drew

OFFICIAL JOURNAL
OF THE
CONSTITUTIONAL CONVENTION
OF 1973
OF THE
STATE OF LOUISIANA

THIRTY-SECOND DAY'S PROCEEDINGS

of the Constitutional Convention of 1973
held in accordance with Act 2 of the 1972
Regular Session of the Legislature

Friday, August 17, 1973, Baton Rouge, La.

The Convention was called to order at 9:00 A.M., by Hon. E. L. Henry, Chairman of the Convention.

ROLL CALL

The roll being called, the following delegates answered to their names:

PRESENT

Delegates—	Giarrusso	Pugh
Mr. Chairman	Ginn	Rachal
Abraham	Gravel	Rayburn
Aertker	Grier	Reeves
Alario	Guarisco	Riecke
Alexander	Hardee	Robinson
Anzalone	Hayes	Roemer
Arnette	Haynes	Roy
Asseff	Heine	Sandoz
Avant	Hernandez	Schmitt
Badeaux	Jack	Segura
Bel	Jackson, A.	Silverberg
Bergeron	Jackson, J.	Singletary
Blair	Jenkins	Smith
Bollinger	Juneau	Soniat
Brien	Kean	Slagg
Brown	Kelly	Stephenson
Burns	Kilbourne	Stinson
Burson	Kilpatrick	Sovall
Casey	Lambert	Sutherland
Champagne	Landrum	Tapper
Chatelain	Landry, A.	Tate
Chehardy	Landry, E. J.	Taylor
Conino	Lanier	Thistlethwaite
Corley	LeBleu	Thompson
Corne	LeBreton	Tobias
Cowen	Leigh	Toca
D'Gerolamo	Leithman	Toomy
Dennery	Lennox	Ullio
Dennis	Lowe	Velazquez
Derbes	McDaniel	Vesich
Deshotels	Martin	Vick
Drew	Maubert	Wall
Dunlap	Miller	Warren
Duval	Mire	Weiss
Elkins	Munson	Willis
Fayard	Newton	Winchester
Flory	Nunez	Wisham
Fontenot	O'Neill	Womack
Fowler	Perkins	Zervigon
Fulco	Perez	
Gauthier	Planchard	
Total—124.		

ABSENT

Delegates—	Edwards	Slay
Armentor	Ours	Triche
Cannon	Shannon	
Carmouche		
Total—8.		

The Chairman announced that there were 124 members present and a quorum.

Prayer

Prayer was offered by Delegate Stovall.

Pledge of Allegiance

Delegate Soniat led the Convention in reciting the Pledge of Allegiance to the Flag of the United States of America.

Reading of the Journal

On motion of Delegate Ullio, the reading of the Journal was dispensed with.

On motion of Delegate Ullio, the Journal of yesterday was adopted.

Morning Hour

Unfinished Business

The following unfinished business in which the Convention was engaged at the time of its adjournment on yesterday was taken up and acted on:

Proposals

Delegate and Committee

The following entitled Delegate and Committee Proposals were taken up on their third reading and final passage:

COMMITTEE PROPOSAL No. 21—

Introduced by Delegate Dennis, Chairman, on behalf of the Committee on the Judiciary, and Delegates Avant, Bel, Bergeron, Burns, Deshotels, Drew, Gauthier, Kelly, Kilbourne, Landry, Martin, Ours, Sandoz, Tate and Vesich (A Substitute for Committee Proposal No. 6):

A PROPOSAL

Making provisions for the judiciary branch of government
Read.

The Chairman announced that the Convention had under consideration the above Proposal when it adjourned on Thursday, August 16, 1973, which was taken up and acted upon as follows:

Section 15. Courts; Continued; Jurisdiction; Judicial Districts Changes; Terms

Section 15. (A) The district, parish, city, family, and juvenile courts existing at the time of the adoption of this constitution are retained. Except as provided in Section 35 of this Article, the legislature may abolish or merge trial courts of limited jurisdiction subject to the limitations in Sections 16 and 21 of this Article. Except as provided in Section 35 of this Article, the legislature may establish trial courts of limited jurisdiction which shall have parish-wide territorial jurisdiction and subject matter jurisdiction which shall be uniform throughout the state. The office of city marshal is continued until such time as the city court he serves is abolished by the legislature.

(B) The judicial districts existing at the time of the adoption of this constitution are retained. The legislature, by a majority vote of the elected members of each house, with approval in a referendum in each district or parish affected, may establish or merge judicial districts, subject to the limitations of Section 21 of this Article.

(C) The term of district judge shall be six years. Terms established for judgeships existing at the time of the adoption of this constitution are retained; however, the legislature by a majority vote of the elected members of each house, with approval in a referendum in the parish affected, may reduce the terms of district judges in a parish to not less than six years.

Read.

Vice Chairman Roy in the Chair

Delegate Dennis sent up a floor amendment which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Dennis to Committee Proposal No. 21 by Delegate Dennis, et al.

PAGE 2

32nd Days Proceedings—August 17, 1973

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 5, line 8, immediately after the word "limited" and before the word "jurisdiction" insert the words "or specialized"

Delegate Dennis moved the adoption of the amendment.

Delegate Avant objected.

By a vote of 103 yeas and 5 nays the amendment was adopted.

Delegate Dennis moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate D'Gerolamo sent up a floor amendment which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate D'Gerolamo to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 5, line 4, immediately after the word "parish" and the comma "," and before the word "city" insert the word and punctuation "magistrate."

Delegate D'Gerolamo moved the adoption of the amendment.

Delegate Abraham objected.

By a vote of 88 yeas and 20 nays the amendment was adopted.

Delegate D'Gerolamo moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Nunez sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Nunez and Toomy to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 5, strike out lines 4 through 15, inclusive, and in their entirety and strike out Floor Amendment No. 1 proposed by Delegate Dennis and adopted by the Convention on August 17, 1973 and strike out Floor Amendment No. 1 proposed by Delegate D'Gerolamo and adopted by the Convention on August 17, 1973, and insert in lieu thereof the following:

"Section 15. (A) The district, parish, city, family, and juvenile courts existing at the time of the adoption of this constitution are retained. Except as provided in Section 35 of this Article, the legislature, by a majority vote of the elected members of each house, and with approval in a referendum in each district, parish, or portion affected may abolish or merge trial courts of limited or specialized jurisdiction subject to the limitations in Sections 16 and 21 of this Article. Except as provided in Section 35 of this Article, the legislature may establish trial courts of limited jurisdiction which shall have parishwide territorial jurisdiction and subject matter jurisdiction which shall be uniform throughout the state. The office of city marshal is continued until such time as the city court he serves is abolished by the legislature."

Motion

Delegate Bollinger moved the previous question on the amendment.

Delegate Avant objected.

By a vote of 27 yeas and 76 nays the Convention refused to order the previous question.

Delegate Nunez moved the adoption of the amendment.

Delegate Burson objected.

By a vote of 35 yeas and 81 nays the amendment was rejected.

Delegate Dennis moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Chairman Henry in the Chair

Delegate Tobias sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Tobias to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 5, line 13, immediately after the period "." delete the remainder of the line and delete lines 14 and 15 in their entirety.

Delegate Tobias moved the adoption of the amendment.

Delegate Bel objected.

By a vote of 40 yeas and 66 nays the amendment was rejected.

Delegate Bel moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Delegate Tobias sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates Tobias, Gauthier, Willis, Lennox, Sutherland and Velazquez to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 5, line 6, immediately after the period "." insert the following:

"Notwithstanding any provision of this constitution to the contrary, there shall be no civil district courts or criminal district courts, but a district court may sit in specialized divisions as provided by rule of court."

Delegate Tobias moved the adoption of the amendment.

Delegate Alexander objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

Delegates—

YEAS

Mr. Chairman	Fulco	Lennox
Abraham	Gauthier	Miller
Asseff	Gravel	O'Neill
Blair	Guarico	Perkins
Bongier	Hardsee	Planchard
Brown	Hayes	Rachal
Champagne	Haynes	Reeves
Chatelain	Jackson, A.	Roemer
Conroy	Jackson, J.	Sandoz
Corne	Lambert	Soniat
Cowen	Landrum	Stovall
Duval	LeBlau	Sutherland
Fontenot	Leigh	Tate

PAGE 3

32nd Days Proceedings—August 17, 1973

Taylor	Velazquez	Wisham
Thompson	Wall	
Tobias	Willis	
Total—46.		

NAYS		
Delegates—		
Areriker	Flory	Pugh
Alario	Fowler	Rayburn
Alexander	Giarrusso	Riecke
Anzalone	Ginn	Robinson
Arnette	Grier	Roy
Avant	Heine	Schmitt
Badeaux	Hernandez	Segura
Bel	Jack	Silverberg
Bergeron	Jenkins	Singletary
Brien	Juneau	Smith
Burns	Kelly	Stephenson
Burson	Kilbourne	Stinson
Casey	Kilpatrick	Tapper
Chehardy	Landry, A.	Thistlethwaite
Conino	Landry, E. J.	Toca
D'Geronimo	Lanier	Toomy
Dennerly	LeBreton	Ullio
Derbes	Leithman	Vesich
Deshotels	McDaniel	Vick
Drew	Mire	Weiss
Dunlap	Newton	Winchester
Elkins	Nunez	Zervigon
Fayard	Perez	
Total—68		

ABSENT		
Delegates—		
Armentor	Kean	Shannon
Canon	Lowe	Slay
Carmouche	Martin	Stagg
De Blieux	Mauberrert	Triche
Dennis	Munson	Warren
Edwards	Ourso	Womack
Total—18.		

And the amendment was rejected.
 Delegate Casey moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Vice Chairman Roy in the Chair

Delegate Abraham sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegate Abraham to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 5, line 6, immediately after the period “.” delete the remainder of the line

AMENDMENT No. 2—

On page 5, line 7, at the beginning of the line before the word “legislature” delete the words and punctuation “of this Article, the” and insert in lieu thereof the word “The”

AMENDMENT No. 3—

On page 5, line 9, immediately after the period “.” delete the remainder of the line

AMENDMENT No. 4—

On page 5, line 10, at the beginning of the line immediately before the word “legislature” delete the words and punctuation “Section 35 of this Article, the” and insert in lieu thereof the word “The”

Delegate Abraham moved the adoption of the amendment.

Delegate Vesich objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS		
Delegates—		
Mr. Chairman	Ginn	Roemer
Abraham	Gravel	Sandoz
Arcker	Grier	Schmitt
Arnette	Guarisco	Silverberg
Asseff	Hardee	Singletary
Blair	Hayes	Smith
Bollinger	Haynes	Soniat
Brien	Hernandez	Stagg
Brown	Jack	Stephenson
Champagne	Jackson, A.	Stinson
Chatain	Jackson, J.	Stovall
Conroy	Juneau	Taylor
Corne	Kean	Thompson
Cowen	Lambert	Tobias
Derbes	Lanier	Toomy
Drew	LeBlau	Ullio
Dunlap	Leigh	Vick
Duval	Leithman	Warren
Elkins	Miller	Weiss
Fayard	Newton	Willis
Fontenot	Nunez	Wisham
Fulco	O'Neill	Zervigon
Gauthier	Planchard	
Total—68.		

NAYS		
Delegates—		
Alario	Heine	Perkins
Alexander	Jenkins	Pugh
Avant	Kelly	Rayburn
Badeaux	Kilbourne	Reeves
Bel	Kilpatrick	Riecke
Bergeron	Landrum	Robinson
Burns	Landry, A.	Roy
Casey	Landry, E. J.	Segura
Chehardy	LeBreton	Tapper
Conino	Lennox	Thistlethwaite
D'Geronimo	Lowe	Toca
Dennerly	McDaniel	Velazquez
Deshotels	Mauberrert	Vesich
Flory	Mire	Wall
Fowler	Munson	Winchester
Giarrusso	Perez	
Total—47.		

ABSENT		
Delegates—		
Anzalone	Dennis	Slay
Armentor	Edwards	Sutherland
Burson	Martin	Tate
Canon	Ourso	Triche
Carmouche	Rachal	Womack
De Blieux	Shannon	
Total—17		

And the amendments were adopted.

Delegate Abraham moved to reconsider the vote by which the amendments were adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Duval sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Duval to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 5, line 18, at the end of the line delete the word “with” and delete line 19 in its entirety

Delegate Duval moved the adoption of the amendment.

Delegate Avant objected.

PAGE 4

32nd Days Proceedings—August 17, 1973

By a vote of 34 yeas and 82 nays the amendment was rejected.

Delegate Tapper moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Delegate Perez sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegates Perez, Kelly and Avant to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 5, line 19, between the words "district" and "parish" delete the word "or" and insert in lieu thereof the word "and".

AMENDMENT No. 2—

On page 5, line 20, between the words "establish" and "or" insert the following:
"divide,"

Delegate Perez moved the adoption of the amendment.

Delegate Zervigon objected.

By a vote of 92 yeas and 18 nays the amendments were adopted.

Delegate Perez moved to reconsider the vote by which the amendments were adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Pugh sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Pugh to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 5, at the end of line 21, after the period "." add the following:

"The manner of holding such referendum elections shall be as prescribed in the legislative act providing for the referendum."

Delegate Roy moved the adoption of the amendment.

Delegate Rayburn objected.

By a vote of 35 yeas and 76 nays the amendment was rejected.

Delegate Aertker moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Delegate Willis sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates Willis, Juneau, Sandoz, A. Landry, Lennox, Lanier, Bollinger, Guarisco, Brien, Duval, Reeves, Thompson, Roy, Dunlap, Anzalone, Fayard, Burson, Champagne, Planchard, De Blieux, Stag, Abraham, Kean, Stinson, O'Neill, Roemer, Arnette, Miller, Thistlethwaite, Slay, Munson, Perkins, Gravel, Asseff, Hardee, Elkins, Jack, Smith, E. J. Landry, Chatelain, Corne, Tobias, Avant, Mire, Cowan, A. Jackson, LeBleu, Haynes, Badeaux, Soniat, Aertker, Schmitt, Hayes, Wisham, Lowe, Heine, Fulco, Wall, Ginn, Kilpatrick, Grier, Fontenot, Tommy, Ullo, Womack, Weiss, Winchester, Pugh, Stovall,

Silverberg, McDaniel, Leigh, Carmouche, Kilbourne, Burns, Jenkins, Newton, Shannon and Segura to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 5, at the end of line 22 delete the word "Terms" and delete lines 23 through 28, both inclusive, in their entirety

Delegate Willis moved the adoption of the amendment.

Delegate Vesich objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Grier	Perez
Mr. Chairman	Guarisco	Perkins
Abraham	Hardee	Rayburn
Aertker	Hayes	Reeves
Alario	Haynes	Roemer
Anzalone	Heine	Roy
Arnette	Hernandez	Sandoz
Asseff	Jack	Schmitt
Avant	Jackson, A.	Segura
Badeaux	Jackson, J.	Silverberg
Blair	Jenkins	Singletary
Bollinger	Juneau	Smith
Brien	Kean	Soniat
Brown	Kelly	Stagg
Burns	Kilbourne	Stephenson
Champagne	Kilpatrick	Stinson
Chatelain	Lambert	Stovall
Conroy	Landrum	Taylor
Corne	Landry, A.	Thistlethwaite
Cowan	Landry, E. J.	Thompson
De Blieux	Lanier	Tobias
Dennis	LeBleu	Toomy
Drew	Leigh	Ullo
Dunlap	Leithman	Velazquez
Duval	Lennox	Vick
Elkins	Lowe	Wall
Fayard	McDaniel	Warren
Fontenot	Miller	Weiss
Fowler	Mire	Willis
Fulco	Munson	Winchester
Gauthier	Ginn	Wisham
Ginn	Newton	Zervigon
Gravel	O'Neill	
Total—96.		

NAYS

Delegates—	Dennery	Nunez
Alexander	Derbes	Riecke
Bel	Deshotels	Robinson
Bergeron	Flory	Tapper
Casey	Giarrusso	Toca
Chehardy	LeBreton	Vesich
Conino	Maubert	
D'Gerolamo		
Total—20.		

ABSENT

Delegates—	Ouro	Sutherland
Armentor	Planchard	Tate
Burson	Pugh	Triche
Cannon	Rachal	Womack
Carmouche	Shannon	
Edwards	Slay	
Martin		
Total—16.		

And the amendment was adopted.

Delegate Willis moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Motion

On motion of Delegate Wall the remarks of Delegate Willis were ordered inserted in the official Journal as follows:

PAGE 5

32nd Days Proceedings—August 17, 1973

Opening Remarks

Mr. Chairman,

Gentle Ladies and Gentlemen:

Notwithstanding the gallant support of the coauthors of this amendment, assuring its approval, I cannot be studious of brevity with a full heart. It is the sense of omnipresent duty which pursued me to this podium. I do not appeal to you from lip to ear; I appeal from heart to heart.

I rise, with reluctance, to express my aversion to a sentence in an article of the Judiciary Plan for which we are so much obliged to the honorable men who laid it before us.

After you attentively listed to prayer this morn, you stood at attention with hand over heart and repeated a Pledge of Allegiance to the red, white, and blue bunting on this platform, which is a symbol of our union, and ended by saying "... Justice For All." This you said. Did you mean it?

With the virtuous education and dedication you have, I warrant you did, because no time is good time to tell ourselves or each other an untruth, which immediately compels me to recall the final advice of Polonius to his son, Laertes, upon the latter's departure, in the tragedy of the Prince of Denmark by the Bard of Avon:

"This above all: To thine own self be true,
and it must follow, as the night the day,
Thou canst not then be false to any man."

WILLIAM SHAKESPEARE, HAMLET I, iii.59.

Especially at this time, heed God's monitor in your bosom--conscience. On this side of the grave, there is no greater luxury of enjoyment than a clear conscience and sense of duty performed, righteousness is always an evidence of greatness and honor. Wrong is the property of small souls. Your loyalty is due to no mortal man in authoring this Constitution; it is due to good government—Justice For All.

I ask you to please your constituents and so the public at large. If you do what is right, the consequences are nothing and you clothe yourself in armor that the arrows of consequences can never penetrate, and only nature is responsible; if you do wrong, you are responsible for all the consequences to the last sigh.

Much evidence was heard by the Committee on the Judiciary. The totality of that sponsoring the disparity of terms of district judges whereby those serving within the crescent of this mighty and muddy Mississippi, a block away, should have double the terms of all other judges in Louisiana is that campaign costs are higher in that half-moon area. If you project that argument vis-a-vis other officials in any branch of our government, you will see how ludicrous it is to measure the terms of officials by the costs of campaigns. So, I do not belabor the point. Although a majority of the committee embraced the argument from that evidence, I am inclined to a contrary opinion, because the term of a judge should not depend upon its price or the size, population or configuration of an area.

I cannot admonish you enough that equal judges should have equal terms and that the bad habit of history, another argument for disparity of terms, should not be repeated in this Constitution in total violation of Justice For All.

I am sorry to dissent from the proposal of the committee to which I have been assigned, but my heart is full of contempt for injustice, so I must exclaim:

"Give sorrow words; the grief that does not speak
whispers the o'er-fraught heart and bids it break."

WILLIAM SHAKESPEARE, MACBETH IV, iii.209.

I envy the happy moment so soon to arrive when you will restore justice to our district judges by carpeting our voting board in green the color most favored by God in carpeting our world.

And therefore if there are no further speakers I move the amendment and am content with the satisfaction of having poured my heart and given my frank opinion and done my duty.

Thank you.

Closing Remarks

In the name of justice, I adjure you to deal fairly with judges. Be loyal to justice. Beware you do not betray it or

our district judges. They await your decision with composure and fortitude and with union, justice, and confidence, the three words written on our state seal which is lighted in front of this podium.

You may not, you must not deprive justice to judges. My calm analysis of the evidence supplied the committee on the Judiciary demonstrates to me that there was no valid evidence to support unequal terms for equal judges. Why is equality so difficult to understand or to live by?

I plead for our district judges nothing more than that justice which they or you would mete out to the humblest citizen: Equal Justice. If equality is part of justice, then justice requires equality. That is no more arguable than the ten commandments.

I am calm and confident that you will lean on your daily pledge to old glory and glorify your vote for justice for all judges and receive the blessings and honor of our people by so doing. I am equally confident that you will vote for union, justice, and confidence as I am that you will vote for justice for all, including our district judges.

Because I wish our decision remembered with undiminished interest, I request the vote on the amendment to be recorded, Mr. Chairman.

Delegate Toomy sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates Toomy, Gauthier, Toca, Ullo, Leithman, Alario, Conino, D'Gerolamo, Chehardy, Nunez to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 5, line 22, immediately after the word "district" and before the word "shall" delete the word "judge" and insert in lieu thereof the words "and parish judges"

Delegate Toomy moved the adoption of the amendment.

Delegate Schmitt objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Abraham	Giarrusso	O'Neill
Aertker	Ginn	Perez
Alario	Gravel	Perkins
Anzalone	Grier	Rayburn
Avant	Guarisco	Reich
Badeaux	Hardee	Robinson
Bel	Hayes	Roemer
Bergeron	Haynes	Roy
Blair	Heine	Segura
Bollinger	Hernandez	Silverberg
Brown	Jack	Singletary
Burns	Jackson, A.	Smith
Casey	Jenkins	Staeg
Chatelain	Juneau	Stephenson
Chehardy	Kean	Stinson
Conino	Kilbourne	Stovall
Conroy	Kilpatrick	Tapper
Corne	Lambert	Tate
Cowen	Landry, A.	Thistiethwaite
D'Gerolamo	Landry, E. J.	Thompson
De Bileux	Lanier	Tobias
Dennery	LeBlue	Toca
Dennis	LeBreton	Toomy
Derbes	Leigh	Ullo
Deshotels	Leithman	Velazquez
Drew	Lemox	Vesich
Dunlap	Lowe	Wall
Duval	McDaniel	Warren
Elkins	Mauberet	Weiss
Fayard	Miller	Willis
Flory	Mire	Winchester
Fowler	Munson	Wisham
Fulco	Newton	Zervigon
Gauthier	Nunez	
Total—101.		

PAGE 6

32nd Days Proceedings—August 17, 1973

NAYS

Delegates—		
Alexander	Jackson, J.	Soniati
Asseff	Kelly	Taylor
Brien	Landrum	Vick
Champagne	Riecke	
Fontenot	Schmitt	
Total—13.		

ABSENT

Delegates—		
Mr. Chairman	Edwards	Sandoz
Armstrong	Martin	Shannon
Arnette	Oruso	Slay
Burson	Planchard	Sutherland
Cannon	Pugh	Triche
Carmouche	Rachal	Womack
Total—18.		

And the amendment was adopted.

Delegate Toomy moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Juneau sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Juneau and Kilbourne to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 5, between lines 28 and 29, add the following: "(D) The legislature may increase or decrease the number of judges in any judicial district by a two-thirds vote of the elected membership of each house."

Delegate Juneau moved the adoption of the amendment.

Delegate Singletary objected.

By a vote of 86 yeas and 23 nays the amendment was adopted.

Delegate Juneau moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Passage

Committee Proposal No. 21, Section 15, was read, as amended.

Delegate Dennis moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Chehardy	Fowler
Abraham	Conry	Fulco
Aeriker	Corne	Gauthier
Alario	Cowen	Giarrusso
Alexander	D'Gerolamo	Ginn
Anzalone	De Blieux	Gravel
Arnette	Denmery	Grier
Asseff	Dennis	Guariseo
Avant	Derbes	Hardee
Eadeaux	Deshotels	Hayes
Bel	Drew	Haynes
Bergeron	Dumlap	Heine
Bollinger	Duvai	Hernandez
Brien	Elkins	Jack
Brown	Fayard	Jackson, A.
Burns	Flory	Jackson, J.
Champagne	Fontenot	Jenkins
Chatelain		Juneau

Kean	Nunez	Tapper
Kelly	O'Neill	Tate
Kilbourne	Perez	Taylor
Kilpatrick	Perkins	Thistlethwaite
Lambert	Planchard	Thompson
Landrum	Rayburn	Tobias
Landry, A.	Reeves	Toca
Landry, E. J.	Riecke	Toomy
Lanier	Robinson	Ullio
LeBleu	Roemer	Velazquez
LeBretton	Roy	Vesich
Leigh	Sandoz	Vick
Leithman	Schmitt	Wall
Lennox	Segura	Warren
Lowe	Silverberg	Weiss
McDaniel	Singletary	Willis
Mauberrert	Soniati	Winchester
Miller	Stagg	Wisham
Mire	Stephenson	Zervigon
Munson	Stinson	
Newton	Stovall	
Total—115.		

NAYS

Casey

Total—1.

ABSENT

Delegates—		
Armstrong	Martin	Smith
Blair	Oruso	Sutherland
Burson	Pugh	Triche
Cannon	Rachal	Womack
Carmouche	Shannon	
Edwards	Slay	
Total—16.		

And the Chair declared that the above Section was passed.

Delegate Dennis moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Section 16. District Courts: Original Jurisdiction

Section 16. (A) Unless otherwise authorized by this constitution, a district court shall have original jurisdiction in all civil and criminal matters. It shall have exclusive original jurisdiction of felony cases; cases involving the title to immovable property; the right to office or other public position; civil or political rights; probate and succession matters; the state, a political corporation, or a succession, as a party defendant, regardless of the amount in dispute; and the appointment of receivers or liquidators to corporations or partnerships.

(B) A district court shall have appellate jurisdiction as provided by law.

Read.

Delegate Tate sent up a floor amendment, which was read as follows:

Amendment proposed by Delegate Tate to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 6, line 1, immediately after the word "jurisdiction" insert a colon ":" and delete the remainder of the line and insert in lieu thereof the following: "of felony cases and of cases involving: the title to"

On motion of Delegate Tate the amendment was adopted.

Delegate Tate moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Abraham sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegates Tobias, Abraham and Gauthier to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed proposal as follows:

PAGE 7

32nd Days Proceedings—August 17, 1973

AMENDMENT No. 1—

On page 5, line 30, after the letter "(A)" delete the remainder of the line

AMENDMENT No. 2—

On page 5, line 31, at the beginning of the line delete "stitution, a" and insert in lieu thereof the word "A"

On motion of Delegate Gauthier the amendment was withdrawn.

Vice Chairman Casey in the Chair

Delegate Gauthier sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Gauthier, and Nunez to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 6, line 9, after the word "law" change the period "." to a comma "," and add the following: "except that from parish courts, appeals by trials de novo are prohibited."

Delegate Gauthier moved the adoption of the amendment.

Delegate Stinson objected.

By a vote of 28 yeas and 78 nays the amendment was rejected.

Delegate Jack moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Delegate Pugh sent up a floor amendment which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Pugh to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 6, delete lines 8 and 9, and insert in lieu thereof the following:

"(B) The district courts shall have such appellate jurisdiction as the legislature shall provide by law"

Delegate Roy moved the adoption of the amendment.

Delegate Champagne objected.

By a vote of 50 yeas and 55 nays the amendment was rejected.

Delegate Alario moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Passage

Committee Proposal No. 21, Section 16, was read, as amended.

Delegate Dennis moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Abraham	Anzalone	Badeaux
Aertker	Arnette	Bel
Alario	Asselt	Bergeron
Alexander	Avant	Bollinger

Brien	Hayes	Reeves
Brown	Haynes	Riecke
Burns	Heine	Robinson
Casey	Hernandez	Roemer
Champagne	Jack	Roy
Chatelain	Jackson, A.	Sandoz
Chehardy	Jackson, J.	Schmitt
Conino	Jenkins	Segura
Conroy	Juneau	Silverberg
Corne	Kean	Singletary
Cowen	Kelly	Smith
D'Gerolamo	Kilbourne	Soniat
De Bieaux	Kilpatrick	Stagg
Dennery	Lambert	Stinson
Dennis	Landrum	Tapper
Derbes	Landry, A.	Tate
Deshotels	Landry, E. J.	Taylor
Drew	LeBrie	Thistlethwaite
Dunlap	LeBleu	Thompson
Duval	Leigh	Tobias
Elkins	Lesthman	Toomy
Fayard	Lennox	Ullio
Flory	Lowe	Velazquez
Fontenot	McDaniel	Vesich
Grier	Miller	Vick
Fulco	Mire	Wall
Gauthier	Munson	Warren
Giarrusc	Newton	Weiss
Ginn	Nunez	Willis
Gravel	O'Neill	Wisham
Guariseo	Perez	Zervigon
Hardee	Perkins	
	Rayburn	
Total—109.		

NAYS

Total—0.

ABSENT

Delegates—		
Mr. Chairman	Martin	Stephenson
Armentor	Mauberet	Stoval
Blair	Ourso	Sutherland
Burson	Planchard	Toca
Cannon	Pugh	Triche
Carmouche	Rachal	Winchester
Edwards	Shannon	Womack
LeBreton	Slay	
Total—23.		

And the Chair declared that the above Section was passed.

Delegate Dennis moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Chairman Henry in the Chair

Section 17. District Courts; Chief Judge

Section 17. Each district court shall elect from its members a chief judge who shall exercise, for the term designated by the court, the administrative functions as prescribed by rule of court.

Read.

Delegate Bollinger sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Bollinger to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 6, delete lines 11 through 14 both inclusive in their entirety and insert in lieu thereof the following:

"Section 17. There shall be a chief judge of each district court who shall be the judge oldest in point of service on the court."

Delegate Bollinger moved the adoption of the amendment.

Delegate Dennis objected.

By a vote of 36 yeas and 68 nays the amendment was rejected.

PAGE 8

32nd Days Proceedings—August 17, 1973

Delegate Dennis moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Passage

Committee Proposal No. 21, Section 17, was read.

Delegate Dennis moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Fulco	O'Neill
Abraham	Gauthier	Perez
Aertker	Giarrusso	Ginn
Alario	Rayburn	Riecke
Alexander	Grier	Robinson
Anzalone	Hayes	Roemer
Arnette	Haynes	Sandoz
Avant	Heine	Segura
Badeaux	Hernandez	Silverberg
Bel	Jack	Singletary
Bergeron	Jackson, J.	Smith
Bollinger	Jenkins	Soniati
Brown	Juneau	Stagg
Burns	Kean	Stovall
Casey	Kilbourne	Tapper
Champagne	Kilpatrick	Tate
Chatelain	Lambert	Taylor
Chehardy	Landrum	Thistlethwaite
Conino	Landry, A.	Tobias
Conroy	Landry, E. J.	Toca
Corne	Lanier	Toomy
Cowen	LeBreton	Uilo
D'Gerolamo	Leithman	Velazquez
Dennery	Low	Vesich
Dennis	Mauberrert	Vick
Derbes	Miller	Warren
Deshotels	Mire	Weiss
Drew	Munson	Willis
Dunlap	Newton	Wisham
Duval	Nunez	Zervigon
Elkins		
Flory		
Fontenot		
Total—95.		

NAYS

Delegates—	Guarisco	Reeves
Asseff	Jackson, A.	Roy
Brien	Kelly	Schmitt
De Blieux	LeBleu	Stinson
Fowler	Leigh	Thompson
Gravel		
Total—15.		

ABSENT

Delegates—	Hardee	Stephenson
Mr. Chairman	Martin	Sutherland
Armentor	Ours	Triche
Blair	Planchar	Wall
Burson	Pugh	Winchester
Cannon	Rachal	Womack
Carmouche	Shannon	
Edwards	Slay	
Fayard		
Total—22.		

And the Chair declared that the above Section was passed.

Delegate Dennis moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Section 18. Juvenile Courts; Jurisdiction

Section 18. The jurisdiction of a juvenile court shall be as provided by law.

Read.

Motion

On motion of Delegate J. Jackson action was deferred on Section 18 at this time.

Section 19. -Mayors' Courts; Justices of the Peace; Continued

Section 19. Mayors' courts and justice of the peace courts existing at the time of the adoption of this constitution are continued subject to change by the legislature.

Read.

Delegate Dennis sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegate Dennis to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 6, line 20, immediately after the words "Mayors' courts" delete the remainder of the line

AMENDMENT No. 2—

On page 6, line 22, at the end of the line, add the following:

"Any parish of the state, the parish of Orleans excepted, may be divided by the police jury thereof into not more than six nor fewer than three justice of the peace wards, from each of which there shall be elected one justice of the peace; provided, that the legislature may reduce such number, or even abolish the office of justice of the peace throughout the state. The number of justice of the peace wards in the several parishes shall remain as now fixed until rearranged, or until the office of justice of the peace may be abolished, as herein provided."

Delegate Thompson moved the previous question on the amendment.

Delegate Perez objected.

By a vote of 16 yeas and 83 nays the Convention refused to order the previous question.

Delegate Dennis moved the adoption of the amendment.

Delegate Rayburn objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Newton	Stovall
Asseff	Perez	
Deshotels	Perkins	
Fowler		
Total—7.		

NAYS

Delegates—	Corne	Grier
Abraham	Cowen	Guarisco
Aertker	D'Gerolamo	Hayes
Alario	De Blieux	Haynes
Alexander	Dennery	Hernandez
Anzalone	Dennis	Jack
Arnette	Derbes	Jackson, A.
Avant	Drew	Jackson, J.
Badeaux	Dunlap	Jenkins
Bel	Duval	Juneau
Bergeron	Elkins	Kean
Bollinger	Fayard	Kelly
Brien	Flory	Kilbourne
Burns	Fontenot	Kilpatrick
Casey	Fulco	Lambert
Champagne	Giarrusso	Landrum
Chatelain	Gauthier	Landry, A.
Chehardy	Giarrusso	Landry, E. J.
Conino	Ginn	
Conroy	Gravel	

PAGE 5

34th Days Proceedings—August 22, 1973

FLOOR AMENDMENTS

Amendments proposed by Delegate Tate to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 9, at the end of line 6, immediately after the word "respective" add the word "district."

AMENDMENT No. 2—

On page 9, line 7, place a comma "," after the word "circuit"

Delegate Tate moved the adoption of the amendment.

By a vote of 111 yeas and 0 nays the amendment was adopted.

Delegate Tate moved to reconsider the vote by which the amendments were adopted, and on his own motion, the motion to reconsider was laid on the table.

Motion

On motion of Delegate Stovall further action on the above Section was deferred at this time.

Section 25. Judiciary Commission; Composition; Terms; Vacancy; Grounds for Removal; Powers

Section 25. (A) The Judiciary Commission shall consist of one court of appeal judge and two district court judges selected by the supreme court; three attorneys admitted to the practice of law for at least ten years who are not judges, active or retired, nor public officials, selected by the Louisiana Conference of Court of Appeal Judges' Association or its successor; and three citizens, not lawyers, judges active or retired, nor public officials, appointed by the Louisiana District Judges' Association or its successor.

(B) A member of the commission shall serve a four-year term and shall not be eligible to succeed himself.

(C) A member's term shall terminate when he loses the status causing his appointment or when any event occurs which would have made him ineligible for appointment.

(D) When a vacancy occurs, a successor shall be appointed for a four-year term by the authority which appointed his predecessor.

(E) On recommendation of the Judiciary Commission, the supreme court may censure, suspend with or without salary, remove from office, or retire involuntarily a judge for willful misconduct relating to his official duty, willful and persistent failure to perform his duty, persistent and public conduct prejudicial to the administration of justice that brings the judicial office into disrepute, conduct while in office which would constitute a felony, or conviction of a felony. On recommendation of the Judiciary Commission, the supreme court may disqualify a judge from exercising any judicial function, without loss of salary, during the pendency of the proceedings in the supreme court. On recommendation of the Judiciary Commission, the supreme court may retire involuntarily a judge for disability that seriously interferes with the performance of his duties and that is, or is likely to become, of a permanent character. The supreme court shall make rules implementing this section and providing for confidentiality and privilege of proceedings.

(F) Action against a judge under this Section shall not preclude disciplinary action against him with respect to his license to practice law.

Read.

Delegate Schmitt sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Schmitt to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 9, line 14, immediately after the word "law" and before the word "who" delete the words "for at least 10 years"

Delegate Schmitt moved the adoption of the amendment.

Delegate Casey objected.

By a vote of 38 yeas and 68 nays the amendment was rejected.

Delegate Casey moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Motion

On motion of Delegate Stagg, the Convention altered the Order of Business to take up Petitions, Memorials and Communications at this time.

Petitions, Memorials and Communications

The following petitions, memorials and communications were received and read:

State of Louisiana
HOUSE OF REPRESENTATIVES
Baton Rouge

August 22, 1973

Honorable E. L. "Bubba" Henry
Chairman
1973 Constitutional Convention
Independence Hall
Baton Rouge, Louisiana 70804

Dear Mr. Chairman:

Personal, business and family matters require that I resign as a delegate, representing the public at large, to the 1973 Constitutional Convention. I have this day tendered my resignation to Governor Edwin W. Edwards who originally appointed me as a delegate representing the public at large.

I have hope and confidence in the Convention and look forward with a great deal of optimism to the new Constitution which the Convention will present to the people of this State.

Please accept my sincere congratulations on the work of the Convention thus far and I express my regrets to the Convention that I am unable to continue to work with the Convention.

Yours very truly,
RISLEY C. TRICHE

RCT:rrb

State of Louisiana
OFFICE OF THE GOVERNOR
Baton Rouge

August 22, 1973

Hon. Wade O. Martin, Jr.
Secretary of State
Baton Rouge, Louisiana

Dear Mr. Martin:

Please issue commission to the following:
Paul H. Goldman, Monroe, as Delegate to the Constitutional Convention of 1973 (AT LARGE), vice Representative Risley C. Triche, resigned.

Yours very truly,
EDWIN EDWARDS
Governor of Louisiana

Oath of Office

Mr. Paul H. Goldman appeared before the bar of the Convention and took the following oaths of office administered by Hon. David R. Poynter, Clerk of the House of Represen-

tatives and Chief Clerk of the Constitutional Convention:

"I hereby solemnly swear that I will support the constitution and laws of the United States; that I will well and faithfully perform all duties as a member of the convention, and that I will observe and obey the limitation of authority contained in the Act under which this convention has assembled. So help me God."

...

"I (Paul H. Goldman) do solemnly swear that I will support the Constitution and laws of the United States and the Constitution and laws of this State; and I will faithfully and impartially discharge and perform all the duties incumbent upon me as a delegate to the Constitutional Convention, according to the best of my ability and understanding. So help me God."

Unfinished Business, Resumed

The following unfinished business in which the House was engaged at the time of its adjournment on yesterday was taken up and acted on:

Proposals Delegate and Committee

The following entitled Delegate and Committee Proposals were taken up on their third reading and final passage:

COMMITTEE PROPOSAL No. 21—

Introduced by Delegate Dennis, Chairman, on behalf of the Committee on the Judiciary and Delegates Avant, Bel, Bergeron, Burns, Deshotels, Drew, Gauthier, Kelly, Kilbourne, Landry, Martin, Ourso, Sandoz, Tate and Vesich (A Substitute for Committee Proposal No. 6):

A PROPOSAL

Making provisions for the judiciary branch of government and necessary provisions with respect thereto.

Read.

Section 25. Judiciary Commission; Composition; Terms; Vacancy; Grounds for Removal; Powers

Section 25. (A) The Judiciary Commission shall consist of one court of appeal judge and two district court judges selected by the supreme court; three attorneys admitted to the practice of law for at least ten years who are not judges, active or retired, nor public officials, selected by the Louisiana Conference of Court of Appeal Judges' Association or its successor; and three citizens, not lawyers, judges active or retired, nor public officials, appointed by the Louisiana District Judges' Association or its successor.

(B) A member of the commission shall serve a four-year term and shall not be eligible to succeed himself.

(C) A member's term shall terminate when he loses the status causing his appointment or when any event occurs which would have made him ineligible for appointment.

(D) When a vacancy occurs, a successor shall be appointed for a four-year term by the authority which appointed his predecessor.

(E) On recommendation of the Judiciary Commission, the supreme court may censure, suspend with or without salary, remove from office, or retire involuntarily a judge for willful misconduct relating to his official duty, willful and persistent failure to perform his duty, persistent and public conduct prejudicial to the administration of justice that brings the judicial office into disrepute, conduct while in office which would constitute a felony, or conviction of a felony. On recommendation of the Judiciary Commission, the supreme court may disqualify a judge from exercising any judicial function, without loss of salary, during the pendency of the proceedings in the supreme court. On recommendation of the Judiciary Commission, the supreme court may retire involuntarily a judge for disability that seriously interferes with the performance of his duties and that is, or is likely to become, of a permanent character. The supreme court shall make rules implementing this section and providing for confidentiality and privilege of proceedings.

(F) Action against a judge under this Section shall not preclude disciplinary action against him with respect to his license to practice law.

Read.

Delegate Denberry sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates Denberry and Lanier to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 10, line 13, after the word "of" and before the word "proceedings" insert the word "commission"

On motion of Delegate Denberry the amendment was adopted.

Delegate Denberry moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Perkins sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegate Perkins to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 9, line 13, immediately after the semi-colon "," and before the word "attorneys" delete the word "three" and insert in lieu thereof the word "two"

AMENDMENT No. 2—

On page 9, line 14, immediately after the word "years" and before the word "who" insert the following:
"and one attorney admitted to the practice of law for at least three years but not more than ten years"

Delegate Perkins moved the adoption of the amendment.

Delegate Roemer objected.

By a vote of 95 yeas and 13 nays the amendments were adopted.

Delegate Perkins moved to reconsider the vote by which the amendments were adopted, and on his own motion the motion to reconsider was laid on the table.

Delegate Duval sent up floor amendments, which were read as follows:

Amendments proposed by Delegate Duval to Committee Proposal No. 21 by Delegate Dennis, et al.

FLOOR AMENDMENTS

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 9, delete lines 9 through 27, both inclusive, in their entirety and insert in lieu thereof the following:
"Section 25. Judiciary Commission"

Section 25. (A) There shall be a judiciary commission which shall have the power and duty to investigate misconduct on the part of any judge. The structure of the judiciary commission under the previous constitution is continued until changed by the legislature. The commission shall establish its own rules of procedure.

AMENDMENT No. 2—

On page 9, line 28, change the letter "(E)" to the letter "(B)"

AMENDMENT No. 3—

On page 10, line 14, change the letter "(F)" to the letter "(C)"

Delegate Duval moved the adoption of the amendment.

Delegate Willis objected.

PAGE 7

34th Days Proceedings—August 22, 1973

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	D'Gerolamo	Nunez
Abraham	De Blieux	Perkins
Aertker	Dunlap	Reeves
Alexander	Duval	Roemer
Anzalone	Fayard	Roy
Arnette	Fulco	Schmitt
Asseff	Gauthier	Segura
Bollinger	Giarrusso	Shannon
Brien	Goldman	Singletary
Brown	Guarisco	Slay
Burson	Jackson, A.	Soniat
Carmouche	Juneau	Stagg
Casey	Landrum	Stephenson
Champagne	Landry, E. J.	Stovall
Chatelain	Lanier	Tapper
Chehardy	Leigh	Thompson
Conroy	Lowe	Tobias
Cowen		
Total—51.		

NAYS

Delegates—	Heine	Rayburn
Alario	Hernandez	Robinson
Avant	Jack	Sandoz
Badeaux	Jackson, J.	Silverberg
Bel	Jenkins	Smith
Bergeron	Kelly	Stinson
Blair	Kilbourne	Sutherland
Burns	Kilpatrick	Thistlethwaite
Conino	Landry, A.	Tommy
Corne	LeBlau	Uilo
Denney	LeBreton	Velazquez
Dennis	Lennox	Vesich
Deshotels	Martin	Vick
Drew	Mauberrert	Warren
Edwards	Miller	Weiss
Elkins	Mire	Wallis
Flory	Newton	Winchester
Fontenot	O'Neill	Wisham
Fowler	Orso	Womack
Ginn	Perez	Zervigon
Grier	Planchard	
Hayes	Pugh	
Haynes		
Total—64.		

ABSENT

Delegates—	Kean	Riecke
Mr. Chairman	Lambert	Tate
Armentor	Leithman	Taylor
Cannon	McDaniel	Toca
Derbes	Munson	Wall
Gravel	Rachal	
Hardree		
Total—17.		

And the amendments were rejected.

Delegate Willis moved to reconsider the vote by which the amendments were rejected, and on his own motion, the motion to reconsider was laid on the table.

Delegate Landrum sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates Landrum and Singletary to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 9, delete line 19, in its entirety, and insert in lieu thereof the words "the governor."

Delegate Landrum moved the adoption of the amendment.

Delegate Pugh objected.

By a vote of 47 yeas and 68 nays the amendment was rejected.

Delegate Pugh moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Delegate Schmitt sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Schmitt and Hayes to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 9, delete lines 11 through 19, both inclusive in their entirety and insert in lieu thereof the following:

Section 25 (A) The judiciary Commission shall consist of nine citizens of the state of Louisiana who shall be appointed by the Supreme Court. There shall be one citizen appointed from each congressional district and one from the state-at-large."

Delegate Schmitt moved the adoption of the amendment.

Delegate Zervigon objected.

By a vote of 19 yeas and 93 nays the amendment was rejected.

Delegate Jack moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Delegate Pugh sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Pugh to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 9, line 15, after the word "nor" and before the word "public" insert the word "elected"

Delegate Pugh moved the adoption of the amendment.

Delegate Alexander objected.

By a vote of 100 yeas and 8 nays the amendment was adopted.

Delegate Pugh moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Passage

Committee Proposal No. 21, Section 25, was read as amended.

Delegate Dennis moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Chatelain	Fowler
Mr. Chairman	Conino	Fulco
Abraham	Conroy	Gauthier
Aertker	Corne	Gravel
Alexander	Cowen	Guarisco
Anzalone	D'Gerolamo	Hayes
Arnette	De Blieux	Haynes
Avant	Dennery	Heine
Badeaux	Dennis	Hernandez
Bel	Derbes	Jack
Blair	Deshotels	Jackson, A.
Bollinger	Drew	Jenkins
Brien	Dunlap	Juneau
Brown	Duval	Kelly
Burns	Edwards	Kilbourne
Burson	Elkins	Kilpatrick
Carmouche	Flory	Landry, A.
Casey	Fontenot	
Champagne		

PAGE 8

34th Days Proceedings—August 22, 1973

Landry, E. J.	Pugh	Sutherland
Lanier	Rayburn	Tate
LeBleu	Reeves	Thistlethwaite
LeBreton	Robinson	Thompson
Leigh	Roemer	Tobias
Lennox	Roy	Toca
Lowe	Sandoz	Toomy
Martin	Segura	Ullio
Grier	Shannon	Velazquez
Miller	Silverberg	Vesich
Mirc	Singletary	Vick
Newton	Slay	Warren
Nunez	Smith	Weiss
O'Neill	Soniat	Willis
O'urso	Stagg	Winchester
Perez	Stephenson	Wisham
Perkins	Stinson	Womack
Planchard	Stovall	Zervigon

Total—108.

Delegates—		
Alario	Fayard	Landrum
Asseff	Jackson, J.	Schmitt
Total—6.		

NAYS

Delegates—		
Armenior	Hardee	Munson
Bergeron	Kean	Rachal
Cannon	Lambert	Riecke
Chehardy	Leithman	Tapper
Giarrusso	McDaniel	Taylor
Goldman	Mauberrert	Wall
Total—18.		

ABSENT

And the Chair declared that the above Section was passed.

Delegate Dennis moved to reconsider the vote by which the above Section was passed, and on his own motion, the motion to reconsider was laid of the table.

Motion

On motion of Delegate Stovall, the Convention altered the Order of Business to take up Committee Proposal No. 21, Section 24 at this time.

Section 24. Judges; Qualifications; Practice of Law Prohibited.

Section 24. A judge of the supreme court, court of appeal, district court, family court, parish court, or court having solely juvenile jurisdiction shall have been admitted to the practice of law in this state for at least five years prior to his election, shall have been domiciled in the respective circuit or parish for at least two years immediately preceding election, and shall not practice law.

Read.

Delegate Pugh sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegate Pugh to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 9, line 6, after the word "shall" and before the word "domicile" delete the words "have been" and insert in lieu thereof the word "be"

AMENDMENT No. 2—

On page 9, line 7, after the word "parish" delete the remainder of line 7, and at the beginning of line 9, delete "ing election," and insert in lieu thereof the following: "at the time of qualification for election."

Delegate Pugh moved the adoption of the amendments.

Delegate Drew objected.

By a vote of 26 yeas and 80 nays the amendments were rejected.

Delegate Lanier moved to reconsider the vote by which the amendments were rejected, and on his own motion, the motion to reconsider was laid on the table.

Passage

Committee Proposal No. 21, Section 24, was read as amended.

Delegate Dennis moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Gauthier	Perez
Aertker	Giarrusso	Perkins
Alexander	Ginn	Planchard
Anzalone	Goldman	Pugh
Arnette	Gravel	Rayburn
Asseff	Grier	Reeves
Avant	Guarisco	Roemer
Badeaux	Hardee	Roy
Bel	Hayes	Sandoz
Boilingier	Haynes	Schmitt
Brien	Heine	Segura
Brown	Hernandez	Shannon
Burns	Jack	Silverberg
Burson	Jenkins	Singletary
Carmouche	Juneau	Slay
Casey	Kean	Smith
Champagne	Kelly	Soniat
Chatelain	Kilbourne	Soniat
Conino	Kilpatrick	Stinson
Conroy	Lambert	Stovall
Corne	Landry, A.	Sutherland
Cowen	Landry, E. J.	Tate
D'Gerolamo	Lanier	Thistlethwaite
De Blieux	LeBleu	Thompson
Denberry	LeBreton	Tobias
Dennis	Leigh	Toca
Derbes	Lennox	Toomy
Deshotels	Lowe	Ullio
Drew	McDaniel	Velazquez
Dunlap	Martin	Vesich
Duval	Mauberrert	Vick
Edwards	Miller	Warren
Elkins	Mire	Weiss
Fayard	Munson	Willis
Flory	Newton	Winchester
Fontenot	Nunez	Wisham
Fowler	O'Neill	Zervigon
Fulco	Ourso	
Total—113.		

NAYS

Delegates—		
Abraham	Jackson, A.	Landrum
Alario	Jackson, J.	
Total—5.		

ABSENT

Delegates—		
Armentor	Leithman	Tapper
Bergeron	Rachal	Taylor
Blair	Riecke	Wall
Cannon	Robinson	Womack
Chehardy	Stephenson	
Total—14.		

And the Chair declared that the above Section was passed.

Delegate Dennis moved to reconsider the vote by which the above Section was passed, and on his own motion, the motion to reconsider was laid on the table.

Motion

Delegate Vick moved that the Convention resolve itself into a Committee of the Whole for a period of one-half hour in order to allow the Attorney General of the State of Louisiana to address the Committee.

PAGE 10

34th Days Proceedings—August 22, 1973

Vesich	Winchester	Zervigon
Weiss	Wisham	
Willis	Womack	
Total—97.		

ABSENT

Delegates—		
Mr. Chairman	Derbes	Tate
Armentor	Leithman	Taylor
Bergeron	Munson	Wall
Cannon	Riecke	
Total—11.		

And the amendment was rejected.

Delegate Kilbourne moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Passage

Committee Proposal No. 21, Section 26, was read as amended.

Delegate Dennis moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Fulco	Perez
Abraham	Gauthier	Perkins
Aertker	Giarrusso	Planchard
Alario	Ginn	Pugh
Alexander	Goldman	Rayburn
Anzalone	Gravel	Reeves
Asselt	Grier	Robinson
Avant	Guarisco	Roemer
Badeaux	Hardee	Roy
Bel	Hayes	Sandoz
Blair	Haynes	Schmitt
Bollinger	Heine	Shannon
Brier	Hernandez	Silverberg
Brown	Jack	Singletary
Burns	Jackson, A.	Slay
Burson	Jenkins	Smith
Carmouche	Juneau	Soniat
Casey	Kean	Stagg
Champagne	Kelly	Stephenson
Chatelain	Kilbourne	Stinson
Chehardy	Kilpatrick	Stovall
Conino	Lambert	Sutherland
Conroy	Landry, A.	Tapper
Corne	Landry, E. J.	Tate
Cowen	Landier	Thistiethwaite
D'Gerolamo	LeBlue	Thompson
De Blieux	LeBreton	Tobias
Dennis	Leigh	Toca
Derbes	Lennox	Toomy
Deshotels	Lowe	Ullo
Drew	McDaniel	Velazquez
Dunlap	Martin	Vesich
Duval	Mauberrét	Vick
Edwards	Miller	Weiss
Elkins	Mire	Willis
Fayard	Newton	Winchester
Flory	Nunez	Wisham
Foutenot	O'Neill	Womack
Fowler	Ouro	
Total—116.		

NAYS

Delegates—		
Arnette	Rachal	Zervigon
Jackson, J.	Segura	
Landrum	Warren	
Total—7.		

ABSENT

Delegates—		
Armentor	Bergeron	Cannon

Dennerly	Munson	Taylor
Leithman	Riecke	Wall
Total—9.		

And the Chair declared that the above Section was passed.

Delegate Dennis moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Motion

On motion of Delegate Stovall, the Convention altered the Order of Business to take up Reports of Committees at this time.

Reports of Committees

The following reports of committees were received and read:

Delegate Alphonse Jackson, chairman, on behalf of the Committee on Bill of Rights and Elections, submitted the following report:

State of Louisiana
Constitutional Convention
of 1973

August 22, 1973, Baton Rouge, La.

To the Chairman and Delegates of the Constitutional Convention:

I am directed by your Committee on Bill of Rights and Elections to submit the following report:

COMMITTEE PROPOSAL No. 2—

Introduced by Delegate Jackson, Chairman, on behalf of the Committee on Bill of Rights and Elections and Delegates Dunlap, Guarisco, Jenkins, Roy, Soniat, Stinson, Vick, Wall and Weiss:

A PROPOSAL

To provide a preamble and a declaration of rights to the constitution.

Reported by substitute.

Respectfully submitted,

ALPHONSE JACKSON, JR.
Chairman

Suspension of the Rules

On motion of Delegate Stovall the rules were suspended in order to take up the Proposal contained in the Committee Report at this time.

Reports of Committees Lying Over

Delegate and Committee Proposals on Second Reading Reported by Committees

The following entitled Delegate and Committee Proposals were taken up and acted upon as follows:

COMMITTEE PROPOSAL No. 2—

Introduced by Delegate Jackson, Chairman, on behalf of the Committee on Bill of Rights and Elections and Delegates Dunlap, Guarisco, Jenkins, Roy, Soniat, Stinson, Vick, Wall and Weiss:

A PROPOSAL

To provide a preamble and a declaration of rights to the constitution.

Read.

Reported by substitute by the Committee on Bill of Rights and Elections.

The title to the substitute was as follows:

COMMITTEE PROPOSAL No. 25—

Introduced by Delegate Jackson, Chairman, Committee on Bill of Rights and Elections (Substitute for Committee Proposal No. 2, by Delegate Jackson, Chairman, on behalf of the Committee on Bill of Rights and Elections, and Delegates

PAGE 11

34th Days Proceedings—August 22, 1973

Dunlap, Guarisco, Jenkins, Roy, Soniat, Stinson, Vick, Wall and Weiss):

A PROPOSAL

To provide a preamble and a declaration of rights to the constitution.

On motion of Delegates A. Jackson the substitute was adopted.

On motion of Delegate A. Jackson, and under a suspension of the rules, the Proposal was ordered engrossed and passed to its third reading.

Motion

On motion of Delegate LeBreton the rules were suspended in order to call a meeting of the Committee on Legislative Liason and Transitional Measures without giving the required 24 hour notice.

COMMITTEE NOTICE

Delegate LeBreton, chairman of the Committee on Legislative Liason and Transitional Matters, sent up the following notice:

The Committee on Legislative Liason and Transitional Measures will meet on Thursday, August 23, 1973, at 7:45 o'clock A.M. in the State Room Lounge, White House Inn at a Dutch Treat Breakfast and will consider the following agenda:

AGENDA

To discuss the methods of transition with the members of the Coordinating Committee.

Respectfully submitted,

DELEGATE EDWARD F. LeBRETON, JR.
Chairman of the Committee on
Legislative Liason and Transitional Measures.

The above notice was read in open session and publicly posted as provided by the Rules of Procedure of the Convention.

Leave of Absence

Delegate Wall—1 day.
Delegate Taylor—1 day.
Delegate Leithman—3 days.
Delegate Riecke—3 days.
Delegate Bergeron—½ day.

Adjournment

Delegate Abraham moved that the Convention do now adjourn until Thursday, August 23, 1973 at 9:00 o'clock A.M.

Which motion was agreed to.

And Chairman Henry declared the Convention adjourned to Thursday, August 23, 1973 at 9:00 o'clock A.M.

MOISE W. DENNERY
Secretary

DAVID R. POYNTER
Chief Clerk

PAGE 9

35th Days Proceedings—August 23, 1973

Guarisco	Miller	Soniak
Hayes	Mire	Slagg
Haynes	Newton	Stinson
Hernandez	Nunez	Stovall
Jack	O'Neill	Sutherland
Jackson, A.	Ourso	Tapper
Jackson, J.	Perkins	Tate
Jenkins	Planchard	Thistlethwaite
Juneau	Fugh	Thompson
Kean	Rayburn	Tobias
Kilbourne	Reeves	Toca
Kilpatrick	Robinson	Toomy
Lambert	Roemer	Uilo
Landry, A.	Roy	Velazquez
Landry, E. J.	Sandoz	Vesich
Lanier	Schmitt	Vick
LeBlau	Segura	Warren
Leigh	Shannon	Willis
Lennox	Silverberg	Winchester
Lowe	Singletary	Wisham
McDaniel	Slay	Womack
Martin	Smith	Zervigon

Total—111.

NAYS

Delegates—	
Asseff	Perez
Kelly	Stephenson

Total—4.

ABSENT

Delegates—	Heine	Rachal
Aertker	Landrum	Riecke
Armentor	LeBreton	Taylor
Cannon	Leithman	Wall
Derbes	Ginn	Maubert
Ginn	Munson	Weiss
Hardee		

Total—17.

And the Chair declared that the above Section was passed.

Delegate Dennis moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Section 28. District Attorney; Election; Qualifications; Assistants

Section 28. In each judicial district a district attorney shall be elected by the qualified electors of the district for a term of six years. He shall have been admitted to the practice of law in the state for at least five years prior to his election and shall have resided in the district for the two years immediately preceding election. A district attorney may select his assistants and other personnel and prescribe their duties.

Read.

Delegate Lanier sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates Lanier and Duval to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 11, line 22, immediately after the word "select" and before the word "other" delete the words "his assistants and" and insert in lieu thereof the following: "such assistants as may be authorized by law and"

On motion of Delegate Lanier the amendment was adopted.

Delegate Lanier moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Kelly sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegates Deshotel, Landry, Gauthier and Kelly to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 11, line 14, after the word "Qualifications;" add the words "Duties and Functions;"

AMENDMENT No. 2—

On page 11, line 16, after the word and numeral "Section 28," add "(A)"

AMENDMENT No. 3—

On page 11, between lines 23 and 24, add the following: "(B) A district attorney has entire charge and control of every criminal prosecution instituted or pending in his district, and shall represent concurrently with the attorney general the state in all civil actions instituted or pending in his district.

(C) The district attorney shall be the representative of the state before the grand jury in his district, and shall be its sole legal advisor.

(D) A district attorney shall perform such other duties as may be provided by law."

On motion of Delegate Kelly the amendments were withdrawn.

Delegate Gravel sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Gravel to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 11, line 22, immediately after the word "personnel" insert a period "." and delete the remainder of the line and delete line 23 in its entirety

On motion of Delegate Gravel the amendment was adopted.

Delegate Gravel moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Arnette sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Arnette to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 11, line 19, immediately after the word "least" and before the word "years" delete the word "five" and insert in lieu thereof the word "three"

Delegate Arnette moved the adoption of the amendment.

Delegate Dennis objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Abraham	Brien	Drew
Alexander	Brown	Duval
Anzalone	Carmouche	Edwards
Arnette	Casey	Foulnot
Bel	Champagne	Fowler
Bergeron	Denery	Goldman
Bollinger	Derbes	Grier

PAGE 10

35th Days Proceedings—August 23, 1973

Guarisco	Lowe
Hayes	Newton
Haynes	O'Neill
Jackson, A.	Ours
Jackson, J.	Perkins
Jenkins	Pugh
Kean	Robinson
Landry, A.	Singletary
Lanier	Soniat
LeBlau	Stephenson
Total—51.	

NAYS

Delegates—	Fulco	Planchard
Alario	Gauthier	Rayburn
Asseff	Giarrusso	Reeves
Avant	Ginn	Roemer
Badeaux	Gravel	Sandoz
Blair	Hernandez	Schmitt
Burns	Jack	Segura
Burson	Juneau	Shannon
Chatelain	Kelly	Silverberg
Chehardy	Kilbourne	Slay
Conino	Kilpatrick	Smith
Conroy	Lambert	Stinson
Corne	Landry, E. J.	Sutherland
Cowen	Leigh	Thistlethwaite
D'Gerolamo	Lennox	Thompson
De Blieux	McDaniel	Toca
Dennis	Martin	Uilo
Deshotels	Miller	Vesich
Dunlap	Mire	Willis
Elkins	Nunez	Winchester
Fayard	Perez	
Flory		
Total—63.		

ABSENT

Delegates—	Landrum	Riecke
Mr. Chairman	LeBreton	Roy
Aertker	Leithman	Taylor
Armentor	Mauberrert	Wall
Cannon	Munson	Weiss
Hardee	Rachal	Womack
Heine		
Total—18.		

And the amendment was rejected.

Delegate Kilbourne moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Delegate De Blieux sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate De Blieux to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 11, line 23, after the word "personnel" and punctuation added thereafter by Convention Floor Amendment No. 1 proposed by Mr. Gravel and adopted by the Convention on August 23, 1973, add the following:

"The district attorney shall have such powers and duties as may be prescribed by law."

Delegate De Blieux moved the adoption of the amendment.

Delegate Dennery objected.

By a vote of 42 yeas and 66 nays the amendment was rejected.

Delegate Dennery moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Delegate De Blieux sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegate De Blieux to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 11, line 20, after the word "election" and before the word "shall" delete the word "and" and insert in lieu thereof comma " , "

AMENDMENT No. 2—

On page 11, line 21, after the word "election" change the period " ." to a comma " , " and add the following: "and shall not engage in private practice of law."

Motion

Delegate Smith moved the previous question on the amendment.

Delegate Gravel objected.

By a vote of 16 yeas and 84 nays the Convention refused to order the previous question at this time.

Delegate De Blieux moved the adoption of the amendment.

Delegate Duval objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Jack	Shannon
Badeaux	Jackson, A.	Silverberg
Bergeron	Jackson, J.	Slay
Bollinger	Landry, E. J.	Smith
Conino	Leigh	Soniat
Conroy	McDaniel	Stagg
De Blieux	Miller	Stinson
Dunlap	Pugh	Sutherland
Fulco	Roemer	Toca
Giarrusso	Roy	Uilo
Goldman	Schmitt	Vesich
Guarisco		Willis
Total—33.		Winchester

NAYS

Delegates—	Flory	Ours
Mr. Chairman	Fon'enot	Perez
Abraham	Fowler	Perkins
Alario	Gauthier	Planchard
Alexander	Ginn	Rayburn
Arnette	Gravel	Reeves
Asseff	Grier	Robinson
Avant	Hayes	Sandoz
Bel	Haynes	Segura
Blair	Hernandez	Singletary
Brien	Jenkins	Stephenson
Brown	Juneau	Stovall
Burns	Kean	Tapper
Carmouche	Kelly	Tate
Casey	Kilbourne	Thistlethwaite
Champagne	Kilpatrick	Thompson
Chatelain	Landry, A.	Toca
Chehardy	Lanier	Toomy
Corne	LeBlau	Uilo
Cowen	Lennox	Velazquez
D'Gerolamo	Lowe	Vesich
Dennery	Martin	Willis
Deshotels	Mire	Winchester
Drew	Newton	Zervigon
Duval	Nunez	
Edwards	O'Neill	
Elkins		
Total—76.		

ABSENT

Delegates—	Dennis	Lambert
Aertker	Derbes	Landrum
Anzalone	LeBreton	Leithman
Armentor	Hardee	Mauberrert
Burson	Heine	
Cannon		

PAGE 11

35th Days Proceedings—August 23, 1973

Munson	Taylor	Wisham
Rachal	Wall	Womack
Riecke	Weiss	
Total—23.		

And the amendment was rejected.

Delegate Gravel moved to reconsider the vote by which the amendments were rejected and on his own motion, the motion to reconsider was laid on the table.

Explanation of Vote

Delegate Fayard sent up the following explanation of vote:

"I wish the record to reflect the fact that I have abstained from voting on Floor Amendment No. 1 and No. 2 proposed by Delegate De Blieux as my position as an assistant district attorney creates a personal interest in this amendment."

CALVIN FAYARD

Delegate Kilbourne sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegates Kilbourne, Nunez, Gravel and Toomy to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 11, line 14, after the word "Qualifications;" add the words "Duties and Functions;"

AMENDMENT No. 2—

On page 11, line 16, after the word and numeral "Section 28," add "(A)"

AMENDMENT No. 3—

On page 11, between lines 23 and 34, add the following:
 "(B) A district attorney shall have charge and control of every criminal prosecution in his district and shall perform such other duties as may be provided by law

(C) The district attorney shall be the representative of the state before the grand jury in his district and shall be its legal advisor."

On motion of Delegate Kilbourne the amendments were withdrawn.

Passage

Committee Proposal No. 21, Section 28, was read, as amended.

Delegate Dennis moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Burson	Dunlap
Abraham	Carmouche	Duval
Alario	Casey	Edwards
Alexander	Champagne	Elkins
Anzalone	Chatelain	Fayard
Annette	Chehardy	Flory
Arseff	Conino	Fontenot
Avant	Conroy	Fowler
Badeaux	Corne	Fulco
Bel	Cowen	Gauthier
Bergeron	D'Gerolamo	Gialuruso
Blair	De Blieux	Ginn
Bollinger	Dennery	Goldman
Brien	Dennis	Gravel
Brown	Deshotels	Grier
Burns	Drew	Guarisco

Hayes	Nunez	Stephenson
Haynes	O'Neill	Stinson
Hernandez	Ours	Stovall
Jack	Perez	Sutherland
Jenkins	Perkins	Tapper
Juneau	Planchard	Tate
Kean	Pugh	Thistlewaite
Kilbourne	Rayburn	Thompson
Kilpatrick	Reeves	Tobias
Landry, A.	Robinson	Toca
Landry, E. J.	Roemer	Toomy
Lanier	Roy	Uilo
LeBlau	Sandoz	Velazquez
Leigh	Schmitt	Vesich
Lennox	Segura	Vick
Lowe	Shannon	Warren
McDaniel	Singleatary	Willis
Martin	Slay	Winchester
Miller	Smith	Wisham
Mire	Soniat	Zervigon
Newton	Stagg	
Total—110.		

NAYS

Delegates—		
Jackson, A.	Jackson, J.	Kelly
Total—3.		

ABSENT

Delegates—		
Aertker	Landrum	Silverberg
Armstrong	LeBreton	Taylor
Cannon	Leithman	Wall
Derbes	Mauberret	Weiss
Hardee	Munson	Womack
Heine	Rachal	
Lambert	Riecke	
Total—19.		

And the Chair declared that the above Section was passed.

Delegate Dennis moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Motion

On motion of Delegate Dennis, the Convention altered the Order of Business to take up Introduction of Resolutions at this time.

Introduction of Resolutions Delegate and Committee Resolution

The following delegates and Chairmen on behalf of their committees introduced the following entitled resolutions:

COMMITTEE RESOLUTION No. 11—

Introduced by Delegate LeBreton, Chairman, on behalf of the Committee on Legislative Liaison and Transitional Measures, and Delegate Henry, Chairman, on behalf of the Coordinating Committee, and Delegates Aertker, Blair, Casey Dennis, D'Gerolamo, Drew, Fayard, Hardee, A. Jackson, J. Jackson, Lambert, Lanier, LeBlau, Lennox, Miller, Munson, Perez, Rayburn, Smith, Stagg, Thompson, Vick, Womack and Zervigon:

A RESOLUTION

To recommend categories for the orderly transition of material from the Louisiana Constitution of 1921.

Read.

Lies over under the rules.

Motion

On motion of Delegate Stovall, the Convention altered the Order of Business to take up Introduction of Proposals at this time.

Introduction of Proposals

The following named delegates and committees introduced the following entitled Delegate and Committee Proposals which were read by their titles and placed on the Calendar for their second reading.

A RESOLUTION

To recommend categories for the orderly transition of material from the Louisiana Constitution of 1921.

Read.

Under the rules the above resolution was referred to the Committee on Legislative Liaison and Transitional measures.

Proposals on Second Reading and Referral

The following entitled Committee and Delegate Proposals on second reading to be referred to committees were taken up, read, and referred to committees, as follows:

COMMITTEE PROPOSAL No. 26—

Introduced by Delegate Rayburn, Chairman, on behalf of the Committee on Revenue, Finance and Taxation, and Delegates Alario, Brown, Chehardy, Edwards, Goldman, Maubert, Mire, Nunez, Planchard, Slay and Winchester:

A PROPOSAL

Making provisions for property taxation.

Read.

Under the rules the above proposal was referred to the Committee on Revenue, Finance and Taxation.

Reports of Committees Lying Over

Delegate and Committee Proposals on Second Reading Reported by Committees

The following entitled Delegate and Committee Proposals were taken up and acted upon as follows:

COMMITTEE PROPOSAL No. 22—

Introduced by Delegate Stagg, Chairman, on behalf of the Committee on Executive Department, and Delegates Abraham, Alexander, Anzalone, Arnette, Brien, Dennerly, Duval, Gravel, Stovall and Tapper:

A PROPOSAL

Making provisions for a code of ethics and the Louisiana Board of Ethics.

Read.

Reported favorably by the Committee on Executive Department.

Ordered engrossed and passed to its third reading.

COMMITTEE PROPOSAL No. 23—

Introduced by Delegate Stagg, Chairman, on behalf of the Committee on Executive Department, and Delegates Abraham, Arnette, Brien, Dennerly, Gravel, Stovall and Tapper:

Prohibiting dual employment and dual officeholding in state and local government.

Read.

Reported favorably by the Committee on Executive Department.

Ordered engrossed and passed to its third reading.

Unfinished Business

The following unfinished business in which the Convention was engaged at the time of its adjournment on yesterday was taken up and acted on:

Proposals Delegate and Committee

The following entitled Delegate and Committee Proposals were taken up on their third reading and final passage:

COMMITTEE PROPOSAL No. 21—

Introduced by Delegate Dennis, Chairman, on behalf of the Committee on the Judiciary and Delegates Avant, Bel, Bergeron, Burns, Deshotel, Drew, Gautier, Kelly, Kilbourne, Landry, Martin, Ourso, Sandoz, Tate and Vesich (A Substitute for Committee Proposal No. 6):

A PROPOSAL

Making provisions for the judiciary branch of government.

Read.

The Chairman announced that the Convention had under consideration the above Proposal when it adjourned on Thursday, August 23, 1973, which was taken up and acted upon as follows:

Section 29. Defense of Criminal Prosecution; Removal

Section 29. No district attorney or assistant district attorney shall appear, plead or in any way defend, or assist in defending any criminal prosecution or charge. A violation shall be cause for removal.

Read.

Delegate Velazquez sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegate Velazquez, Warren, and Jack to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 11, line 25, immediately after "Section 29." and before the word "No" insert "(A)"

AMENDMENT No. 2—

On page 11, between lines 28 and 29 add the following: "(B) Any defendant in a criminal proceeding, the results of which may be imprisonment with or without hard labor for a term exceeding six months and/or fine of five hundred dollars or more, shall have the right to retain counsel, and if indigent, shall upon his request therefor be appointed competent counsel for his defense. The legislature shall provide for a uniform system for securing such counsel, including compensation."

Delegate Velazquez moved the adoption of the amendment.

Delegate Roy objected.

By a vote of 47 yeas and 50 nays the amendment was rejected.

Delegate Roy moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Delegate Pugh sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegate Pugh to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 11, between lines 28 and 29, insert the following: "(B) Any defendant in a criminal proceeding, the punishment for which may be imprisonment, if indigent, shall have competent counsel appointed for his defense. The legislature shall provide for a uniform system for securing such counsel, including compensation."

AMENDMENT No. 2—

On page 11, line 25, immediately after "Section 29." and before the word "No" insert "(A)"

Delegate Pugh moved the adoption of the amendment.

Delegate Dennis objected.

A record vote was asked for and ordered by the Convention.

PAGE 3

36th Days Proceedings—August 24, 1973

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Abraham	Duval	Rachal
Alario	Edwards	Robinson
Alexander	Flory	Schmitt
Avant	Ginn	Silverberg
Badeaux	Gravel	Singletary
Bel	Grier	Soniati
Bergeron	Haynes	Stagg
Bollinger	Jackson, A.	Stephenson
Brien	Jackson, J.	Stovall
Burson	Juneau	Tobias
Carmouche	Kilpatrick	Toca
Casey	Lambert	Velazquez
Chatelain	Landrum	Warren
Chehardy	Landry, A.	Willis
Conroy	Orso	Winchester
D'Gerolamo	Pugh	Wisham
Dennery		
Total—49.		

NAYS

Delegates—		
Aertker	Hayes	Perkins
Anzalone	Heine	Planchard
Arnette	Hernandez	Rayburn
Asseff	Jack	Reeves
Blair	Jenkins	Roemer
Burns	Kelly	Roy
Champagne	Kilbourne	Sandoz
Conino	Landry, E. J.	Shannon
Corne	Lanier	Slay
Cowen	LeBleu	Smith
De Blieux	Leigh	Stinson
Dennis	Lennox	Sutherland
Derbes	Lowe	Tapper
Deshotels	McDaniel	Tate
Drew	Martin	Thompson
Dunlap	Mauberrert	Toomy
Elkins	Miller	Ullo
Fontenot	Mire	Vesich
Fowler	Munson	Vick
Gauthier	Nunez	Weiss
Giarrusso	O'Neill	Womack
Goldman	Perez	Zervigon
Hardee		
Total—67.		

ABSENT

Delegates—		
Mr. Chairman	Guarisco	Segura
Armentor	Kean	Taylor
Brown	LeBreton	Thistlethwaite
Cannon	Leithman	Wall
Fayard	Newton	
Fulco	Riecke	
Total—16.		

And the amendments were rejected.

Delegate Alexander moved to reconsider the vote by which the amendments were rejected, and on his own motion, the motion to reconsider was laid on the table.

Passage

Committee Proposal No. 21, Section 29, was read.

Delegate Dennis moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Alario	Arnette
Abraham	Alexander	Asseff
Aertker	Anzalone	Avant

Badeaux	Gravel	Perkins
Bel	Grier	Planchard
Bergeron	Hardee	Pugh
Blair	Hayes	Rayburn
Bollinger	Haynes	Reeves
Brien	Heine	Robinson
Burns	Hernandez	Roemer
Burson	Jack	Roy
Carmouche	Jackson, A.	Sandoz
Casey	Jackson, J.	Shannon
Champagne	Jenkins	Silverberg
Chatelain	Juneau	Singletary
Chehardy	Kelly	Slay
Conino	Kilbourne	Smith
Conroy	Kilpatrick	Soniati
Corne	Lambert	Stagg
Cowen	Landrum	Stephenson
D'Gerolamo	Landry, A.	Sinson
De Blieux	Landry, E. J.	Stovall
Dennery	Lanier	Sutherland
Dennis	LeBleu	Tapper
Derbes	Leigh	Tate
Deshotels	Lennox	Thompson
Drew	Lowe	Tobias
Dunlap	McDaniel	Toca
Duval	Martin	Toomy
Edwards	Mauberrert	Ullo
Elkins	Miller	Vesich
Flory	Mire	Vick
Fontenot	Munson	Weiss
Fowler	Newton	Willis
Fulco	Nunez	Winchester
Gauthier	O'Neill	Wisham
Giarrusso	Orso	Womack
Ginn	Perez	Zervigon
Goldman		
Total—115.		

NAYS

Delegates—	
Rachal	Velazquez
Schmitt	Warren
Total—4.	

ABSENT

Delegates—		
Armentor	Kean	Taylor
Brown	LeBreton	Thistlethwaite
Cannon	Leithman	Wall
Fayard	Riecke	
Guarisco	Segura	
Total—13.		

And the Chair declared that the above Section was passed.

Delegate Dennis moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Section 30. Sheriff; Duties; Tax Collector

Section 30. In each parish, a sheriff shall be elected for a term of four years. He shall be the chief law enforcement officer in the parish, except as otherwise provided by this constitution, and shall execute court orders and process. He shall be the collector of state and parish ad valorem taxes and such other taxes and licenses as provided by law.

Read.

Delegate Casey sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates Casey, Dennery, Zervigon, Edwards, Martin, and Orso to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 12, between lines 3 and 4, insert the following: "This section shall not apply to the parish of Orleans."

Delegate Casey moved the adoption of the amendment.

Delegate Champagne objected.

By a vote of 104 yeas and 15 nays the amendment was adopted.

PAGE 4

36th Days Proceedings—August 24, 1973

Delegate Casey moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Schmitt sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegates Schmitt, Velazquez, and Champagne to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 12, between lines 3 and 4, insert the following: "This section shall not apply to any parish in which there may be a provision in a city or parish home rule charter or plan of government to the contrary."

AMENDMENT No. 2—

Strike out Amendment No. 1 proposed by Delegate Casey and adopted by the Convention on August 24, 1973.

On motion of Delegate Schmitt the amendments were withdrawn.

Delegate Schmitt sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates Schmitt, Velazquez, and Champagne to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 12, between lines 3 and 4, insert the following: "This section shall not apply to any parish in which there may be a provision in a parish home rule charter or plan of government to the contrary."

Delegate Schmitt moved the adoption of the amendment.

Delegate Dennis objected.

By a vote of 17 yeas and 96 nays the amendment was rejected.

Delegate Dennis moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Passage

Committee Proposal No. 21, Section 30, was read as amended.

Delegate Dennis moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Brown	Dennis
Mr. Chairman	Burns	Derbes
Abraham	Burson	Deshotels
Aertker	Carmouche	Drew
Alario	Casey	Dunlap
Alexander	Champagne	Duval
Anzalone	Chatelain	Edwards
Arnette	Chehardy	Elkins
Asseff	Conino	Fayard
Avant	Conroy	Flory
Badeaux	Corne	Fontenot
Bel	Cowen	Fowler
Bergeron	D'Gerolamo	Fulco
Blair	De Blieux	Gauthier
Bollinger	Dennery	Giarrusso
Brien		

Ginn	Lennox	Singletary
Goldman	Lowe	Slay
Gravel	McDaniel	Smith
Grier	Martin	Soniak
Hardee	Mauberret	Stagg
Hayes	Miller	Stephenson
Haynes	Mire	Stinson
Heine	Munson	Stovall
Hernandez	Newton	Tapper
Jack	Nunez	Tate
Jackson, A.	O'Neill	Thistlethwaite
Jackson, J.	Perez	Thompson
Jenkins	Perkins	Tobias
Juneau	Planchard	Toca
Kean	Pugh	Toomy
Kelly	Rachal	Ulla
Kilbourne	Rayburn	Velazquez
Kilpatrick	Reeves	Vesich
Lambert	Robinson	Vick
Landrum	Roemer	Warren
Landry, A.	Roy	Weiss
Landry, E. J.	Sandoz	Willis
Lanier	Shannon	Winchester
LeBlau	Silverberg	Wisham
Leigh		Zervigon
Total—120.		

NAYS

Delegate Schmitt
Total—1.

ABSENT

Delegates—	Leithman	Taylor
Armentor	Riecke	Wall
Cannon	Segura	Womack
Guarisco	Sutherland	
LeBreton		
Total—11.		

And the Chair declared that the above Section was passed.

Delegate Dennis moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Section 31. Clerks; Election; Powers and Duties; Deputies; Office Hours

Section 31. (A) In each parish, a clerk of the district court shall be elected by the qualified electors of the parish for a term of four years. He shall be ex officio notary public and parish recorder of conveyances, mortgages, and other acts and shall have such other duties and powers as may be prescribed by law. The clerk may appoint deputies with such duties and powers as may be prescribed by law and he may appoint, with the approval of the district judges, minute clerks with such duties and powers as may be prescribed by law.

(B) The legislature shall establish statewide uniform office hours for all clerks of district courts.

Read.

Delegate Asseff sent up floor amendments, which were read as follows:

FLOOR AMENDMENT

Amendments proposed by Delegate Asseff to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend Reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 12, line 6 immediately after "31." and before "In" strike out "(A)".

AMENDMENT No. 2—

On page 12 strike out lines 16 and 17 in their entirety.

Delegate Asseff moved the adoption of the amendment.

Delegate De Blieux objected.

By a vote of 29 yeas and 90 nays the amendments were rejected.

Delegate A. Landry moved to reconsider the vote by

PAGE 5

36th Days Proceedings—August 24, 1973

which the amendments were rejected, and on his own motion, the motion to reconsider was laid on the table.

Delegate Abraham sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegate Abraham, Schmitt to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 12, line 10, after the word "acts" and before the words "and shall" insert the following:

" , may appoint deputies, may appoint, with the approval of the district judges, minute clerks,"

AMENDMENT No. 2—

On page 12, line 11, after the period ".", delete the remainder of the line and delete lines 12 through 15, both inclusive, in their entirety

On motion of Delegate Abraham the amendment was withdrawn.

Passage

Committee Proposal No. 21, Section 31, was read.

Delegate Dennis moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Fowler	Perez
Abraham	Fulco	Perkins
Aertker	Gauthier	Planchar
Alario	Giarrusso	Pugh
Alexander	Ginn	Rachal
Anzalone	Goldman	Rayburn
Arnette	Gravel	Reeves
Asseff	Grier	Roemer
Avant	Hardee	Roy
Badeaux	Hayes	Sandoz
Bel	Haynes	Schmitt
Bergerson	Heine	Shannon
Blair	Hernandez	Silverberg
Bollinger	Jack	Singletary
Brien	Jackson, A.	Slay
Brown	Jackson, J.	Smith
Burns	Jenkins	Soniati
Burson	Juneau	Stagg
Camouche	Kean	Stephenson
Casey	Kelly	Stinson
Champagne	Kilbourne	Stovall
Chatalein	Kilpatrick	Sutherland
Conino	Landrum	Tapper
Conroy	Landry, A.	Tate
Corne	Landry, E. J.	Thistlethwaite
Cowen	Lanier	Thompson
D'Gerolamo	LeBlau	Tobias
De Blieux	Leigh	Toca
Denney	Lennox	Toomy
Dennis	Lowe	Uilo
Derbes	McDaniel	Velazquez
Deshotels	Martin	Vesich
Drew	Mauberret	Vick
Dunlap	Miller	Warren
Duval	Mire	Weiss
Edwards	Munson	Willis
Elkins	Newton	Winchester
Fayard	Nunez	Wisham
Flory	O'Neill	Zervigon
Fontenot	Ouro	

Total—119.

NAYS

Total—0.

ABSENT

Delegates—		
Armentor	LeBreton	Segura
Cannon	Leithman	Taylor
Chehardy	Riecke	Wall
Cuarisco	Robinson	Womack
Lambert		
Total—13.		

And the Chair declared that the above Section was passed.

Delegate Dennis moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Section 32. Coroner; Election; Term; Qualifications; Duties

Section 32. In each parish, a coroner shall be elected for a term of four years with such qualifications and duties as may be prescribed by law.

Read.

Delegate Weiss sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates Weiss, Gravel, Dunlap, Fulco, Anzalone, Planchar, Arnette, Willis, Roemer, Kelly, Burns, LeBlau, Rev. Landrum, Singletary, Asseff, to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 12, line 21, place a period "." after the word "years" and delete the remainder of line 21, and delete line 22 in its entirety, and insert in lieu thereof the following:

"He shall be a licensed physician and possess such other qualifications and perform such duties as are provided by law. The legislature may provide the qualifications, however, if no licensed physician is available for the office."

Delegate Weiss moved the adoption of the amendment.

Delegate Brown objected.

By a vote of 19 yeas and 94 nays the amendment was rejected.

Delegate Gravel moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Delegate Weiss sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Weiss to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 12, line 21, place a period "." after the word "years" and delete the remainder of line 21, and delete line 22 in its entirety, and insert in lieu thereof the following:

"He shall be a licensed physician and possess such other qualifications and perform such duties as are provided by law; however, the requirement that he be a licensed physician shall not apply to any parish in which there is no licensed physician who will accept the office."

Delegate Weiss moved the adoption of the amendment.

Delegate Jack objected.

By a vote of 79 yeas and 34 nays the amendment was adopted.

Delegate Weiss moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Passage

Committee Proposal No. 21, Section 32, was read, as amended.

PAGE 6

36th Days Proceedings—August 24, 1973

Delegate Dennis moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

Delegates—	YEAS	
Abraham	Fulco	Ourso
Alario	Gauthier	Perez
Alexander	Giarrusso	Perkins
Anzalone	Ginn	Planchard
Arnette	Goldman	Pugh
Asseff	Gravel	Reeves
Avant	Grier	Robinson
Badeaux	Guarisco	Roemer
Bel	Hardee	Roy
Bergeron	Hayes	Sandoz
Blair	Heine	Segura
Bollinger	Hernandez	Shannon
Brien	Jack	Silverberg
Brown	Jackson, A.	Singletary
Burns	Jenkins	Smith
Burson	Juneau	Soniatt
Carmouche	Kean	Stagg
Casey	Kelly	Stephenson
Champagne	Kilbourne	Sinon
Chatelain	Kilpatrick	Stovall
Chehardy	Lambert	Sutherland
Conino	Landrum	Tapper
Conroy	Landry, A.	Tate
Corne	Landry, E. J.	Thistlethwaite
Cowen	Lanier	Thompson
De Bileux	LeBlau	Tobias
Dennerly	Leigh	Toomy
Dennis	Lennox	Uilo
Derbes	Lowe	Velazquez
Deshotels	McDaniel	Vesich
Drew	Martin	Vick
Dunlap	Mauberrert	Warren
Duval	Miller	Weiss
Edwards	Munson	Willis
Elkins	Newton	Winchester
Flory	Nunez	Wisham
Fontenot	O'Neill	Zervigon
Fowler		
Total—112.		

Total—0.

Delegates—	ABSENT	
Mr. Chairman	Jackson, J.	Schmitt
Aertker	LeBreton	Slay
Ammentor	Leithman	Taylor
Cannon	Mire	Toca
D'Gerolamo	Rachal	Wall
Fayard	Rayburn	Womack
Haynes	Riecke	
Total—20.		

And the Chair declared that the above Section was passed.

Delegate Dennis moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Vice-Chairman Roy in the Chair

Section 33. Vacancies

Section 33. When a vacancy occurs in the following offices, the duties of the office, until it is filled by election as provided by law, shall be assumed by: in the case of sheriff, the chief criminal deputy; district attorney, the first assistant; clerk of a district court, the chief deputy; coroner, the chief deputy. If there is no such person to assume the duties at the time of the vacancy, the governing authority or authorities of the parish or parishes concerned shall appoint

a qualified person to assume the duties of the office until filled by election.

Read.

Delegate Perez sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates Perez, Burson, Giarrusso, Chatelain, Conino, D'Gerolamo, Fowler, Heine, J. Jackson, Kean, Shannon, Stephenson, Toomy, Uilo, and Zervigon to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 12, delete lines 24 through 32, both inclusive, in their entirety, and on page 13, delete line 1 in its entirety and insert in lieu thereof the following:

"Section 33. (A) When a vacancy occurs in the office of district attorney, the duties of the office, until it is filled by election as provided by law, shall be assumed by the first assistant. If there is no such person to assume the duties at the time of vacancy, the governing authority or authorities of the parish or parishes concerned shall appoint a qualified person to assume the duties of the office until filled by election.

(B) A vacancy occurring in the office of sheriff, clerk of a district court, or coroner shall be filled by appointment by the governing authority of the parish until it is filled by election as provided by this constitution."

Delegate Perez moved the adoption of the amendment.

Delegate A. Landry objected.

By a vote of 36 yeas and 74 nays the amendment was rejected.

Delegate A. Landry moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Passage

Committee Proposal No. 21, Section 33, was read.

Delegate Dennis moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

Delegates—	YEAS	
Abraham	Dunlap	Landry, E. J.
Aertker	Duval	Lanier
Alario	Edwards	LeBlau
Anzalone	Elkins	Leigh
Asseff	Flory	Lennox
Avant	Fontenot	Lowe
Badeaux	Fowler	McDaniel
Bel	Fulco	Marlin
Bergeron	Gauthier	Mauberrert
Bollinger	Giarrusso	Miller
Brien	Ginn	Newton
Brown	Goldman	Nunez
Burns	Gravel	O'Neill
Cannon	Grier	Ourso
Carmouche	Guarisco	Perez
Casey	Hardee	Perkins
Champagne	Hayes	Planchard
Chatelain	Haynes	Pugh
Chehardy	Hernandez	Reeves
Conino	Jack	Robinson
Conroy	Jackson, A.	Roemer
Corne	Jackson, J.	Sandoz
Cowen	Jenkins	Segura
D'Gerolamo	Juneau	Shannon
De Bileux	Kean	Silverberg
Dennerly	Kelly	Singletary
Dennis	Kilbourne	Smith
Derbes	Kilpatrick	Soniatt
Deshotels	Lambert	Stagg
Drew	Landry, A.	Stephenson

PAGE 7

36th Days Proceedings—August 24, 1973

Stinson	Toca	Weiss
Stovall	Toomy	Willis
Tapper	Uilo	Winchester
Tate	Velazquez	Wisham
Thistlethwaite	Vesich	Zervigon
Thompson	Vick	
Tobias	Warren	

Total—109.

NAYS

Delegates—		
Burson	Landrum	Sutherland
Total—3.		

ABSENT

Delegates—		
Mr. Chairman	LeBreton	Roy
Alexander	Leithman	Schmitt
Armentor	Mire	Slay
Arnette	Munson	Taylor
Blair	Rachal	Wall
Fayard	Rayburn	Womack
Heine	Riecke	
Total—20.		

And the Chair declared that the above Section was passed.

Delegate Dennis moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Section 34. Reduction of Salaries and Benefits Prohibited

Section 34. No attorney general, district attorney, sheriff, or clerk of the district court shall have his salary or retirement benefits diminished during his term of office.

Read.

Delegate Conino sent up a floor amendment, which was read as follows:

Amendment proposed by Delegate Conino to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 13, line 4, immediately after "general," delete the remainder of the line and insert in lieu thereof the following:

"judge, district attorney, sheriff, coroner,"

Delegate Conino moved the adoption of the amendment.

Delegate De Blieux objected.

By a vote of 53 yeas and 51 nays the amendment was adopted.

Delegate Conino moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Passage

Committee Proposal No. 21, Section 34, was read, as amended.

Delegate Dennis moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Aertker	Bergeron	Casey
Alario	Bollinger	Champagne
Anzalone	Brien	Chehardy
Arnette	Brown	Conino
Asseff	Burns	Corne
Avant	Burson	Cowen
Badeaux	Cannon	D'Gerolamo
Bel	Carmouche	Dennery

Dennis	Juneau	Sandoz
Derbes	Kean	Segura
Deshotels	Kilbourne	Shannon
Drzew	Kilpatrick	Silverberg
Dunlap	Landrum	Singletary
Duval	Landry, A.	Smith
Edwards	Landry, E. J.	Soniat
Elkins	Lanier	Stephenson
Fontenot	LeBieu	Stovall
Fowler	Leigh	Sutherland
Fulco	Lennox	Tapper
Gauthier	Lowe	Tate
Giarrusso	McDaniel	Thistlethwaite
Ginn	Martin	Thompson
Goldman	Maubert	Toca
Gravel	Miller	Toomy
Grier	Newton	Uilo
Guarisco	O'Neill	Velazquez
Hayes	Perkins	Vesich
Haynes	Pianchard	Vick
Heine	Pugh	Warren
Hernandez	Reeves	Weiss
Jack	Robinson	Willis
Jackson, A.	Roemer	Winchester
Jackson, J.	Roy	Wisham
Jenkins		Zervigon
Total—102.		

NAYS

Delegates—		
Abraham	Kelly	Stagg
Chatelain	Nunez	Stinson
Conroy	Perez	Tobias
De Blieux	Schmitt	
Total—12.		

ABSENT

Delegates—		
Mr. Chairman	Hardee	Riecke
Alexander	LeBreton	Slay
Armentor	Leithman	Taylor
Blair	Mire	Wall
Fayard	Munson	Womack
Flory	Rachal	
Lambert	Rayburn	
Total—18.		

And the Chair declared that the above Section was passed.

Delegate Dennis moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Chairman Henry in the Chair

Section 35. Orleans Parish Courts, Officials; Continued

Section 35. Notwithstanding any provision of this Article to the contrary, the following courts and officers in Orleans Parish are continued, subject to change by a majority vote of the elected members of each house of the legislature and by approval in a referendum in the parish: the civil and criminal district courts, the city, municipal, traffic and juvenile courts, the clerks of the civil and criminal district courts, the civil and criminal sheriffs, the constables and the clerks of the first and second city courts, the register of conveyances, and the recorder of mortgages. These officers shall be elected for four-year terms with such duties and powers as provided by the legislature and terms of office, retirement benefits, or compensation shall not be reduced during their terms of office.

The civil district court shall have civil jurisdiction as provided in Section 16 of this Article and the criminal district court shall have criminal jurisdiction as provided in Section 16 of this Article.

The judicial expense fund of Orleans Parish as existing at the time of the adoption of this constitution is retained subject to change by two-thirds vote of the elected members of each house of the legislature.

Delegate Casey sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Casey to Committee Proposal No. 21 by Delegate Dennis, et al.

PAGE 8

36th Days Proceedings—August 24, 1973

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 13, delete lines 8 through 29, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 35. Except for provisions relating to terms of office as provided elsewhere in this Article and notwithstanding any other provision of this constitution to the contrary, the following courts and officers in Orleans Parish are continued, subject to change by a vote of two-thirds of the elected members of each house of the legislature: the civil and criminal district courts, the city, municipal, traffic and juvenile courts, the clerks of the civil and criminal district courts, the civil and criminal sheriffs, the constables and the clerks of the first and second city courts, the register of conveyances, and the recorder of mortgages."

Motion

Delegate Smith moved the previous question on the amendment.

Delegate J. Jackson objected.

By a vote of 26 yeas and 77 nays the Convention refused to order the previous question at this time.

Delegate Casey moved the adoption of the amendment.

Delegate Juneau objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Alexander	Giarrusso	Perez
Avant	Goldman	Perkins
Badeaux	Gravel	Pugh
Bel	Haynes	Reeves
Bergeron	Heine	Robinson
Brien	Jackson, J.	Roy
Burns	Jenkins	Sandoz
Burson	Kelly	Segura
Cannon	Kilpatrick	Silverberg
Carmouche	Landrum	Sutherland
Casey	Landry, A.	Tapper
Conino	Landry, E. J.	Thistlethwaite
Cowen	Leigh	Velazquez
De Blieux	Lennox	Vesich
Dennery	Marlin	Vick
Derbes	Maubert	Warren
Deshotels	Nunez	Winchester
Elkins	O'Neill	Wisham
Flory		Zervigon
Fulco		
Total—60.		

NAYS

Delegates—		
Abraham	Fontenot	Planchard
Aertker	Fowler	Roemer
Alario	Gauthier	Schmitt
Arnette	Grier	Shannon
Asseff	Guarisco	Singletary
Bollinger	Hardee	Smith
Brown	Hayes	Stagg
Champagne	Hernandez	Stephenson
Chatelain	Jack	Stinson
Chehardy	Jackson, A.	Thompson
Conroy	Juneau	Tobias
Corne	Lanier	Toca
D'Gerolamo	LeBleu	Toomy
Dennis	Lowe	Ulio
Drew	McDaniel	Weiss
Dunlap	Miller	Willis
Duval	Newton	
Total—50.		

ABSENT

Delegates—		
Mr. Chairman	LeBreton	Riecke
Anzalone	Leithman	Slay
Armentor	Mire	Stovall
Blair	Munson	Tate
Edwards	Ourso	Taylor
Fayard	Rachal	Wall
Kilbourne	Rayburn	Womack
Lambert		
Total—22.		

And the amendment was adopted.

Delegate Casey moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Juneau sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Juneau to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 13, line 8, in Floor Amendment No. 1 proposed by Delegate Casey and adopted by the convention on August 24, 1973, in line 5, delete the word "two-thirds" and insert in lieu thereof the words "a majority"

Delegate Juneau moved the adoption of the amendment.

Delegate Casey objected.

By a vote of 65 yeas and 48 nays the amendment was adopted.

Delegate Fontenot moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Passage

Committee Proposal No. 21, Section 35, was read, as amended.

Delegate Dennis moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Deshotels	Landry, A.
Abraham	Drew	Landry, E. J.
Aertker	Dunlap	Lanier
Alario	Duval	LeBleu
Alexander	Edwards	Leigh
Anzalone	Elkins	Lowe
Arnette	Flory	McDaniel
Asseff	Fontenot	Martin
Avant	Fowler	Maubert
Badeaux	Fulco	Miller
Bergeron	Gauthier	Newton
Bollinger	Giarrusso	Nunez
Brien	Ginn	O'Neill
Brown	Goldman	Ourso
Burns	Gravel	Perez
Burson	Grier	Perkins
Cannon	Guarisco	Planchard
Carmouche	Hardee	Pugh
Casey	Hayes	Reeves
Champagne	Haynes	Robinson
Chatelain	Heine	Roemer
Chehardy	Hernandez	Roy
Conino	Jack	Sandoz
Conroy	Jackson, A.	Schmitt
Corne	Jackson, J.	Segura
Cowen	Jenkins	Shannon
D'Gerolamo	Juneau	Silverberg
De Blieux	Kean	Singletary
Dennery	Kilbourne	Smith
Dennis	Kilpatrick	Soniat
Derbes	Landrum	Stagg

PAGE 9

36th Days Proceedings—August 24, 1973

Stephenson	Tobias	Warren
Stinson	Toca	Weiss
Sutherland	Toomy	Willis
Tapper	Uilo	Winchester
Tate	Velazquez	Wisham
Thistlethwaite	Vesich	Zervigon
Thompson	Vick	
Total—113.		

NAYS

Delegates—	Kelly	Lennox
Bel		
Total—3.		

ABSENT

Delegates—	Mire	Slay
Armentor	Munson	Stovall
Blair	Rachal	Taylor
Fayard	Rayburn	Wall
Lambert	Riecke	Womack
LeBreton		
Leithman		
Total—16.		

And the Chair declared that the above Section was passed.

Delegate Dennis moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Section 36. Jurors; Qualifications; Exemptions

Section 36. The supreme court by rule shall provide for qualification and exemption of jurors.

Read.

Delegate Pugh sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Pugh and Gravel to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 13, delete lines 31 and 32, both inclusive, in their entirety, and insert in lieu thereof the following:

"Section 36. (A) A citizen of the state, who is domiciled within the parish in which he is to serve as a juror and who has reached the age of majority, is eligible to serve as a juror. The legislature may provide additional qualifications.

(B) The supreme court by rule shall provide for exemption of jurors."

Delegate A. Landry moved the adoption of the amendment.

Delegate Deshotels objected.

By a vote of 94 yeas and 15 nays the amendment was adopted.

Delegate A. Landry moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Vice-Chairman Roy in the Chair

Delegate Stinson sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Stinson to Committee Proposal No. 21 by Delegate Dennis, et al.

AMENDMENT No. 1—

On page 13, immediately below line 32, add the following paragraph:

"Notwithstanding any other provision of this constitution, no woman shall be drawn for jury service unless she shall

have previously filed with the clerk of the district court a written declaration of her desire to be subject to such service."

Delegate Stinson moved the adoption of the amendment.

Delegate Dunlap objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Kilbourne	Sutherland
Anzalone	LeBleu	Weiss
Asseff	Perez	
Drew	Stinson	
Fowler		
Total—10.		

NAYS

Delegates—	Flory	Nunez
Mr. Chairman	Fontenot	O'Neill
Abraham	Fulco	Oruso
Acker	Gauthier	Perkins
Alario	Giarrusso	Planchard
Alexander	Ginn	Pugh
Arnette	Goldman	Reeves
Avant	Gravel	Robinson
Badeaux	Grier	Roemer
Bel	Guarisco	Sandoz
Bergeron	Hardee	Segura
Bollinger	Hayes	Shannon
Brien	Haynes	Silverberg
Brown	Heine	Singletary
Burns	Hernandez	Smith
Burson	Jack	Soniat
Carmouche	Jackson, A.	Stagg
Casey	Jackson, J.	Stephenson
Champagne	Jenkins	Tapper
Chatelain	Kean	Tate
Chehardy	Kelly	Thistlethwaite
Conino	Kilpatrick	Thompson
Conroy	Landrum	Tobias
Corne	Landry, A. A.	Toca
Cowen	Landry, E. J.	Toomy
De Blieux	Lanier	Uilo
D'Gerolamo	Leigh	Velazquez
Dennery	Lennox	Vesich
Dennis	Lowe	Vick
Derbes	McDaniel	Warren
Deshotels	Martin	Willis
Dunlap	Maubernet	Winchester
Duval	Miller	Wisham
Edwards	Newton	Zervigon
Elkins		
Total—102.		

ABSENT

Delegates—	Leithman	Schmitt
Armentor	Mire	Slay
Blair	Munson	Stovall
Cannon	Rachal	Taylor
Fayard	Rayburn	Wall
Juneau	Riecke	Womack
Lambert	Roy	
LeBreton		
Total—20.		

And the amendment was rejected.

Delegate Zervigon moved to reconsider the vote by which the amendment was rejected, and on her own motion, the motion to reconsider was laid on the table.

Passage

Committee Proposal No. 21, Section 36, was read as amended.

Delegate A. Landry moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

PAGE 10

36th Days Proceedings—August 24, 1973

YEAS

Delegates—	Fontenot	O'Neill
Mr. Chairman	Fowler	Ours
Abraham	Fulco	Perez
Aertker	Gauthier	Perkins
Alario	Giarrusso	Planchard
Alexander	Ginn	Pugh
Anzalone	Goldman	Reeves
Arnette	Gravel	Robinson
Avant	Grier	Roemer
Badeaux	Guarisco	Roy
Bel	Hardee	Sandoz
Bergeron	Hayes	Segura
Bollinger	Haynes	Shannon
Brien	Heine	Silverberg
Brown	Hernandez	Singletary
Burns	Jack	Smith
Burson	Jackson, A.	Soniati
Carmouche	Jackson, J.	Stagg
Casey	Jenkins	Stephenson
Champagne	Kean	Sutherland
Chatelain	Kelly	Tapper
Chehardy	Kilbourne	Tate
Conino	Kilpatrick	Thistlethwaite
Conroy	Landrum	Thompson
Corne	Cowen	Tobias
De Blieux	Landry, A.	Toca
D'Gerolamo	Landry, E. J.	Toomy
Dennery	Lanier	Uilo
Dennis	LeBleu	Velazquez
Derbes	Leigh	Vesich
Deshotels	Lennox	Vick
Drew	Lowe	Warren
Dunlap	McDaniel	Weiss
Duval	Martin	Willis
Edwards	Mauberret	Winchester
Elkins	Miller	Wisham
Flory	Newton	Zervigon
Flory	Nunez	
Total—111.		

NAYS

Delegates—	Stinson
Arseff	
Total—2.	

ABSENT

Delegates—	Leithman	Schmitt
Ayrenor	Mire	Slay
Blair	Munson	Stovall
Cannon	Rachal	Taylor
Fayard	Rayburn	Womack
Juneau	Riecke	
Lambert		
LeBreton		
Total—19.		

And the Chair declared that the above Section was passed.

Delegate A. Landry moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Section 37. Grand Jury

Section 37. There shall be a grand jury or grand juries in each parish whose duties and responsibilities shall be provided by law and whose qualifications shall be as provided in Section 6 of this Article. The secrecy of the proceedings, including the identity of the witnesses appearing, shall be provided for by law.

Read.

Delegate Pugh sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegates Pugh and Perez to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 14, line 3, after the word "whose" and before the word "duties" insert the word and punctuation "qualifications."

AMENDMENT No. 2—

On page 14, line 4, after the words "by law" and before the words "and whose" insert a period "." and delete the remainder of the line and at the beginning of line 5, delete the following:

"vided in Section 6 of this Article."

Delegate Pugh moved the adoption of the amendments.

Delegate Champagne objected.

By a vote of 92 yeas and 2 nays the amendments were adopted.

Delegate Pugh moved to reconsider the vote by which the amendments were adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Kean sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Kean and Thistlethwaite to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 14, line 6, after the partial word "ceedings" delete the remainder of the line

Delegate Kean moved the adoption of the amendment.

Delegate Avant objected.

A record vote was asked for and ordered by the Convention:

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Jackson, A.	Roy
Abraham	Jackson, J.	Shannon
Aertker	Jenkins	Silverberg
Arseff	Juneau	Singletary
Brien	Kean	Smith
Champagne	Kelly	Stinson
De Blieux	LeBleu	Tapper
Dennery	Perkins	Tate
Dennis	Planchard	Thistlethwaite
Derbes	Robinson	Thompson
Dunlap	Roemer	Tobias
Total—33.		

NAYS

Delegates—	Drew	Lennox
Alario	Dunlap	Lowe
Alexander	Duval	McDaniel
Anzalone	Edwards	Martin
Arnette	Elkins	Mauberret
Avant	Flory	Miller
Badeaux	Fontenot	Newton
Bel	Fowler	Nunez
Bergeron	Gauthier	O'Neill
Bollinger	Giarrusso	Ours
Brown	Ginn	Perez
Burson	Gravel	Pugh
Carmouche	Grier	Reeves
Casey	Guarisco	Sandoz
Chatelain	Hardee	Soniati
Chehardy	Heine	Stagg
Conino	Hernandez	Stephenson
Conroy	Kilbourne	Sutherland
Corne	Kilpatrick	Toca
Cowen	Landrum	Toomy
D'Gerolamo	Landry, A.	Uilo
Dennis	Landry, E. J.	Velazquez
Derbes	Lanier	Vick
Deshotels		

PAGE 11

36th Days Proceedings—August 24, 1973

Warren	Willis	Zervigon
Weiss	Wisham	
Total—74.		

ABSENT

Delegates—		
Mr. Chairman	Leigh	Segura
Armentor	Leithman	Slay
Blair	Mire	Stovall
Burns	Munson	Taylor
Cannon	Rachal	Vesich
Fayard	Rayburn	Wall
Haynes	Riecke	Winchester
Lambert	Schmitt	Womack
LeBreton		
Total—25.		

And the amendment was rejected.

Delegate Avant moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Delegate Conroy sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegate Perez, Gravel, Kilbourne, Nunez, Rayburn, and Burson to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 14, line 2, between "Section 37." and the word "There" insert "(A)"

AMENDMENT No. 2—

On page 14, between lines 7 and 8, insert the following: "(B) Except as otherwise provided in this constitution, a district attorney, or his designated assistant, shall have charge of every criminal prosecution in his district, shall be the representative of the state in his district before the grand jury, and its legal advisor. He shall perform such other duties as may be provided by law."

Point of Order

Delegate Conroy asked a ruling from the Chair as to whether the subject matter contained in the amendment was germane to the Section under consideration.

Ruling of the Chair

The Chair ruled that the subject matter contained in the amendment was germane to the Section under consideration.

Delegate Conroy appealed the ruling of the Chair.

Under the rules the vote recurred on the motion to sustain the Chair.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Chehardy	Fowler
Alario	Conino	Fulco
Anzalone	Corne	Giarrusso
Arnette	D'Gerolamo	Ginn
Asseff	De Bileux	Gravel
Avant	Derbes	Haynes
Badeaux	Deshotels	Heine
Bel	Drew	Jackson, A.
Burson	Dunlap	Jenkins
Casey	Edwards	Juneau
Chatelain	Flory	Kean

Kelly	O'Neill	Stinson
Kilbourne	Ourso	Tapper
Kilpatrick	Perez	Thistlethwaite
Landrum	Perkins	Toca
Landry, A.	Planchard	Toomy
Lanier	Pugh	Vesich
LeBieu	Reeves	Willis
Martin	Robinson	Wisham
Mauberrert	Roy	Zervigon
Newton	Sandoz	
Nunez	Stephenson	
Total—64.		

NAYS

Delegates—		
Abraham	Goldman	Shannon
Aertker	Grier	Silverberg
Alexander	Guarisco	Singletary
Bergeron	Hardee	Smith
Bollinger	Hayes	Soniat
Brien	Hernandez	Stagg
Brown	Jack	Sutherland
Carmouche	Jackson, J.	Thompson
Conroy	Landry, E. J.	Tobias
Dennerly	Lennox	Ulio
Dennis	Lowe	Velasquez
Duval	McDaniel	Vick
Elkins	Miller	Weiss
Fontenot	Roemer	
Total—41.		

ABSENT

Delegates—		
Armentor	LeBreton	Segura
Blair	Leigh	Slay
Burns	Leithman	Stovall
Cannon	Mire	Tate
Champagne	Munson	Taylor
Cowen	Rachal	Wall
Fayard	Rayburn	Warren
Gauthier	Riecke	Winchester
Lambert	Schmitt	Womack
Total—27.		

And the Chair was sustained.

Motion

Delegate Smith moved the previous question on the entire subject matter.

Delegate Tapper objected.

By a vote of 19 yeas and 81 nays the Convention refused to order the previous question at this time.

Delegate Perez moved the adoption of the amendments.

Delegate Tate objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Conino	Haynes
Abraham	Corne	Heine
Aertker	D'Gerolamo	Hernandez
Alario	Deshotels	Jenkins
Alexander	Drew	Juneau
Anzalone	Dunlap	Kean
Arnette	Duval	Kelly
Asseff	Edwards	Kilbourne
Avant	Fayard	Kilpatrick
Badeaux	Flory	Landrum
Bel	Fontenot	Landry, A.
Bergeron	Fowler	Lanier
Bollinger	Fulco	LeBieu
Brien	Gauthier	Lowe
Brown	Giarrusso	Martin
Burson	Ginn	Mauberrert
Carmouche	Goldman	Newton
Champagne	Gravel	Nunez
Chatelain	Grier	O'Neill
Chehardy	Hayes	Ouro

PAGE 12

36th Days Proceedings—August 24, 1973

Perez	Stephenson	Ullo
Perkins	Stinson	Vesich
Planchard	Tapper	Weiss
Reeves	Thistlethwaite	Willis
Robinson	Thompson	Wisham
Roy	Toca	
Silverberg	Toomy	
Total—79.		

NAYS

Delegates—		
Casey	Jackson, A.	Soniatt
Conroy	Landry, E. J.	Stagg
De Blieux	Lennox	Sutherland
Dennerly	McDaniel	Tate
Dennis	Miller	Tobias
Derbes	Roemer	Velazquez
Elkins	Sandoz	Vick
Guarisco	Singletary	Warren
Hardee	Smith	Zervigou
Jack		
Total—28.		

ABSENT

Delegates—		
Armentor	Leithman	Segura
Blair	Mire	Shannon
Burns	Munson	Slay
Cannon	Pugh	Stovall
Cowen	Rachal	Taylor
Jackson, J.	Rayburn	Wall
Lambert	Riecke	Winchester
LeBreton	Schmitt	Womack
Leigh		
Total—25.		

And the amendments were adopted.

Delegate Perez moved to reconsider the vote by which the amendments were adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Tapper sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Tapper to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 14, between lines 7 and 8 add the following paragraph:

"(C) At all stages of grand jury proceedings, anyone testifying in such proceedings shall have the right to the advice of counsel while testifying."

Delegate Tapper moved the adoption of the amendment.

Delegate Grier objected.

By a vote of 89 yeas and 10 nays the amendment was adopted.

Delegate Tapper moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Burson sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Burson to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 14, in Floor Amendment No. 2, proposed by

Delegates Perez, et al., at the end of line 3 after the word "district" add the following:

"in which the district court has jurisdiction"

On motion of Delegate Burson the amendment was withdrawn

Delegate Burson sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Burson to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 14, in Floor Amendment No. 2, proposed by Delegates Perez, et al., on line 3 after the word "prosecution" and before the word "in" insert the following:

"by the state"

Delegate Burson moved the adoption of the amendment.

By a vote of 97 yeas and 0 nays the amendment was adopted.

Delegate Burson moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Passage

Committee Proposal No. 21, Section 37, was read, as amended.

Delegate Dennis moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Fayard	Nunez
Abraham	Flory	O'Neill
Aertker	Fowler	Ourso
Alario	Fulco	Perez
Alexander	Gauthier	Perkins
Anzalone	Giarrusso	Planchard
Arnette	Ginn	Reeves
Assett	Goldman	Robinson
Avant	Gravel	Roemer
Badeaux	Grier	Roy
Bel	Guarisco	Sandoz
Bergeron	Hayes	Silverberg
Bollinger	Haynes	Singletary
Brien	Hernandez	Smith
Brown	Jack	Soniatt
Burson	Jackson, A.	Stagg
Casey	Jackson, J.	Stephenson
Champagne	Jenkins	Sutherland
Chatelain	Juneau	Tapper
Chehardy	Kelly	Tate
Conino	Kilbourne	Thistlethwaite
Conroy	Kilpatrick	Thompson
Corne	Landrum	Tobias
D'Gerolamo	Landry, A.	Toca
De Blieux	Landry, E. J.	Toomy
Dennerly	Lanier	Ullo
Derbes	LeBlau	Velazquez
Deshotels	Lennox	Vesich
Drew	Lowe	Warren
Dunlap	McDaniel	Weiss
Duval	Martin	Willis
Edwards	Miller	Wisham
Elkins	Newton	Zervigou
Total—99.		

NAYS

Delegates—		
Dennis	Fontenot	Stinson
Total—3.		

ABSENT

Delegates—		
Armentor	Cannon	Hardee
Blair	Carmouche	Heine
Burns	Cowen	Kean

PAGE 13

36th Days Proceedings—August 24, 1973

Lambert	Pugh	Slay
LeBreton	Rachal	Stovall
Leigh	Rayburn	Taylor
Leithman	Riecke	Vick
Mauberrert	Schmitt	Wall
Mire	Segura	Winchester
Munson	Shannon	Womack
Total—30.		

And the Chair declared that the above Section was passed.

Delegate Dennis moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Section 38. Fees; Orleans Parish

Section 38. The judges of the civil district court and the city courts of Orleans Parish shall set the fees for civil cases filed in their respective courts.

Read.

Passage

Delegate Dennis moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	
Deshotel	Stinson
Orso	Velazquez
Total—4.	

NAYS

Delegates—		
Mr. Chairman	Flory	Nunez
Abraham	Fontenot	O'Neill
Acker	Fowler	Perez
Alario	Fulco	Perkins
Alexander	Gauthier	Planchard
Anzalone	Giarrusso	Reeves
Arnette	Ginn	Robinson
Asseff	Goldman	Roemer
Avant	Grier	Roy
Badeaux	Guarisco	Sandoz
Bel	Hayes	Silverberg
Bergeron	Haynes	Singletary
Bollinger	Hernandez	Smith
Brien	Jack	Soniat
Brown	Jackson, A.	Stagg
Burson	Jackson, J.	Stephenson
Casey	Jenkins	Sutherland
Champagne	Juneau	Tapper
Chatelain	Kelly	Tate
Chehardy	Kilbourne	Thistlethwaite
Conino	Kilpatrick	Thompson
Conroy	Landrum	Tobias
Corne	Landry, A.	Toca
D'Gerolamo	Landry, E. J.	Tomy
De Bileux	Lanier	Uilo
Dennery	LeBlau	Vesich
Dennis	Lennox	Warren
Derbes	Lowe	Weiss
Drew	McDaniel	Willis
Dunlap	Marlin	Wisham
Duvall	Miller	Zervigon
Elkins	Newton	
Fayard		
Total—97.		

ABSENT

Delegates—		
Armentor	Edwards	Leigh
Blair	Hardee	Leithman
Burns	Heine	Mauberrert
Cannon	Kean	Mire
Carmouche	Lambert	Munson
Cowen	LeBreton	Pugh

Rachal	Shannon	Wall
Rayburn	Slay	Winchester
Riecke	Stovall	Womack
Schmitt	Taylor	
Segura	Vick	
Total—31.		

And the Chair declared that the above Section failed to pass.

Delegate Dennis moved to reconsider the vote by which the above Section failed to pass, and, on his own motion, the motion to reconsider was laid on the table.

Motion

On motion of Delegate Dennery the motion to reconsider the vote by which Section 25 of Committee Proposal No. 21 was passed, was called from the table.

On motion of Delegate Dennery the vote by which Section 25 was passed, was reconsidered.

Section 25. (A) The Judiciary Commission shall consist of one court of appeal judge and two district court judges selected by the supreme court; three attorneys admitted to the practice of law for at least ten years who are not judges, active or retired, nor public officials, selected by the Louisiana Conference of Court of Appeal Judges' Association or its successor; and three citizens, not lawyers, judges active or retired, nor public officials, appointed by the Louisiana District Judges' Association or its successor.

(B) A member of the commission shall serve a four-year term and shall not be eligible to succeed himself.

(C) A member's term shall terminate when he loses the status causing his appointment or when any event occurs which would have made him ineligible for appointment.

(D) When a vacancy occurs, a successor shall be appointed for a four-year term by the authority which appointed his predecessor.

(E) On recommendation of the Judiciary Commission, the supreme court may censure, suspend with or without salary, remove from office, or retire involuntarily a judge for willful misconduct relating to his official duty, willful and persistent failure to perform his duty, persistent and public conduct prejudicial to the administration of justice that brings the judicial office into disrepute, conduct while in office which would constitute a felony, or conviction of a felony. On recommendation of the Judiciary Commission, the supreme court may disqualify a judge from exercising any judicial function, without loss of salary, during the pendency of the proceedings in the supreme court. On recommendation of the Judiciary Commission, the supreme court may retire involuntarily a judge for disability that seriously interferes with the performance of his duties and that is, or is likely to become, of a permanent character. The supreme court shall make rules implementing this section and providing for confidentiality and privilege of proceedings.

(F) Action against a judge under this Section shall not preclude disciplinary action against him with respect to his license to practice law.

Delegate Dennery sent up floor amendments which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegate Dennery to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 9, line 15, delete Amendment No. 1, proposed by Delegate Pugh and adopted by the convention on August 22, 1973.

AMENDMENT No. 2—

On page 9, line 15, after the word "officials" delete the comma "," and insert the following:
"Other than notaries public."

On motion of Delegate Dennery the amendment was adopted.

Delegate Dennery moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

PAGE 14

36th Days Proceedings—August 24, 1973

Passage

Committee Proposal No. 21, Section 25, was read, as amended.

Delegate Denny moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Fowler	O'Neill
Abraham	Fulco	Ourso
Alario	Gauthier	Perez
Alexander	Giarrusso	Perkins
Anzalone	Ginn	Planchard
Arnette	Goldman	Reeves
Asseff	Gravel	Robinson
Avant	Grier	Roemer
Badeaux	Guarisco	Roy
Bel	Hayes	Sandoz
Bergeron	Haynes	Silverberg
Bollinger	Hernandez	Smith
Brien	Jack	Soniat
Brown	Jackson, A.	Slagg
Burson	Jackson, J.	Stephenson
Casey	Jenkins	Stinson
Champagne	Juneau	Sutherland
Chatelain	Kelly	Tapper
Conino	Kilbourne	Tate
Conroy	Kilpatrick	Thistlethwaite
Corne	Landrum	Thompson
D'Gerolamo	Landry, A.	Tobias
De Blieux	Landry, E. J.	Toca
Denny	Lanier	Toomy
Dennis	LeBieu	Uilo
Deshotels	Lennox	Velazquez
Dunlap	Lowe	Vesich
Duval	McDaniel	Warren
Elkins	Martin	Weiss
Fayard	Miller	Willis
Flory	Newton	Wisham
Fontenot	Nunez	Zervigon
Total—96.		

NAYS

Total—0.

ABSENT

Delegates—		
Aertker	Heine	Riecke
Armstrong	Kean	Schmitt
Blair	Lambert	Segura
Burns	LeBreton	Shannon
Cannon	Leigh	Singletary
Carmouche	Leithman	Slay
Chehardy	Maubert	Stovall
Cowen	Mire	Taylor
Derbes	Munson	Vick
Drew	Pugh	Wall
Edwards	Rachal	Winchester
Hardee	Rayburn	Womack
Total—36.		

And the Chair declared that the above Section was passed.

Delegate Denny moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Motion

On motion of Delegate Reeves, the Convention altered the Order of Business to take up other orders of Business at this time.

COMMITTEE NOTICE

Mr. Alphonse Jackson, Jr., chairman of the Committee on Bill of Rights and Elections, sent up the following notice:

The Committee on Bill of Rights and Elections will meet on Tuesday, August 28, 1973, at 10:00 o'clock A.M. in Committee Room 9 and will consider the following agenda:

AGENDA

To prepare the presentation of Committee Proposal No. 25 to the full convention.

Respectfully submitted,

ALPHONSE JACKSON, JR.
Chairman of the Committee on
Bill of Rights and Elections

The above notice was read in open session and publicly posted as provided by the Rules of Procedure of the Convention.

COMMITTEE NOTICE

Delegate Stovall, chairman of the Committee on Rules, Credentials and Ethics, sent up the following notice:

The Committee on Rules, Credentials and Ethics will meet on Wednesday, August 29, 1973, at 5:30 o'clock P.M. in Committee Room 1 and will consider the following agenda:

AGENDA

To consider resolutions referred to the committee.

Respectfully submitted,

JAMES STOVALL,
Chairman of the Committee on
Rules, Credentials and Ethics

The above notice was read in open session and publicly posted as provided by the Rules of Procedure of the Convention.

COMMITTEE NOTICE

Delegate LeBreton, chairman of the Committee on Legislative Liaison and Transitional Measures, sent up the following notice:

The Committee on Legislative Liaison and Transitional Measures will meet on Wednesday, August 29, 1973, immediately after adjournment in Convention Hall and will consider the following agenda:

AGENDA

To discuss the Resolution on Transitional Measures.

Respectfully submitted,

EDWARD F. LEBRETON,
Chairman of the Committee on
Legislative Liaison and Transitional Measures

The above notice was read in open session and publicly posted as provided by the Rules of Procedure of the Convention.

COMMITTEE NOTICE

Delegate Perez, chairman of the Committee on Local and Parochial Government, sent up the following notice:

The Committee on Local and Parochial Government will meet Wednesday, August 29, 1973, after adjournment in Committee Room 9 and will consider the following agenda:

AGENDA

To consider the committee's proposal.

Respectfully submitted,

C. O. PEREZ,
Chairman of the Committee on
Local and Parochial Government

The above notice was read in open session and publicly posted as provided by the Rules of Procedure of the Convention.

Unfinished Business

The following unfinished business in which the Convention was engaged at the time of its adjournment on yesterday was taken up and acted on:

Proposals Delegate and Committee

The following entitled Delegate and Committee Proposals were taken up on their third reading and final passage:

COMMITTEE PROPOSAL No. 21—

Introduced by Delegate Dennis, Chairman, on behalf of the Committee on the Judiciary and Delegates Avant, Bel, Bergeron, Burns, Deshotels, Drew, Gauthier, Kelly, Kilbourne, Landry, Martin, Ourso, Sandoz, Tate and Vesich (A Substitute for Committee Proposal No. 6):

A PROPOSAL

Making provisions for the judiciary branch of government.

Read.

The Chairman announced that the Convention had under consideration the above Committee Proposal when it adjourned on Friday, August 24, 1973, which was taken up and acted upon as follows:

Section 18. Juvenile Courts; Jurisdiction

Section 18. The jurisdiction of a juvenile court shall be as provided by law.

Read.

On motion of Delegate J. Jackson the above Section, upon which action was deferred on August 17, 1973, was taken up and acted upon as follows:

FLOOR AMENDMENT

Delegate J. Jackson sent up a floor amendment, which was read as follows:

Amendment proposed by Delegates J. Jackson, Warren, Roy, Pugh and Gravel to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 6, delete lines 15 through 17, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 18. Juvenile Courts; Family Courts; Jurisdiction
Section 18. (A) Except as otherwise herein provided, the juvenile courts or family courts shall have exclusive original jurisdiction of cases of the state in the interest of persons under eighteen years of age brought before the court as delinquent or neglected children. The courts shall also have jurisdiction of all cases of desertion or nonsupport of children by either parent or nonsupport of a wife by her husband and the adoption of children under eighteen years of age. The family court shall have such additional jurisdiction as is possessed by the family courts in existence at the time this constitution is adopted, or as otherwise provided by law.

(B) The legislature shall have the power to establish juvenile courts or family courts for any parish or group of parishes and designate the title and domicile of said courts, upon the petition of the police jury or other governing authority of the parish to be affected. The jurisdiction of any family court established subsequent to the adoption of this constitution shall be the same as the jurisdiction vested in family courts in existence at the time of the adoption of this constitution.

(C) The district courts in the Parish of Orleans and the several district courts in the other parishes of the state, however, shall have exclusive jurisdiction of the trial of all persons over the age of sixteen years who have been indicted by a Grand Jury for the offenses of murder, aggravated kidnapping, or aggravated rape committed within their respective jurisdictions."

Delegate J. Jackson moved the adoption of the amendment.

Delegate Jack objected.

A record vote was asked for and order by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Ginn	Roy
Alexander	Gravel	Shannon
Bergeron	Guarisco	Soniat
Bollinger	Hayes	Stagg
Brian	Haynes	Stephenson
Brown	Jackson, A.	Stovall
Chatelein	Jackson, J.	Vick
Chehardy	Kilpatrick	Warren
D'Gerolamo	Landrum	Wisham
Denney	Newton	Zervigon
Flory	Rachal	
Gauthier	Roemer	
Total—34.		

NAYS

Delegates—		
Abraham	Fayard	Mire
Alario	Fontenot	Munson
Anzalone	Fowler	Nunez
Arnette	Fulco	O'Neill
Asseff	Guldiman	Perez
Avant	Grier	Perkins
Badeaux	Heine	Planchard
Bel	Hernandez	Robinson
Blair	Jack	Sandoz
Burns	Jenkins	Segura
Burson	Juneau	Singletary
Carmouche	Kelly	Smith
Casey	Kilbourne	Sutherland
Champagne	Lambert	Tapper
Conino	Landry, A.	Tate
Conroy	Landry, E. J.	Thistlethwaite
Corne	Lanier	Thompson
De Blieux	LeBleu	Tobias
Dennis	Leigh	Toca
Derbes	Lennox	Toomy
Deshotels	Lowe	Weiss
Drew	McDaniel	Willis
Dunlap	Martin	Winchester
Duval	Maubernet	Womack
Elkins	Miller	
Total—74.		

ABSENT

Delegates—		
Aertker	LeBreton	Silverberg
Armentor	Leithman	Slay
Cannon	Ourso	Stinson
Cowan	Pugh	Taylor
Edwards	Rayburn	Ulio
Giarrusso	Reeves	Velazquez
Hardee	Riecke	Vesich
Kean	Schmitt	Wall
Total—24		

And the amendment was rejected.

Delegate Planchard moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Delegate Gravel sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Gravel to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 6, line 17, change the period "." to a semicolon ";" and add the following:

"provided, however, that the juvenile courts, including district courts and parish and city courts when sitting as ex officio juvenile courts, shall have exclusive original jurisdiction of all offenses committed by persons under the age

PAGE 3

37th days Proceedings—August 28, 1973

of seventeen, except that the criminal district courts in the Parish of Orleans and the several district courts in the other parishes of the state shall have exclusive original jurisdiction of persons who at the time of the commission of the offense are over the age of fifteen years and who have been indicted by a grand jury for the offenses of murder, aggravated kidnapping, or aggravated rape committed within their respective jurisdictions."

Delegate Gravel moved the adoption of the amendment.

Delegate Derbes objected.

By a vote of 53 yeas and 53 nays the amendment was rejected.

Delegate J. Jackson moved to reconsider the vote by which the amendment was rejected.

Delegate Derbes moved to lay the motion to reconsider on the table.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Arnette	Fowler	Mauberrert
Asseff	Fulco	Nunez
Bel	Goldman	O'Neill
Blair	Grier	Ours
Burns	Heine	Perez
Carmouche	Hernandez	Perkins
Casey	Jack	Sandoz
Champagne	Jenkins	Singletary
Conino	Janeau	Smith
Conroy	Kelly	Stephenson
Corne	Kilbourne	Stovall
Cowen	Lanier	Sutherland
De Blieux	LeBleu	Tapper
Derbes	Leigh	Thistlethwaite
Deshotels	Lennox	Tobias
Drew	Lowe	Vesich
Elkins	McDaniel	Willis
Fontenot	Martin	Winchester
Total—54.		

NAYS

Delegates—		
Mr. Chairman	Edwards	Rachal
Abraham	Flory	Reeves
Alario	Gauthier	Robinson
Alexander	Ginn	Roy
Anzalone	Gravel	Segura
Avant	Guarisco	Shannon
Badeaux	Hayes	Soniat
Bollinger	Haynes	Slagg
Brien	Jackson, A.	Tate
Brown	Jackson, J.	Thompson
Burson	Kean	Toca
Chatelain	Kilpatrick	Toomy
Chehardy	Landrum	Vick
D'Gerolamo	Landry, A.	Warren
Dennery	Landry, E. J.	Weiss
Dennis	Mire	Wisham
Dunlap	Munson	Zervigon
Duval	Planchard	
Total—53.		

ABSENT

Delegates—		
Aertker	Leithman	Slay
Armentor	Miller	Stinson
Bergerson	Newton	Taylor
Cannon	Pugh	Ullio
Fayard	Rayburn	Velazquez
Giarrusso	Riecke	Wall
Hardee	Roemer	Womack
Lambert	Schmitt	
LeBreton	Silverberg	
Total—25.		

And the motion to reconsider was tabled.

Delegate Kean sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates Pugh, Kean and Avant to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 6, delete lines 16 and 17, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 1. The juvenile and family courts shall have such jurisdiction as the legislature shall provide by law."

Delegate Kean moved the adoption of the amendment.

Delegate Alexander objected.

By a vote of 92 yeas and 12 nays the amendment was adopted.

Delegate Kean moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Tate sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Tate and Tobias to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 6, line 16, in the language added by Convention Floor Amendment No. 1 proposed by Delegate Pugh et al and adopted by the Convention on August 28, 1973, immediately after the number "18" and before the word "juvenile" delete the word "The" and insert in lieu thereof the following:

"Notwithstanding any provision of this Article to the contrary, the"

Delegate Tate moved the adoption of the amendment.

Delegate Stovall objected.

By a vote of 103 yeas and 0 nays the amendment was adopted.

Delegate Tate moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Gravel sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Gravel to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 6, line 16, immediately after the words "provide by law" added by Convention Floor Amendment No. 1 proposed by Mr. Pugh, et al and adopted by the Convention on August 28, 1973, change the period "." to a semicolon ";" and add the following:

"Juvenile courts shall have exclusive original jurisdiction of all offenses committed by persons under the age of seventeen, except that the criminal district courts in the Parish of Orleans and the several district courts in the other parishes of the state shall have exclusive original jurisdiction of persons who at the time of the commission of the offense are over the age of fifteen years and who have been indicted by a grand jury for the offenses of murder, aggravated kidnapping, armed robbery, or aggravated rape committed within their respective jurisdictions."

On motion of Delegate Gravel the amendment was withdrawn.

Delegate Gravel sent up a floor amendment, which was read as follows:

PAGE 4

37th days Proceedings—August 28, 1973

FLOOR AMENDMENT

Amendment proposed by Delegate Gravel to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 6, line 16, immediately after the words "provide by law" added by Convention Floor Amendment No. 1 proposed by Mr. Pugh, et al and adopted by the Convention on August 28, 1973, change the period "." to a semicolon ";" and add the following:

"Juvenile courts including district courts and parish and city courts when sitting as ex officio juvenile courts, shall have exclusive original jurisdiction of all offenses committed by persons under the age of seventeen, except that the criminal district courts in the Parish of Orleans and the several district courts in the other parishes of the state shall have exclusive original jurisdiction of persons who at the time of the commission of the offense are over the age of fifteen years and who have been indicted by a grand jury for the offenses of murder, aggravate kidnapping, armed robbery, or aggravated rape committed within their respective jurisdictions."

On motion of Delegate Gravel the amendment was withdrawn.

Passage

Committee Proposal No. 21, Section 18, was read, as amended.

Delegate Dennis moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates— Mr. Chairman Abraham Alario Anzalone Arnette Asseff Avant Badeaux Bel Bergeron Blair Bollinger Brien Brown Burns Burson Cannon Carmouche Casey Champagne Chatelain Conino Conroy Corne Cowan D'Gerolamo De Blieux Dennery Dennis Derbes Deshotels Drew Dunlap Duval	Edwards Elkins Flory Fontenot Fowler Fulco Ginn Goldman Gravel Grier Guarisco Hayes Hernandez Jack Jenkins Juneau Kean Kelly Kilbourne Kilpatrick Lambert Landry, A. Landry, E. J. Lanier LeBleu Leigh Lennox Lowe McDaniel Martin Mauberret Miller Mire Munson	Newton Nunez O'Neill Ourso Perez Perkins Plancharde Rachal Reeves Robinson Roemer Roy Sandoz Segura Shannon Singletary Smith Stagg Stephenson Tapper Tate Thompson Tobias Toomy Vesich Vick Weiss Willis Winchester Wismam Womack Zervigon
--	--	---

Total—101.

NAYS

Delegates—
Alexander
Chehardy
Gauthier
Total—9.

Haynes
Jackson, A.
Jackson, J.

Soniatt
Stovall
Warren

ABSENT

Delegates—
Aertker
Armentor
Fayard
Giarrusso
Hardee
Heine
Landrum
LeBreton
Total—22.

Leithman
Pugh
Rayburn
Riecke
Schmitt
Silverberg
Slay
Stinson

Sutherland
Taylor
Thistlethwaite
Uilo
Velazquez
Wall

And the Chair declared that the above Section was passed.

Delegate Dennis moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Delegate Avant sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Avant to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 5, between lines 28 and 29, insert the following:

"Section 15.1. City Court Judges; Terms

Section 15.1. A judge of a city court shall be elected for the same term as a district court judge."

Delegate Avant moved the adoption of the amendment.

Delegate Tobias objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates— Alario Alexander Anzalone Avant Badeaux Bel Bergeron Blair Bollinger Brien Brown Burns Burson Cannon Carmouche Casey Champagne Chatelain Chehardy Conino Corne Cowan D'Gerolamo De Blieux Dennery Dennis Derbes Deshotels Dunlap	Duval Edwards Flory Fontenot Fulco Gauthier Ginn Gravel Grier Guarisco Hayes Jack Juneau Kean Kelly Kilbourne Kilpatrick Lambert Landry, A. Lanier Martin Mauberret Mire Newton Nunez O'Neill Ourso Perkins	Planchard Reeves Robinson Roemer Roy Sandoz Segura Shannon Singletary Smith Soniatt Stagg Stephenson Stovall Tapper Thistlethwaite Thompson Toca Toomy Vesich Vick Warren Weiss Willis Winchester Womack Zervigon
--	--	---

Total—85.

NAYS

Delegates— Abraham Arnette Asseff	Conroy Drew Elkins	Fowler Goldman Haynes
--	--------------------------	-----------------------------

PAGE 2

38th Days Proceedings—August 29, 1973

Motion

Delegate O'Neill moved that the Convention defer any further action on the Section at this time.

Delegate Roy objected.

By a vote of 46 yeas and 40 nays further action on the above Section was deferred at this time.

Section 2. Due Process of Law

Section 2. No person shall be deprived of life, liberty, property, or other rights without substantive and procedural due process of law.

Read.

FLOOR AMENDMENT

Delegate Pugh sent up a floor amendment, which was read as follows:

Amendment proposed by Delegate Pugh to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 2, line 4, after the word "without" and before the word "substantive" insert the following:
"There being first afforded both"

On motion of Delegate Pugh the amendment was withdrawn.

Delegate Jack sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegate Jack to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 2, line 3, at the end of the line, immediately after the word "liberty" delete the comma "," and insert in lieu thereof the word "or"

AMENDMENT No. 2—

On page 2, line 4, immediately after the word "property" and the comma "," delete the remainder of the line and insert in lieu thereof the words "except by"

On motion of Delegate Jack the amendments were withdrawn.

Delegate Thistlethwaite sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates Thistlethwaite, Staggs, Tate, and Sandoz to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 2, delete lines 2 through 5, both inclusive in their entirety and insert in lieu thereof the following:

Section 2. Due Process; Equal Protection; Right to Property
"Section 2. No person shall be deprived of life, liberty, property, or other rights without due process of law, nor be denied the equal protection of the laws. No law shall discriminate against a person in the exercise of his rights. Private property shall not be taken or damaged nor shall vested rights be divested, except for a public purpose and after just and adequate compensation."

Delegate Thistlethwaite moved the adoption of the amendment.

Delegate O'Neill objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Kean	Sandoz
Alario	Kilbourne	Stagg
Bollinger	Landry, A.	Sutherland
Burson	Lanier	Tate
Carmouche	LeBlau	Thistlethwaite
Champagne	Leigh	Toca
Conroy	Lennox	Toomy
Dennis	McDaniel	Uilo
Duval	Miller	Willis
Elkins	Nunez	Winchester
Heine	Perez	
Jack	Planchard	
Total—34.		

NAYS

Delegates—	Gauthier	Rayburn
Abraham	Ginn	Reeves
Aerker	Goldman	Robinson
Alexander	Gravel	Roemer
Anzalone	Grier	Roy
Arnette	Guarisco	Schmitt
Asseff	Hayes	Segura
Avant	Haynes	Shannon
Badeaux	Hernandez	Singletary
Bel	Jackson, A.	Slay
Bergeron	Jackson, J.	Smith
Blair	Jenkins	Soniat
Brien	Juneau	Stephenson
Brown	Kelly	Simsion
Burns	Kilpatrick	Stovall
Casey	Landrum	Tappper
Chatelain	Landry, E. J.	Thompson
Chehardy	Lowe	Tobias
Conino	Martin	Velazquez
Corne	Maubert	Vick
Cowen	Mire	Warren
DeGerolamo	Munson	Weiss
DeBlieux	Newton	Wisham
Dennerly	O'Neill	Womack
Dunlap	Ourso	Zervignon
Flory	Perkins	
Fowler	Pugh	
Fulco		
Total—79.		

ABSENT

Delegates—	Fontenot	Riecke
Mr. Chairman	Giarrusso	Silverberg
Armentor	Hardee	Taylor
Cannon	Lambert	Vesich
Derbes	LeBreton	Wall
Deshotels	Leithman	
Edwards	Rayard	
Fayard	Rachal	
Total—19.		

And the amendment was rejected.

Delegate A. Jackson moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Delegate Perez sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Perez to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 2, delete lines 3 through 5, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 2. No person shall be deprived of life, liberty or property, except by due process of law. Except as otherwise provided in this constitution, private property shall not be

PAGE 3

38th Days Proceedings—August 29, 1973

taken or damaged except for public purposes and after just and adequate compensation is paid."

Motion

Delegate Stovall moved that further action on Section 2 be deferred at this time.

Delegate Jenkins objected.

By a vote of 26 yeas and 74 nays the Convention refused to defer further action on Section 2 at this time.

Motion

Delegate Perez moved that the amendment be withdrawn.

Delegate Guarisco objected.

By a vote of 93 yeas and 11 nays the amendment was withdrawn.

Delegate Perez sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegate Perez to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 2, delete lines 3 through 5, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 2. No person shall be deprived of life, liberty or property, except by due process of law."

AMENDMENT No. 2—

Add the following after the language added by Amendment No. 1:

"Except as otherwise provided in this constitution, private property shall not be taken or damaged except for public purposes and after just and adequate compensation is paid."

On motion of Delegate Perez a division of the question was ordered.

Delegate Perez moved the adoption of Amendment No. 1.

Delegate Vick objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Abraham	Drew	Perkins
Aertker	Duval	Planchard
Alario	Elkins	Rayburn
Anzalone	Fontenot	Riecke
Arnette	Gauthier	Robinson
Asseff	Heine	Sandoz
Badeaux	Jack	Schmitt
Blair	Juneau	Segura
Bollinger	Kean	Shannon
Brien	Kilbourne	Smith
Brown	Landry, A.	Stagg
Burns	Lanier	Sutherland
Burson	LeBleu	Tapper
Carmouche	Leigh	Tate
Casey	Lennox	Thistlethwaite
Champagne	Lowe	Toomy
Conino	McDaniel	Ulio
Conroy	Mauberret	Velazquez
Corne	Nunez	Willis
Cowen	Perez	Winchester

Total—60.

NAYS

Delegates—		
Alexander	Guarisco	Pugh
Avant	Hayes	Reeves
Bel	Haynes	Roemer
Bergeron	Jackson, A.	Roy
Chateau	Jackson, J.	Singletary
Chehardy	Jenkins	Slay
D'Gerolamo	Kelly	Soniak
De Blieux	Kilpatrick	Stinson
Dennerly	Lambert	Stovall
Dennis	Landrum	Thompson
Dunlap	Landry, E. J.	Tobias
Flory	LeBreton	Toca
Fulco	Miller	Vick
Ginn	Mire	Warren
Goldman	Munson	Weiss
Gravel	Newton	Wisham
Grier	O'Neill	Zervigon
Total—51.		

ABSENT

Delegates—		
Mr. Chairman	Fowler	Rachal
Armentor	Giarrusso	Silverberg
Cannon	Hardee	Stephenson
Derbes	Hernandez	Taylor
Deshotels	Leithman	Vesich
Edwards	Martin	Wall
Fayard	Ourso	Womack
Total—21.		

And the amendment was adopted.

Delegate Perez moved to reconsider the vote by which the amendment was adopted and on his own motion, the motion to reconsider was laid on the table.

On motion of Delegate Perez, and under a suspension of the rules, Amendment No. 2 was withdrawn.

Passage

Committee Proposal No. 25, Section 2, was read, as amended.

Delegate A. Jackson moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Abraham	Fontenot	Mire
Aertker	Fowler	Munson
Alario	Fulco	Newton
Alexander	Gauthier	Nunez
Anzalone	Ginn	O'Neill
Arnette	Goldman	Perez
Asseff	Gravel	Perkins
Avant	Grier	Planchard
Badeaux	Guarisco	Pugh
Bel	Hayes	Rayburn
Bergeron	Haynes	Reeves
Bollinger	Heine	Riecke
Brien	Jack	Robinson
Brown	Jackson, A.	Roemer
Burns	Jackson, J.	Roy
Burson	Jenkins	Sandoz
Carmouche	Juneau	Schmitt
Casey	Kelly	Segura
Champagne	Kilbourne	Shannon
Chateau	Kilpatrick	Singletary
Chehardy	Lambert	Slay
Conino	Landrum	Smith
Conroy	Landry, A.	Soniak
Corne	Landry, E. J.	Stagg
D'Gerolamo	Lanier	Stinson
De Blieux	LeBleu	Stovall
Dennerly	LeBreton	Sutherland
Dennis	Leigh	Tapper
Drew	Lennox	Tate
Dunlap	Lowe	Thistlethwaite
Duval	McDaniel	Thompson
Elkins	Mauberret	Tobias
Flory	Miller	Toca

PAGE 4

38th Days Proceedings—August 29, 1973

Toomy	Weiss	Womack
Uilo	Willis	Zervigon
Velazquez	Winchester	
Vick	Wisham	
Total—109.		
Delegate—	NAYS	
Warren		
Total—1.		
Delegates—	ABSENT	
Mr. Chairman	Fayard	Ourso
Armentor	Giarrusso	Rachal
Blair	Hardee	Silverberg
Cannon	Hernandez	Stephenson
Cowan	Kean	Taylor
Derbes	Leithman	Vesich
Deshotels	Martin	Wall
Edwards		
Total—22.		

And the Chair declared that the above Section was passed.

Delegate A. Jackson moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Motion

On motion of Delegate A. Jackson, the Convention altered the Order of Business to take up Committee Proposal No. 25, Section 1 at this time.

ARTICLE I. DECLARATION OF RIGHTS

Section 1. Origin and Purpose of Government

Section 1. All government, of right, originates with the people, is founded on their will alone, and is instituted to protect the rights of the individual and for the good of the whole. Its only legitimate ends are to secure justice for all, preserve peace, and promote and protect the rights, happiness, and general welfare of the people. The rights enumerated in this Article are inalienable and shall be preserved inviolate.

On motion of Delegate A. Jackson Committee Proposal No. 25, Section 1, on which action was previously deferred, was taken up and acted upon as follows:

Delegate Lanier sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegate Lanier to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 1, line 32, after the word "inalienable" and before the word "and" insert the following:
"by the state"

AMENDMENT No. 2—

On page 2, line 1 after the word "involute" add the words
"by the state."

Delegate Lanier moved the adoption of the amendment.

Delegate Denny objected.

By a vote of 112 yeas and 6 nays the amendment was adopted.

Delegate Lanier moved to reconsider the vote by which the amendments were adopted, and on his own motion, the motion to reconsider was laid on the table.

Passage

Committee Proposal No. 25, Section 1, was read, as amended.

Delegate A. Jackson moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS		
Delegates—	Gauthier	Planchard
Abraham	Ginn	Pugh
Aerker	Goldman	Rachal
Alario	Gravel	Rayburn
Alexander	Grier	Reeves
Anzalone	Guarisco	Riecke
Arnette	Hayes	Robinson
Asseff	Heine	Roemer
Avant	Hernandez	Roy
Badeaux	Jack	Sandoz
Bel	Jackson, A.	Schmitt
Bergeron	Jackson, J.	Segura
Blair	Jenkins	Shannon
Bollinger	Juneau	Silverberg
Brien	Kean	Singletary
Brown	Kelly	Slay
Burns	Kilbourne	Smith
Bursen	Kilpatrick	Sonial
Carmouche	Lambert	Stagg
Casey	Landrums	Stephenson
Champagne	Landry, A.	Stinson
Chatelain	Landry, E. J.	Stovall
Chehardy	Lanier	Sutherland
Conino	LeBieu	Tapper
Conroy	LeBreton	Tate
Corne	Leigh	Thistlethwaite
Cowan	Lennox	Thompson
D'Gerolamo	Lowe	Tobias
De Blieux	McDaniel	Toomy
Elkins	Martin	Uilo
Dennery	Mauberret	Velazquez
Dennis	Miller	Vick
Deshotels	Mire	Warren
Drew	Munson	Weiss
Dunlap	Newton	Willis
Duval	Nunez	Winchester
Edwards	O'Neill	Wisham
Elkins	Ourso	Womack
Flory	Perez	Zervigon
Fontenot	Perkins	
Fowler		
Fulco		
Total—119.		

NAYS

Delegates—
Total—0.

ABSENT

Delegates—	Giarrusso	Toca
Mr. Chairman	Hardee	Vesich
Armentor	Haynes	Wall
Cannon	Leithman	
Derbes	Taylor	
Fayard		
Total—13.		

And the Chair declared that the above Section was passed.

Delegate A. Jackson moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Section 3. Right to Individual Dignity

Section 3. No person shall be denied the equal protection of the laws nor shall any law discriminate against a person in the exercise of rights on account of birth, race, age, sex, social origin, physical condition, or political or religious ideas. Slavery and involuntary servitude are prohibited, except in the latter case as a punishment for crime.

Read.

Motion

Delegate Abraham moved for a suspension of the rules in order to allow Delegate Roy an additional five minutes, beyond the time allowed by the rules, to answer questions put to him from the floor of the Convention.

Delegate Jack objected.

PAGE 5

38th Days Proceedings—August 29, 1973

By a vote of 81 yeas and 31 nays the rules were suspended.

Motion

Delegate Rayburn moved that Delegates be allowed to address the Convention on the entire Section prior to taking up amendments pertaining to the Section.

As a substitute Delegate De Blieux moved that amendments be considered immediately after an explanation of the Section by a proponent.

The vote recurred on the substitute motion.

By a vote of 37 yeas and 73 nays the Convention refused to adopt the substitute motion.

The vote then recurred on the original motion.

On motion of Delegate Rayburn the Convention agreed that Delegates could address the Convention on the entire Section prior to considering amendments thereto.

Motion

On motion of Delegate Abraham, the Convention altered the Order of Business to take up Petitions, Memorials and Communications at this time.

Petitions, Memorials and Communications

The following petitions, memorials and communications were received and read:

State of Louisiana
OFFICE OF LOUISIANA
Baton Rouge

August 29, 1973

Hon. Wade O. Martin, Jr.
Secretary of State
Baton Rouge, Louisiana

Dear Mr. Martin:

Please issue commission to the following:

Charles Wattigny, 113 Evangeline, New Iberia, as Delegate to the Constitutional Convention of 1973 (District 48), vice Mines H. Armentor, resigned.

Yours very truly,

EDWIN EDWARDS
Governor of Louisiana

OATH OF OFFICE

Mr. Charles Wattigny appeared before the bar of the Convention and took the following oaths of office administered by Honorable David R. Poynter, Clerk of the House of Representatives and Chief Clerk of the Constitutional Convention:

"I hereby solemnly swear that I will support the constitution and laws of the United States; that I will well and faithfully perform all duties as a member of the convention, and that I will observe and obey the limitation of authority contained in the Act under which this convention has assembled. So help me God."

"I (Charles Wattigny) do solemnly swear that I will support the Constitution and laws of the United States and the Constitution and laws of this State; and I will faithfully and impartially discharge and perform all the duties incumbent upon me as a delegate to the Constitutional Convention, according to the best of my ability and understanding. So help me God."

Proposals Delegate and Committee, Resumed

The following entitled Delegate and Committee Proposals were taken up on their third reading and final passage:

COMMITTEE PROPOSAL No. 25—

Introduced by Delegate A. Jackson, Chairman, Committee on Bill of Rights and Elections (Substitute for Committee Proposal No. 2, by Delegate A. Jackson, Chairman, on behalf of the Committee on Bill of Rights and Elections, and Delegates Dunlap, Guarisco, Jenkins, Roy, Soniat, Stinson, Vick, Wall and Weiss):

Read.

Section 3. Right to Individual Dignity

Section 3. No person shall be denied the equal protection of the laws nor shall any law discriminate against a person in the exercise of rights on account of birth, race, age, sex, social origin, physical condition, or political or religious ideas. Slavery and involuntary servitude are prohibited, except in the latter case as a punishment for crime.

Read.

Motion

Delegate Landrum moved for a suspension of the rules in order to allow Delegate Jack an additional time of three minutes in which to address the Convention.

Delegate Tapper objected.

By a vote of 64 yeas and 30 nays the rules were suspended in order to allow Delegate Jack and additional three minutes in which to address the Convention.

Motion

Delegate J. Jackson moved that the Convention consider amendments to the Section 3 at this time.

Delegate Stinson objected.

By a vote of 75 yeas and 24 nays the Convention proceeded with amendments to the Section.

Delegate Juneau sent up a floor amendment which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Juneau to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 2, delete lines 6 through 12, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 3. Equal Protection of the Law

Section 3. No person shall be denied equal protection of the laws."

Delegate Juneau moved the adoption of the amendment.

Delegate A. Jackson objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Abraham	Fayard	Planchand
Alario	Fontenot	Rayburn
Anzalone	Fowler	Riecke
Arnette	Jack	Sandoz
Asselt	Juneau	Singletary
Bollinger	Kilbourne	Smith
Burson	Lanier	Stinson
Cannon	LeBleu	Sutherland
Carmouche	Leigh	Tate
Champagne	Lennox	Thistlethwaite
Conroy	McDaniel	Toomy
Cowen	Maubert	Uilo
Dennis	Munson	Vesich
Deshotels	Nunez	Willis
Drew	O'Neill	Winchester
Duval	Perez	Womack
Elkins	Perkins	Zervigon

Total—51.

PAGE 6

38th Days Proceedings—August 29, 1973

NAMEY

Delegates—		
Alexander	Goldman	Rachal
Avant	Gravel	Reeves
Badeaux	Grier	Robinson
Bel	Guarisco	Roemer
Bergeron	Hayes	Roy
Blair	Heine	Schmitt
Brien	Hernandez	Shannon
Burns	Jackson, A.	Silverberg
Casey	Jackson, J.	Slay
Chatelain	Jenkins	Soniat
Chehardy	Kean	Stagg
Conino	Kelly	Stephenson
Corne	Kilpatrick	Stovall
D'Grolamo	Landrum	Tapper
De Bileux	Landry, A.	Thompson
Dennery	Landry, E. J.	Tobias
Derbes	LeBreton	Toca
Dunlap	Lowe	Velazquez
Flory	Miller	Vick
Fulco	Mire	Warren
Gauthier	Newton	Weiss
Ginn	Fugh	Wisham
Total—66.		

ABSENT

Delegates—		
Mr. Chairman	Hardee	Ourso
Aertker	Haynes	Segura
Brown	Lambert	Taylor
Edwards	Leithman	Wall
Giarrusso	Martin	Wattigny
Total—15.		

And the amendment was rejected.

Delegate A. Jackson moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Motion

On motion of Delegate Munson, the Convention altered the Order of Business to take up Introduction of Proposals at this time.

Introduction of Proposals

The following named delegates and committees introduced the following entitled Delegate and Committee Proposals which were read by their titles and placed on the Calendar for their second reading.

DELEGATE PROPOSAL No. 31—

Introduced by Delegate Dennery:

A PROPOSAL

Providing for trust; forced heirship.

Read.

Lies over under the rules.

Delegate Dennery, Secretary of the Constitutional Convention of 1973, submits the following report:

Constitutional Convention of 1973
State of Louisiana

August 28, 1973, Baton Rouge, La.

To the Chairman and Delegates of the Convention:

I submit the following report:

That the following Committee Proposal has been properly enrolled:



COMMITTEE PROPOSAL No. 21—

Introduced by Delegate Dennis, Chairman, on behalf of the Committee on the Judiciary and Delegates Avant, Bel, Bergeron, Burns, Deshotels, Drew, Gauthier, Kelly, Kil-

bourne, Landry, Martin, Ourso, Sandoz, Tate and Vesich (A Substitute for Committee Proposal No. 8)

A PROPOSAL

Making provisions for the judiciary branch of government and necessary provisions with respect thereto.

Be it adopted by the Constitutional Convention of Louisiana of 1973:

ARTICLE V. JUDICIAL BRANCH

Section 1. Judicial Power

Section 1. The judicial power shall be vested in a supreme court, courts of appeal, district courts, and other courts authorized by this constitution.

Section 2. Habeas Corpus, Needful Writs, Orders and Process

Section 2. A judge may issue writs of habeas corpus and all other needful writs, orders and process in aid of the jurisdiction of his court. Exercise of this authority by a judge of the supreme court or court of appeal is subject to review by the whole court. The power to punish for contempt of court shall be limited by law.

Section 3. Supreme Court; Composition; Judgments; Terms

Section 3. The supreme court shall be composed of a chief justice and six associate justices, four of whom must concur to render judgment. The term of a judge of the supreme court shall be ten years.

Section 4. Supreme Court; Districts

Section 4. The state shall be divided into at least six supreme court districts, with at least one judge elected from each. The present districts and the number of judges assigned to each are retained, subject to change by a two-thirds vote of the elected members of each house of the legislature.

Section 5. Supreme Court; Supervisory, Original, and Appellate Jurisdiction; Rule-Making Power; Assignment of Judges

Section 5. (A) The supreme court has general supervisory jurisdiction over all other courts. It may establish procedural and administrative rules not in conflict with law. It may assign a judge retired or retired judge to any court.

(B) The supreme court has exclusive original jurisdiction of disciplinary proceedings against members of the bar.

(C) Except as otherwise provided in this constitution, the supreme court's jurisdiction in civil cases extends to both the law and the facts. In criminal matters, its appellate jurisdiction extends only to questions of law.

(D) In addition to appeals provided for elsewhere in this constitution, the following cases shall be appealable to the supreme court:

(1) A case in which a law or ordinance has been declared unconstitutional;

(2) Cases in which the defendant has been convicted of a felony or in which a fine exceeding five hundred dollars or imprisonment exceeding six months has been actually imposed.

(E) Subject to the provisions of Paragraph (C), the supreme court has appellate jurisdiction over all issues involved in any civil action properly brought.

(F) In all criminal cases not provided for in subsection (D) (2) of this Section an accused shall have a right of appeal or review, as provided by law.

Section 6. Supreme Court; the Chief Justice

Section 6. (A) When a vacancy in the office of chief justice occurs, the judge oldest in point of service on the court, shall succeed to the office.

(B) The chief justice is the chief administrative officer of the judicial system of the state, subject to rules adopted by the court.

Section 7. Supreme Court; Judicial Administrator, Clerks and Staff

Section 7. The supreme court has authority to select a judicial administrator, its clerks, and other personnel, and prescribe their duties.

Section 8. Courts of Appeal; Panels; Number Necessary to Decision; Terms

Section 8. The state shall be divided into at least four circuits, with one court of appeal in each circuit. Each court shall sit in panels of at least three judges selected according to rules adopted by the court. A majority of the judges sitting in a case must concur to render judgment. However, when the judgment of the district court is to be modified or reversed, and one judge dissents, the case shall be reargued, before a panel of at least five judges, prior to rendition of judgment, and a majority must concur to render judgment. The term of a court of appeal judge shall be ten years.

Section 9. Courts of Appeal; Circuits and Districts
 Section 9. Each circuit shall be divided into at least three districts, with at least one judge elected from each. After January 1, 1975, no judge shall be elected at large from within the circuit. The present circuits and districts and the number of judges as elected in each circuit are retained, subject to change by two-thirds vote of the elected members in each house of the legislature.

Section 10. Courts of Appeal; Appellate and Supervisory Jurisdiction

Section 10. (A) Except in those cases appealable to the supreme court and as otherwise provided in this constitution, a court of appeal has appellate jurisdiction of all civil cases decided within its circuit. It has appellate jurisdiction of all matters appealed from the family and juvenile courts, except criminal prosecutions of persons other than juveniles. It has supervisory jurisdiction over all cases in which an appeal would lie to that court.

(B) Except as limited to questions of law by this constitution or as provided by law in the case of review of administrative agency determinations, its appellate jurisdiction extends to law and facts.

Section 11. Courts of Appeal; Certification to Supreme Court; Determination

Section 11. A court of appeal may certify any question of law before it to the supreme court, whereupon the supreme court may give its binding instruction, or consider and decide the case upon the whole record.

Section 12. Courts of Appeal; Chief Judge; Duties

Section 12. There shall be a chief judge of each court of appeal who shall be the judge oldest in point of service on the court and who shall administer the court subject to rules adopted by the court.

Section 13. Courts of Appeal; Clerks and Staff

Section 13. Each court of appeal has authority to select its clerk and other personnel and prescribe their duties.

Section 14. District Courts; Judicial Districts

Section 14. The state shall be divided into judicial districts; each composed of one or more parishes and served by one or more district judges.

Section 15. Courts; Continued; Jurisdiction; Judicial Districts Changes; Terms

Section 15. (A) The district, parish, magistrate, city, family, and juvenile courts existing at the time of the adoption of this constitution are retained. The legislature may abolish or merge trial courts of limited or specialized jurisdiction subject to the limitations in Sections 16 and 21 of this Article. The legislature may establish trial courts of limited jurisdiction which shall have parish-wide territorial jurisdiction and subject matter jurisdiction which shall be uniform throughout the state. The office of city marshal is continued until such time as the city court he serves is abolished by the legislature.

(B) The judicial districts existing at the time of the adoption of this constitution are retained. The legislature, by a majority vote of the elected members of each house, with approval in a referendum in each district and parish affected, may establish, divide, or merge judicial districts, subject to the limitations of Section 21 of this Article.

(C) The term of a district and parish judges shall be six years.

(D) The legislature may increase or decrease the number of judges in any judicial district by a two-thirds vote of the elected membership of each house.

Section 15.1. City Courts; Terms

Section 15.1. A judge of a city court shall be elected for the same term as a district court judge.

Section 16. District Courts; Original Jurisdiction

Section 16. (A) Unless otherwise authorized by this constitution, a district court shall have original jurisdiction in all civil and criminal matters. It shall have exclusive original jurisdiction: of felony cases and of cases involving: the title to immovable property; the right to office or other public position; civil or political rights; probate and succession matters; the state, a political corporation, or a succession, as a party defendant, regardless of the amount in dispute; and the appointment of receivers or liquidators to corporations or partnerships.

(B) A district court shall have appellate jurisdiction as provided by law.

Section 17. District Courts; Chief Judge

Section 17. Each district court shall elect from its members a chief judge who shall exercise, for the term designated by the court, the administrative functions as prescribed by rule of court.

Section 18. Juvenile Courts; Jurisdiction

Section 18. Notwithstanding any provision of this Article to the contrary, the juvenile and family courts shall have such jurisdiction as the legislature shall provide by law.

Section 19. Mayors' Courts; Justices of the Peace; Continued

Section 19. Mayors' courts and justice of the peace courts existing at the time of the adoption of this constitution are continued subject to change by the legislature.

Section 21. Judges; Term of Office or Compensation May Not Be Decreased

Section 21. No judge's term of office or compensation shall be decreased during the term for which he is elected.

Section 22. Judges; Election; Vacancy in Office

Section 22. (A) Except as otherwise provided in this Section all judges shall be elected. Election of judges shall be at the regular congressional election.

(B) A newly-created judgeship or vacancy in the office of any judge shall be filled by a special election which shall be called by the governor, and held within six months of the day on which the vacancy occurs or the judgeship is established, except when the vacancy occurs in the last six months of an existing term. Until the vacancy is filled, the supreme court shall appoint a person meeting the qualifications other than domicile for the office, to serve at its pleasure, who shall be ineligible as a candidate for election to the judgeship at the election to fill the vacancy or the newly created judicial office. For service as an appointed judge, the person appointed to fill the vacancy, other than a retired judge, shall not be eligible for retirement benefits provided for the elected judiciary.

(C) A judge serving on the date of adoption of this constitution shall continue in office for the term to which elected and shall serve through December thirty-first of the last year of his term or, if the last year of his term is not in the even-numbered year of a regular congressional election, then through December thirty-first of the following year. The election for the next term in the office will be held in the year in which the term expires as provided above.

Section 23. Retirement of Judges

Section 23. (A) Within two years after the effective date of this constitution, the legislature shall provide for a retirement system for judges which shall apply to a judge taking office after the effective date of the statute enacting the system and to which a judge in office at the time of its adoption may elect to join with credit for all prior years of judicial service without contribution therefor; provided, however, a judge in office or retired at the time of adoption of this constitution, shall not have diminished any retirement benefits or judicial service rights, nor shall the benefits to which his surviving spouse is entitled, be reduced.

(B) A judge shall remain in office beyond his seventieth birthday, except as otherwise provided in this Section.

Section 24. Judges; Qualifications; Practice of Law Prohibited

Section 24. A judge of the supreme court, court of appeal, district court, family court, parish court, or court having solely juvenile jurisdiction shall have been admitted to the practice of law in this state for at least five years prior to his election, shall have been domiciled in the respective district, circuit, or parish for at least two years immediately preceding election, and shall not practice law.

Section 25. Judiciary Commission; Composition; Terms; Vacancy; Grounds for Removal; Powers

Section 25. (A) The Judiciary Commission shall consist of one court of appeal judge and two district court judges selected by the supreme court; two attorneys admitted to the practice of law for at least ten years and one attorney admitted to the practice of law for at least three years but not more than ten years who are not judges, active or retired, nor public officials other than notaries public selected by the Louisiana Conference of Court of Appeal Judges' Association or its successor; and three citizens, not lawyers, judges active or retired, nor public officials, ap-

PAGE 8

38th Days Proceedings—August 29, 1973

pointed by the Louisiana District Judges' Association or its successor.

(B) A member of the commission shall serve a four-year term and shall not be eligible to succeed himself.

(C) A member's term shall terminate when he loses the status causing his appointment or when any event occurs which would have made him ineligible for appointment.

(D) When a vacancy occurs, a successor shall be appointed for a four-year term by the authority which appointed his predecessor.

(E) On recommendation of the Judiciary Commission, the supreme court may censure, suspend with or without salary, remove from office, or retire involuntarily a judge for willful misconduct relating to his official duty, willful and persistent failure to perform his duty, persistent and public conduct prejudicial to the administration of justice that brings the judicial office into disrepute, conduct while in office which would constitute a felony, or conviction of a felony. On recommendation of the Judiciary Commission, the supreme court may disqualify a judge from exercising any judicial function, without loss of salary, during the pendency of the proceedings in the supreme court. On recommendation of the Judiciary Commission, the supreme court may retire involuntarily a judge for disability that seriously interferes with the performance of his duties and that is, or is likely to become, of a permanent character. The supreme court shall make rules implementing this section and providing for confidentiality and privilege of commission proceedings.

(F) Action against a judge under this Section shall not preclude disciplinary action against him with respect to his license to practice law.

Section 26. Department of Justice; Composition; Attorney General; Election and Assistants

Section 26. There shall be a department of justice consisting of an attorney general, a first assistant attorney general, and other necessary assistants and staff. The attorney general shall be elected for a term of four years at the state general election, and the assistants shall be appointed by the attorney general to serve at his pleasure.

Section 27. Attorney General; Powers and Duties; Vacancy

Section 27. (A) The attorney general shall be the state's chief legal officer. As may be necessary for the assertion or protection of the rights and interests of the state, the attorney general shall have authority to:

(1) institute and prosecute or intervene in any civil actions or proceedings;

(2) advise and assist, upon request of a district attorney, in the prosecution of a criminal case; and

(3) for cause when authorized by the court of original jurisdiction in which any proceeding or affidavit is pending, subject to judicial review, supersede any attorney representing the state in any civil or criminal action.

He shall have such other powers and perform such other duties as may be authorized by this constitution or provided by statute.

Section 28. District Attorney; Election; Qualifications; Assistants

Section 28. In each judicial district a district attorney shall be elected by the qualified electors of the district for a term of six years. He shall have been admitted to the practice of law in the state for at least five years prior to his election and shall have resided in the district for the two years immediately preceding election. A district attorney may select such assistants as may be authorized by law and other personnel.

Section 29. Defense of Criminal Prosecution; Removal

Section 29. No district attorney or assistant district attorney shall appear, plead, or in any way defend, or assist in defending any criminal prosecution or charge. A violation shall be cause for removal.

Section 30. Sheriff; Duties; Tax Collector

Section 30. In each parish, a sheriff shall be elected for a term of four years. He shall be the chief law enforcement officer in the parish, except as otherwise provided by this constitution, and shall execute court orders and process. He shall be the collector of state and parish ad valorem

taxes and such other taxes and licenses as provided by law.

This section shall not apply to the parish of Orleans.

Section 31. Clerks; Elections; Powers and Duties; Deputies; Office Hours

Section 31. (A) In each parish, a clerk of the district court shall be elected by the qualified electors of the parish for a term of four years. He shall be ex officio notary public and parish recorder of conveyances, mortgages, and other acts and shall have such other duties and powers as may be prescribed by law. The clerk may appoint deputies with such duties and powers as may be prescribed by law and he may appoint, with the approval of the district judges, minute clerks with such duties and powers as may be prescribed by law.

(B) The legislature shall establish statewide uniform office hours for all clerks of district courts.

Section 32. Coroner; Election; Term; Qualifications; Duties

Section 32. In each parish, a coroner shall be elected for a term of four years. He shall be a licensed physician and possess such other qualifications and perform such duties as are provided by law; however, the requirement that he be a licensed physician shall not apply to any parish in which there is no licensed physician who will accept the office.

Section 33. Vacancies

Section 33. When a vacancy occurs in the following offices, the duties of the office, until it is filled by election as provided by law, shall be assumed by: in the case of sheriff, the chief criminal deputy; district attorney, the first assistant; clerk of a district court, the chief deputy; coroner, the chief deputy. If there is no such person to assume the duties at the time of the vacancy, the governing authority or authorities of the parish or parishes concerned shall appoint a qualified person to assume the duties of the office until filled by election.

Section 34. Reduction of Salaries and Benefits Prohibited

Section 34. No attorney general, judge, district attorney, sheriff, coroner, or clerk of the district court shall have his salary or retirement benefits diminished during his term of office.

Section 35. Orleans Parish Courts, Officials; Continued

Section 35. Except for provisions relating to terms of office as provided elsewhere in this Article and notwithstanding any other provision of this constitution to the contrary, the following courts and officers in Orleans Parish are continued, subject to change by a vote of a majority of the elected members of each house of the legislature: the civil and criminal district courts, the city, municipal, traffic and juvenile courts, the clerks of the civil and criminal district courts, the civil and criminal sheriffs, the constables and the clerks of the first and second city courts, the register of conveyances, and the recorder of mortgages.

Section 36. Jurors; Qualifications; Exemptions

Section 36. (A) A citizen of the state, who is domiciled within the parish in which he is to serve as a juror and who has reached the age of majority, is eligible to serve as a juror. The legislature may provide additional qualifications.

(B) The supreme court by rule shall provide for exemption of jurors.

Section 37. Grand Jury

Section 37. (A) There shall be a grand jury or grand juries in each parish whose qualifications, duties and responsibilities shall be provided by law. The secrecy of the proceedings including the identity of the witnesses appearing, shall be provided for by law.

(B) Except as otherwise provided in this constitution, a district attorney, or his designated assistant, shall have charge of every criminal prosecution by the state in his district, shall be the representative of the state in his district before the grand jury, and the grand jury shall perform such other duties as may be provided by law.

(C) At all stages of grand jury proceedings, anyone testifying in such proceedings shall have the right to the advice of counsel while testifying.

Respectfully submitted,

MOISE W. DENNEY

Secretary.

Under the Rules, referred to the Committee on Style and Drafting.

Motion

On motion of Delegate Rayburn the rules were suspended in order to call a meeting of the Committee on Revenue,

**OFFICIAL JOURNAL
OF THE
CONSTITUTIONAL CONVENTION
OF 1973**

**OF THE
STATE OF LOUISIANA**

THIRTY-NINTH DAY'S PROCEEDINGS

of the Constitutional Convention of 1973
held in accordance with Act 2 of the 1972
Regular Session of the Legislature

Thursday, August 30, 1973, Baton Rouge, La.

The Convention was called to order at 9:00 o'clock a.m., by
Hon. E. L. Henry, Chairman of the Convention.

ROLL CALL

The roll being called, the following delegates answered to
their names:

PRESENT

Mr. Chairman	Fowler	Perkins
Abraham	Fulco	Planchard
Alker	Gauthier	Pugh
Alario	Ginn	Rachal
Alexander	Goldman	Rayburn
Anzalone	Gravel	Reeves
Arnette	Grier	Riecke
Asseff	Guarisco	Robinson
Avant	Hayes	Roemer
Badeaux	Haynes	Roy
Bel	Heine	Sandoz
Bergeron	Hernandez	Schmitt
Blair	Jack	Segura
Bollinger	Jackson, A.	Shannon
Brien	Jackson, J.	Silverberg
Brown	Jenkins	Singletary
Burns	Juneau	Slay
Burson	Kean	Smith
Cannon	Kelly	Soniak
Carmouche	Kilbourne	Stagg
Casey	Kilpatrick	Stephenson
Champagne	Lambert	Stinson
Chatalain	Landrum	Stovall
Chehardy	Landry, A.	Sutherland
Conino	Landry, E. J.	Tapper
Conroy	Lanier	Thistlethwaite
Corne	LeBleu	Thompson
Cowen	LeBreton	Tobias
D'Gerolamo	Leigh	Toca
DeBlieux	Leithman	Toomy
Dennery	Lennox	Uilo
Dennis	Lowe	Velazquez
Derbes	McDaniel	Vesich
Deshotels	Martin	Vick
Drew	Maubertret	Warren
Dunlap	Miller	Wattigny
Duval	Mire	Weiss
Edwards	Munson	Willis
Elkins	Nunez	Winchester
Fayard	O'Neill	Wisham
Flory	Oursou	Womack
Fontenot	Perez	Zervigon
Total—125.		

ABSENT

Giarrusso	Tate	Wall
Hardee	Taylor	Wattigny
Newton		
Total—7.		

The Chairman announced that there were 125 members
present and a quorum.

Prayer

Prayer was offered by Delegate De Blieux.

Pledge of Allegiance

Delegate Ullo led the Convention in reciting the Pledge
of Allegiance to the Flag of the United States of America.

Reading of the Journal

On motion of Delegate Reeves, the reading of the Journal
was dispensed with.

On motion of Delegate Reeves, the Journal of yesterday was
adopted.

Morning Hour

Proposals on Second Reading and Referral

The following entitled Committee and Delegate Proposals
on second reading to be referred to committees were taken
up, read, and referred to committees, as follows:

DELEGATE PROPOSAL No. 31—

Introduced by Delegate Dennery:
A PROPOSAL
Providing for trust; forced heirship.

Read.

Under the rules the above Proposal was referred to the
Committee on Bill of Rights and Elections.

Unfinished Business

The following unfinished business in which the House was
engaged at the time of its adjournment on yesterday was
taken up and acted on:

Proposals

Delegate and Committee

The following entitled Delegate and Committee Proposals
were taken up on their third reading and final passage:

COMMITTEE PROPOSAL No. 25—

Introduced by Delegate A. Jackson, Chairman, Committee
on Bill of Rights and Elections (Substitute for Committee Pro-
posal No. 2, by Delegate A. Jackson, Chairman, on behalf of
the Committee on Bill of Rights and Elections, and Delegates
Dunlap, Guarisco, Jenkins, Roy, Schmitt, Stinson, Vick, Wall
and Weiss):

Read.

Section 3. Right to Individual Dignity

Section 3. No person shall be denied the equal protection
of the laws nor shall any law discriminate against a person
in the exercise of rights on account of birth, race, age, sex,
social origin, physical condition, or political or religious ideas.
Slavery and involuntary servitude are prohibited, except
in the latter case as a punishment for crime.

Read.

The Chairman announced that the Convention had under
consideration Committee Proposal No. 25, Section 3, when
it adjourned on Wednesday, August 29, 1973, which was taken
up and acted upon as follows:

Delegate Dennery sent up a floor amendment, which was
read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates Dennery, Gravel, Avant,
Conroy, Abraham, Arnette, Bel, Brien, Burns, Burson, Cham-
pagne, Chatalain, Chehardy, Conino, D'Gerolamo, De Blieux,
Dennis, Flory, Gauthier, Ginn, Grier, Guarisco, Heine, J.
Jackson, E. J. Landry, Lanier, Miller, Pugh, Roy, Schmitt,
Stagg, Stovall, Tapper, Thistlethwaite, Goldman, Velazquez
and Weiss to Committee Proposal No. 25 by Delegate A. Jack-
son, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 2, delete lines 7 through 12 in their entirety and
insert in lieu thereof the following:

"Section 3. No person shall be denied the equal protection

PAGE 2

39th Days Proceedings—August 30, 1973

of the law. No law shall discriminate against a person on account of race or religious ideas, religious beliefs, or religious affiliations. No law shall arbitrarily, capriciously, or unreasonably discriminate against any person by reason of birth, age, sex, culture, physical condition, political ideas or political affiliation. Slavery and involuntary servitude are prohibited, except in the latter case as a punishment for crime."

Delegate Denney moved the adoption of the amendment.

Delegate Kilbourne objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Flory	Rachal
Mr. Chairman	Fontenot	Rayburn
Abraham	Fowler	Reeves
Alexander	Fulco	Riecke
Anzalone	Gauthier	Robinson
Arnette	Ginn	Roemer
Asseff	Goldman	Roy
Avant	Gravel	Sandoz
Badeaux	Grier	Schmitt
Bel	Guarisco	Shannon
Bergeron	Hayes	Silverberg
Blair	Haynes	Singletary
Bollinger	Heine	Slay
Brien	Hernandez	Smith
Burns	Jack	Soniat
Burson	Jackson, A.	Stagg
Carmouche	Jackson, J.	Stephenson
Casey	Juneau	Stovall
Champagne	Kelly	Sutherland
Chatelain	Kilpatrick	Tapper
Chehardy	Landrum	Thistlethwaite
Conino	Landry, A.	Thompson
Conroy	Landry, E. J.	Tobias
Corne	Lanier	Toca
Cowen	Lennox	Uilo
D'Gerolamo	Lowe	Velasquez
De Blieux	McDaniel	Vick
Denney	Martin	Warren
Dennis	Mauberret	Weiss
Derbes	Miller	Willis
Deshotels	Nunez	Wisham
Dunlap	O'Neill	Womack
Duval	Planchar	Zervigon
Elkins	Pugh	
Total—101.		

YEAS

Delegates—	LeBleu	Perkins
Drew	Leigh	Stinson
Kilbourne		
Total—6.		

ABSENT

Delegates—	Lambert	Tate
Aertker	LeBreton	Taylor
Alario	Leithman	Toomy
Cannon	Mire	Vesich
Edwards	Munson	Wall
Fayard	Newton	Wattigny
Giarrusso	Oruso	Winchester
Hardee	Perez	
Jenkins	Segura	
Kean		
Total—25.		

And the amendment was adopted.

Passage

Committee Proposal No. 25, Section 3, was read, as amended.

Delegate A. Jackson moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Flory	Pugh
Mr. Chairman	Fontenot	Rachal
Abraham	Fowler	Rayburn
Alario	Fulco	Reeves
Alexander	Gauthier	Riecke
Anzalone	Ginn	Robinson
Arnette	Goldman	Roemer
Asseff	Gravel	Roy
Avant	Grier	Sandoz
Badeaux	Guarisco	Schmitt
Bel	Hayes	Shannon
Bergeron	Haynes	Silverberg
Blair	Heine	Singletary
Bollinger	Hernandez	Slay
Brien	Jack	Smith
Burns	Jackson, A.	Soniat
Burson	Jackson, J.	Stagg
Carmouche	Jenkins	Stephenson
Casey	Juneau	Stovall
Champagne	Kelly	Sutherland
Chatelain	Kilpatrick	Tapper
Conino	Landry, A.	Thistlethwaite
Conroy	Landry, E. J.	Thompson
Corne	Lanier	Tobias
Cowen	Leigh	Toca
D'Gerolamo	Lennox	Uilo
De Blieux	Lowe	Velasquez
Denney	McDaniel	Vick
Dennis	Martin	Warren
Derbes	Mauberret	Weiss
Deshotels	Miller	Winchester
Dunlap	Nunez	Wisham
Duval	O'Neill	Womack
Elkins	Perkins	Zervigon
	Planchard	
Total—104.		

NAYS

Delegates—	LeBleu	Stinson
Kilbourne		
Total—3.		

ABSENT

Delegates—	Landrum	Tate
Aertker	LeBreton	Taylor
Brown	Leithman	Toomy
Cannon	Mire	Vesich
Edwards	Munson	Wall
Fayard	Newton	Wattigny
Giarrusso	Oruso	Willis
Hardee	Perez	
Kean	Segura	
Lambert		
Total—25.		

And the Chair declared that the above Section was passed.

Delegate A. Jackson moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Section 4. Right to Property

Section 4. Every person has the right to acquire by voluntary means, to own, to control, to enjoy, to protect, and to dispose of private property. This right is subject to the reasonable exercise of the police power and to the law of forced heirship. Property shall not be taken or damaged except for a public and necessary purpose and with just compensation paid to the owner or into court for his benefit. The owner shall be compensated to the full extent of his loss and has the right to a trial by jury to determine such compensation. No business enterprise or any of its assets shall be taken for the purpose of operating that enterprise or for the purpose of halting competition with government enterprises, and per-

PAGE 13

39th Days Proceedings—August 30, 1973

COMMITTEE PROPOSAL No. 29—

Introduced by Delegate Perez, Chairman, on behalf of the Committee on Local and Parochial Government, and Delegates Burson, Cannon, Chatelain, Conino, D'Gerolamo, Fowler, Giarrusso, Hayes, Heine, J. Jackson, Kean, Lanier, Reeves, Shannon, Stephenson, Taylor, Toomy, Uilo, and Zervigon:

A PROPOSAL

Providing for a Revenue Sharing Fund.

Read.

Lies over under the rules.

DELEGATE PROPOSAL No. 32—

By Delegate Drew:

A PROPOSAL

To provide with respect to the court of appeal circuits and districts.

Read.

Lies over under the rules.

DELEGATE PROPOSAL No. 33—

Introduced by Delegate Dennis:

A PROPOSAL

Providing for the financing of the judicial system.

Read.

Lies over under the rules.

DELEGATE PROPOSAL No. 34—

Introduced by Delegate Dennis:

A PROPOSAL

Providing for the financing of the state judicial system.

Read.

Lies over under the rules.

DELEGATE PROPOSAL No. 35—

Introduced by Delegate Miller:

A PROPOSAL

Providing for supreme court districts.

Read.

Lies over under the rules.

DELEGATE PROPOSAL No. 36—

Introduced by Delegate Gravel:

A PROPOSAL

To provide with respect to retirement systems and plans for public officials and employees and judges.

Read.

Lies over under the rules.

DELEGATE PROPOSAL No. 37—

Introduced by Delegates Bel, Bergeron, Casey, Lennox, Maubert, Tapper, Vesich, Vick, Alexander, Landrum, J. Jackson, Warren, Reicke:

A PROPOSAL

Relative to Orleans Parish courts and officials.

Read.

Lies over under the rules.

DELEGATE PROPOSAL No. 38—

Introduced by Delegate Casey:

A PROPOSAL

To provide for the prohibition of local and special laws where general laws can be made applicable.

Read.

Lies over under the rules.

DELEGATE PROPOSAL No. 39—

Introduced by Delegate Casey:

A PROPOSAL

To provide for a date for taking office of members of the legislature at the beginning of each term, or to fill the remainder of an unexpired term.

Read.

Lies over under the rules.

DELEGATE PROPOSAL No. 40—

Introduced by Delegates Bel and Vesich:

A PROPOSAL

To provide with respect to the terms of district court judges.

Read.

Lies over under the rules.

DELEGATE PROPOSAL No. 41—

Introduced by Delegates Bel and Vesich:

A PROPOSAL

To provide with respect to the terms of appellate judges.

Read.

Lies over under the rules.

DELEGATE PROPOSAL No. 42—

Introduced by Delegates Denny and Stovall:

A PROPOSAL

Providing for the lieutenant governor as ombudsman.

Read.

Lies over under the rules.

DELEGATE PROPOSAL No. 43—

Introduced by Delegates J. Jackson, A. Jackson, Warren, Ray, Gravel, Stovall, Pugh, and Gauthier:

A PROPOSAL

Providing for juvenile courts having exclusive original jurisdiction with the exception for offenses of murder, aggravated kidnapping, armed robbery, or aggravated rape.

Read.

Lies over under the rules.

Motion

Delegate Miller

I move for the suspension of Rule 42 to permit the introduction of Committee and Delegate Proposals after the deadline set forth in Rule 42 through Wednesday, September 5, 1973.

Which motion was agreed to.

Leave of Absence

Delegate Tate—2 days.
Delegate Newton—2 days.
Delegate Rayburn—½ day.
Delegate Blair—½ day.
Delegate Segura—½ day.
Delegate Hardee—3 days.

Adjournment

Delegate Pugh moved that the Convention do now adjourn until Friday, August 31, 1973, at 9:00 o'clock a.m.

Which motion was agreed to.

And Chairman Henry declared the Convention adjourned to Friday, August 31, 1973 at 9:00 o'clock a.m.

MOISE W. DENNERY
Secretary

DAVID R. POYNTER
Chief Clerk

PAGE 3

40th Days Proceedings—August 31, 1973

ABSENT

Delegates—		
Mr. Chairman	Ginn	Rachal
Anzalone	Hardee	Rayburn
Berry	Kilpatrick	Reeves
Bollinger	Lambert	Silverberg
Cannon	LeBleu	Stovall
Chehardy	LeBreton	Tapper
Deshotels	Mire	Tate
Duval	Munson	Thistlethwaite
Edwards	Newton	Vesich
Fayard	Ourso	Wall
Giarrusso	Pugh	Wattigny
Total—33.		

And the proposal was referred to the Committee on Judiciary.

Delegate Dennis moved to reconsider the vote by which the proposal was referred to the Committee on Judiciary, and on his own motion, the motion to reconsider was laid on the table.

★ DELEGATE PROPOSAL No. 37—

Introduced by Delegates Bel, Bergeron, Casey, Lennox, Mauberret, Tapper, Vesich, Vick, Alexander, Landrum, J. Jackson, Warren, Riecke.

A PROPOSAL

Relative to Orleans Parish courts and officials.

Read.

Under the rules the above Proposal was referred to the Committee on Judiciary.

DELEGATE PROPOSAL No. 38—

Introduced by Delegate Casey.

A PROPOSAL

To provide for the prohibition of local and special laws where general laws can be made applicable.

Read.

Under the rules the above Proposal was referred to the Committee on Legislative Powers and Functions.

DELEGATE PROPOSAL No. 39—

Introduced by Delegate Casey.

A PROPOSAL

To provide for a date for taking office of members of the legislature at the beginning of each term, or to fill the remainder of an unexpired term.

Read.

Under the rules the above Proposal was referred to the Committee on Legislative Powers and Functions.

DELEGATE PROPOSAL No. 40—

Introduced by Delegates Bel and Vesich.

A PROPOSAL

To provide with respect to the terms of district court judges.

Read.

Under the rules the above Proposal was referred to the Committee on Judiciary.

DELEGATE PROPOSAL No. 41—

Introduced by Delegates Bel and Vesich.

A PROPOSAL

To provide with respect to the terms of appellate judges.

Read.

Under the rules the above Proposal was referred to the Committee on Judiciary.

DELEGATE PROPOSAL No. 42—

Introduced by Delegates Denney and Stovall.

A PROPOSAL

Providing for the lieutenant governor as ombudsman.

Read.

Under the rules the above Proposal was referred to the Committee on Executive Department.

DELEGATE PROPOSAL No. 43—

Introduced by Delegates J. Jackson, A. Jackson, Warren, Ray, Gravel, Stovall, Pugh, and Gauthier.

A PROPOSAL

Providing for juvenile courts having exclusive original jurisdiction with the exception for offenses of murder, aggravated kidnapping, armed robbery, or aggravated rape.

Read.

Under the rules the above Proposal was referred to the Committee on Judiciary.

Reports of Committees Lying Over

Delegate and Committee Resolutions on Second Reading Reported by Committees

The following entitled Delegate and Committee Resolutions reported by Committees were taken up and acted upon as follows:

COMMITTEE RESOLUTION No. 11—

Introduced by Delegates LeBreton, Chairman, on behalf of the Committee on Legislative Liaison and Transitional Measures, and Delegate Henry, chairman, on behalf of the Coordinating Committee, and Delegates Aeriker, Blair, Casey, Dennis, D'Geronimo, Drew, Fayard, Hardee, A. Jackson, J. Jackson, Lambert, Lanier, LeBleu, Lennox, Miller, Munson, Perez, Rayburn, Smith, Staggs Thompson, Vick, Womack, and Zervigon.

A RESOLUTION

To recommend categories for the orderly transition of material from the Louisiana Constitution of 1921.

Read.

Reported favorably by the Committee on Legislative Liaison and Transitional matters.

On motion of Delegate Leithman, and under a suspension of the rules, the Resolution was ordered engrossed and passed to its third reading.

Unfinished Business

The following unfinished business in which the Convention was engaged at the time of its adjournment on yesterday was taken up and acted on:

Proposals Delegate and Committee

The following entitled Delegate and Committee Proposals were taken up on their third reading and final passage:

COMMITTEE PROPOSAL No. 25—

Introduced by Delegate Jackson, Chairman, Committee on Bill of Rights and Elections (Substitute for Committee Proposal No. 2, by Delegate Jackson, Chairman, on behalf of the Committee on Bill of Rights and Elections, and Delegates Dunlap, Guarisco, Jenkins, Roy, Soniat, Stinson, Vick, Wall and Weiss):

Read.

The chairman announced that the Convention had under consideration Committee Proposal No. 25 when it adjourned on Thursday, August 30, 1973, which was taken up and acted upon as follows:

Section 5. Right to Privacy

Section 5. Every person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy. No warrant shall issue without probable cause supported by oath or affirmation particularly describing the place to be searched, the persons or things to be seized, and the lawful purpose or reason for the search. Any person adversely affected by a search or seizure conducted in violation of this Section shall have standing to raise the illegality of that search or seizure in the appropriate court of law.

Read.

Delegate Deshodels sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Deshodels to Committee Proposal No. 25 by Delegate Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 3, line 5, after the word and punctuation "search," delete the remainder of the line and delete lines 6 through 8 both inclusive in their entirety.

Delegate Burson moved the adoption of the amendment.

Delegate Schmitt objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Aertker	Fowler	McDaniel
Alario	Heine	Martin
Burson	Juneau	Maubert
Casey	Kean	Nunez
Champagne	Kilbourne	Ourso
Conino	Lambert	Perez
Conroy	Landry, A.	Perkins
Corne	Lanier	Singletary
D'Gerolamo	LeBieu	Thistlethwaite
Denney	Leigh	Toca
Dennis	Lennox	Toomy
Elkins	Lowe	Uilo
Fontenot		
Total—37.		

NAYS

Delegates—		
Mr. Chairman	Gauthier	Reeves
Abraham	Ginn	Riecke
Alexander	Goldman	Robinson
Arnette	Gravel	Roemer
Asseff	Grier	Roy
Avant	Guarisco	Sandoz
Badeaux	Hayes	Schmitt
Bel	Haynes	Segura
Bergeron	Hernandez	Shannon
Berry	Jack	Tapper
Blair	Jackson, A.	Thompson
Brien	Jackson, J.	Tobias
Brown	Jenkins	Velazquez
Burns	Kelly	Vick
Carmouche	Kilpatrick	Warren
Chatelain	Landrum	Weiss
Cowen	Landry, E. J.	Willis
De Blieux	Leithman	Winchester
Derbes	Miller	Wisham
Dunlap	Mire	Womack
Flory	O'Neill	Zervigon
Fulco	Planchard	
Total—72.		

ABSENT

Delegates—		
Anzalone	Hardee	Soniat
Bollinger	LeBreton	Stagg
Cannon	Munson	Stephenson
Chehardy	Newton	Stinson
Deshodels	Pugh	Stovall
Drew	Rachal	Sutherland
Duval	Rayburn	Tate
Edwards	Silverberg	Vesich
Fayard	Slay	Wall
Giarrusso	Smith	Wattigny
Total—23.		

And the amendment was rejected.

Delegate A. Jackson moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Passage

Committee Proposal No. 25, Section 5, was read.

Delegate A. Jackson moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Fowler	Riecke
Abraham	Fulco	Robinson
Aertker	Gauthier	Roemer
Alario	Ginn	Roy
Alexander	Goldman	Sandoz
Arnette	Gravel	Schmitt
Asseff	Grier	Segura
Avant	Guarisco	Shannon
Badeaux	Hayes	Singletary
Bel	Haynes	Slay
Berry	Hernandez	Smith
Bergeron	Jack	Soniat
Blair	Jackson, A.	Stagg
Brien	Jackson, J.	Stephenson
Brown	Jenkins	Stinson
Burns	Juneau	Stovall
Carmouche	Kean	Sutherland
Champagne	Kelly	Tapper
Chatelain	Kilpatrick	Thompson
Conino	Lambert	Tobias
Conroy	Landrum	Toca
Corne	Landry, A. J.	Toomy
Cowen	Landry, E. J.	Uilo
D'Gerolamo	Lanier	Velazquez
De Blieux	LeBieu	Vick
Denney	Leigh	Warren
Dennis	Leithman	Weiss
Derbes	Lowe	Willis
Dunlap	Maubert	Winchester
Elkins	Mire	Wisham
Flory	O'Neill	Womack
Fontenot	Reeves	Zervigon
Total—96.		

NAYS

Delegates—		
Burson	Lennox	Perez
Casey	McDaniel	Perkins
Drew	Martin	Thistlethwaite
Heine	Nunez	
Kilbourne	Ourso	
Total—13.		

ABSENT

Delegates—		
Anzalone	Giarrusso	Rachal
Bollinger	Hardee	Rayburn
Cannon	LeBreton	Silverberg
Chehardy	Miller	Tate
Deshodels	Munson	Vesich
Duval	Newton	Wall
Edwards	Planchard	Wattigny
Fayard	Pugh	
Total—23.		

And the Chair declared that the above Section was passed.

Delegate A. Jackson moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Section 6. Freedom from Intrusion

Section 6. No person shall be quartered in any house without the consent of the owner or lawful occupant.

Read.

Delegate Dunlap moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

PAGE 5

40th Days Proceedings—August 31, 1973

YEAS

Delegates—	Gauthier	Planchard
Mr. Chairman	Ginn	Reeves
Abraham	Goldman	Riecke
Aertker	Gravel	Robinson
Alario	Grier	Roemer
Alexander	Guarisco	Roy
Arnette	Hayes	Sandoz
Asseff	Haynes	Schmitt
Avant	Heine	Segura
Badeaux	Hernandez	Shannon
Bel	Jack	Singletary
Bergeron	Jackson, A.	Slay
Berry	Jackson, J.	Smith
Blair	Jenkins	Soniati
Brien	Juneau	Stagg
Brown	Kean	Stephenson
Burns	Kelly	Stinson
Burson	Kilpatrick	Stovall
Carmouche	Lambert	Sutherland
Casey	Landrum	Tapper
Champagne	Landry, E. J.	Thistlethwaite
Chatelain	Lanier	Thompson
Conino	LeBleu	Tobias
Conroy	Leigh	Toca
Corne	Leithman	Toomy
Cowen	Lennox	Uilo
De Blieux	Lowe	Velazquez
D'Gerolamo	McDaniel	Vick
Dennery	Martin	Warren
Dennis	Maubert	Weiss
Derbes	Miller	Willis
Drew	Mire	Winchester
Dunlap	Nunez	Wisham
Flory	O'Neill	Womack
Fontenot	Perez	Zervigon
Fowler	Perkins	
Fulco		

Total—107.

NAYS

Delegates—
Ourso
Total—1.

ABSENT

Delegates—	Fayard	Pugh
Anzalone	Giarrusso	Rachal
Bollinger	Hardee	Rayburn
Cannon	Kilbourne	Silverberg
Chehardy	Landry, A.	Tate
Deshotels	LeBreton	Vesich
Duval	Munson	Wall
Edwards	Newton	Wattigny
Elkins		
Total—24.		

And the Chair declared that the above Section was passed.

Delegate A. Jackson moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Section 7. Freedom from Discrimination

Section 7. All persons shall be free from discrimination on the basis of race, color, creed, national ancestry, and sex in access to public accommodations or in the sale or rental of property by persons or agents who derive a substantial income from such business activity. Nothing herein shall be construed to impair freedom of association.

Read.

Delegate Dennery sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Dennery to Committee Proposal No. 25 by Delegate Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 3, line 14, after the word "ancestry," delete the word "and" and insert in lieu thereof the word "or"

On motion of Delegate Dennery the amendment was adopted.

Delegate Dennery moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Dennery sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Dennery to Committee Proposal No. 25 by Delegate Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 3, line 14 after the word "color," delete the word "creed" and insert in lieu thereof the word "religion"

On motion of Delegate Dennery the amendment was adopted.

Delegate Dennery moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Burns sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegate Burns to Committee Proposal No. 25 by Delegate Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 3, line 15, immediately after the word "accommodations" insert a period "." and delete the remainder of the line and delete line 16 in its entirety

AMENDMENT No. 2—

On page 3, line 17, immediately before the word "Nothing" delete the following:
"come from such business activity."

Delegate Burns moved the adoption of the amendments.

Delegate J. Jackson objected.

By a vote of 68 yeas and 37 nays the amendments were adopted.

Delegate Burns moved to reconsider the vote by which the amendments were adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Haynes sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates Haynes, Stovall, E. J. Landry, Berry, and J. Jackson to Committee Proposal No. 25 by Delegate Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 3, line 15, after the word "public" delete the word "accommodations" and insert in lieu thereof the following:

"accommodations, or in the hiring and promotion practices of any employer with fifteen or more employees."

On motion of Delegate Haynes the amendment was withdrawn.

Delegate Haynes sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates Haynes, Stovall, E. J. Landry, Berry, J. Jackson and Conroy to Committee Proposal No. 25 by Delegate Jackson, et al.

Motion

Delegate Tobias moved the previous question on the entire subject matter.

Delegate Burson objected.

By a vote of 63 yeas and 48 nays the previous question on the entire subject matter was ordered.

Passage

Committee Proposal No. 25, Section 8, was read, as amended.

Delegate Guarisco moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Gravel	Singletary
Alexander	Grier	Soniak
Brien	Newton	Stephenson
Brown	Rachal	Velasquez
Chehardy	Roemer	Warren
Flory	Schmitt	
Goldman		
Total—17.		

NAYS

Delegates—	Fontenot	O'Neill
Mr. Chairman	Fulco	Ourso
Abraham	Gauthier	Perez
Aertker	Ginn	Perkins
Alario	Guarisco	Planchard
Anzalone	Hayes	Pugh
Arnette	Haynes	Rayburn
Asseff	Heime	Reeves
Avant	Hernandez	Riecke
Badeaux	Jack	Robinson
Bel	Jackson, A.	Roy
Bergeron	Jackson, J.	Sandoz
Berry	Jenkins	Smith
Blair	Juneau	Siagg
Bollinger	Kean	Stinson
Burns	Kelly	Slovall
Burson	Kilbourne	Sutherland
Casey	Landrum	Tapper
Champagne	Landry, A.	Tate
Chatelain	Landry, E. J.	Thistlethwaite
Conino	Lanier	Thompson
Conroy	LeBleu	Tobias
Corne	LeBreton	Toca
Cowen	Leigh	Toomy
D'Gerolamo	Leithman	Vesich
De Blieux	Lennox	Vick
Dennery	Lowe	Wattigny
Dennis	McDaniel	Weiss
Deshotels	Martin	Willis
Drew	Mauberrert	Winchester
Dunlap	Miller	Wisham
Duval	Munson	Zervigon
Edwards	Nunez	
Elkins		
Total—98.		

ABSENT

Delegates—	Hardee	Silverberg
Cannon	Kilpatrick	Slay
Carmouche	Lambert	Ullio
Derbes	Mire	Wall
Fayard	Segura	Womack
Fowler	Shannon	
Giarrusso		
Total—17.		

And the Chair declared that the above Section, failed to pass.

Delegate Duval moved to reconsider the vote by which the Section failed to pass, and, on his own motion, the motion to reconsider was laid on the table.

Section 9. Freedom of Expression

Section 9. No law shall abridge the freedom of every person to speak, write, publish, photograph, illustrate, or broadcast on any subject or to gather, receive, or transmit knowledge or information, but each person shall be responsible for the abuse of that liberty; nor shall such activities ever be subject to censorship, licensure, registration, control, or special taxation.

Read.

Delegate Burson sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Burson to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 3, delete lines 26 through 32, both inclusive, in their entirety and insert in lieu thereof the following: "Section 9. No law shall abridge the freedom of speech or press."

Motion

On motion of Delegate Bel, the Convention altered the Order of Business to take up Introduction of Proposals at this time.

Introduction of Proposals

The following named delegates and committees introduced the following entitled Delegate and Committee Proposals which were read by their titles and placed on the Calendar for their second reading.

DELEGATE PROPOSAL No. 60—

Introduced by Delegate Jenkins:

A PROPOSAL

Making provision to control future growth of state tax revenues.

Read.

Lies over under the rules.

DELEGATE PROPOSAL No. 61—

Introduced by Delegates Bel and Vesich:

A PROPOSAL

To provide with respect to judicial districts.

Read.

Lies over under the rules.

DELEGATE PROPOSAL No. 62—

Introduced by Delegate Burson:

A PROPOSAL

Making provisions for the grand jury.

Read.

Lies over under the rules.

DELEGATE PROPOSAL No. 63—

Introduced by Delegate Burson:

A PROPOSAL

Making provisions for legislative limitation on executive power.

Read.

Lies over under the rules.

DELEGATE PROPOSAL No. 64—

Introduced by Delegate Toca:

A PROPOSAL

Making provision for a board of commissioners of the Louisiana State Library.

Read.

Lies over under the rules.

PAGE 4

42nd Day's Proceedings—September 6, 1973

★ **DELEGATE PROPOSAL No. 86—**

Introduced by Delegate Abraham:

A PROPOSAL

Making provisions for the deletion of the attorney general from the Judicial Branch of state government.

Read.

On motion of Delegate Abraham the Proposal was withdrawn.

DELEGATE PROPOSAL No. 87—

Introduced by Delegate Segura:

A PROPOSAL

Providing for state and city civil service.

Read.

Under the rules the above proposal was referred to the Committee on Education and Welfare.

DELEGATE PROPOSAL No. 88—

Introduced by Delegate Lennox:

A PROPOSAL

To provide for the continuous operation of government.

Read.

Under the rules the above proposal was referred to the Committee on Education and Welfare.

DELEGATE PROPOSAL No. 89—

Introduced by Delegate Lennox:

A PROPOSAL

Prohibiting strikes by public employees.

Read.

Under the rules the above proposal was referred to the Committee on Education and Welfare.

DELEGATE PROPOSAL No. 90—

Introduced by Delegate Lennox:

A PROPOSAL

To prohibit monopolistic control over employment in any industry within the state.

Read.

Under the rules the above proposal was referred to the Committee on Education and Welfare.

DELEGATE PROPOSAL No. 91—

Introduced by Delegate Zervigon:

A PROPOSAL

Making provisions for property taxation.

Read.

Under the rules the above proposal was referred to the Committee on Revenue, Finance and Taxation.

DELEGATE PROPOSAL No. 92—

Introduced by Delegate Robinson:

A PROPOSAL

Making provisions for public elementary and secondary education and necessary provisions with respect thereto.

Read.

Under the rules the above proposal was referred to the Committee on Education and Welfare.

★ **DELEGATE PROPOSAL No. 93—**

Introduced by Delegate Burson:

A PROPOSAL

Providing with respect to grand jury proceedings.

Read.

Under the rules the above proposal was referred to the Committee on Bill of Rights and Elections.

DELEGATE PROPOSAL No. 94—

Introduced by Delegate Pugh:

A PROPOSAL

Prohibiting the purchase or subscription by the state or its

political subdivisions of stock of any corporation or association or for any private enterprise and providing exceptions.

Read.

Under the rules the above proposal was referred to the Committee on Education and Welfare.

DELEGATE PROPOSAL No. 95—

Introduced by Delegate Bel:

A PROPOSAL

Making provisions for property taxation.

Read.

Under the rules the above proposal was referred to the Committee on Revenue, Finance and Taxation.

DELEGATE PROPOSAL No. 96—

Introduced by Delegates Vick, Abraham, Bel, Berry, Casey, Denney, Goldman, Guarisco, Haynes, A. Jackson, J. Jackson, LeBreton, Lennox, Miller, Pugh, Rachal, Riecke, Soniat, Stoval, Sutherland, Velazquez, and Weiss:

A PROPOSAL

Providing for the powers and duties of the attorney general.

Read.

Under the rules the above proposal was referred to the Committee on the Executive Department.

Unfinished Business

The following unfinished business in which the Convention was engaged at the time of its adjournment on yesterday was taken up and acted on:

Proposals

Delegate and Committee

The following entitled Delegate and Committee Proposals were taken up on their third reading and final passage:

COMMITTEE PROPOSAL No. 25—

Introduced by Delegate A. Jackson, Chairman, Committee on Bill of Rights and Elections (Substitute for Committee Proposal No. 2, by Delegate A. Jackson, Chairman, on behalf of the Committee on Bill of Rights and Elections, and Delegates Dunlap, Guarisco, Jenkins, Roy, Soniat, Stinson, Vick, Wall and Weiss):

A PROPOSAL

To provide a preamble and a declaration of rights to the constitution.

Read.

Section 9. Freedom of Expression

Section 9. No law shall abridge the freedom of every person to speak, write, publish, photograph, illustrate, or broadcast on any subject or to gather, receive, or transmit knowledge or information, but each person shall be responsible for the abuse of that liberty; nor shall such activities ever be subject to censorship, licensure, registration, control, or special taxation.

Read.

FLOOR AMENDMENT

Amendment proposed by Delegate Burson to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 3, delete lines 26 through 32, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 9. No law shall abridge the freedom of speech or press."

Read.

The chairman announced that the Convention had under consideration the above amendment proposed by Delegate Burson, to Committee Proposal No. 25, Section 9, when it

PAGE 5

42nd Day's Proceedings—September 6, 1973

adjourned on Wednesday, September 5, 1973 which was taken up and acted upon as follows:

Delegate Burson moved the adoption of the amendment.

Delegate Roy objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Deshotels	Martin
Abraham	Drew	Miller
Alario	Edwards	Munson
Anzalone	Elkins	Nunez
Arnette	Payard	Ours
Asselt	Fontenot	Perez
Avant	Badeaux	Planchard
Bergeron	Gauthier	Rayburn
Berry	Heine	Sandoz
Blair	Hernandez	Singletary
Brien	Jack	Smith
Burns	Kean	Stinson
Burson	Kilbourne	Stovall
Carmouche	Landry, A.	Sutherland
Casey	Lanier	Tate
Champagne	LeBreton	Thistlethwaite
Conino	Leigh	Toomy
Conroy	Lennox	Uilo
Corne	Low	Wattigny
D'Gerolamo	McDaniel	Willis
Dennis		
Total—61.		

NAYS

Delegates—	Hardee	Rosmer
Mr. Chairman	Hayes	Roy
Artiker	Jackson, A.	Schmitt
Alexander	Jenkins	Segura
Bel	Juneau	Slay
Bollinger	Kelly	Soniat
Brown	Kilpatrick	Stagg
Chatelain	Landrum	Stephenson
Cowen	Landry, E. J.	Tapper
De Blieux	Leithman	Thompson
Dennerly	Maubert	Tobias
Derbes	Newton	Toca
Dunlap	O'Neill	Velazquez
Flory	Perkins	Vick
Ginn	Rachal	Warren
Goldman	Reeves	Weiss
Gravel	Riecke	Zervigon
Grier	Robinson	
Guarisco		
Total—53.		

ABSENT

Delegates—	Jackson, J.	Silverberg
Cannon	LeBlau	Vesich
Neahardy	LeBlau	Wail
Duval	Mire	Winchester
Fowler	Pugh	Wisham
Giarrusso	Shannon	Womack
Haynes		
Total—18.		

And the amendment was adopted.

Delegate Burson moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Gravel sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Gravel to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 3, delete lines 26, through 32 both inclusive, in their entirety, and strike out Floor Amendment No. 1 proposed by Delegate Burson and adopted by the Convention on September 6, 1973, and insert in lieu thereof the following:

"Section 9. No law shall abridge the freedom of speech or press, but each person shall be responsible for the abuse of those freedoms."

On motion of Delegate Gravel the amendment was adopted.

Delegate Gravel moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Drew sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Drew to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 3, delete lines 25 through 32, both inclusive, in their entirety, and delete Convention Floor Amendment No. 1 proposed by Mr. Gravel and adopted by the Convention on September 6, 1973, and insert in lieu thereof the following:

"Section 9. Liberty of Speech and Freedom of the Press

Section 9. No law shall ever be passed to curtail or restrain the liberty of speech or freedom of the press; any person may speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty or freedom."

Delegate Drew moved the adoption of the amendment.

Delegate A. Jackson objected.

By a vote of 69 yeas and 39 nays the amendment was adopted.

Delegate Drew moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate D'Gerolamo sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates D'Gerolamo, Toca, Uilo, Toomy, Gauthier, Alario, Bergeron, Conino, Bollinger, Nunez, Ginn, Gravel, Tapper, Burson and Flory to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 3, line 26, after the language added by Convention Floor Amendment No. 1 proposed by Delegate Drew and adopted by the Convention on September 6, 1973, insert the following:

"Any person whose character is assailed by reason of the exercise of any freedom herein granted shall be afforded an equal opportunity to reply, and the legislature shall enact laws to implement this provision and provide penalties for violations."

Motion

Delegate A. Jackson moved the previous question on the amendment.

Delegate Nunez objected.

By a vote of 86 yeas and 13 nays the previous question was ordered on the amendment.

Delegate D'Gerolamo moved the adoption of the amendment.

Delegate Dennerly objected.

By a vote of 30 yeas and 77 nays the amendment was rejected.

PAGE 6

42nd Day's Proceedings—September 6, 1973

Delegate Stagg moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Delegate Jenkins sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Jenkins to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 3, line 26, at the end of the language added by Convention Floor Amendment No. 1 proposed by Delegate Drew and adopted by the Convention on September 6, 1973: "Such activities shall never be subject to prior restraint, licensure, registration, or special taxation."

Delegate Jenkins moved the adoption of the amendment.

Delegate Jack objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following results:

YEAS

Delegates—

Aertker
Alario
Alexander
Avant
Bel
Berry
Brien
Chehardy
Conino
Cowan
D'Gerolamo
Dennery
Flory
Ginn
Total—41.

NAYS

Delegates—

Mr. Chairman
Abraham
Anzalone
Arnette
Asseff
Badeaux
Bergeron
Blair
Brown
Burns
Burson
Carmouche
Casey
Champagne
Conroy
Corne
De Blieux
Dennis
Derbes
Deshotels
Drew
Dunlap
Elkins
Total—68.

ABSENT

Delegates—

Bollinger
Cannon
Chatelain
Duval
Edwards
Fayard
Fowler
Giarrusso

Reeves
Riecke
Robinson
Roemer
Roy
Soniat
Stephenson
Stinson
Toca
Velazquez
Vick
Warren
Weiss
Perez
Perkins
Planchard
Rayburn
Schmitt
Segura
Singletary
Slay
Smith
Stagg
Stovall
Sutherland
Tapper
Tate
Thistlethwaite
Thompson
Tobias
Toomy
Uilo
Wattigny
Willis
Zervigon

Shannon
Silverberg
Vesich
Womack
Winchester
Wisham

Total—23.

And the amendment was rejected.

Delegate Willis moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Passage

Committee Proposal No. 25, Section 9, was read as amended.

Delegate A. Jackson moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—

Mr. Chairman
Abraham
Aertker
Alario
Alexander
Anzalone
Arnette
Asseff
Avant
Badeaux
Bel
Bergeron
Berry
Blair
Brien
Brown
Burns
Carmouche
Casey
Champagne
Chehardy
Conino
Conroy
Corne
Cowan
D'Gerolamo
De Blieux
Dennery
Dennis
Derbes
Deshotels
Drew
Dunlap
Elkins
Flory
Fontenot
Total—108.

Fulco
Gauthier
Ginn
Goldman
Gravel
Grier
Hardee
Hayes
Haynes
Heine
Hernandez
Jack
Jackson, A.
Jackson, J.
Jenkins
Juneau
Kean
Kilbourne
Kilpatrick
Lambert
Landrum
Landry, A.
Landry, E. J.
Lanier
LeBreton
Leigh
Leithman
Lennox
Lowe
McDaniel
Miller
Mire
Munson
Newton
Nunez
O'Neill

Perez
Perkins
Planchard
Rachal
Rayburn
Reeves
Riecke
Robinson
Roemer
Roy
Schmitt
Segura
Singletary
Slay
Smith
Soniat
Stagg
Stephenson
Stinson
Sutherland
Tapper
Tate
Thistlethwaite
Thompson
Tobias
Toca
Toomy
Uilo
Velazquez
Vick
Warren
Wattigny
Weiss
Willis
Zervigon

NAYS

Delegates—

Burson
Total—2.

Kelly

ABSENT

Delegates—

Bollinger
Cannon
Chatelain
Duval
Edwards
Fayard
Fowler
Giarrusso
Total—22.

Guarisco
LeBleu
Martin
Mauberret
Ourso
Pugh
Sandoz
Shannon

Silverberg
Vesich
Wall
Winchester
Wisham
Womack

And the Chair declared that the above Section was passed.

Delegate A. Jackson moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Section 10. Freedom of Religion

Section 10. No law shall be enacted respecting an establishment of religion or prohibiting the free exercise thereof.

Read.

Passage

Delegate Weiss moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Fontenot	O'Neill
Abraham	Fulco	Perez
Aertker	Gauthier	Perkins
Alario	Ginn	Planchard
Alexander	Goldman	Rachal
Anzalone	Gravel	Rayburn
Arnette	Grier	Reeves
Asselt	Hardee	Riecke
Avant	Hayes	Robinson
Badeaux	Haynes	Roemer
Bel	Heine	Roy
Bergeron	Hernandez	Schmitt
Berry	Jack	Singletary
Blair	Jackson, A.	Slay
Brien	Jackson, J.	Smith
Brown	Jenkins	Soniat
Burns	Juneau	Stagg
Burson	Kean	Stephenson
Carmouche	Kelly	Stinson
Casey	Kilbourne	Stovall
Champagne	Kipatrack	Sutherland
Chehardy	Lambert	Tapper
Conino	Landrum	Thistlethwaite
Conroy	Landry, A.	Thompson
Corne	Landry, E. J.	Tobias
D'Gerolamo	Lanier	Toca
De Blieux	Leigh	Toomy
Denberry	Leighman	Ullio
Dennis	Lennox	Velazquez
Derbes	Lowe	Vick
Deshotels	McDaniel	Warren
Dunlap	Mire	Wattigny
Edwards	Munson	Weiss
Elkins	Newton	Willis
Flory	Nunez	Zervigon

Total—105.

NAYS

Total—0.

ABSENT

Delegates—		
Bollinger	Guarisco	Segura
Cannon	LeBleu	Shannon
Chatelain	LeBreton	Silverberg
Cowen	Marlin	Tate
Drew	Maubert	Vesich
Duval	Miller	Wal
Fayard	Ourso	Winchester
Fowler	Pugh	Wisham
Giarrusso	Sandoz	Womack

Total—27.

And the Chair declared that the above Section was passed.

Delegate Weiss moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Section 11. Freedom of Assembly and Movement

Section 11. No law shall impair the right of every person to assemble peaceably, to petition government for a redress of grievances, to travel freely within the state, and to enter times or restrict the authority of the state to supervise persons subject to parole or probation.

Read.

Delegate Arnette sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegate Arnette to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 4, line 6, immediately after the word "peaceably" and before the word "to" delete the comma "," and insert in lieu thereof the word "or"

AMENDMENT No. 2—

On page 4, line 7, immediately after the word "grievances" change the comma "," to a period "." and delete the remainder of the line and delete lines 8 through 10, both inclusive, in their entirety

Motion

Delegate Abraham suggested the absence of a quorum.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Fontenot	Ourso
Abraham	Fulco	Perez
Alario	Gauthier	Perkins
Alexander	Ginn	Planchar
Anzalone	Goldman	Rayburn
Arnette	Gravel	Reeves
Asselt	Grier	Robinson
Avant	Hardee	Roemer
Badeaux	Hayes	Roy
Bel	Haynes	Sandoz
Bergeron	Hernandez	Schmitt
Blair	Jack	Singletary
Bollinger	Jackson, A.	Slay
Brien	Jackson, J.	Smith
Brown	Jenkins	Soniat
Burns	Kean	Stagg
Burson	Kelly	Stephenson
Carmouche	Kilbourne	Stovall
Casey	Kipatrack	Sutherland
Champagne	Landrum	Tate
Chehardy	Landry, A.	Thistlethwaite
Conino	Landry, E. J.	Thompson
Conroy	Lanier	Tobias
Corne	Leigh	Toca
Cowen	Leithman	Toomy
D'Gerolamo	Lennox	Ullio
De Blieux	Lowe	Velazquez
Denberry	McDaniel	Vesich
Dennis	Martin	Vick
Derbes	Maubert	Warren
Deshotels	Miller	Wattigny
Drew	Mire	Weiss
Dunlap	Munson	Willis
Edwards	Newton	Winchester
Elkins	Nunez	Zervigon
Flory	O'Neill	

Total—108.

NAYS

Total—0.

ABSENT

Delegates—		
Aertker	Guarisco	Riecke
Berry	Heine	Shannon
Burson	Juneau	Silverberg
Chatelain	Lambert	Stinson
Duval	LeBleu	Tapper
Fayard	LeBreton	Wall
Fowler	Pugh	Wisham
Giarrusso	Rachal	Womack

Total—24.

And the Chairman announced that there were 107 members present and a quorum.

Delegate Arnette moved the adoption of the amendment.

Delegate Roy objected.

PAGE 8

42nd Day's Proceedings—September 6, 1973

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Abraham	Edwards	Ourso
Alario	Elkins	Perez
Anzalone	Fontenot	Perkins
Arnette	Fulco	Planchard
Asseff	Gauthier	Rayburn
Avant	Hardee	Robinson
Badeaux	Heine	Sandoz
Bel	Hernandez	Schmitt
Bergeron	Jack	Singletary
Brien	Juneau	Slay
Burns	Kean	Smith
Burson	Kelly	Sutherland
Carmouche	Kilbourne	Tapper
Casey	Landry, A.	Thistlethwaite
Champagne	Lanier	Thompson
Chehardy	Leigh	Tommy
Conino	Lennox	Ullio
Corne	Lowe	Vesich
Cowen	McDaniel	Wattigny
D'Gerolamo	Martin	Weiss
De Blieux	Miller	Winchester
Derbes	Mire	
Deshotels	Munson	
Drew	Nunez	
Total—73.		

NAYS

Delegates—		
Alexander	Hayes	Roemer
Berry	Haynes	Roy
Blair	Jackson, A.	Segura
Brown	Jackson, J.	Soniati
Conroy	Jenkins	Stephenson
Dennery	Kilpatrick	Stinson
Dennis	Landrum	Stovall
Dunlap	Landry, E. J.	Tate
Flory	Maubert	Tobias
Ginn	Newton	Velasquez
Goldman	O'Neill	Vick
Gravel	Rachal	Warreu
Grier	Reeves	Zervigon
Total—39.		

ABSENT

Delegates—		
Mr. Chairman	Giarrusso	Riecke
Aertker	Guarisco	Shannon
Cannon	Lambert	Silverberg
Chatelain	LeBleu	Wall
Duval	LeBreton	Wisham
Fayard	Leithman	Womack
Fowler	Pugh	
Total—20.		

And the Amendments were adopted.

Delegate Arnette moved to reconsider the vote by which the amendments were adopted, and on his own motion, the motion to reconsider was laid on the table.

Passage

Committee Proposal No. 25, Section 11, was read as amended.

Delegate Jenkins moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Abraham	Alario

[226]

Alexander	Ginn	Planchard
Anzalone	Goldman	Rachal
Arnette	Gravel	Rayburn
Asseff	Grier	Reeves
Avant	Hardee	Robinson
Badeaux	Hayes	Roemer
Bel	Haynes	Roy
Bergeron	Heine	Sandoz
Berry	Hernandez	Schmitt
Blair	Jack	Segura
Bollinger	Jackson, A.	Singletary
Brien	Jackson, J.	Slay
Brown	Jenkins	Smith
Burns	Juneau	Soniati
Burson	Kean	Stagg
Carmouche	Kelly	Stephenson
Casey	Kilbourne	Stinson
Champagne	Kilpatrick	Stovall
Chehardy	Landrum	Sutherland
Conino	Landry, A.	Tapper
Conroy	Landry, E. J.	Tate
Corne	Lanier	Thistlethwaite
Cowen	Leigh	Thompson
De Blieux	Lennox	Tobias
D'Gerolamo	Lowe	Toca
Dennery	McDaniel	Toomy
Dennis	Martin	Ullio
Derbes	Maubert	Velasquez
Deshotels	Miller	Vesich
Drew	Mire	Vick
Dunlap	Munson	Warren
Edwards	Newton	Wattigny
Elkins	Nunez	Weiss
Flory	O'Neill	Willis
Fontenot	Ourso	Winchester
Fulco	Perez	Zervigon
Gauthier	Perkins	
Total—113.		

NAYS

Total—0.

ABSENT

Delegates—		
Aertker	Guarisco	Riecke
Cannon	Lambert	Shannon
Chatelain	LeBleu	Silverberg
Duval	LeBreton	Wall
Fayard	Leithman	Wisham
Fowler	Pugh	Womack
Giarrusso		
Total—19.		

And the Chair declared that the above Section was passed.

Delegate Jenkins moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Section 12. Rights of the Accused

Section 12. When a person has been detained, he shall immediately be advised of his legal rights and the reason for his detention. In all criminal prosecutions, the accused shall be precisely informed of the nature and cause of the accusation against him. At all stages of the proceedings, every person shall be entitled to assistance of counsel of his choice, or appointed by the court in indigent cases if charged with an offense punishable by imprisonment.

Read.

Delegate Avant sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Avant to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 4, between lines 19 and 20, insert the following: "No person shall be subjected to imprisonment or forfeiture of his rights or property without the right of judicial review based upon a complete record of all evidence upon which

such judgment is based. This right may be intelligently waived."

Delegate Avant moved the adoption of the amendment.

Delegate Stinson objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Alario	Goldman	Robinson
Alexander	Gravel	Roemer
Asseff	Grier	Roy
Avant	Hayes	Schmitt
Bel	Haynes	Segura
Bergeron	Jack	Singletary
Bery	Jack, A.	Slay
Brown	Jackson, J.	Soniat
Burns	Jenkins	Stephenson
Burson	Kelly	Stovall
Chehardy	Kilbourne	Tapper
Conino	Kilpatrick	Tate
Corne	Landry, E. J.	Thompson
D'Gerolamo	Leigh	Toca
De Blieux	Martin	Uilo
Dennis	Miller	Velazquez
Deshotels	Mire	Vesich
Dunlap	Newton	Vick
Edwards	O'Neill	Warren
Flory	Oruso	Wattignier
Gauthier	Rachal	Willis
Ginn	Reeves	Wisham
Total—66.		

NAYS

Delegates—		
Abraham	Fontenot	Perkins
Anzalone	Fulco	Planchard
Arnette	Hardee	Rayburn
Badeaux	Heine	Riecke
Blair	Hernandez	Sandoz
Bollinger	Juneau	Smith
Brien	Lambert	Stagg
Carmouche	Lanier	Stinson
Casey	Leithman	Sutherland
Champagne	Lennox	Thistlethwaite
Conroy	Low	Tobias
Cowen	McDaniel	Toomy
Dennery	Mauberrert	Weiss
Derbes	Munson	Winchester
Drew	Nunez	Zervigon
Elkins	Perez	
Total—47.		

ABSENT

Delegates—		
Mr. Chairman	Giarrusso	Pugh
Aertker	Guarisco	Shannon
Cannon	Kean	Silverberg
Chatelain	Landrum	Wall
Duval	Landry, A.	Womack
Fayard	LeBieu	
Fowler	LeBreton	
Total—19.		

And the amendment was adopted.

Delegate Avant moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Burson sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Burson to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 4, line 15, after the words "shall be" delete the word "precisely" and insert in lieu thereof the word "reasonably"

Delegate Burson moved the adoption of the amendment.

Delegate Roemer objected.

By a vote of 57 yeas and 52 nays the amendment was adopted.

Delegate Burson moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Gravel sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegate Gravel to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 4, line 15, after the words "shall be" and before the words "of the nature" delete the words "precisely informed" and insert in lieu thereof the following: "informed, with particularity."

AMENDMENT No. 2—

Strike out Amendment No. 1 proposed by Mr. Burson and adopted by the Convention on September 6, 1973.

Delegate Gravel moved the adoption of the amendment.

Delegate Burson objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following results:

YEAS

Delegates—		
Mr. Chairman	Grier	Roemer
Avant	Hardee	Roy
Berry	Hayes	Schmitt
Blair	Haynes	Segura
Brien	Hernandez	Singletary
Brown	Jack, A.	Slay
Carmouche	Jackson, J.	Soniat
Chatelain	Jenkins	Stephenson
Conino	Kelly	Stinson
De Blieux	Kilpatrick	Thompson
Dennis	Lambert	Velazquez
Derbes	Landrum	Vick
Dunlap	Landry, E. J.	Warren
Flory	Mire	Weiss
Fulco	Newton	Winchester
Ginn	O'Neill	Wisham
Goldman	Planchard	Zervigon
Gravel	Reeves	
Total—53.		

NAYS

Delegates—		
Abraham	Corne	Lanier
Alario	D'Gerolamo	Leigh
Anzalone	Dennery	Leithman
Arnette	Deshotels	Lennox
Asseff	Drew	Low
Badeaux	Edwards	McDaniel
Bel	Elkins	Martin
Bergeron	Fayard	Mauberrert
Bollinger	Fontenot	Miller
Burns	Gauthier	Nunez
Burson	Heine	Oruso
Cannon	Jack	Perez
Casey	Juneau	Perkins
Champagne	Kean	Rayburn
Chehardy	Kilbourne	Riecke
Conroy	Landry, A.	Robinson

PAGE 10

42nd Day's Proceedings—September 6, 1973

Sandoz	Tate	Uilo
Smith	Thistlethwaite	Vesich
Stagg	Tobias	Wattigny
Stovall	Toca	Willis
Sutherland	Toomy	
Total—62.		

ABSENT

Delegates—	Guarisco	Shannon
Aertker	LeBleu	Silverberg
Alexander	LeBreton	Tapper
Cowen	Duval	Wall
Duval	Munson	Womack
Fowler	Pugh	
Giarrusso	Rachal	
Total—17.		

And the amendment was rejected.

Delegate Burson moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Motion

On motion of Delegate Abraham, the Convention altered the Order of Business to take up other orders of business at this time.

COMMITTEE NOTICE

Delegate Aertker, chairman of the Committee on Education and Welfare, sent up the following notice:

The Committee on Education and Welfare will meet on Wednesday, September 12, 1973, at 5:30 o'clock P.M. in Committee Room No. 5 and will consider the following agenda:

AGENDA

Hearings—Civil Service.

Consideration of Committee and Delegate Proposals on Civil Service.

Respectfully submitted,

ROBERT AERTKER,
Chairman of the Committee on
Education and Welfare

The above notice was read in open session and publicly posted as provided by the Rules of Procedure of the Convention.

COMMITTEE NOTICE

Delegate Perez, chairman of the Committee on Local and Parochial Government, sent up the following notice:

The Committee on Local and Parochial Government will meet on Friday, September 7, 1973, after adjournment in Committee Room No. 5 and will consider the following agenda:

AGENDA

The Committee's Proposals

Respectfully submitted,

C. O. PEREZ,
Chairman of the Committee on
Local and Parochial Government

The above notice was read in open session and publicly posted as provided by the Rules of Procedure of the Convention.

Motion

On motion of Delegate Casey the rules were suspended in order to call a meeting of the Executive Committee without giving the required 24 hours notice.

COMMITTEE NOTICE

Delegate Henry, chairman of the Executive Committee, sent up the following notice:

The Executive Committee will meet on Friday, September 7, 1973, at 12:00 o'clock noon in Independence Hall and will consider the following agenda:

AGENDA

Matters relating to the operation of the Convention.

Respectfully submitted,

E. L. HENRY,
Chairman of the Executive Committee

The above notice was read in open session and publicly posted as provided by the Rules of Procedure of the Convention.

Leave of Absence

Delegate Chehardy— $\frac{1}{2}$ day.
Delegate Pugh—2 days.
Delegate Duval—1 day.
Delegate J. Jackson— $\frac{1}{2}$ day.
Delegate Guarisco— $\frac{1}{2}$ day.
Delegate Haynes— $\frac{1}{2}$ day.
Delegate Aertker— $\frac{1}{2}$ day.
Delegate Giarrusso—September 6 through September 22.

Adjournment

Delegate Abraham moved that the Convention do now adjourn until Friday, September 6, 1973 at 9:00 o'clock A.M.

Which motion was agreed to.

And Chairman Henry declared the Convention adjourned to Friday, September 6, 1973 at 9:00 o'clock A.M.

MOISE W. DENNERY
Secretary

DAVID R. POYNTER
Chief Clerk

PAGE 2

43rd Days Proceedings—September 7, 1973

on Bill of Rights and Elections (Substitute for Committee Proposal No. 2, by Delegate A. Jackson, Chairman, on behalf of the Committee on Bill of Rights and Elections, and Delegates Dunlap, Guarisco, Jenkins, Roy, Soniat, Stinson, Vick, Wall and Weiss):

A PROPOSAL

To provide a preamble and a declaration of rights to the constitution.

Read.

Section 12. Rights of the Accused

Section 12. When a person has been detained, he shall immediately be advised of his legal rights and the reason for his detention. In all criminal prosecutions, the accused shall be precisely informed of the nature and cause of the accusation against him. At all stages of the proceedings, every person shall be entitled to assistance of counsel of his choice, or appointed by the court in indigent cases if charged with an offense punishable by imprisonment.

Read.

The chairman announced that the Convention had under consideration Committee Proposal No. 25, Section 12, when it adjourned on Thursday, September 6, 1973, which was taken up and acted upon as follows:

Delegate Kelly sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Kelly and Jack to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 4, line 15 delete Amendment No. 1 proposed by Delegate Burson and adopted by the Convention on September 6, 1973 and on page 4, line 15, after the word "shall be" strike out the word "precisely"

On motion of Delegate Kelly the amendment was adopted.

Delegate Kelly moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Derbes sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegate Derbes to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 4, line 12 after "Section 12." delete the remainder of the line and delete line 13 and on line 14 at the beginning of the line delete the words and punctuation "for his detention."

AMENDMENT No. 2—

On page 4, line 12, after "Section 12." insert the following: "When a person has been detained for the commission of any offense, he shall be advised of the nature of that offense, his right to silence and against self-incrimination, his right to the assistance of counsel and to court-appointed counsel, if indigent."

On motion of Delegate Casey a division of the question was ordered.

Delegate Derbes moved the adoption of the amendment No. 1.

Delegate Roy objected.

By a vote of 50 yeas and 58 nays the amendment was rejected.

Delegate Roy moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

On motion of Delegate Derbes, and under a suspension of the rules, amendment No. 2 was withdrawn.

Delegate Jack sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Jack to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 4, between lines 19 and 20 in Floor Amendment No. 1 proposed by Delegate Avant and adopted by the Convention on September 6, 1973 at the end of line 3, place a comma "," after the word "record" and add the following: "without cost to him."

Delegate Jack moved the adoption of the amendment.

Delegate A. Landry objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Alexander	Goldman	Robinson
Avant	Gravel	Roemer
Bergeron	Hayes	Schmitt
Berry	Hernandez	Singletary
Brien	Jack	Stephenson
Brown	Jackson, J.	Stovall
Flory	Jenkins	Tapper
Fontenot	Landry, E. J.	Velazquez
Gauthier	Miller	Warren
Ginn	Newton	
Total—29.		

NAYS

Delegates—		
Abraham	Edwards	Planchard
Aertker	Elkins	Pugh
Alario	Fulco	Rayburn
Arnette	Grier	Reeves
Asseff	Guarisco	Riecke
Badeaux	Hardee	Roy
Bel	Haynes	Sandoz
Blair	Heine	Siay
Bollinger	Jackson, A.	Smith
Burns	Juneau	Soniat
Burson	Kilbourne	Siagg
Carmouche	Kilpatrick	Stinson
Casey	Landrum	Sutherland
Champagne	Landry, A.	Tate
Chatalein	Lanier	Thistlethwaite
Chehardy	Leigh	Thompson
Conino	Leithman	Tobias
Conroy	Lennox	Tooca
Corne	Low	Toomy
D'Gerolamo	McDaniel	Uilo
De Blieux	Martin	Vick
Dennery	Mire	Wattigny
Dennis	Munson	Weiss
Derbes	O'Neill	Willis
Drew	Perez	Winchester
Dunlap	Perkins	Zervigon
Duval		
Total—79.		

ABSENT

Delegates—		
Mr. Chairman	Kean	Rachal
Anzalone	Kelly	Segura
Cannon	Lambert	Shannon
Cowen	LeBleu	Silverberg
Deshotels	LeBreton	Vesich
Fayard	Mauberet	Wall
Fowler	Nunez	Wisham
Giarrusso	Ourso	Womack
Total—24.		

PAGE 3

43rd Days Proceedings—September 7, 1973

And the amendment was rejected.

Delegate Abraham moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Motion

On motion of Delegate Abraham, the Convention altered the Order of Business to take up other Orders of Business at this time.

Petitions, Memorials and Communications

The following petitions, memorials and communications were received and read.

State of Louisiana
OFFICE OF THE GOVERNOR
Baton Rouge

September 7, 1973

Hon. Wade O. Martin, Jr.
Secretary of State
Baton Rouge, Louisiana

Dear Mr. Martin:

Please issue commission to the following:

Emile M. Comar, Jr., 3014 Prytania Street, New Orleans 70115, as Delegate to the Constitutional Convention of 1973 (District 92), vice Representative Edward F. LeBreton, Jr., resigned.

Yours very truly,

EDWIN EDWARDS
Governor of Louisiana

OATH OF OFFICE

Emile M. Comar, Jr. appeared before the bar of the Convention and took the following oaths of office administered by Honorable David R. Poynter, Clerk of the House of Representatives and Chief Clerk of the Constitutional Convention:

"I hereby solemnly swear that I will support the constitution and laws of the United States; that I will well and faithfully perform all duties as a member of the convention, and that I will observe and obey the limitation of authority contained in the Act under which this convention has assembled. So help me God."

"I (Emile M. Comar, Jr.) do solemnly swear that I will support the Constitution and laws of the United States and the Constitution and laws of this State; and I will faithfully and impartially discharge and perform all the duties incumbent upon me as a delegate to the Constitutional Convention, according to the best of my ability and understanding. So help me God."

Unfinished Business, Resumed

The following unfinished business in which the House was engaged at the time of its adjournment on yesterday was taken up and acted on:

COMMITTEE PROPOSAL No. 25—

Introduced by Delegate A. Jackson, Chairman, Committee on Bill of Rights and Elections (Substitute for Committee Proposal No. 2, by Delegate A. Jackson, Chairman, on behalf of the Committee on Bill of Rights and Elections, and Delegates Dunlap, Guarisco, Jenkins, Roy, Soniat, Stinson, Vick, Wall and Weiss):

A PROPOSAL

To provide a preamble and a declaration of rights to the constitution.

Read.

Section 12. Rights of the Accused

Section 12. When a person has been detained, he shall

immediately be advised of his legal rights and the reason for his detention. In all criminal prosecutions, the accused shall be precisely informed of the nature and cause of the accusation against him. At all stages of the proceedings, every person shall be entitled to assistance of counsel of his choice, or appointed by the court in indigent cases if charged with an offense punishable by imprisonment.

Read.

Delegate Dennis sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Dennis to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 4, between lines 19 and 20, in Floor Amendment No. 1 proposed by Delegate Avant and adopted by the Convention on September 6, 1973, on line 4 at the end of the line add the following:

"The cost of the transcription of such record shall be paid as provided by law."

Delegate Dennis moved the adoption of the amendment.

Delegate Jack objected.

By a vote of 92 yeas and 20 nays the amendment was adopted.

Delegate Dennis moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Velazquez sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates Velazquez and J. Jackson to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 4, at the end of line 19, add the following: "The legislature shall provide for a uniform system for securing counsel for indigents, including qualifications and compensation."

Delegate Velazquez moved the adoption of the amendment.

Delegate Drew objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Abraham	Conino	Hayes
Aertker	Conroy	Heine
Alario	Corne	Jack
Alexander	D'Gerolamo	Jackson, A.
Arnette	Dennery	Jackson, J.
Asseff	Derbes	Juneau
Avant	Deshotels	Kilbourne
Badeaux	Dunlap	Kilpatrick
Bel	Duval	Lambert
Bergeron	Edwards	Landrum
Berry	Elkins	Landry, A.
Blair	Fayard	Landry, E. J.
Bollinger	Flory	Lanier
Brien	Fontenot	Leigh
Brown	Fulco	Leithman
Burns	Gauthier	Lennox
Burson	Ginn	Martin
Casey	Gravel	Miller
Champagne	Grier	Mire
Chatelain	Guarisco	Munson
Comar	Hardee	Newton

PAGE 4

43rd Days Proceedings—September 7, 1973

Nunez	Roy	Tobias
O'Neill	Schmitt	Toca
Ouiso	Singletary	Toomy
Peretz	Slay	Uilo
Perkins	Soniata	Velazquez
Planchard	Stagg	Vick
Pugh	Stephenson	Warren
Rayburn	Stovall	Wattigny
Reeves	Sutherland	Weiss
Riecke	Tapper	Willis
Robinson	Thistlethwaite	Winchester
Roemer	Thompson	Zervigon
Total—99.		

NAYS

Delegates—		
Carmouche	Hernandez	McDaniel
De Blieux	Jenkins	Sandoz
Drew	Kelly	Stinson
Goldman	Lowe	
Total—11.		

ABSENT

Delegates—		
Mr. Chairman	Haynes	Silverberg
Anzalone	Kean	Smith
Cannon	LeBlau	Tate
Chehardy	Mauberrert	Vesich
Cowen	Rachal	Wall
Dennis	Segura	Wisham
Fowler	Shannon	Womack
Giarrusso		
Total—22.		

And the amendment was adopted.

Delegate Velazquez moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Derbes sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegate Derbes to Committee Proposal No. 25 by Delegate A. Jackson, et al.

AMENDMENT No. 1—

On page 4, line 12 after "Section 12." delete the remainder of the line and delete line 13 and on line 14 at the beginning of the line delete the words and punctuation "for his detention."

AMENDMENT No. 2—

On page 4, line 12, after "Section 12." insert the following: "When any person has been arrested or detained in connection with the investigation or commission of any offense, he shall be advised fully of the reason for his arrest or detention, his right to remain silent, his right against self incrimination, his right to the assistance of counsel and, to court appointed counsel, if indigent."

On motion of Delegate Derbes the amendment was withdrawn.

Delegate Derbes sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegate Derbes to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 4, line 12 after "Section 12." delete the remainder of the line and delete line 13 and on line 14 at the beginning of the line delete the words and punctuation "for his detention."

AMENDMENT No. 2—

On page 4, line 12, after "Section 12." insert the following: "When any person has been arrested or detained in con-

nection with the investigation or commission of any offense, he shall be advised fully of the reason for his arrest or detention, his right to remain silent, his right against self incrimination, his right to the assistance of counsel and, to court appointed counsel, if indigent."

Delegate Derbes moved the adoption of the amendments.

Delegate Stinson objected.

By a vote of 100 yeas and 9 nays the amendments were adopted.

Delegate Derbes moved to reconsider the vote by which the amendments were adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Drew sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Drew to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 4, line 16, after the word and punctuation "him," delete the remainder of the line and delete lines 17 through 19, both inclusive, in their entirety

Delegate Drew moved the adoption of the amendment.

Delegate Pugh objected.

By a vote of 35 yeas and 71 nays the amendment was rejected.

Delegate Jack moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Passage

Committee Proposal No. 25, Section 12, was read as amended.

Delegate Stinson moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Fontenot	Planchard
Abraham	Fulco	Pugh
Aertker	Gauthier	Rayburn
Alario	Ginn	Reeves
Alexander	Goldman	Riecke
Asselt	Gravel	Robinson
Avant	Grier	Roemer
Badeaux	Hardee	Roy
Bel	Hayes	Sandoz
Bergeron	Heine	Schmitt
Blair	Hernandez	Singletary
Bollinger	Jack	Slay
Brien	Jackson, A.	Smith
Brown	Jackson, J.	Soniata
Burns	Jenkins	Stagg
Burson	Juneau	Stephenson
Carmouche	Kelly	Stinson
Casey	Kilpatrick	Tapper
Champagne	Lambert	Tate
Chatelain	Landrum	Thistlethwaite
Comar	Landry, E. J.	Thompson
Conino	Lanier	Toca
Conroy	LeBlau	Toomy
Corne	Leigh	Uilo
D'Gerolamo	Leihman	Velazquez
De Blieux	Lennox	Warren
Dennery	Lowe	Wattigny
Dennis	Mire	Weiss
Derbes	Munson	Willis
Dunlap	Newton	Winchester
Duval	Nunez	Zervigon
Fayard	O'Neill	
Flory	Perkins	
Total—98.		

PAGE 5

43rd Days Proceedings—September 7, 1973

NAYS		
Delegates—		
Amstutz	Kilbourne	Perez
Deshotels	Landry, A.	Sutherland
Drew	McDaniel	Tobias
Edwards	Martin	
Elkins	Ourso	
Total—13.		

ABSENT		
Delegates—		
Anzalone	Guarisco	Shannon
Berry	Haynes	Silverberg
Cannon	Kean	Vesich
Chehardy	Mauberrert	Vick
Cowen	Miller	Wall
Fowler	Rachal	Wisham
Giarrusso	Segura	Womack
Total—21.		

And the Chair declared that the above Section was passed.

Delegate Stinson moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Section 13. Initiation of Prosecution

Section 13. Prosecution of felonies shall be initiated by indictment or information, provided that no person shall be held to answer for a capital crime or a felony necessarily punishable by hard labor, except on indictment by a grand jury. No person shall be twice placed in jeopardy for the same offense, except on his own application for a new trial or when a mistrial is declared or a motion in arrest of judgment is sustained.

Read.

Delegate Burson sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Burson to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 4, line 23, place a comma “,” after the word “crime” and delete the remainder of the line and at the beginning of line 24 delete the words and punctuation “punishable by hard labor.”

Delegate Burson moved the adoption of the amendment.

Delegate Roy objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS		
Delegates—		
Abraham	Chehardy	Fulco
Aertker	Comar	Gauthier
Alario	Conino	Ginn
Alexander	Corne	Hardee
Anzalone	Cowen	Hayes
Arnette	D'Gerolamo	Heine
Badeaux	DeBlieux	Hernandez
Bergeron	Dennery	Jack
Bollinger	Dennis	Juneau
Brown	Derbes	Kean
Burns	Deshotels	Kilbourne
Burson	Drew	Lambert
Casey	Edwards	Landry, A.
Champagne	Elkins	Landry, E. J.
Chatelain	Fontenot	Lanier

Leigh	Reeves	Thistlethwaite
Leithman	Riecke	Thompson
Lennox	Robinson	Toca
Lowe	Roemer	Toomy
McDaniel	Sandoz	Ullo
Martin	Singletary	Velazquez
Miller	Slay	Vesich
Mire	Smith	Wattigny
Newton	Stagg	Weiss
Nunez	Stephenson	Willis
Ourso	Stovall	Winchester
Perez	Sutherland	Zervigon
Perkins	Tapper	
Planchard	Tate	
Total—85.		

NAYS		
Delegates—		
Asseff	Gravel	Rachal
Berry	Grier	Roy
Blair	Guarisco	Schmitt
Brien	Jackson, A.	Segura
Carmouche	Jackson, J.	Soniat
Conroy	Jenkins	Stinson
Dunlap	Landrum	Tobias
Duval	Munson	Vick
Flory	O'Neill	Warren
Goldman	Pugh	
Total—29.		

ABSENT

Delegates—		
Mr. Chairman	Giarrusso	Rayburn
Avant	Haynes	Shannon
Bel	Kelly	Silverberg
Cannon	Kilpatrick	Wall
Fayard	LeBlau	Wisham
Fowler	Mauberrert	Womack
Total—18.		

And the amendment was adopted.

Delegate Burson moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Pugh sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Gravel and Pugh to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 4, line 23, immediately after the word “for” delete the remainder of the line and insert in lieu thereof the following:

“any capital offense, or any felony in which punishment at hard labor for twenty years or more may be imposed upon conviction.”

Delegate Pugh moved the adoption of the amendment.

Delegate Lanier objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS		
Delegates—		
Abraham	DeBlieux	Hernandez
Aertker	Dennery	Jackson, A.
Alexander	Dennis	Jackson, J.
Asseff	Dunlap	Jenkins
Badeaux	Flory	Kean
Berry	Fulco	Landrum
Blair	Ginn	Landry, A. J.
Brien	Goldman	Landry, E. J.
Brown	Gravel	LeBlau
Comar	Grier	Lennox
Conroy	Guarisco	Lowe
Cowen	Hardee	Munson

Newton	Schmitt	Tate
O'Neill	Segura	Tobias
Planhard	Slay	Velazquez
Pugh	Soniatt	Vick
Rachal	Stagg	Warren
Riecke	Stinson	Weiss
Robinson	Stovall	
Roy	Tapper	
Total—58.		

YAYS

Delegates—		
Alario	Elkins	Perez
Anzalone	Fontenot	Perkins
Arnette	Gauthier	Reeves
Bergeron	Hayes	Roemer
Bollinger	Heine	Sandoz
Burns	Jack	Singletary
Burson	Juneau	Smith
Carmouche	Kelly	Stephenson
Casey	Kilbourne	Sutherland
Champagne	Lambert	Thistlethwaite
Chatelain	Lanier	Thompson
Conino	Leigh	Toomy
Corne	Leithman	Uilo
D'Gerolamo	McDaniel	Vesich
Derbes	Martin	Wattigny
Deshotels	Miller	Willis
Drew	Mire	Zervigon
Duval	Nunez	
Edwards	Ourso	
Total—55.		

ABSENT

Delegates—		
Mr. Chairman	Giarrusso	Toca
Avant	Haynes	Wall
Bel	Kilpatrick	Winchester
Cannon	Maubert	Wisham
Chehardy	Rayburn	Womack
Fayard	Shannon	
Fowler	Silverberg	
Total—19.		

And the amendment was adopted.

Delegate Pugh moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Duval sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Duval to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 4, line 25, immediately after the word and punctuation "Jury," and before the word "No" insert the following:

"No person shall be denied the right to a preliminary examination unless previously indicted by a grand jury."

Delegate Duval moved the adoption of the amendment.

Delegate Burson objected.

By a vote of 43 yeas and 66 nays the amendment was rejected.

Delegate Burson moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Delegate Burson sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Burson to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 4, delete lines 23 and 24, in their entirety, including all floor amendments previously adopted thereto, and insert in lieu thereof the following:

"and to answer for any capital crime or any crime punishable by life imprisonment, except on indictment by a grand"

Delegate Burson moved the adoption of the amendment.

Delegate Gravel objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Abraham	Elkins	Perez
Alario	Fontenot	Perkins
Anzalone	Gauthier	Planhard
Arnette	Heine	Sandoz
Badeaux	Juneau	Singletary
Bergeron	Kean	Slay
Bollinger	Lambert	Smith
Burns	Landry, A.	Stagg
Burson	Lanier	Stephenson
Carmouche	LeBlau	Sutherland
Casey	Leigh	Thistlethwaite
Champagne	Leithman	Thompson
Conino	Lennox	Toca
Cowen	Lowe	Toomy
D'Gerolamo	McDaniel	Uilo
Denney	Martin	Vesich
Derbes	Miller	Wattigny
Deshotels	Mire	Willis
Drew	Nunez	Winchester
Edwards	Ourso	
Total—59.		

NAYS

Delegates—		
Aertker	Gravel	Rachal
Alexander	Grier	Reeves
Asseff	Guarisco	Robinson
Avant	Hardee	Roemer
Berry	Hayes	Roy
Blair	Hernandez	Schmitt
Brien	Jack	Segura
Brown	Jackson, A.	Soniatt
Chatelain	Jackson, J.	Stinson
Comar	Jenkins	Stovall
Conroy	Kelly	Tate
Corne	Kilpatrick	Tobias
De Blieux	Landrum	Velazquez
Dennis	Landry, E. J.	Vick
Dunlap	Munson	Warren
Flory	Newton	Weiss
Fulco	O'Neill	Wisham
Ginn	Pugh	Zervigon
Goldman		
Total—55.		

ABSENT

Delegates—		
Mr. Chairman	Fowler	Riecke
Bel	Giarrusso	Shannon
Cannon	Haynes	Silverberg
Chehardy	Kilbourne	Tapper
Duval	Maubert	Wall
Fayard	Rayburn	Womack
Total—18.		

And the amendment was adopted.

Delegate Burson moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Passage

Committee Proposal No. 25, Section 13, was read, as amended.

Delegate A. Jackson moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Elkins	Nunez
Mr. Chairman	Flory	O'Neill
Abraham	Fontenot	Ourso
Aertker	Fulco	Perez
Alario	Gauthier	Perkins
Alexander	Ginn	Planchard
Anzalone	Goldman	Rachal
Arnette	Gravel	Reeves
Avant	Grier	Riecke
Badeaux	Hardee	Robinson
Bergeron	Hayes	Roemer
Berry	Heine	Roy
Blair	Hernandez	Sandoz
Bollinger	Jack	Segura
Brien	Jenkins	Singletary
Brown	Juneau	Slay
Burns	Kelly	Smith
Burson	Kilpatrick	Slagg
Carmouche	Lambert	Stephenson
Casey	Landry, A.	Stovall
Champagne	Landry, E. J.	Sutherland
Chatelain	Lanier	Tate
Comar	LeBlau	Thistlethwaite
Conino	Leigh	Thompson
Conroy	Leithman	Tobias
Corne	Lennox	Toomy
Cowen	Lowe	Uilo
D'Gerolamo	McDaniel	Vesich
Denery	Martin	Wattigny
Dennis	Miller	Weiss
Derbes	Mire	Willis
Deshotels	Munson	Winchester
Dunlap	Newton	Zervigon
Duval		
Edwards		
Total—100.		

NAYS

Delegates—	Jackson, J.	Velasquez
Asseff	Landrum	Vick
De Blieux	Schmitt	Warren
Drew	Soniart	Wisham
Guarisco	Stinson	
Jackson, A.		
Total—14.		

ABSENT

Delegates—	Haynes	Shannon
Bel	Kean	Silverberg
Cannon	Kilbourne	Tapper
Chehardy	Mauberrert	Toca
Fayard	Pugh	Wall
Fowler	Rayburn	Womack
Giarrusso		
Total—18.		

And the Chair declared that the above Section was passed.

Delegate A. Jackson moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Section 14. Grand Jury Proceedings

Section 14. At all stages of the grand jury proceedings, after arrest, the accused, if permitted to testify, shall have the right to the advice of counsel while testifying, to compulsory process for presenting witnesses to the grand jury for interrogation, and to the transcribed testimony of any witnesses appearing before the grand jury in his case.

Read.

Delegate Arnette sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Arnette to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 4, delete lines 29 through 32 in their entirety and on page 5, delete lines 1 through 3 in their entirety

Delegate Arnette moved the adoption of the amendment.

Delegate Lanier objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Derbes	Miller
Abraham	Deshotels	Nunez
Aertker	Drew	Perez
Alario	Duval	Planchard
Anzalone	Edwards	Sandoz
Arnette	Elkins	Singletary
Badeaux	Fontenot	Smith
Bergeron	Gauthier	Stagg
Bollinger	Grier	Sutherland
Brien	Hardee	Tapper
Burns	Heine	Tate
Burson	Hernandez	Thistlethwaite
Cannon	Juneau	Tobias
Carmouche	Kean	Toca
Casey	Landry, A.	Toomy
Champagne	Lanier	Uilo
Conino	Leigh	Wattigny
Conroy	Lennox	Weiss
Corne	Lowe	Willis
Cowen	McDaniel	Zervigon
D'Gerolamo	Martin	
Denery		
Total—62.		

NAYS

Delegates—	Haynes	Riecke
Alexander	Jackson, A.	Robinson
Asseff	Jackson, J.	Roemer
Avant	Jenkins	Roy
Berry	Kelly	Segura
Blair	Kilpatrick	Slay
Brown	Lambert	Soniart
Comar	Landrum	Stephenson
De Blieux	Landry, E. J.	Stinson
Dennis	Mire	Stovall
Dunlap	Munson	Thompson
Fulco	Newton	Velasquez
Flory	O'Neill	Vick
Ginn	Perkins	Warren
Goldman	Pugh	Winchester
Gravel	Rachal	Wisham
Guarisco		
Hayes		
Total—49.		

ABSENT

Delegates—	Jack	Reeves
Mr. Chairman	Kilbourne	Schmitt
Bel	LeBlau	Shannon
Chatelain	Leithman	Silverberg
Chehardy	Mauberrert	Vesich
Fayard	Ourso	Wall
Fowler	Rayburn	Womack
Giarrusso		
Total—21.		

And the amendment was adopted.

Delegate Arnette moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Section 15. Fair Trial

Section 15. Every person charged with a crime shall be presumed innocent until proven guilty, and shall be entitled to a speedy, public, and impartial trial in the parish where the offense or an element of the offense occurred, unless venue be changed in accordance with law. No person shall be compelled to give evidence against himself. An accused shall be entitled to confront and cross-examine the witnesses

against him, to compel the attendance of witnesses, to present a defense, and to take the stand in his own behalf.

Read.

Delegate Gravel sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Gravel to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 5, line 13, at the end of the line, add the following:

"Prior to his trial, every defendant shall be furnished with the transcribed testimony or statement, for or against him, of any witnesses appearing before any official or employee of the state or any of its political subdivisions or any grand jury which participated in any investigation of the case for which he is being prosecuted."

Delegate Gravel moved the adoption of the amendment.

Delegate Burson objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Jackson, J.	Segura
Berry	Kelly	Slay
Brien	Kilpatrick	Soniak
Corne	Landrum	Stagg
De Blieux	Landry, E. J.	Stephenson
Denney	Mire	Stinson
Dunlap	Munson	Stovall
Flory	Newton	Thompson
Fulco	Ourso	Velazquez
Goldman	Pugh	Vick
Gravel	Rachal	Warren
Guarisco	Reeves	Wisham
Hayes	Riecke	Zervigon
Haynes	Roy	
Jackson, A.	Schmitt	
Total—43.		

NAYS

Delegates—		
Abraham	Deshotels	Miller
Aertker	Drew	Nunez
Alario	Edwards	O'Neill
Anzalone	Elkins	Perkins
Arnette	Fontenot	Planchard
Asseff	Gauthier	Robinson
Avant	Grier	Roemer
Badeaux	Hardee	Sandoz
Bergeron	Hernandez	Singletary
Bollinger	Jack	Sutherland
Burns	Jenkins	Tobias
Burson	Juneau	Toca
Cannon	Kean	Toomy
Carmouche	Landry, A.	Ullio
Casey	Lanier	Vesich
Champagne	Leigh	Watigny
Comar	Leithman	Weiss
Conino	Lennox	Willis
Cowen	Lowe	Winchester
D'Gerolamo	McDaniel	
Derbes	Martin	
Total—65.		

ABSENT

Delegates—		
Alexander	Bel	Blair

Brown	Ginn	Shannon
Chatelain	Heine	Silverberg
Chelard	Kilbourne	Smith
Dennis	Lambert	Tapper
Fayard	LeBlou	Tate
Fowler	Maubert	Wall
Giarrusso	Rayburn	Womack
Total—24.		

And the amendment was rejected.

Delegate Burson moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Delegate Derbes sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Derbes to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 5, line 13, after the word "to" and before the words "in his own behalf," delete the words "take the stand" and insert in lieu thereof the word "testify"

On motion of Delegate Derbes the amendment was adopted.

Delegate Derbes moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Passage

Committee Proposal No. 25, Section 15, was read as amended.

Delegate A. Jackson moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Flory	Planchard
Abraham	Fontenot	Pugh
Aertker	Fulco	Reeves
Alario	Gauthier	Riecke
Alexander	Ginn	Robinson
Anzalone	Goldman	Roemer
Arnette	Gravel	Roy
Asseff	Grier	Sandoz
Avant	Guarisco	Schmitt
Badeaux	Hayes	Segura
Bel	Haynes	Singletary
Bergeron	Hernandez	Slay
Berry	Jack	Soniak
Blair	Jackson, A.	Stagg
Bollinger	Jenkins	Stephenson
Brien	Juneau	Stinson
Burns	Kean	Stovall
Burson	Kelly	Sutherland
Cannon	Kilpatrick	Tapper
Carmouche	Landry, A.	Tate
Casey	Landry, E. J.	Thistlethwaite
Champagne	Lanier	Thompson
Comar	Leigh	Tobias
Conino	Leithman	Toca
Conroy	Lennox	Toomy
Corne	Lowe	Ullio
D'Gerolamo	McDaniel	Velazquez
De Blieux	Martin	Vesich
Denney	Miller	Vick
Dennis	Mire	Warren
Derbes	Newton	Watigny
Deshotels	Nunez	Weiss
Dunlap	O'Neill	Willis
Duval	Perez	Winchester
Edwards	Perkins	Wisham
Elkins		Zervigon
Total—108.		

NAYS

Delegates—	
Jackson, J.	Rachal
Total—2.	

PAGE 9

43rd Days Proceedings—September 7, 1973

ABSENT

Delegates—		
Brown	Hardee	Rayburn
Chatelain	Heine	Shannon
Cheahardy	Kilbourne	Silverberg
Cowen	Lambert	Smith
Drew	Landrum	Wall
Fayard	LeBlou	Womack
Fowler	Maubert	
Giarrusso	Munson	
Total—22.		

And the Chair declared that the above Section was passed.

Delegate A. Jackson moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Motion

On motion of Delegate A. Jackson, the Convention altered the Order of Business to take up other Orders of Business at this time.

COMMITTEE NOTICE

Delegate Zervigon, Vice chair person of the Committee on Legislative Liaison and Transitional Measures, sent up the following notice:

The Committee on Legislative Liaison and Transitional Measures will meet on Wednesday, September 12, 1973, at 1:00 o'clock p.m. in Committee Room 5 and will consider the following agenda:

AGENDA

Election of the chairman of the committee and other matters relating to the work of the committee.

Respectfully submitted,

MARY ZERVIGON,
Vice-Chairperson of the Committee on
Legislative Liaison and Transitional Measures

The above notice was read in open session and publicly posted as provided by the Rules of Procedure of the Convention.

CHANGE OF MEETING TIME

Delegate Tate, chairman of the Committee on Style and Drafting, sent up the following notice:

The Committee on Style and Drafting will meet on Wednesday, September 12, 1973, at 1:30 o'clock p.m. in Committee Room 9 and will consider the following agenda:

Respectfully submitted,

ALBERT TATE, JR.,
Chairman of the Committee on
Style and Drafting

The above notice was read in open session and publicly

posted as provided by the Rules of Procedure of the Convention.

COMMITTEE NOTICE

Delegate A. Jackson, chairman of the Committee on Bill of Rights and Elections, sent up the following notice:

The Committee on Bill of Rights and Elections will meet on Thursday, September 13, 1973, at 9:00 o'clock a.m. in (Room to be announced) and will consider the following agenda:

AGENDA

To consider the delegate proposal relating to freedom from discrimination

Respectfully submitted,

ALPHONSE JACKSON, JR.,
Chairman of the Committee on
Bill of Rights and Elections

The above notice was read in open session and publicly posted as provided by the Rules of Procedure of the Convention.

COMMITTEE NOTICE

Delegate Stovall, chairman of the Committee on Rules, Credentials, and Ethics, sent up the following notice:

The Committee on Rules, Credentials and Ethics will meet on Wednesday, September 12, 1973, at 1:00 o'clock p.m. in Committee Room 10 and will consider the following agenda:

AGENDA

To consider resolutions which have been referred to the committee.

Respectfully submitted,

JAMES L. STOVALL,
Chairman of the Committee on
Rules, Credentials, and Ethics

The above notice was read in open session and publicly posted as provided by the Rules of Procedure of the Convention.

Leave of Absence

Delegate Kean— $\frac{1}{2}$ day.
Delegate Avant— $\frac{1}{2}$ day.
Delegate Rayburn— $\frac{1}{2}$ days.
Delegate Segura— $\frac{1}{2}$ day.

Adjournment

Delegate Abraham moved that the Convention do now adjourn until Saturday, September 8, 1973 at 9:00 o'clock a.m.

Which motion was agreed to.

And Chairman Henry declared the Convention adjourned to Saturday, September 8, 1973 at 9:00 o'clock a.m.

MOISE W. DENNERY
Secretary

DAVID R. POYNTER
Chief Clerk

**OFFICIAL JOURNAL
OF THE
CONSTITUTIONAL CONVENTION
OF 1973
OF THE
STATE OF LOUISIANA**

FORTY-FOURTH DAY'S PROCEEDINGS

of the Constitutional Convention of 1973
held in accordance with Act 2 of the 1972
Regular Session of the Legislature

Saturday, September 8, 1973, Baton Rouge, La.

The Convention was called to order at 9:00 o'clock a.m., by Hon. E. L. Henry, Chairman of the Convention.

ROLL CALL

The roll being called, the following delegates answered to their names:

PRESENT

Delegates—		
Mr. Chairman	Flory	Planchard
Abraham	Fontenot	Rachal
Aertker	Fulco	Reeves
Alario	Gauthier	Riecke
Alexander	Goldman	Robinson
Anzalone	Ginn	Roemer
Arnette	Gravel	Roy
Asseff	Grier	Sandoz
Avant	Guarisco	Schmitt
Badeaux	Hardee	Segura
Bergeron	Hayes	Singletary
Bollinger	Heine	Slay
Brien	Hernandez	Smith
Brown	Jack	Soniati
Burns	Jackson, A.	Stagg
Burson	Jenkins	Stephenson
Cannon	Juneau	Stinson
Casey	Kean	Stovall
Champagne	Kelly	Sutherland
Chatalein	Kilpatrick	Tapper
Chehardy	Lambert	Tate
Comar	Landrum	Thistlethwaite
Conino	Landry, A.	Thompson
Conroy	Landry, E. J.	Tobias
Corne	Lanier	Toca
Cowen	LeBlau	Toomy
D'Gerolamo	Leigh	Ullio
De Blieux	Leithman	Velazquez
Dennery	Lennox	Vesich
Dennis	Lowe	Vick
Derbes	McDaniel	Warren
Deshotels	Martin	Wattigny
Drew	Mire	Weiss
Dunlap	Munson	Willis
Duval	Newton	Winchester
Edwards	O'Neil	Wisham
Elkins	Ourso	Zervigon
Fayard	Perez	
Total—113.		

ABSENT

Delegates—		
Bel	Jackson, J.	Rayburn
Berry	Kilbourne	Shannon
Blair	Mauberret	Silverberg
Carmouche	Miller	Wall
Fowler	Nunez	Womack
Giarrusso	Perkins	
Haynes	Pugh	
Total—19.		

The Chairman announced that there were 113 members present and a quorum.

Prayer

Prayer was offered by Delegate Brien.

Pledge of Allegiance

Delegate Heine led the Convention in reciting the Pledge of Allegiance to the Flag of the United States of America.

Reading of the Journal

On motion of Delegate Avant, the reading of the Journal was dispensed with.

On motion of Delegate Avant, the Journal of yesterday was adopted.

Regular Order

Unfinished Business

The following unfinished business in which the Convention was engaged at the time of its adjournment on yesterday was taken up and acted on:

Proposals

Delegate and Committee

The following entitled Delegate and Committee Proposals were taken up on their third reading and final passage:

COMMITTEE PROPOSAL No. 25—

Introduced by Delegate A. Jackson, Chairman, Committee on Bill of Rights and Elections (Substitute for Committee Proposal No. 2, by Delegate A. Jackson, Chairman, on behalf of the Committee on Bill of Rights and Elections, and Delegates Dunlap, Guarisco, Jenkins, Roy, Soniat, Stinson, Vick, Wall and Weiss):

A PROPOSAL

To provide a preamble and a declaration of rights to the constitution.

Read.

The chairman announced that the Convention had under consideration Committee Proposal No. 25 when it adjourned on Friday, September 7, 1973, which was taken up and acted upon as follows:

Section 16. Trial by Jury in Criminal Cases

Section 16. Any person charged with an offense or set of offenses punishable by imprisonment of more than six months may demand a trial by jury. In cases involving a crime necessarily punishable by hard labor, the jury shall consist of twelve persons, all of whom must concur to render a verdict in capital cases or cases in which no parole or probation is permitted, and ten of whom must agree in others. In cases not necessarily punishable by hard labor, the jury may consist of a smaller number of persons, all of whom must concur to render a verdict. The accused shall have the right to voir dire and to challenge jurors peremptorily.

Read.

On motion of Delegate A. Jackson action on the above Section was deferred at this time.

Section 17. Right to Bail

Section 17. Excessive bail shall not be required. Before and during a trial, a person shall be bailable by sufficient sureties, unless charged with a capital offense and the proof is evident and the presumption is great. After conviction and before sentencing, a person shall be bailable if the maximum sentence which may be imposed is less than five years, and the judge may grant bail if the maximum sentence which may be imposed is greater. After sentencing and until final judgment, persons shall be bailable if the sentence actually imposed is less than five years, and the judge may grant bail if the sentence actually imposed is greater.

Read.

Delegate Gravel sent up a floor amendment, which was read as follows:

PAGE 2

44th Days Proceedings—September 8, 1973

FLOOR AMENDMENT

Amendment proposed by Delegate Gravel to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 5, line 31 after the word "presumption" and before the words "is great" insert the words "of guilt"

On motion of Delegate Gravel the Amendment was adopted.

Delegate Gravel moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Gravel sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates Gravel and Burson to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 6, delete lines 1 through 7, both inclusive in their entirety and insert in lieu thereof the following: "the maximum sentence which may be imposed is imprisonment of five years or less. The judge may grant bail if the maximum sentence which may be imposed is imprisonment in excess of five years. After sentencing and until final judgment, persons shall be bailable if the sentence actually imposed is five years or less and the judge in his discretion may grant bail if the sentence actually imposed is in excess of five years imprisonment."

Delegate Gravel moved the adoption of the amendment.

Delegate Alario objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Elkins	Mire
Abraham	Flory	Munson
Aertker	Fontenot	O'Neill
Alexander	Fulco	Ours
Anzalone	Gauthier	Perez
Arnette	Ginn	Planchar
Asseff	Goldman	Rachal
Avant	Gravel	Reeves
Badeaux	Grier	Riecke
Bergeron	Hardee	Robinson
Brien	Hayes	Roy
Brown	Heine	Sandoz
Burns	Hernandez	Stagg
Burson	Jack	Stephenson
Casey	Jackson, A.	Segura
Champagne	Jenkins	Singletery
Chatelain	Juneau	Slay
Chehardy	Kean	Smith
Comar	Kilpatrick	Soniat
Conroy	Lennox	Stagg
Cowen	Landry, A.	Stinson
D'Gerolamo	Landry, E. J.	Stovall
De Blieux	Lanier	Sutherland
Dennerly	LeBlau	Tapper
Deshotels	Leigh	Tate
Dunlap	Leithman	Thistlethwaite
Duval	Lennox	Thompson
Edwards	Low	Tobias
	McDaniel	Toca
	Martin	Toomy

Uilo	Warren	Winchester
Velazquez	Wattigny	Wisham
Vesich	Weiss	Zervigon
Vick	Willis	

Total—101.

NAYS

Delegates—	Bollinger	Roemer
Alario		
Total—3.		

ABSENT

Delegates—		
Bel	Giarrusso	Nunez
Berry	Guarisco	Perkins
Blair	Haynes	Pugh
Cannon	Jackson, J.	Rayburn
Carmouche	Kelly	Shannon
Corne	Kilbourne	Silverberg
Dennis	Lambert	Wall
Derbes	Maubert	Wemack
Fayard	Miller	
Fowler	Newton	
Total—28.		

And the amendment was adopted.

Delegate Gravel moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Passage

Committee Proposal No. 25, Section 17, was read as amended.

Delegate A. Jackson moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Flory	Riecke
Abraham	Fontenot	Robinson
Aertker	Fulco	Roemer
Alario	Gauthier	Roy
Alexander	Ginn	Sandoz
Anzalone	Goldman	Schmitt
Arnette	Gravel	Segura
Asseff	Grier	Singletery
Avant	Hardee	Slay
Badeaux	Hayes	Smith
Bergeron	Heine	Soniat
Bollinger	Hernandez	Stagg
Brien	Jack	Stephenson
Brown	Jackson, A.	Stinson
Burns	Jenkins	Stovall
Burson	Juneau	Sutherland
Casey	Kean	Tapper
Champagne	Kilpatrick	Tate
Chatelain	Landry, A.	Thistlethwaite
Chehardy	Landry, E. J.	Thompson
Comar	Lanier	Tobias
Conino	LeBlau	Toca
Cowen	Leigh	Toomy
D'Gerolamo	Lennox	Uilo
De Blieux	Low	Velazquez
Dennerly	McDaniel	Vesich
Dennis	Martin	Vick
Derbes	Mire	Warren
Deshotels	Munson	Wattigny
Dunlap	O'Neill	Weiss
Duval	Ours	Willis
Edwards	Perez	Winchester
Elkins	Planchar	Wisham
	Rachal	Zervigon
	Reeves	
Total—104.		

NAYS

Delegates—		
Bel	Carmouche	Giarrusso
Berry	Corne	Guarisco
Blair	Fayard	Haynes
Cannon	Fowler	Jackson, J.

Total—0.

ABSENT

PAGE 3

44th Days Proceedings—September 8, 1973

Kelly	Miller	Shannon
Kilbourne	Newton	Silverberg
Lambert	Nunez	Wall
Landrum	Perkins	Womack
Leithman	Pugh	
Mauberrert	Rayburn	
Total—28.		

And the Chair declared that the above Section was passed.

Delegate A. Jackson moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Motion

On motion of Delegate Lanier, the Convention altered the Order of Business to take up Committee Proposal No. 25, Section 16, at this time.

Section 16. Trial by Jury in Criminal Cases

Section 16. Any person charged with an offense or set of offenses punishable by imprisonment of more than six months may demand a trial by jury. In cases involving a crime necessarily punishable by hard labor, the jury shall consist of twelve persons, all of whom must concur to render a verdict in capital cases or cases in which no parole or probation is permitted, and ten of whom must agree in others. In cases not necessarily punishable by hard labor, the jury may consist of a smaller number of persons, all of whom must concur to render a verdict. The accused shall have the right to voir dire and to challenge jurors peremptorily.

Read.

The above Section upon which action was deferred on Saturday, September 8, 1973, was taken up and acted upon as follows:

Delegate Lanier sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates Lanier, Bergeron, Mr. Chairman, Abraham, Aertker, Alario, Alexander, Anzalone, Wattigny, Arnette, Avant, Badeaux, Bollinger, Brien, Burns, Burson, Champagne, Chatelein, Chehardy, Conino, Conroy, Cowen, D'Gerolamo, Dunlap, Duval, Flory, Fontenot, Gauthier, Grier, Hardee, Hernandez, Jack, Juneau, Kean, Kilpatrick, A. Landry, E. J. Landry, Leithman, Lowe, Martin, Mire, Munson, Newton, O'Neill, Ourso, Rachal, Robinson, Roemer, Roy, Sandoz, Schmitt, Segura, Slay, Smith, Stinson, Stovall, Sutherland, Thistlethwaite, Thompson, Toca, Toomy, Goldman, Ulio, Velazquez, Weiss, Willis and Wisham to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 5, delete lines 15 through 26 both inclusive, in their entirety and insert in lieu thereof the following:

"Section 16. Criminal cases in which the punishment may be capital shall be tried before a jury of twelve persons, all of whom must concur to render a verdict; cases in which the punishment is necessarily confinement at hard labor shall be tried before a jury of twelve persons, ten of whom must concur to render a verdict. Cases in which the punishment may be confinement at hard labor or confinement without hard labor of more than six months, shall be tried before a jury of six persons, five of whom must concur to render a verdict. Except in capital cases, a defendant may knowingly and intelligently waive his right to a trial by jury. In all criminal prosecutions tried by a jury the accused shall have the right to full voir dire examination of prospective jurors and to challenge jurors peremptorily. The number of challenges shall be fixed by law."

Delegate Lanier moved the adoption of the amendment.

Delegate Asseff objected.

By a vote of 99 yeas and 5 nays the amendment was adopted.

Delegate Lanier moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Passage

Committee Proposal No. 25, Section 16, was read as amended.

Delegate A. Jackson moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Gauthier	Riecke
Abraham	Ginn	Robinson
Aertker	Goldman	Roemer
Alario	Gravel	Roy
Alexander	Grier	Sandoz
Anzalone	Hardee	Schmitt
Arnette	Hayes	Segura
Avant	Heine	Singletary
Badeaux	Hernandez	Slay
Bergeron	Jack	Smith
Bollinger	Jackson, A.	Soniat
Brien	Jenkins	Stagg
Juneau	Juneau	Stephenson
Kean	Kean	Stinson
Kilpatrick	Kilpatrick	Stovall
Lambert	Lambert	Sutherland
Landrum	Landrum	Tapper
Chatelein	Landry, A.	Tate
Chehardy	Landry, E. J.	Thistlethwaite
Comar	Lanier	Thompson
Conino	LeBleu	Tobias
Conroy	Leigh	Toca
Cowen	Leithman	Toomy
D'Gerolamo	Lennox	Ulio
De Blieux	Lowe	Velazquez
Dennery	McDaniel	Vesich
Dennis	Martin	Vick
Derbes	Mire	Warren
Dunlap	Munson	Wattigny
Duval	O'Neill	Weiss
Edwards	Ourso	Willis
Elkins	Perez	Winchester
Flory	Planchard	Wisham
Fontenot	Rachal	Zervigon
Fulco	Reeves	
Total—104.		

NAYS

Delegates—		
Asseff	Deshotels	Drew
Total—3.		

ABSENT

Delegates—		
Bel	Guarisco	Perkins
Berry	Haynes	Pugh
Blair	Jackson, J.	Rayburn
Cannon	Kelly	Shannon
Carrouche	Kilbourne	Silverberg
Corne	Mauberrert	Wall
Fayard	Miller	Womack
Fowler	Newton	
Giarrusso	Nunez	
Total—25.		

And the Chair declared that the above Section was passed.

Delegate A. Jackson moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Motion

On motion of Delegate Perez the rules were suspended in order to call a meeting of the Committee on Local and Parochial Government without giving the required 24 hours notice.

PAGE 4

44th Days Proceedings—September 8, 1973

Unfinished Business, Resumed

The following unfinished business in which the Convention was engaged at the time of its adjournment on yesterday was taken up and acted on:

Proposals Delegate and Committee

The following entitled Delegate and Committee Proposals were taken up on their third reading and final passage:

COMMITTEE PROPOSAL No. 25—

Introduced by Delegate A. Jackson, Chairman, Committee on Bill of Rights and Elections (Substitute for Committee Proposal No. 2, by Delegate A. Jackson, Chairman, on behalf of the Committee on Bill of Rights and Elections, and Delegates Dunlap, Guarisco, Jenkins, Roy, Soniat, Stinson, Vick, Wall and Weiss):

A PROPOSAL

To provide a preamble and a declaration of rights to the constitution.

Read.

Section 18. Right to Humane Treatment

Section 18. No person shall be subjected to euthanasia, torture, or cruel, unusual, or excessive punishments or treatments, and full rights shall be restored by termination of state or federal supervision for any offense.

Read.

Delegate Dennery sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Dennery to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 6, delete line 10 in its entirety and at the beginning of line 11 delete the word and punctuation "treatments," and insert in lieu thereof the following: "torture, or cruel, excessive or unusual punishment,"

On motion of Delegate Dennery the amendment was adopted.

Delegate Dennery moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Zervigon sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Zervigon to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 6, line 9, immediately after the word "to" delete the remainder of the line

Delegate Zervigon moved the adoption of the amendment.

Delegate Jenkins objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—
Abraham Aertker Alario

[240]

Arnette	Fayard	Martin
Avant	Flory	Mire
Brown	Fulco	Orso
Burson	Gauthier	Rachal
Casey	Gravel	Roemer
Champagne	Grier	Sandoz
Chatelain	Hardee	Singletary
Conino	Heine	Smith
Conroy	Hernandez	Stephenson
Cowen	Jack	Sutherland
Dennery	Juneau	Tate
Dennis	Kean	Thistlethwaite
Derbes	Landry, A.	Toomy
Deshotels	Lanier	Uilo
Drew	LeBleu	Vick
Dunlap	Leigh	Wattigny
Duval	Leithman	Willis
Edwards	Lowe	Winchester
Elkins	McDaniel	Zervigon
Total—60.		

Delegates—

Alexander	Goldman
Anzalone	Guarisco
Asseff	Hayes
Badeaux	Jackson, A.
Bergeron	Jenkins
Bollinger	Kelly
Brien	Kilpatrick
Burns	Lambert
Cannon	Landrum
Comar	Landry, E. J.
Corne	Lennox
D'Gerolamo	O'Neill
De Blieux	Planchard
Fontenot	Reeves
Ginn	Riecke
Total—45.	

NAYS

Roy
Slay
Soniat
Stagg
Stinson
Stovall
Tapper
Thompson
Tobias
Toca
Velazquez
Vesich
Warren
Weiss
Wisham

ABSENT

Delegates—	
Mr. Chairman	Jackson, J.
Bel	Kilbourne
Berry	Maubert
Blair	Miller
Carmouche	Munson
Chehardy	Newton
Fowler	Nunez
Giarrusso	Perez
Haynes	Perkins
Total—27.	

And the amendment was adopted.

Delegate Zervigon moved to reconsider the vote by which the amendment was adopted, and on her own motion, the motion to reconsider was laid on the table.

Delegate Jack sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Jack to Committee Proposal No. 25 by Delegate A. Jackson, et al.

AMENDMENT No. 1—

On page 6, line 11, immediately after the word "punishment" added by Convention Floor Amendment No. 1 proposed by Mr. Dennery and adopted by the Convention on September 8, 1973, change the comma "," to a period "." and delete line 11 and line 12 in their entirety.

Motion

Delegate Jack suggested the absence of a quorum.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

PRESENT

Delegates—	
Mr. Chairman	Alexander
Abraham	Anzalone
Arnette	Asseff

PAGE 5

44th Days Proceedings—September 8, 1973

Avant	Gravel	Riecke
Badeaux	Grier	Robinson
Bergeron	Guarisco	Roemer
Brien	Hardee	Roy
Brown	Hayes	Sandoz
Burns	Heine	Schmitt
Burson	Hernandez	Singletary
Cannon	Jack	Slay
Casoy	Jackson, A.	Smith
Champagne	Jenkins	Soniati
Chatelain	Juneau	Stagg
Chehardy	Kean	Stinson
Comar	Kelly	Stovall
Conino	Lambert	Sutherland
Conroy	Landrum	Tapper
Corne	Landry, A.	Tate
D'Gerolamo	Landry, E. J.	Thistlethwaite
De Blieux	Lanier	Tobias
Dennerly	LeBlau	Toca
Dennis	Leigh	Uilo
Derbes	Leithman	Velazquez
Deshotels	Lennox	Vesich
Drew	Lowe	Vick
Dunlap	McDaniel	Warren
Edwards	Martin	Wattigny
Elkins	Mire	Weiss
Fayard	O'Neill	Willis
Flory	Ours	Winchester
Fulco	Planchard	Wisham
Gauthier	Rachal	Zerzigon
Goldman	Reeves	
Total—98.		

ABSENT

Delegates—		
Aertker	Ginn	Perkins
Alario	Haynes	Pugh
Bel	Jackson, J.	Rayburn
Berry	Kilbourne	Segura
Blair	Kilpatrick	Shannon
Bollinger	Mauberrert	Silverberg
Carmouche	Miller	Stephenson
Cowan	Munson	Thompson
Duval	Newton	Toomy
Fontenot	Nunez	Wall
Fowler	Perez	Womack
Giarrusso		
Total—34.		

And the Chairman announced that there were 98 members present and a quorum.

Delegate Jack moved the adoption of the amendment.

Delegate Roy objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Arnette	Hernandez	McDaniel
Asseff	Jack	Sandoz
Badeaux	Kean	Singletary
Drew	Landry, A.	Smith
Elkins	Lanier	Stinson
Fayard	Leigh	Sutherland
Fulco	Lennox	Thistlethwaite
Grier	Lowe	Winchester
Total—24.		

NAYS

Delegates—		
Abraham	Burson	Comar
Alexander	Cannon	Conroy
Avant	Casoy	Corne
Bergeron	Champagne	Cowan
Brien	Chatelain	D'Gerolamo
Brown	Chehardy	

De Blieux	Kilpatrick	Stagg
Dennerly	Lambert	Stephenson
Dennis	Landrum	Stovall
Derbes	Landry, E. J.	Tapper
Dunlap	Leithman	Tate
Flory	Martin	Tobias
Gauthier	Mire	Toca
Ginn	O'Neill	Uilo
Goldman	Ours	Velazquez
Gravel	Planchard	Vesich
Guarisco	Rachal	Vick
Hardee	Reeves	Warren
Hayes	Riecke	Wattigny
Heine	Robinson	Weiss
Jackson, A.	Roemer	Willis
Jenkins	Roy	Wisham
Juneau	Slay	Zerzigon
Kelly	Soniati	
Total—71.		

ABSENT

Delegates—		
Mr. Chairman	Fontenot	Perez
Aertker	Fowler	Perkins
Alario	Giarrusso	Pugh
Anzalone	Haynes	Rayburn
Bel	Jackson, J.	Schmitt
Berry	Kilbourne	Segura
Blair	LeBlau	Shannon
Bollinger	Mauberrert	Silverberg
Burns	Miller	Thompson
Carmouche	Munson	Toomy
Deshotels	Newton	Wall
Duval	Nunez	Womack
Edwards		
Total—37.		

And the amendment was rejected.

Delegate Roy moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Delegate Roy sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegate Roy, on behalf of the Committee on Bill of Rights and Elections to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—
Strike out Convention Floor Amendment No. 1 proposed by Mr. Dennerly and adopted by the Convention on September 8, 1973.

AMENDMENT No. 2—
On page 6, delete lines 9 and 10 in its entirety and at the beginning of line 11, strike out the words and punctuation "treatments," and insert in lieu thereof the following:
"Section 18. No law shall subject any person to euthanasia, torture, cruel, excessive, or unusual punishments."

Delegate Weiss moved the adoption of the amendment.

Delegate Lanier objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Alexander	Cannon	Flory
Asseff	Champagne	Fulco
Avant	Chehardy	Gauthier
Badeaux	Comar	Ginn
Bergeron	Corne	Goldman
Bollinger	D'Gerolamo	Guarisco
Brien	De Blieux	Hayes
Brown	Dennerly	Heine
Burns	Drew	Jackson, A.
Burson	Duval	Jenkins

PAGE 6

44th Days Proceedings—September 8, 1973

Kean	Planchard	Tobias
Kelly	Reeves	Toca
Kilpatrick	Riecke	Velazquez
Lambert	Robinson	Vesich
Landry, E. J.	Roy	Vick
LeBleu	Slay	Warren
Lennox	Soniart	Weiss
Lowe	Stinson	Winchester
O'Neill	Stovall	Wisham
Ourso	Tapper	

Total—59.

NAYS

Delegates—		
Abraham	Gravel	Roemer
Anzalone	Grier	Sandoz
Arnette	Hardee	Singletary
Casey	Hernandez	Smith
Chatelain	Jack	Stagg
Conino	Juneau	Stephenson
Conroy	Landry, A.	Sutherland
Coven	Lanier	Thistlethwaite
Derbes	Leigh	Uilo
Deshotels	Leithman	Wattigny
Dunlap	Mire	Willis
Edwards	Newton	Zervigon
Fayard	Rachal	

Total—38.

ABSENT

Delegates—		
Mr. Chairman	Haynes	Pugh
Aerker	Jackson, J.	Rayburn
Alario	Kilbourne	Schmitt
Bel	Landrum	Segura
Berry	McDaniel	Shannon
Blair	Martin	Silverberg
Carmouche	Mauberrert	Tate
Dennis	Miller	Thompson
Elkins	Munson	Toomy
Fontenot	Nunez	Wall
Fowler	Perez	Womack
Giarrusso	Perkins	

Total—35.

And the amendment was adopted.

Delegate Weiss moved to reconsider the vote by which the amendments were adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Drew sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Drew to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 6, line 11 immediately after the word "restored" and before the word "by" insert the words "for any first offender"

Delegate Drew moved the adoption of the amendment.

Delegate Roy objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Anzalone	Bollinger	Champagne
Arnette	Brien	Comar
Asseff	Burns	Conino
Badeaux	Burson	Corne
Bergeron	Cannon	Cowen

D'Gerolamo	Hernandez	Riecke
Deshotels	Jack	Robinson
Drew	Kean	Singletary
Dunlap	Lambert	Smith
Duval	Landry, A.	Stagg
Edwards	Lanier	Stephenson
Fayard	Leigh	Stinson
Fontenot	Leithman	Sutherland
Fulco	Lennox	Thistlethwaite
Grier	Martin	Wattigny
Hardee	Mire	Weiss
Hayes	Ourso	Willis
Heine	Rachal	Winchester

Total—54.

NAYS

Delegates—		
Adraham	Guarisco	Roy
Alexander	Jackson, A.	Slay
Brown	Jenkins	Soniart
Casey	Juneau	Stovall
Chatelain	Kelly	Tapper
Chehardy	Kilpatrick	Tobias
Conroy	Landrum	Uilo
De Blieux	Landry, E. J.	Velazquez
Denery	Lowe	Vesich
Flory	Newton	Vick
Gauthier	O'Neill	Warren
Ginn	Planchard	Wisham
Goldman	Reeves	Zerzigon
Gravel	Roemer	

Total—41.

ABSENT

Delegates—		
Mr. Chairman	Haynes	Rayburn
Aerker	Jackson, J.	Sandoz
Alario	Kilbourne	Schmitt
Avant	LeBleu	Segura
Bel	McDaniel	Shannon
Berry	Mauberrert	Silverberg
Blair	Miller	Tate
Carmouche	Munson	Thompson
Dennis	Nunez	Toca
Derbes	Perez	Toomy
Elkins	Perkins	Wall
Fowler	Pugh	Womack
Giarrusso		

Total—37.

And the amendment was adopted.

Delegate Drew moved to reconsider the vote by which the amendment was adopted, and to lay the motion to reconsider on the table.

Delegate Roy objected to tabling the motion to reconsider.

By a vote of 52 yeas and 44 nays the motion to reconsider was tabled.

Delegate Derbes sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegate Derbes to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 6, in Floor Amendment No. 1 proposed by Delegates Roy, et al., and adopted by the Convention on September 8, 1973, immediately after the word "punishment" at the end of said amendment, strike out the comma "," and insert in lieu thereof a period "." and insert immediately thereafter the following:

"Full rights of citizenship shall be restored upon termination of state and federal supervision following conviction for any offense."

AMENDMENT No. 2—

On page 6, strike out lines 11 and 12 in their entirety including Convention Floor Amendment No. 1 proposed by Mr. Drew and adopted by the Convention of September 8, 1973.

Delegate Derbes moved the adoption of the amendments.

Delegate Drew objected.

PAGE 7

44th Days Proceedings—September 8, 1973

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result.

YEAS

Delegates—		
Mr. Chairman	Duval	Reeves
Abraham	Edwards	Riecke
Aertker	Flory	Roemer
Alexander	Fulco	Roy
Annette	Gauthier	Sandoz
Avant	Ginn	Schmitt
Badeaux	Goldman	Singletary
Bergeron	Gravel	Slay
Bollinger	Guarisco	Soniat
Brien	Hardee	Stagg
Brown	Hayes	Stephenson
Burson	Heine	Stovall
Casey	Jackson, A.	Tapper
Champagne	Jenkins	Tate
Chatelain	Juneau	Thistlethwaite
Chehardy	Kelly	Tobias
Comar	Kilpatrick	Toca
Conino	Landrum	Uilo
Conroy	Landry, E. J.	Velazquez
Corne	Leithman	Vesich
Cowen	Lowe	Vick
D'Gerolamo	Mire	Warren
De Blieux	Newton	Wattigny
Dennery	O'Neill	Willis
Dennis	Ouro	Winchester
Derbes	Planchard	Wisham
Deshotels	Rachal	Zerzigon
Total—81.		

NAYS

Delegates—		
Anzalone	Hernandez	McDaniel
Asseff	Jack	Martin
Burns	Kean	Robinson
Cannon	Landry, A.	Smith
Drew	Lanier	Stinson
Elkins	LeBleu	Sutherland
Fontenot	Leigh	Weiss
Grier	Lennox	
Total—23.		

ABSENT

Delegates—		
Alario	Jackson, J.	Rayburn
Bel	Kilbourne	Segura
Berry	Lambert	Shannon
Blair	Mauberrert	Silverberg
Carmouche	Miller	Thompson
Dunlap	Munson	Toomy
Fayard	Nunez	Wall
Fowler	Perez	Womack
Giarrusso	Perkins	
Haynes	Pugh	
Total—28.		

And the amendments were adopted.

Delegate Gravel moved to reconsider the vote by which the amendments were adopted, and on his own motion, the motion to reconsider was laid on the table.

Passage

Committee Proposal No. 25, Section 18, was read, as amended.

Delegate Roy moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Abraham	Alexander

Anzalone	Ginn	Robinson
Arnette	Goldman	Roemer
Asseff	Gravel	Roy
Avant	Grier	Sandoz
Badeaux	Guarisco	Schmitt
Bergeron	Hayes	Singletary
Bollinger	Heine	Slay
Brien	Jackson, A.	Smith
Brown	Jenkins	Soniat
Burns	Juneau	Stagg
Burson	Kean	Stephenson
Cannon	Kelly	Stovall
Casey	Kilpatrick	Tapper
Champagne	Landrum	Tate
Chatelain	Landry, E. J.	Tobias
Chehardy	LeBleu	Toca
Comar	Leigh	Uilo
Conino	Leithman	Velazquez
Corne	Lennox	Vesich
D'Gerolamo	Lowe	Vick
De Blieux	Low	Warren
Dennery	Mire	Wattigny
Derbes	Newton	Weiss
Dunlap	O'Neill	Willis
Duval	Ouro	Winchester
Edwards	Planchard	Wisham
Elkins	Rachal	Zerzigon
Fulco	Reeves	
Gauthier	Riecke	
Total—88.		

NAYS

Delegates—		
Aertker	Fontenot	Martin
Conroy	Hardee	Stinson
Cowen	Hernandez	Sutherland
Deshotels	Jack	Thistlethwaite
Drew	Lanier	
Elkins	McDaniel	
Total—16.		

ABSENT

Delegates—		
Alario	Jackson, J.	Rayburn
Bel	Kilbourne	Segura
Berry	Lambert	Shannon
Blair	Mauberrert	Silverberg
Carmouche	Miller	Thompson
Dennis	Munson	Toomy
Fayard	Nunez	Wall
Fowler	Perez	Womack
Giarrusso	Perkins	
Haynes	Pugh	
Total—28.		

And the Chair declared that the above Section was passed.

Delegate Roy moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Section 19. Right to Vote

Section 19. No person eighteen years of age or older who is a citizen and resident of the state shall be denied the right to register and to vote, except that this right may be suspended while a person is interdicted and judicially declared mentally incompetent, or under an order of imprisonment for conviction of a felony.

Read.

Delegate A. Landry sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates A. Landry, Badeaux, Lanier, Bollinger, Bel, Martin, Burns, Willis, Duval, Toomy, Roemer, Segura, Ouro, and Landrum to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 6, delete lines 14 through 16, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 19. Every citizen of the state, upon reaching

OFFICIAL JOURNAL
OF THE
**CONSTITUTIONAL CONVENTION
OF 1973**
OF THE
STATE OF LOUISIANA

FORTY-FIFTH DAYS PROCEEDINGS

of the Constitutional Convention of 1973
held in accordance with Act 2 of the 1972
Regular Session of the Legislature

Wednesday, September 12, 1973, Baton Rouge, La.

The Convention was called to order at 9:00 o'clock a.m., by
Hon. E. L. Henry, Chairman of the Convention.

ROLL CALL

The roll being called, the following delegates answered to
their names:

PRESENT

Delegates—		
Mr. Chairman	O'Neill	Perez
Abraham	Fowler	Perkins
Alario	Fulco	Planchard
Alexander	Gauthier	Rayburn
Anzalone	Ginn	Reeves
Arnette	Goldman	Robinson
Asseff	Gravel	Roemer
Avant	Grier	Roy
Badeaux	Guarisco	Sandoz
Bel	Hayes	Schmitt
Bergeron	Heine	Segura
Berry	Hernandez	Singletary
Blair	Jack	Smith
Bollinger	Jack Jackson, A.	Soniati
Brien	Jenkins	Stagg
Brown	Juneau	Stephenson
Burns	Kean	Stovall
Burson	Kelly	Sutherland
Cannon	Kilbourne	Tapper
Carmouche	Kilpatrick	Tate
Casey	Lambert	Thistlethwaite
Champagne	Landrum	Tobias
Chatelain	Landry, A.	Toca
Comar	Landry, E. J.	Toomy
Conino	Lanier	Uilo
Conroy	LeBlau	Velazquez
Corne	Leight	Vesich
Cowen	Lennox	Vick
D'Gerolamo	Lowe	Wall
De Blieux	McDaniel	Warren
Dennis	Martin	Wattign
Deshotels	Maubert	Weiss
Drew	Miller	Willis
Dunlap	Mire	Winchester
Duval	Munson	Wisham
Elkins	Newton	Zervigon
Flory	Nunez	
Fontenot	Ours	
Total—112.		

ABSENT

Delegates—		
Aerker	Hardee	Riecke
Chehardy	Haynes	Silverberg
Derbes	Jackson, J.	Slay
Denery	Leithman	Stinson
Edwards	Pugh	Thompson
Fayard	Rachal	Womack
Giarrusso	Shannon	
Total—20.		

The Chairman announced that there were 112 members
present and a quorum.

Prayer

Prayer was offered by Delegate Landrum.

Pledge of Allegiance

Delegate Conroy led the Convention in reciting the Pledge
of Allegiance to the Flag of the United States of America.

Reading of the Journal

On motion of Delegate Reeves, the reading of the Journal
was dispensed with.

On motion of Delegate Reeves, the Journal of yesterday
was adopted.

Morning Hour

Resolutions on Second Reading and Referral

The following entitled Committee and Delegate Resolutions
on second reading to be referred to Committees were taken
up, read, and referred to Committees, as follows:

DELEGATE RESOLUTION No. 48—

Introduced by Delegate Alexander:

A RESOLUTION

To amend the Standing Rules of the Constitutional Convention
to add a new Rule No. 30.1.

Read.

Under the rules the above Resolution was referred to the
Committee on Rules, Credentials and Ethics.

Unfinished Business

The following unfinished business in which the Convention
was engaged at the time of its adjournment on yesterday
was taken up and acted on:

**Proposals
Delegate and Committee**

The following entitled Delegate and Committee Proposals
were taken up on their third reading and final passage:

COMMITTEE PROPOSAL No. 25—

Introduced by Delegate A. Jackson, Chairman, Committee
on Bill of Rights and Elections (Substitute for Committee
Proposal No. 2, by Delegate A. Jackson, Chairman, on behalf
of the Committee on Bill of Rights and Elections, and Dele-
gates Dunlap, Guarisco, Jenkins, Roy, Soniat, Stinson, Vick,
Wall and Weiss):

A PROPOSAL

To provide a preamble and a declaration of rights to the
constitution.

Read.

The Chairman announced that the Convention had under
consideration Committee Proposal No. 25 when it adjourned
on Saturday, September 8, 1973, which was taken up and
acted upon as follows:

Section 20. Right to Keep and Bear Arms

Section 20. The right of each citizen to keep and bear
arms shall not be abridged, but this provision shall not pre-
vent the passage of laws to prohibit the carrying of con-
cealed weapons.

Read.

Delegate Avant sent up floor amendments, which were read
as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegates Avant, Burson, Thomp-
son, Ours, Munson, A. Landry, Sandoz, Lanier, Ginn, Drew,
Edwards, O'Neill, Jenkins, LeBlau, Elkins, Thistlethwaite,
Heine, Bollinger, Robinson, McDaniel, Martin, Hardee, Co-
wen, Juneau, Landry, Chatelain, Anzalone and Kelly to Com-
mittee Proposal No. 25 by Delegate Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 6, line 23, after the words "carrying of" delete

PAGE 2

45th Day's Proceedings—September 12, 1973

"con—" and delete line 24 in its entirety and insert in lieu thereof the following:
"weapons concealed on the person."

AMENDMENT No. 2—

On page 6, at the end of line 24, add the following sentence:

"No law shall require the licensing or registration or impose special taxation on the ownership or possession of firearms or ammunition."

On motion of Delegate Avant a division of the question was ordered.

Delegate Avant moved the adoption of Amendment No. 1. Delegate Stovall objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Fontenot	Newton
Mr. Chairman	Fowler	Nunez
Abraham	Gauthier	O'Neill
Alario	Ginn	Perez
Anzalone	Goldman	Planchard
Arnette	Grier	Rayburn
Asseff	Guarisco	Reeves
Avant	Hayes	Robinson
Badeaux	Bel	Roy
Bel	Hernandez	Singletary
Bergeron	Jenkins	Smith
Berry	Juneau	Slagg
Blair	Kean	Stephenson
Bollinger	Kelly	Sutherland
Brown	Kilbourne	Tapper
Burns	Kilpatrick	Thistlethwaite
Cannon	Landry, A.	Toca
Champagne	Landry, E. J.	Toomy
Chatalein	Lanier	Ullo
Conroy	Leigh	Vesich
Corne	Lennox	Wattigny
Cowen	Lowe	Willis
D'Gerolamo	Martin	Winchester
Deshotels	Maubert	Wisham
Dunlap	Miller	
Duval	Mire	
Elkins	Munson	
Flory		
Total—79.		

NAYS

Delegates—	Landrum	Velazquez
Alexander	Perkins	Vick
Brien	Schmitt	Warren
Burson	Soniat	Weiss
Casey	Stovall	Zervigon
Comar	Tate	
De Blieux	Tobias	
Gravel		
Total—19.		

ABSENT

Delegates—	Hardee	Riecke
Aertker	Haynes	Roemer
Carmouche	Jack	Segura
Chehardy	Jackson, A.	Shannon
Conino	Jackson, J.	Silverberg
Dennerly	Lambert	Slay
Dennis	LeBleu	Stinson
Derbes	Leithman	Thompson
Drew	McDaniel	Wall
Edwards	Ourso	Womack
Fayard	Pugh	
Fulco	Rachal	
Giarrusso		
Total—34.		

And the amendment was adopted.

Delegate Avant moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Avant moved the adoption of Amendment No. 2.

Delegate Stovall objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Grier	Mire
Alario	Hayes	Munson
Anzalone	Heine	Newton
Asseff	Hernandez	Nunez
Avant	Jenkins	O'Neill
Bergeron	Kelly	Reeves
Bollinger	Kilbourne	Robinson
Cannon	Kilpatrick	Singletary
Chatalein	Landry, A.	Slagg
Cowen	Landry, E. J.	Stephenson
Deshotels	Martin	Tapper
Dunlap	Miller	Wisham
Elkins		
Ginn		
Total—37.		

NAYS

Delegates—	Fowler	Sandoz
Mr. Chairman	Fulco	Schmitt
Abraham	Gauthier	Smith
Alexander	Goldman	Soniat
Arnette	Gravel	Stovall
Badeaux	Guarisco	Sutherland
Bel	Jackson, A.	Tate
Berry	Juneau	Thistlethwaite
Blair	Kean	Tobias
Brien	Landrum	Toca
Brown	Lanier	Toomy
Burns	Leigh	Ullo
Burson	Lennox	Velazquez
Casey	Lowe	Vesich
Champagne	Maubert	Vick
Comar	Perez	Warren
Conroy	Perkins	Wattigny
Corne	Planchard	Weiss
D'Gerolamo	Rayburn	Willis
De Blieux	Roemer	Winchester
Duval	Roy	Zervigon
Flory		
Fontenot		
Total—64.		

ABSENT

Delegates—	Hardee	Rachal
Aertker	Haynes	Riecke
Carmouche	Jack	Segura
Chehardy	Jackson, J.	Shannon
Conino	Lambert	Silverberg
Dennerly	LeBleu	Slay
Dennis	Leithman	Stinson
Derbes	McDaniel	Thompson
Drew	Ourso	Wall
Edwards	Pugh	Womack
Fayard		
Giarrusso		
Total—31.		

And the amendment was rejected.

Delegate Roy moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Passage

Committee Proposal No. 25, Section 20, was read, as amended.

Delegate A. Jackson moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

PAGE 3

45th Day's Proceedings—September 12, 1973

YEAS

Delegates—		
Mr. Chairman	Fulco	Ourso
Abraham	Gauthier	Perez
Alexander	Glenn	Perkins
Anzalone	Goldman	Planchard
Arnette	Gravel	Rayburn
Asseff	Grier	Reeves
Avant	Guarisco	Robinson
Badeaux	Hayes	Roemer
Bel	Heine	Roy
Bergeron	Hernandez	Sandoz
Berry	Jack	Schmitt
Bollinger	Jackson, A.	Singletary
Brien	Jenkins	Smith
Brown	Juneau	Soniati
Burns	Kean	Stagg
Burson	Kelly	Stephenson
Cannon	Kilbourne	Stovall
Casey	Kilpatrick	Sutherland
Champagne	Lambert	Tapper
Chatelain	Landry, A.	Tate
Comar	Landry, E. J.	Thistlethwaite
Conroy	Lanier	Toca
Corne	Leigh	Toomy
Cowen	Lennox	Uilo
D'Gerolamo	Lowe	Vesich
De Blieux	Martin	Vick
Deshotels	Maubert	Warren
Drew	Miller	Wattigny
Dunlap	Mire	Weiss
Duval	Munson	Willis
Elkins	Newton	Winchester
Flory	Nunez	Wisham
Fontenot	O'Neill	Zervigon
Fowler		
Total—100.		

NAYS

Delegates—		
Landrum	Tobias	Velazquez
Total—3.		

ABSENT

Delegates—		
Aeriker	Fayard	Riecke
Alario	Giarrusso	Segura
Blair	Hardee	Shannon
Carmouche	Haynes	Silverberg
Chehardy	Jackson, J.	Slay
Conino	LeBleu	Stinson
Denery	Leithman	Thompson
Dennis	McDaniel	Wall
Derbes	Pugh	Womack
Edwards	Rachal	
Total—29.		

And the Chair declared that the above Section was passed.

Delegate A. Jackson moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Section 21. Writ of Habeas Corpus

Section 21. The writ of habeas corpus shall not be suspended.

Read.

Passage

Delegate A. Jackson moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Alario	Anzalone
Abraham	Alexander	Arnette

[246]

Asseff	Gravel	Rayburn
Avant	Grier	Reeves
Badeaux	Guarisco	Robinson
Bel	Hayes	Roemer
Bergeron	Heine	Roy
Berry	Hernandez	Sandoz
Blair	Jack	Schmitt
Bollinger	Jackson, A.	Segura
Brien	Jenkins	Singletary
Brown	Juneau	Smith
Burns	Kean	Soniati
Burson	Kelly	Stagg
Cannon	Kilbourne	Stephenson
Casey	Kilpatrick	Stovall
Champagne	Lambert	Sutherland
Chatelain	Landrum	Tapper
Comar	Landry, A.	Tate
Conroy	Landry, E. J.	Thistlethwaite
Corne	Lanier	Tobias
Cowen	Leigh	Toca
D'Gerolamo	Lennox	Toomy
De Blieux	Lowe	Uilo
Deshotels	Martin	Velazquez
Drew	Maubert	Vesich
Dunlap	Miller	Vick
Duval	Mire	Warren
Elkins	Munson	Wattigny
Flory	Newton	Weiss
Fontenot	Nunez	Willis
Fowler	O'Neill	Winchester
	Ourso	Wisham
	Perez	Zervigon
	Perkins	
Goldman	Planchard	
Total—106.		

NAYS

ABSENT

Delegates—		
Aeriker	Giarrusso	Riecke
Carmouche	Hardee	Shannon
Chehardy	Haynes	Silverberg
Conino	Jackson, J.	Slay
Denery	LeBleu	Stinson
Dennis	Leithman	Thompson
Derbes	McDaniel	Wall
Edwards	Pugh	Womack
Fayard	Rachal	
Total—26.		

And the Chair declared that the above Section was passed.

Delegate Willis moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Section 22. Access to Courts

Section 22. All courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay for actual or threatened injury to him in his person, property, reputation, or other rights. Neither the state, its political subdivisions, nor any private person shall be immune from suit and liability.

Read.

Delegate Conroy sent up a floor amendment which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Conroy to Committee Proposal No. 25 by Delegate Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 7, line 1, after the word "rights" delete the remainder of the line and delete lines 2 and 3 both inclusive in their entirety

Delegate Conroy moved the adoption of the amendment.

Delegate De Blieux objected.

By a vote of 78 yeas and 17 nays the amendment was adopted.

PAGE 4

45th Day's Proceedings—September 12, 1973

Delegate Conroy moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Arnette sent up a floor amendment which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Arnette to Committee Proposal No. 25 by Delegate Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 6, line 32, after the word "for" and before the word "injury" delete the words "actual or threatened"

Delegate Arnette moved the adoption of the amendment.

Delegate Roy objected.

By a vote of 63 yeas and 34 nays the amendment was adopted.

Delegate Arnette moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Avant sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Avant to Committee Proposal No. 25 by Delegate Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 7, line 3, at the end of the line add the following: "No private person shall be immune from suit and liability except as otherwise provided in this Constitution."

On motion of Delegate Avant the amendment was withdrawn.

Passage

Committee Proposal No. 25, Section 22, was read, as amended.

Delegate A. Jackson moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	D'Gerolamo	Kean
Abraham	De Blieux	Kelly
Alario	Dennis	Kilbourne
Alexander	Deshotels	Kilpatrick
Anzalone	Drew	Lambert
Arnette	Dunlap	Landrum
Asseff	Duval	Landry, A. J.
Avant	Elkins	Lanier
Badaux	Flory	Leigh
Bel	Fontenot	Lennox
Bergeron	Fowler	Lowe
Berry	Fulco	Martin
Blair	Gauthier	Mauberret
Bollinger	Brien	Mire
Burns	Ginn	Munson
Burson	Goldman	Newton
Cannon	Gravel	Nunez
Casey	Guarisco	O'Neill
Champagne	Hayes	Ours
Chatelain	Heine	Perez
Comar	Hernandez	Perkins
Conino	Jack	Planchard
Conroy	Jackson, A.	Rayburn
Corne	Jenkins	Reeves
Cowen	Juneau	

Robinson	Stephenson	Vesich
Roemer	Stovall	Vick
Roy	Sutherland	Wall
Sandoz	Tate	Warren
Schmitt	Thistlethwaite	Wattigny
Segura	Tobias	Weiss
Singletary	Toca	Willis
Smith	Toomy	Winchester
Soniai	Uilo	Wisham
Stagg	Velazquez	Zervigon
Total—105.		

NAYS

Total—0.

ABSENT

Delegates—	Giarrusso	Rachal
Mr. Chairman	Hardee	Riecke
Aeriker	Haynes	Shannon
Brown	Jackson, J.	Silverberg
Carmouche	LeBlau	Slay
Chehardy	Leithman	Stinson
Denney	McDaniel	Tapper
Derbes	Miller	Thompson
Edwards	Pugh	Womack
Fayard		
Total—27.		

And the Chair declared that the above Section was passed.

Delegate A. Jackson moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Motion

On motion of Delegate Kean, the Convention altered the Order of Business to take up other Orders of Business at this time.

Motion

On motion of Delegate Zervigon the Rules were suspended in order to call a meeting of the Committee on Legislative Transitional Measures without giving the required 24 hours notice.

COMMITTEE NOTICE

Delegate Zervigon, vice-chairperson of the Committee on Legislative Liaison and Transitional Measures, sent up the following notice:

The Committee on Legislative Liaison and Transitional Measures will meet on Wednesday, September 12, 1973, upon adjournment in the Convention Hall and will consider the following agenda:

AGENDA

Election of new committee officers.

Respectfully submitted,

MARY KELLER ZERVIGON,

Vice-Chairperson of the Committee on Legislative Liaison and Transitional Measures.

The above notice was read in open session and publicly posted as provided by the Rules of Procedure of the Convention.

COMMITTEE NOTICE

Delegate A. Jackson, Jr., chairman of the Committee on Bill of Rights and Elections, sent up the following notice:

The Committee on Bill of Rights and Elections will meet on Thursday, September 13, 1973, at 9:00 o'clock A.M. in Committee Room No. 1 and will consider the following agenda:

AGENDA

Agenda previously announced.

Respectfully submitted,

ALPHONSE JACKSON, JR.,
Chairman of the Committee on
Bill of Rights and Elections

The above notice was read in open session and publicly

PAGE 8

46th Day's Proceedings—September 13, 1973

Tapper	Ullo	Willis
Thistlethwaite	Vesich	Winchester
Thompson	Warren	Wisham
Toca	Wattigny	
Toomy	Weiss	

Total—85.

NAYS

Delegates—		
Arnette	Fowler	Stovall
Carmouche	Kean	Sutherland
Casey	Kilbourne	Tate
Champagne	Newton	Tobias
Cwene	Perkins	Velazquez
Dennis	Roemer	Zervigon
Derbes	Sandoz	
Drew	Singletary	

Total—22.

ABSENT

Delegates—		
Mr. Chairman	Lambert	Segura
Aertker	Landry, A.	Shannon
Alexander	Leigh	Silverberg
Chehardy	Martin	Stephenson
Deshotels	Miller	Vick
Edwards	Munson	Wall
Giarrusso	Nunez	Womack
Ginn	Ourso	
Haynes	Riecke	

Total—25.

And the Chair declared that the above Section was passed.

Delegate A. Jackson moved to reconsider the vote by which the above Section was passed, and to lay the motion to reconsider on the table.

Delegate De Bileux objected to tabling the motion to reconsider.

By a vote of 76 yeas and 32 nays the motion to reconsider was tabled.

Delegate Gravel sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates Gravel and Berry to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 7, between lines 15 and 16, insert the following:

"Section 26. Freedom from Discrimination

Section 26. In access to public areas, accommodations, and facilities every person shall have the right to be free from discrimination based on race, religion, or national ancestry and from arbitrary, capricious, or unreasonable discrimination based on age, sex, or physical condition."

Delegate Gravel moved the adoption of the amendment.

Delegate Perez objected.

A record vote was asked for and ordered by the Convention

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Bollinger	Chatelain
Abraham	Brien	Conino
Anzalone	Brown	Conroy
Avant	Burns	Corne
Badeaux	Burson	Cowen
Bel	Carmouche	D'Gerolamo
Berry	Casey	De Bileux
Blair	Champagne	Dennerly

Dennis	Kean	Slay
Derbes	Kelly	Smith
Duval	Landrum	Stagg
Payard	Landry, E. J.	Stovall
Flory	Lanier	Tate
Fontenot	Lennox	Thistlethwaite
Fowler	Lowe	Thompson
Fulco	Maubernet	Tobias
Gauthier	Newton	Toca
Goldman	Perkins	Ullo
Gravel	Pugh	Velazquez
Guariseo	Rachal	Vesich
Hardee	Rayburn	Warren
Hayes	Robinson	Weiss
Heine	Roemer	Willis
Jack	Roy	Winchester
Jackson, A.	Sandoz	Zervigon
Jackson, J.	Schmitt	
Juneau	Singletary	

Total—79.

NAYS

Delegates—		
Asseff	Jenkins	Soniatt
Bergeron	Kilbourne	Stephenson
Drew	McDaniel	Stinson
Dunlap	O'Neill	Sutherland
Elkins	Perez	
Grier	Planchard	

Total—16.

ABSENT

Delegates—		
Aertker	Kilpatrick	Riecke
Alario	Lambert	Segura
Alexander	Landry, A.	Shannon
Arnette	LeBleu	Silverberg
Cannon	Leigh	Tapper
Chehardy	Leithman	Toomy
Comar	Martin	Vick
Deshotels	Miller	Wall
Edwards	Mire	Wattigny
Giarrusso	Munson	Wisham
Ginn	Nunez	Womack
Haynes	Ourso	
Hernandez	Reeves	

Total—37.

The amendment having received a majority vote of the total membership of the Convention, necessary to pass a Section to a Proposal, was passed.

Delegate Gravel moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Jenkins sent up a floor amendment which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Jenkins to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 7, line 16 add the following at the end of the language added by Floor Amendment No. 1 proposed by Mr. Gravel, et al, and adopted by the Convention on September 13, 1973.

"Nothing herein shall be construed to impair freedom of association."

Delegate Jenkins moved the adoption of the amendment.

Delegate Roemer objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Anzalone	Asseff	Blair
Arnette	Berry	Bollinger

PAGE 9

46th Day's Proceedings—September 13, 1973

Cannon	Jack	Slay
Carmouche	Jenkins	Smith
Conroy	Juneau	Stephenson
Corne	Kean	Stinson
Drew	Kilbourne	Sutherland
Dunlap	Lanier	Tapper
Duval	LeBleu	Thistlethwaite
Elkins	Lennox	Toomy
Fayard	Lowe	Uilo
Fontenot	McDaniel	Vesich
Fowler	O'Neill	Wattigny
Grier	Perez	Weiss
Guarisco	Rayburn	Willis
Heine	Roy	Winchester
Hernandez	Singletary	
Total—50.		

NAYS

Delegates—	Dennis	Perkins
Mr. Chairman	Derbes	Planchar
Abraham	Flory	Pugh
Avant	Fulco	Rachal
Badeaux	Gauthier	Roemer
Bel	Ginn	Sandoz
Bergeron	Goldman	Schmitt
Brien	Gravel	Soni
Brown	Hardee	Stagg
Burns	Hayes	Stovall
Burson	Jackson, A.	Tate
Casey	Jackson, J.	Thompson
Champagne	Kilpatrick	Toca
Chatelain	Landrum	Velazquez
Conino	Landry, E. J.	Warren
Cowen	Maubert	Zervigon
D'Gerolamo	Dennery	
De Blieux		
Dennery		
Total—53.		

ABSENT

Delegates—	Landry, A.	Riecke
Aertker	Leigh	Robinson
Alario	Leithman	Segura
Alexander	Martin	Shannon
Chehardy	Miller	Silverberg
Comar	Mire	Vick
Deshotels	Munson	Wall
Edwards	Nunez	Wisham
Giarrusso	Ourso	Womack
Haynes	Reeves	
Lambert		
Total—29.		

And the amendment was rejected.

Delegate Gravel moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Passage

Committee Proposal No. 25, Section 26, was read.

Delegate Gravel moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Bollinger	Cowen
Mr. Chairman	Brien	D'Gerolamo
Abraham	Brown	De Blieux
Anzalone	Burns	Dennery
Arnette	Casey	Dennis
Assett	Champagne	Derbes
Avant	Chatelain	Duval
Badeaux	Conino	Fayard
Bel	Conroy	Flory
Bergeron	Corne	Fulco
Berry		
Blair		

Gauthier	Lennox	Stovall
Ginn	Lowe	Sutherland
Goldman	Maubert	Tapper
Gravel	Newton	Tate
Grier	Perkins	Thompson
Guarisco	Planchar	Tobias
Hardee	Pugh	Toca
Hayes	Rachal	Toomy
Hernandez	Rayburn	Uilo
Jack	Roemer	Velazquez
Jackson, A.	Roy	Vesich
Jackson, J.	Sandoz	Warren
Juneau	Schmitt	Wattigny
Kean	Singletary	Weiss
Kelly	Slay	Willis
Kilpatrick	Smith	Winchester
Landrum	Soni	Zervigon
Landry, E. J.	Stagg	
Lanier	Stephenson	
Total—88.		

NAYS

Delegates—	Fontenot	McDaniel
Cannon	Heine	Perez
Carmouche	Jenkins	O'Neill
Drew	Kilbourne	Stinson
Dunlap	LeBleu	Thistlethwaite
Elkins		
Total—15.		

ABSENT

Delegates—	Landry, A.	Riecke
Aertker	Leigh	Robinson
Alario	Leithman	Segura
Alexander	Martin	Shannon
Chehardy	Miller	Silverberg
Comar	Mire	Vick
Deshotels	Munson	Wall
Edwards	Nunez	Wisham
Giarrusso	Ourso	Womack
Haynes	Reeves	
Lambert		
Total—29.		

And the Chair declared that the above Section was passed.

Delegate Gravel moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Delegate Warren sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Warren and Jack to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 7, between lines 3 and 4, insert the following:

"Section 22.1 Right to Compensation

Section 22.1 The legislature shall provide for adequate compensation for persons convicted and imprisoned for crimes which they are proven subsequently not to have committed provided the person did not by perjury contribute to his own conviction."

Motion

Delegate Roy moved the previous question on the amendment.

Delegate Stovall objected.

By a vote of 41 yeas and 5 nays the Convention refused to order the previous question.

Delegate Warren moved the adoption of the amendment.

Delegate Fontenot objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

PAGE 3

47th Day's Proceedings—September 14, 1973

the total membership of the Convention, required to pass a Section to a Proposal, failed to pass.

Delegate Drew moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Delegate Goldman sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Goldman to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 7, line 16, add the following section:

"Section 27. Trial by Jury in Civil Cases

Section 27. The right to trial by jury shall not be abridged in civil cases; however, the legislature may provide for exceptions to this right of trial by jury by a two-thirds vote of the elected members of each house of the legislature. Determination of facts by an administrative body shall be subject to review."

Point of Order

Delegate Tobias suggested that the contents of the amendment were the same as those contained in Committee Proposal No. 25, Section 8, therefore out of Order and asked a ruling of the Chair.

Ruling of the Chair

The Chair ruled that the amendment was in order.

Delegate Goldman moved the adoption of the amendment.

Delegate Lanier objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Guarisco	Roy
Alexander	Hardee	Sonlat
Carmouche	Jackson, A.	Stephenson
Chatain	Jackson, J.	Stinson
Dunlap	Jenkins	Vick
Edwards	LeBleu	Warren
Fulco	Newton	
Goldman	Rachal	
Gravel		
Total—22.		

NAYS

Delegates—	Conroy	Kean
Abraham	Corne	Kelly
Aertker	Cowen	Kilbourne
Alario	De Blieux	Kilpatrick
Arnette	D'Gerolamo	Lambert
Asseff	Denney	Landrum
Avant	Dennis	Landry, A.
Badeaux	Deshotels	Landry, E. J.
Bel	Drew	Lanier
Bergeron	Duval	Leigh
Berry	Elkins	Leithman
Blair	Fayard	Lennox
Bollinger	Flory	Lowe
Brien	Fontenot	McDaniel
Brown	Fowler	Martin
Burns	Gauthier	Miller
Burson	Grier	Munson
Cannon	Hayes	Nunez
Casey	Heine	O'Neill
Champagne	Hernandez	Oruso
Chahardy	Jack	Perez
Comar	Juneau	Perkins
Conino		

Planchard	Slay	Uilo
Pugh	Smith	Velazquez
Rayburn	Stagg	Wattigny
Reeves	Stovall	Weiss
Robinson	Sutherland	Willis
Roemer	Thompson	Winchester
Sandoz	Tobias	Wisham
Schmitt	Toca	Womack
Singletary	Toomy	Zervigon

Total—83.

ABSENT

Delegates—	Mauberrert	Tapper
Mr. Chairman	Mire	Tate
Anzalone	Riecke	Thistlethwaite
Derbes	Segura	Vesich
Giarrusso	Shannon	Wall
Ginn	Silverberg	
Haynes		
Total—17.		

The amendment not having received a majority vote of the total membership of the Convention, required to pass a Section to a Proposal, failed to pass.

Delegate Stovall moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Delegate Planchard sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates Anzalone, Burson, Planchard, Aertker, Alario, Alexander, Asseff, Avant, Berry, Bollinger, Brien, Dennis, Derbes, Duval, Flory, Fontenot, Goldman, Gravel, Guarisco, Hernandez, Jack, A. Jackson, J. Jackson, Jenkins, Kelly, Landrum, E. J. Landry, Lowe, Newton, Nunez, O'Neill, Pugh, Rachal, Roy, Stephenson, Stovall, Tapper, Toca, Velazquez, Warren and Willis to Committee Proposal No. 25 by Delegate Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 7, between lines 15 and 16, insert the following:

"Section 27. Right to Preliminary Examination

Section 27. In all felony cases, except those indicted by a grand jury, the right to a preliminary examination shall not be denied."

Delegate Planchard moved the adoption of the amendment.

Delegate Casey objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Drew	Kilpatrick
Abraham	Dunlap	Lambert
Aertker	Duval	Landrum
Alario	Edwards	Landry, E. J.
Alexander	Elkins	LeBleu
Asseff	Flory	Leithman
Avant	Fontenot	Lennox
Badeaux	Fowler	Lowe
Bergeron	Fulco	Mire
Berry	Gauthier	Munson
Blair	Goldman	Newton
Bollinger	Gravel	Nunez
Brien	Guarisco	O'Neill
Burns	Hardee	Ourso
Burson	Hardee	Perez
Cannon	Hayes	Perkins
Chatain	Heine	Planchard
Chahardy	Hernandez	Pugh
Comar	Jack	Rachal
Conroy	Jackson, A.	Rayburn
Corne	Jackson, J.	Robinson
D'Gerolamo	Jenkins	Roemer
De Blieux	Juneau	Roy
Denney	Kean	Sandoz
Dennis	Kelly	Schmitt
Derbes	Kilbourne	

PAGE 4

47th Day's Proceedings—September 14, 1973

Singletary	Stovall	Warren
Slay	Tapper	Weiss
Smith	Thompson	Willis
Soniati	Tobias	Winchester
Stagg	Toca	Wisham
Stephenson	Uilo	Womack
Stinson	Velazquez	Zervigon
Total—96.		

NAYS

Delegates—		
Arnette	Deshotels	McDaniel
Bel	Fayard	Martin
Carmouche	Grier	Miller
Casey	Landry, A.	Reeves
Champagne	Lanier	Sutherland
Conino	Leigh	Toomy
Total—18.		

ABSENT

Delegates—		
Mr. Chairman	Haynes	Tate
Anzalone	Mauberrert	Thistlethwaite
Brown	Riecke	Vesich
Cowen	Segura	Vick
Giarrusso	Shannon	Wall
Ginn	Silverberg	Wattigny
Total—18.		

The amendment having received a majority vote of the total membership of the Convention, required to pass a Section to a Proposal, was passed.

Delegate Planchard moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Pugh sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegate Pugh and Gravel to Committee Proposal No. 25 by Delegate Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 7, line 16, add the following:

"Section 26. Trial by Jury in Civil Cases

Section 26. The right to trial by jury shall not be abridged in civil cases; however, except in those instances where the right to trial by jury is guaranteed by this constitution, the legislature may provide for exceptions to this right of trial by jury.

AMENDMENT No. 2—

On page 7, at the end of the language added by Floor Amendment No. 1 hereof, add the following:

"Determination of facts by an administrative body shall be subject to review as provided by law."

On motion of Delegate Pugh a division of the question was ordered.

Point of Order

Delegate Denney suggested that the subject matter contained in amendment No. 2 was previously considered and rejected and therefore out of order.

Ruling of the Chair

The Chair ruled that Amendment No. 2 was in order at this time.

Delegate Pugh moved the adoption of Amendment No. 1.

Delegate Jack objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Aertker	Gravel	Roy
Alexander	Guarisco	Singletary
Avant	Jackson, A.	Slay
Bel	Jackson, J.	Soniati
Bergeron	Jenkins	Stagg
Berry	Lambert	Stephenson
Brien	Landrum	Stinson
Brown	Landry, E. J.	Stovall
Carmouche	Leithman	Thompson
Chehardy	Mire	Toca
Comar	Munson	Velazquez
De Bileux	Newton	Vick
Dunlap	O'Neill	Warren
Edwards	Planchard	Willis
Flory	Pugh	Wisham
Fulco	Rachal	Womack
Goldman	Roemer	Zervigon
Total—51.		

NAYS

Delegates—		
Abraham	Drew	Leigh
Alario	Duval	Lennox
Arnette	Elkins	Lowe
Asseff	Fayard	McDaniel
Badeaux	Fontenot	Martin
Bollinger	Fowler	Nunez
Burns	Gauthier	Perez
Burson	Grier	Perkins
Cannon	Hardee	Rayburn
Casey	Hayes	Reeves
Champagne	Heine	Robinson
Chatelain	Hernandez	Sandoz
Conino	Jack	Smith
Conroy	Juneau	Sutherland
Corne	Kean	Tobias
Cowen	Kelly	Toomy
Denney	Kilbourne	Uilo
Dennis	Kilpatrick	Wattigny
Derbes	Landry, A.	Weiss
Deshotels	Lanier	Winchester
Total—60.		

ABSENT

Delegates—		
Mr. Chairman	LeBlau	Shannon
Anzalone	Mauberrert	Silverberg
Blair	Miller	Tapper
D'Gerolamo	Ourso	Tate
Giarrusso	Riecke	Thistlethwaite
Ginn	Schmitt	Vesich
Haynes	Segura	Wall
Total—21.		

The amendment not having received a majority vote of the total membership of the Convention, required to pass a Section to a Proposal.

Delegate Champagne moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

On motion of Delegate Pugh Amendment No. 2 was withdrawn.

Passage

Committee Proposal No. 25, Section 27, was read.

Delegate Planchard moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Avant	Brien
Abraham	Badeaux	Brown
Aertker	Bel	Burns
Alario	Bergeron	Burson
Arnette	Berry	Cannon
Asseff	Bollinger	Casey

PAGE 5

47th Day's Proceedings—September 14, 1973

Champagne	Hernandez	Reeves
Chatelain	Jack	Robinson
Chehardy	Jackson, A.	Roemer
Comar	Jackson, J.	Roy
Conino	Jenkins	Sandoz
Conroy	Juneau	Schmitt
Corne	Kean	Singletary
Cowen	Kelly	Slay
D'Gerolamo	Kilbourne	Smith
De Blieux	Kilpatrick	Soniati
Dennerly	Lambert	Stagg
Dennis	Landry, E. J.	Stephenson
Derbes	LeBlau	Stinson
Drew	Leigh	Stovall
Dunlap	Leithman	Tapper
Duval	Lennox	Thompson
Edwards	Lowe	Tobias
Flory	Mire	Uilo
Fontenot	Munson	Velazquez
Fowler	Newton	Vick
Fulco	Nunez	Warren
Gauthier	O'Neill	Wattigny
Goldman	Ourso	Willis
Gravel	Perez	Winchester
Guarisco	Perkins	Wisham
Hardee	Planchard	Zervigon
Hays	Pugh	
Heine	Rachal	

Total—100.

NAYS

Delegates—	Grier	McDaniel
Carmouche	Landry, A.	Martin
Deshotels	Lanier	Toomy
Elkins		
Fayard		

Total—10.

ABSENT

Delegates—	Miller	Tate
Alexander	Reynum	Thistlethwaite
Alarione	Riecke	Toca
Blair	Segura	Vesich
Giarrusso	Shannon	Wall
Ginn	Haynes	Silverberg
Haynes	Landrum	Sutherland
Landrum		Womack
Mauberret		

Total—22.

And the Chair declared that the above Section was passed.

Delegate Chehardy moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Delegate Gravel sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegate Gravel to Committee Proposal No. 25 by Delegate Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 7, line 1, add the following:

"Section 26. Trial by Jury in Civil Cases

Section 26. There shall be a right to trial by jury in civil cases. Except where the right to trial by jury is guaranteed by this constitution, however, the legislature may provide for exceptions to this right.

AMENDMENT No. 2—

On page 7, at the end the language added by Floor Amendment No. 1 hereof add the following:

"Determination of facts by an administrative body or by the jury shall be subject to review.

Delegate Gravel moved the adoption of the amendment.

Delegate Arnette objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Fontenot	Planchard
Aertker	Goldman	Rachal
Alexander	Gravel	Rayburn
Avant	Guarisco	Roy
Bergeron	Hernandez	Schmitt
Berry	Jackson, A.	Singletary
Brien	Jackson, J.	Slay
Brown	Jenkins	Soniati
Carmouche	Juneau	Stephenson
Chatelain	Kean	Stinson
Chehardy	Kilpatrick	Stovall
Comar	Lambert	Thompson
Corne	Landry, E. J.	Toca
Cowen	Leithman	Velazquez
D'Gerolamo	Lowe	Vick
De Blieux	Munson	Warren
Dunlap	Newton	Willis
Edwards	O'Neill	Wisham
Fayard		
Flory		

Total—55.

NAYS

Delegates—	Deshotels	Nunez
Abraham	Drew	Perez
Alario	Duval	Perkins
Arnette	Elkins	Pugh
Asseff	Fowler	Reeves
Badeaux	Fulco	Robinson
Bel	Gauthier	Roemer
Blair	Grier	Sandoz
Bollinger	Hayes	Smith
Burns	Heine	Sutherland
Burson	Heine	Tobias
Cannon	Jack	Toomy
Casey	Kelly	Uilo
Champagne	Kilbourne	Wattigny
Conino	Landry, A.	Weiss
Conroy	Lanier	Winchester
Dennerly	Leigh	Zervigon
Dennis	Lennox	
Derbes		

Total—52.

ABSENT

Delegates—	Martin	Silverberg
Mr. Chairman	Mauberret	Stagg
Anzalone	Giarrusso	Tapper
Ginn	Mire	Tate
Hardee	Ourso	Thistlethwaite
Haynes	Riecke	Vesich
Landrum	Segura	Wall
LeBlau	Shannon	Womack
McDaniel		

Total—25.

The amendment not having received a majority of the total membership of the Convention, required to pass a Section to a Proposal, failed to pass.

Delegate Arnette moved to reconsider the vote by which the amendments were rejected, and on his own motion, the motion to reconsider was laid on the table.

Delegate Warren sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates Warren, Jack, Velazquez, and Rayburn to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 7, between lines 3 and 4, insert the following:

"Section 22.1. Right to Compensation
Section 22.1. The legislature shall provide a method for

PAGE 6

47th Day's Proceedings—September 14, 1973

adequate compensation for persons convicted and imprisoned for crimes which they are proven subsequently not to have committed provided the person did not by perjury contribute to his own conviction."

Point of Order

Delegate Arnette raised a point of order, and sought a ruling of the Chair as to whether the amendments were out of order, as having been previously considered.

Ruling of the Chair

The Chair declined to rule the amendment out of order at this time, and put the question to the Convention under the rules.

The question was put to declare the amendments to be in order.

By a vote of 47 yeas and 59 nays, the Convention determined the amendments to be out of order.

Delegate Warren sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates Warren and Jack to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 7, between lines 3 and 4, insert the following:

"Section 22.1 Right to Compensation

Section 22.1 The legislature shall provide for adequate compensation for persons convicted and imprisoned for crimes which they are proven subsequently not to have committed provided the person did not by perjury contribute to his own conviction."

Point of Order

Delegate Arnette raised a point of order, and sought a ruling of the Chair as to whether the amendment was out of order, as having been previously considered.

Ruling of the Chair

And the Chair ruled the amendment out of order, as the incidental amendment was considered on the prior Convention day.

Motion

Delegate Thompson moved the previous question on the entire subject matter.

Delegate Kilbourne objected.

By a vote of 49 yeas and 62 nays and the Convention refused to order the previous question on the entire subject matter.

Delegate Velazquez sent up a floor amendment, which was read as follows:

Amendment proposed by Delegate Velazquez to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend reprinted as engrossed Proposal as follows:

AMENDMENT No. 1—

On page 7, between lines 3 and 4, insert the following:

"Section 22.1. Right of Victims of Compensation

Section 22.1 The legislature shall provide adequate compensation for victims of felonies and for persons convicted and imprisoned for crimes which they are proven subsequently not to have committed, provided that such person did not by perjury contribute to his own conviction."

On motion of Delegate Velazquez the amendment was withdrawn.

Motion

Delegate Kilbourne moved for a suspension of the rules in order to call from the table the motion to reconsider the vote by which Committee Proposal No. 25, Section 12, was passed.

Delegate Avant objected.

By a vote of 44 yeas and 64 nays the Convention refused to suspend the rules at this time.

The Proposal was read, as amended.

Delegate A. Jackson moved the final passage of the entire Proposal.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Dunlap	Planchard
Abraham	Duval	Pugh
Aeriker	Flory	Rachal
Alario	Pontenot	Rayburn
Alexander	Fulco	Reeves
Arnette	Gauthier	Robinson
Avant	Goldman	Roemer
Badeaux	Gravel	Roy
Bel	Grier	Schmitt
Bergeron	Guarisco	Singletary
Berry	Hardee	Slay
Blair	Hayes	Smith
Bollinger	Jack	Soniat
Brien	Jackson, A.	Stagg
Brown	Jackson, J.	Stephenson
Burns	Jenkins	Stinson
Casey	Juneau	Stovall
Champagne	Kelly	Thompson
Chatelain	Kilpatrick	Tobias
Chehardy	Lambert	Toca
Comar	Landry, E. J.	Toomy
Conino	Lanier	Uilo
Conroy	Leithman	Velazquez
Corne	Lennox	Vick
Cowen	Lowe	Warren
De Blieux	Mitre	Weiss
D'Gerolamo	Munson	Winchester
Dennery	Newton	Wisham
Dennis	O'Neill	Zerzigon
Derbes		
Total—89.		

NAYS

Delegates—		
Asseff	Heine	Nunez
Burson	Hernandez	Perez
Cannon	Kean	Perkins
Carmouche	Kilbourne	Sandoz
Deshotels	Landrums	Sutherland
Drew	Landry, A.	Thistlethwaite
Edwards	Leigh	Wattigny
Elkins	McDaniel	Willis
Fayard	Martin	Womack
Fowler		
Total—28		

ABSENT

Delegates—		
Anzalone	Mauberret	Silverberg
Giarrusso	Ourso	Tapper
Ginn	Riecke	Tate
Haynes	Segura	Vesich
LeBlou	Shannon	Wall
Total—15.		

And the Chair declared that the above Proposal was finally passed.

Motion

Delegate Chatelain moved that the Convention work on Saturday September 15, 1973 and adjourn until Wednesday, September 19, 1973, at 9:00 o'clock P.M.

As a substitute Delegate Fulco moved that the Convention

PAGE 7

48th Day's Proceedings—September 15, 1973

of the Standing Rules of the Constitutional Convention is hereby amended and readopted to read as follows:

"2. Committee on Style and Drafting, which shall have control over literary style, consistency, arrangement, and numbering. The committee shall have authority to rephrase or to regroup proposed language, but shall have no authority to change the sense or purpose of any proposal referred to it; where a proposal referred to it is inconsistent or in conflict with a proposal already acted on favorably by the convention, the committee shall at the third reading (Rule 44 (H)) notify the convention of that inconsistency or conflict and wait upon its instructions.

Prior to returning to the convention, with its report thereon, any finally adopted proposal referred to it, the Committee on Style and Drafting shall submit its proposed report to the substantive committee having jurisdiction over the subject matter. Within five days after such submission, the substantive committee may make any recommendations and comments to the Committee on Style and Drafting it deems necessary. If recommendations or comments are so made, the Committee on Style and Drafting shall consider them prior to reporting the proposal to the convention."

Respectfully submitted,

MOISE W. DENNERY
Secretary

The Resolutions contained in the report were signed by the Chairman of the Convention and attested by the Secretary in accordance with the Rules.

Delegate Dennery, Secretary of the Constitutional Convention of 1973, submits the following report:

Constitutional Convention of 1973
State of Louisiana

September 14, 1973, Baton Rouge, La.

To the Chairman and Delegates of the Convention:

I submit the following report:

That the following Committee Proposal has been properly enrolled:

COMMITTEE PROPOSAL No. 25—

Introduced by Delegate Jackson, Chairman, Committee on Bill of Rights and Elections (Substitute for Committee Proposal No. 2, by Delegate Jackson, Chairman, on behalf of the Committee on Bill of Rights and Elections, and Delegates Dunlap, Guarisco, Jenkins, Roy, Soniat, Stinson, Vick, Wall and Weiss)

A PROPOSAL

To provide a preamble and a declaration of rights to the constitution.

Be it adopted by the Constitutional Convention of Louisiana of 1973:

A PREAMBLE

We, the people of Louisiana, grateful to Almighty God for the civil, political, economic, and religious liberties we enjoy, and desiring to protect individual rights to life, liberty, and property; afford opportunity for the fullest development of the individual; assure equality of rights; promote the health, safety, education, and welfare of the people; maintain a representative and orderly government; ensure domestic tranquility; provide for the common defense; and secure the blessings of freedom and justice to ourselves and our posterity, do ordain and establish this constitution.

ARTICLE I. DECLARATION OF RIGHTS

Section 1. Origin and Purpose of Government
Section 1. All government, of right, originates with the people, is founded on their will alone, and is instituted to protect the rights of the individual and for the good of the whole. Its only legitimate ends are to secure justice for all, preserve peace, protect the rights, and promote the happiness, and general welfare of the people. The rights enumerated in this Article are inalienable by the state and shall be preserved inviolate by the state.

Section 2. Due Process of Law

Section 2. No person shall be deprived of life, liberty or property, except by due process of law.

Section 3. Right to Individual Dignity

Section 3. No person shall be denied the equal protection of the law. No law shall discriminate against a person on account of race or religious ideas, religious beliefs, or religious affiliations. No law shall arbitrarily, capriciously, or unreasonably discriminate against any person by reason of birth, age, sex, culture, physical condition, political ideas or political affiliation. Slavery and involuntary servitude are prohibited, except in the latter case as a punishment for crime.

Section 4. Right to Property

Section 4. Every person has the right to acquire, control, own, use, enjoy, protect, and dispose of private property. This right is subject to reasonable statutory restrictions and the reasonable exercise of the police power. Property shall not be taken or damaged by the state or its political subdivisions except for public purposes and with just compensation paid to the owner or into court for his benefit. Property shall not be taken or damaged by any private entity authorized by law to expropriate property, except for a public and necessary purpose and with just compensation paid to the owner and, in such proceedings, the issue of whether the purpose is public and necessary shall be a judicial question. In all expropriations, any party shall have the right to trial by jury to determine compensation and the owner shall be compensated to the full extent of his loss. No business enterprise or any of its assets shall be taken for the purpose of operating that enterprise or for the purpose of halting competition with government enterprises, except that municipalities may expropriate utilities within their jurisdiction. Personal effects, other than contraband, shall never be taken. The provisions of this Section shall not apply to appropriation of property necessary for levee and levee drainage purposes.

Section 5. Right to Privacy

Section 5. Every person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy. No warrant shall issue without probable cause supported by oath or affirmation particularly describing the place to be searched, the persons or things to be seized, and the lawful purpose or reason for the search. Any person adversely affected by a search or seizure conducted in violation of this Section shall have standing to raise the illegality of that search or seizure in the appropriate court of law.

Section 6. Freedom from Intrusion

Section 6. No person shall be quartered in any house without the consent of the owner or lawful occupant.

Section 9. Liberty of Speech and Freedom of the Press

Section 9. No law shall ever be passed to curtail or restrain the liberty of speech or freedom of the press; any person may speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty or freedom.

Section 10. Freedom of Religion

Section 10. No law shall be enacted respecting an establishment of religion or prohibiting the free exercise thereof.

Section 11. Freedom of Assembly and Movement

Section 11. No law shall impair the right of every person to assemble peaceably or to petition government for a redress of grievances.

Section 12. Rights of the Accused

Section 12. When any person has been arrested or detained in connection with the investigation or commission of any offense, he shall be advised fully of the reason for his arrest or detention, his right to remain silent, his right against self incrimination, his right to the assistance of counsel and, to court appointed counsel, if indigent. In all criminal prosecutions, the accused shall be informed of the nature and cause of the accusation against him. At all stages of the proceedings, every person shall be entitled to assistance of counsel of his choice, or appointed by the court in indigent cases if charged with an offense punishable by imprisonment. The legislature shall provide for a uniform system for securing counsel for indigents, including qualifications and compensation.

No person shall be subjected to imprisonment or forfeiture of his rights or property without the right of judicial review based upon a complete record of all evidence upon which such judgment is based. The cost of the transcription of

PAGE 8

48th Day's Proceedings—September 15, 1973

such record shall be paid as provided by law. This right may be intelligently waived.

Section 13. Initiation of Prosecution

Section 13. Prosecution of felonies shall be initiated by indictment or information, provided that no person shall be held to answer for any capital crime or any crime punishable by life imprisonment, except on indictment by a grand jury. No person shall be twice placed in jeopardy for the same offense, except on his own application for a new trial or when a mistrial is declared or a motion in arrest of judgment is sustained.

Section 15. Fair Trial

Section 15. Every person charged with a crime shall be presumed innocent until proven guilty, and shall be entitled to a speedy, public, and impartial trial in the parish where the offense or an element of the offense occurred, unless venue be changed in accordance with law. No person shall be compelled to give evidence against himself. An accused shall be entitled to confront and cross-examine the witnesses against him, to compel the attendance of witnesses, to present a defense, and to testify in his own behalf.

Section 16. Trial by Jury in Criminal Cases

Section 16. Criminal cases in which the punishment may be capital shall be tried before a jury of twelve persons, all of whom must concur to render a verdict; cases in which the punishment is necessarily confinement at hard labor shall be tried before a jury of twelve persons, ten of whom must concur to render a verdict. Cases in which the punishment may be confinement at hard labor or confinement without hard labor of more than six months, shall be tried before a jury of six persons, five of whom must concur to render a verdict. Except in capital cases, a defendant may knowingly and intelligently waive his right to a trial by jury. In all criminal prosecutions tried by a jury the accused shall have the right to full voir dire examination of prospective jurors and to challenge jurors peremptorily. The number of challenges shall be fixed by law.

Section 17. Right to Bail

Section 17. Excessive bail shall not be required. Before and during a trial, a person shall be bailable by sufficient sureties, unless charged with a capital offense and the proof is evident and the presumption of guilt is great. After conviction and before sentencing, a person shall be bailable if the maximum sentence which may be imposed is imprisonment of five years or less. The judge may grant bail if the maximum sentence which may be imposed is imprisonment in excess of five years. After sentencing and until final judgment, persons shall be bailable if the sentence actually imposed is five years or less and the judge in his discretion may grant bail if the sentence actually imposed is in excess of five years imprisonment.

Section 18. Right to Humane Treatment

Section 18. No law shall subject any person to euthanasia, torture, cruel, excessive, or unusual punishments. Full rights of citizenship shall be restored upon termination of state and federal supervision following conviction for any offense.

Section 19. Right to Vote

Section 19. Every citizen of the state, upon reaching eighteen years of age shall have the right to register and

vote, except that this right may be suspended while a person is interdicted and judicially declared mentally incompetent, or under an order of imprisonment for conviction of a felony.

Section 20. Right to Keep and Bear Arms

Section 20. The right of each citizen to keep and bear arms shall not be abridged, but this provision shall not prevent the passage of laws to prohibit the carrying of weapons concealed on the person.

Section 21. Writ of Habeas Corpus

Section 21. The writ of habeas corpus shall not be suspended.

Section 22. Access to Courts

Section 22. All courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay for injury to him in his person, property, reputation, or other rights.

Section 23. Prohibited Laws

Section 23. No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall be enacted.

Section 25. Unenumerated Rights

Section 25. The enumeration in this constitution of certain rights shall not be construed to deny or disparage other rights retained by the individual citizens of the state.

Section 26. Freedom from Discrimination

Section 26. In access to public areas, accommodations, and facilities every person shall have the right to be free from discrimination based on race, religion, or national ancestry and from arbitrary, capricious, or unreasonable discrimination based on age, sex, or physical condition.

Section 27. Right to Preliminary Examination

Section 27. In all felony cases, except those indicted by a grand jury, the right to a preliminary examination shall not be denied.

Respectfully submitted,

MOISE W. DENNERY
Secretary

Under the Rules, referred to the Committee on Style and Drafting.

Leaves of Absence

Delegate Miller—1 day.

Delegate Pugh—½ day.

Delegate Denney—1 day.

Adjournment

Delegate Abraham moved that the Convention do now adjourn until Wednesday, September 19, 1973, at 9:00 o'clock A.M.

Which motion was agreed to.

And Chairman Henry declared the Convention adjourned to Wednesday, September 19, 1973 at 9:00 o'clock A.M.

MOISE W. DENNERY
Secretary

DAVID R. POYNTER
Chief Clerk

PAGE 6

54th Days Proceedings—September 26, 1973

Delegate Reeves moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

★ Section 12. Limitations of Local Governmental Subdivisions

Section 12. Local governmental subdivisions shall not: (1) incur debt payable from ad valorem tax receipts maturing more than forty years from the time it is incurred; (2) define and provide for the punishment of a felony; or (3) enact private or civil ordinances governing civil relationships.

Read.

Delegate O'Neill sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegate O'Neill to Committee Proposal No. 17 by Delegate Perez, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 6, at the end of line 31, change the period "." to a semicolon ";" and add the following:
"or, (4) set prices of private goods or services, other than those of public utilities or common carriers subject to their regulations."

AMENDMENT No. 2—

On page 6, at the end of line 31, change the period "." to a semicolon ";" and add the following:
"or, (5) engage in wholesale or retail trade, or manufacturing enterprises."

On motion of Delegate O'Neill Amendment No. 2 was withdrawn.

Delegate Stovall moved the previous question on the amendments.

Delegate Perez objected.

By a vote of 35 yeas and 67 nays the Convention refused to order the previous question at this time.

Delegate O'Neill moved the adoption of the amendment.

Delegate Casey objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Avant	Hayes	Robinson
Berry	Haynes	Roemer
Chehardy	Hernandez	Roy
Corne	Jackson, A.	Segura
De Blieux	Jenkins	Stagg
Flory	Mire	Stephenson
Fontenot	Newton	Stinson
Goldman	O'Neill	Vesich
Gravel	Perkins	Wisham
Guarisco	Rachal	
Total—29.		

NAYS

Delegates—		
Abraham	Brown	Conroy
Alario	Burns	Cowen
Anzalone	Burson	Dennery
Arnette	Cannon	Dennis
Asseff	Carmouche	Deshotels
Badeaux	Casey	Dunlap
Bergeron	Champagne	Duval
Blair	Chatelain	Edwards
Bollinger	Comar	Elkins
Brien	Conino	Fowler

Fulco	McDaniel	Soniat
Gauthier	Martin	Stovall
Ginn	Maubert	Sutherland
Grier	Miller	Tapper
Hardee	Nunez	Thompson
Jack	Ourso	Tobias
Jackson, J.	Perez	Toca
Juneau	Planchard	Toomy
Kilbourne	Rayburn	Uilo
Kilpatrick	Reeves	Velazquez
Lambert	Riecke	Vick
Landry, A.	Sandoz	Wattigny
Landry, E. J.	Schmitt	Willis
Lanier	Shannon	Winchester
Leithman	Singletary	Zervigon
Lennox	Slay	
Lowe	Smith	

Total—79.

NOT VOTING

Delegates—		
Mr. Chairman	Giarrusso	Pugh
Aerker	Heine	Silverberg
Alexander	Kean	Tate
Bel	Kelly	Thistlethwaite
D'Gerolamo	Landrum	Wall
Derbes	LeBleu	Warren
Drew	Leigh	Weiss
Fayard	Munson	Womack

Total—24.

And the amendment was rejected.

Delegate Casey moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Delegate Casey sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Casey to Committee Proposal No. 17 by Delegate Perez, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 6, line 30, immediately after the number and punctuation "(3)" insert the following:
"except as may be provided by law."

Delegate Casey moved the adoption of the amendment.

Delegate Jenkins objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Abraham	Cowen	Juneau
Alario	D'Gerolamo	Kilbourne
Anzalone	De Blieux	Kilpatrick
Arnette	Dennery	Lambert
Asseff	Deshotels	Landry, A.
Avant	Dunlap	Landry, E. J.
Badeaux	Duval	Lanier
Bergeron	Edwards	Leithman
Berry	Elkins	Lennox
Blair	Fayard	Lowe
Bollinger	Flory	McDaniel
Brien	Fontenot	Miller
Brown	Fowler	Mire
Burns	Fulco	Newton
Burson	Gauthier	Nunez
Cannon	Ginn	Perkins
Carmouche	Gravel	Planchard
Casey	Grier	Rachal
Champagne	Guarisco	Rayburn
Chatelain	Hardee	Reeves
Chehardy	Haynes	Riecke
Comar	Hernandez	Robinson
Conino	Jack	Roemer
Conroy	Jackson, A.	Roy
Corne	Jackson, J.	

PAGE 7

54th Days Proceedings—September 26, 1973

Sandoz	Stephenson	Ulio
Schmitt	Stovall	Velazquez
Segura	Sucherland	Vesich
Singletary	Tate	Vick
Slay	Thompson	Wattigny
Smith	Tobias	Willis
Soniata	Toca	Winchester
Stagg	Toomy	Zervigon

Total—99.

NAYS

Delegates—	Jenkins	Stinson
Dennis	O'Neill	Wisham
Goldman		
Total—6.		

NOT VOTING

Delegates—	Kean	Pugh
Mr. Chairman	Kelly	Shannon
Aertker	Landrum	Silverberg
Alexander	LeBleu	Tapper
Bel	Leigh	Thistlethwaite
Derbes	Martin	Wall
Drew	Mauberrert	Warren
Giarrusso	Munson	Weiss
Hayes	Oursou	Womack
Heine		
Total—27.		

And the amendment was adopted.

Delegate Casey moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Avant sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegates Avant, Newton, Jack, Goldman, Reeves, Roy, Alario, Flory, Gravel, Leithman, A. Jackson, Jenkins, Toca, Wisham, Chehardy, Haynes, Munson, Brien, Kilpatrick, O'Neill, Womack, Ginn, Cannon, E. J. Landry, and Rachal to Committee Proposal No. 17 by Delegate Perez, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 6, line 27, immediately after the numeral and punctuation "12." insert the letter "(A)"

AMENDMENT No. 2—

On page 6, between lines 31 and 32, insert the following: "(B) Notwithstanding any provision of any plan of local government, or any home rule charter, or any other provision of this Article, the legislature may by general law, applicable throughout the state, or based upon any reasonable classification, exercise the police power of the state in the parishes, municipalities, and other local governmental subdivisions of the state."

Delegate Avant moved the adoption of the amendment.

Delegate Burson objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Comar	Gravel
Mr. Chairman	D'Gerolamo	Guarisco
Alario	De Blieux	Hayes
Avant	Dennis	Haynes
Bergeron	Dunlap	Jack
Berry	Edwards	Jackson, A.
Blair	Flory	Jackson, J.
Brien	Ginn	Jenkins
Brown	Goldman	Kilpatrick
Chehardy		

Lambert	Robinson	Tate
Landry, E. J.	Roemer	Thompson
Leithman	Roy	Tobias
Miller	Segura	Toca
Mire	Shannon	Velazquez
Munson	Singletary	Vesich
Newton	Slay	Vick
O'Neill	Soniata	Winchester
Oursou	Stephenson	Wisham
Rachal	Stinson	
Rayburn	Stovall	
Reeves	Tapper	
Total—61.		

NAYS

Delegates—	Denney	McDaniel
Abraham	Duval	Mauberrert
Anzalone	Elkins	Nunez
Arnette	Fayard	Perez
Asseff	Fonlenot	Perkins
Badeaux	Fulco	Planchard
Boillinger	Gauthier	Riecke
Burns	Grier	Sandoz
Burson	Hardee	Schmitt
Carmouche	Hernandez	Smith
Casey	Juneau	Stagg
Champagne	Kilbourne	Sutherland
Chatelain	Landry, A.	Toomy
Conino	Lanier	Ulio
Conroy	Lennox	Willis
Corne	Lowe	Zervigon
Cowen		
Total—48.		

NOT VOTING

Delegates—	Giarrusso	Pugh
Aertker	Heine	Silverberg
Alexander	Kean	Thistlethwaite
Bel	Kelly	Wall
Cannon	Landrum	Wattigny
Derbes	LeBleu	Weiss
Deshotels	Leigh	Womack
Drew	Martin	
Fowler		
Total—23.		

And the amendments were adopted.

Delegate Avant moved to reconsider the vote by which the amendments were adopted, and on his own motion, the motion to reconsider was laid on the table.

Motion

On motion of Delegate O'Neill, the Convention altered the Order of Business to take up other Orders of Business at this time.

COMMITTEE NOTICE

Delegate Perez, chairman of the Committee on Local and Parochial Government, sent up the following notice:

The Committee on Local and Parochial Government will meet on Thursday, August 26, 1973, at 10:00 o'clock A.M. in Committee Room 206 and will consider the following agenda:

AGENDA

Continue committee preparation for presentation of CP 17.

Respectfully submitted,

DELEGATE C. O. PEREZ,
Chairman of the Committee on
Local and Parochial Government

The above notice was read in open session and publicly posted as provided by the Rules of Procedure of the Convention.

COMMITTEE NOTICE

Delegate Lambert, chairman of the Committee on Natural Resources and the Environment, sent up the following notice:

The Committee on Natural Resources and the Environment will meet on Thursday, September 27, 1973, at 10:00 o'clock

OFFICIAL JOURNAL OF THE CONSTITUTIONAL CONVENTION OF 1973

OF THE STATE OF LOUISIANA

FIFTY-FIFTH DAY'S PROCEEDINGS

of the Constitutional Convention of 1973
held in accordance with Act 2 of the 1972
Regular Session of the Legislature

Thursday, September 27, 1973, Baton Rouge, La.

The Convention was called to order at 1:00 o'clock p.m., by
Hon. E. L. Henry, Chairman of the Convention.

ROLL CALL

The roll being called, the following delegates answered to
their names:

PRESENT

Delegates—	Fowler	Perkins
Mr. Chairman	Fulco	Planckard
Abraham	Gauthier	Pugh
Aertker	Ginn	Rachal
Alario	Goldman	Rayburn
Amalzone	Gravel	Reeves
Arnette	Grier	Riecke
Asselt	Guarisco	Robinson
Avant	Hardee	Roemer
Badeaux	Hayes	Roy
Bel	Haynes	Sandoz
Bergeron	Heine	Schmitt
Blair	Hernandez	Segura
Bollinger	Jack	Shannon
Brien	Jackson, A.	Singletary
Brown	Jackson, J.	Slay
Burns	Jenkins	Smith
Burson	Juneau	Soniati
Cannon	Kean	Stagg
Carmouche	Kelly	Stephenson
Casey	Kilbourne	Stinson
Champagne	Kilpatrick	Stovall
Chatelain	Lambert	Sutherland
Chehardy	Landrum	Tapper
Comar	Landry, A.	Tate
Conino	Landry, E. J.	Thompson
Conroy	Lanier	Tobias
Corne	LeBleu	Toca
Cowen	Leithman	Toomy
D'Gerolamo	Lennox	Ullio
De Bileux	Lowe	Velazquez
Dennis	Martin	Vesich
Derbes	Mauberret	Vick
Deshotels	Miller	Wall
Drew	Mire	Warren
Dunlap	Munson	Watigny
Duval	Newton	Weiss
Edwards	Nunez	Willis
Elkins	O'Neill	Winchester
Fayard	Ourso	Wisham
Flory	Perez	Zervigon
Fontenot		
Total—124.		

ABSENT

Delegates—	Leigh	Thistlethwaite
Berry	McDaniel	Womack
Denberry	Silverberg	
Giarrusso		
Total—8.		

The Chairman announced that there were 124 members
present and a quorum.

Prayer

Prayer was offered by Delegate Lennox.

Pledge of Allegiance

Delegate Bergeron led the Convention in reciting the Pledge
of Allegiance to the Flag of the United States of America.

Reading of the Journal

On motion of Delegate Roy, the reading of the Journal
was dispensed with.

On motion of Delegate Roy, the Journal of yesterday was
adopted.

Regular Order

Unfinished Business

The following unfinished business in which the Convention
was engaged at the time of its adjournment on yesterday was
taken up and acted on.

Proposals

Delegate and Committee

The following entitled Delegate and Committee Proposals
were taken up on their third reading and final passage:

COMMITTEE PROPOSAL No. 17—

Introduced by Delegate Perez, Chairman, on behalf of the
Committee on Local and Parochial Government, and Dele-
gates Burson, Cannon, Chatelain, Conino, D'Gerolamo, Fow-
ler, Giarrusso, Hayes, Heine, J. Jackson, Kean, Lanier,
Reeves, Shannon, Stephenson, Taylor, Toomy, Ullio and Zer-
vigon:

A PROPOSAL

Making general provisions for local and parochial govern-
ment, levee districts, and ports, the financing thereof, and
necessary provisions with respect thereto.

Read.

Section 12. Limitations of Local Governmental Subdivisions

Section 12. Local governmental subdivisions shall not: (1)
incur debt payable from ad valorem tax receipts maturing
more than forty years from the time it is incurred; (2) de-
fine and provide for the punishment of a felony; or (3) enact
private or civil ordinances governing civil relationships.

Read.

The Chairman announced that the Convention had under
consideration Committee Proposal No. 17, Section 12, when
it adjourned on Wednesday, September 26, 1973, which was
taken up and acted upon as follows:

Delegate Lowe sent up floor amendments, which were read
as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegates Lowe, Roemer, and
Mire to Committee Proposal No. 17 by Delegate Perez, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 6, line 27, immediately after the word and punctua-
tion "not:" delete the remainder of the line and delete line
28 in its entirety and delete line 29 in its entirety and insert
in lieu thereof the following:

"(1) de-

AMENDMENT No. 2—

On page 6, line 30, immediately after the word "or" and
before the word "enact" change the number "(3)" to the
number "(2)"

On motion of Delegate Lowe the amendment was adopted.

Delegate Lowe moved to reconsider the vote by which the
amendments were adopted, and on his own motion, the motion
to reconsider was laid on the table.

Delegate Casey sent up floor amendments which were read
as follows:

PAGE 2

55th Days Proceedings—September 27, 1973

FLOOR AMENDMENTS

Amendments proposed by Delegate Casey to Committee Proposal No. 17 by Delegate Perez, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—
Delete in their entirety Amendment No. 1 and Amendment No. 2 proposed by Mr. Avant et al. and adopted by this Convention on September 26, 1973.

AMENDMENT No. 2—
On page 6, line 27, immediately after the numeral and punctuation "12." insert the letter "(A)"

AMENDMENT No. 3—
On page 6, between lines 31 and 32, insert the following:
"(B) Notwithstanding any provision of this Constitution, the police power of the state shall never be abridged."

On motion of Delegate Casey the amendments were withdrawn.

Delegate Casey sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegate Casey to Committee Proposal No. 17 by Delegate Perez, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—
Delete in their entirety Amendment No. 1 and Amendment No. 2 proposed by Mr. Avant et al. and adopted by this Convention on September 26, 1973.

AMENDMENT No. 2—
On page 6, line 27, immediately after the numeral and punctuation "12." insert the letter "(A)"

AMENDMENT No. 3—
On page 6, between lines 31 and 32, insert the following:
"(B) Notwithstanding any provision of this Article, the police power of the state shall never be abridged."

Delegate Casey moved the adoption of the amendment.

Delegate Avant objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Drew	Miller
Abraham	Duval	Nunez
Aerker	Elkins	Perez
Alexander	Fayard	Perkins
Anzalone	Fontenot	Planchar
Arnette	Gauthier	Riecke
Badeaux	Grier	Sandoz
Bel	Guarisco	Schmitt
Bollinger	Hardee	Singletary
Burns	Heine	Smith
Burson	Hernandez	Soni
Carmouche	Janeau	Stagg
Casey	Kean	Stinson
Champagne	Kelly	Sutherland
Chatelain	Kilbourne	Toomy
Conino	Landry, A.	Uilo
Conroy	Lanier	Velazquez
Corne	LeBleu	Weiss
Cowen	Lennox	Willis
Dennis	Lowe	Winchester
Derbes		Zervigon
Deshotels		
Total—63.		

NAYS

Delegates—	Hayes	Rayburn
Mr. Chairman	Haynes	Reeves
Alario	Jack	Robinson
Asseff	Avant	Roemer
Bergeron	Jackson, A.	Roy
Blair	Jackson, J.	Slay
Brown	Jenkins	Stephenson
Cannon	Kilpatrick	Stovall
Chehardy	Lambert	Tapper
Cinmar	Landrum	Tate
D'Gerolamo	Landry, E. J.	Thompson
De Blieux	Leithman	Toca
Dunlap	Mauberet	Vesich
Edwards	Mire	Vick
Flory	Munson	Wall
Fowler	Newton	Warren
Ginn	O'Neil	Wattigny
Goldman	Oruso	Wisham
Gravel	Rachal	
Total—55.		

NOT VOTING

Delegates—	McDaniel	Silverberg
Berry	Martin	Thistlethwaite
Brien	O'Neill	Tobias
Denney	Segura	Womack
Giarrusso	Shannon	
Leigh		
Total—14.		

And the amendments were adopted.

Delegate Casey moved to reconsider the vote by the amendments were adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Jenkins sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Jenkins to Committee Proposal No. 17 by Delegate Perez, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—
On page 6, line 31, at the end of the line change the period " " to a semicolon " ; " and insert the following:
"or (3) levy any tax beyond the limits imposed by this constitution; or (4) levy or increase any tax not specifically authorized by this constitution unless authorized by the legislature and by a majority of the electors voting thereon in the political subdivision affected."

Delegate Jenkins moved the adoption of the amendment.

Delegate Perez objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Jackson, J.	Rachal
Mr. Chairman	Jenkins	Reeves
Alexander	Kilbourne	Robinson
Avant	Kilpatrick	Roemer
Brien	Lambert	Roy
D'Gerolamo	Landrum	Stinson
Edwards	Leithman	Thompson
Flory	Mire	Toca
Ginn	Munson	Wall
Gravel	Newton	Wattigny
Hayes	O'Neil	Wisham
Jackson, A.	Oruso	
Total—35.		

NAYS

Delegates—	Asseff	Blair
Abraham	Badeaux	Brown
Alario	Bel	Burns
Anzalone	Bergeron	Burson
Arnette		

PAGE 3

55th Days Proceedings—September 27, 1973

Cannon	Grier	Riecke
Carmouche	Guarisco	Sandoz
Casey	Hardee	Schmitt
Champagne	Heine	Shannon
Chatelain	Hernandez	Singletary
Conino	Jack	Slay
Conroy	Juneau	Smith
Corne	Kean	Soniat
Cowen	Kelly	Stagg
De Blieux	Landry, A.	Sutherland
Dennis	Landry, E. J.	Tate
Derbes	Lanier	Tobias
Deshotels	LeBleu	Toomy
Drew	Lennox	Uilo
Dunlap	Love	Velazquez
Duval	Mauberrert	Vesich
Elkins	Miller	Vick
Fayard	Nunez	Weiss
Fontenot	Perez	Willis
Fowler	Perkins	Winchester
Fulco	Planchard	Zervigon
Gauthier	Pugh	
Goldman	Rayburn	
Total—79.		

NOT VOTING

Delegates—	Giarrusso	Stephenson
Aertker	Leigh	Stovall
Berry	McDaniel	Tapper
Bollinger	Martin	Thistlethwaite
Chehardy	Segura	Warren
Comar	Silverberg	Womack
Dennery		
Total—18.		

And the amendment was rejected.

Delegate Perez moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Delegate Dennis sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Dennis to Committee Proposal No. 17 by Delegate Perez, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 6, between lines 31 and 32, following the language added by Floor Amendment No. 3 proposed by Delegate Casey and adopted by the Convention on September 27, 1973, insert the following:

"(C) This article shall not limit the power of the legislature to enact laws of statewide concern."

Delegate Dennis moved the adoption of the amendment.

Delegate Lanier objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Flory	Kelly
Mr. Chairman	Fowler	Kilpatrick
Alario	Ginn	Landrum
Alexander	Goldman	Landry, E. J.
Avant	Gravel	Leithman
Blair	Guarisco	Lowe
Brien	Hayes	Mauberrert
Brown	Havnes	Mire
Corne	Jackson, A.	Munson
D'Gerolamo	Jackson, J.	Newton
Dennis	Jenkins	O'Neill
Dunlap		

Pugh	Slay	Vick
Rachal	Stephenson	Wall
Reeves	Stovall	Warren
Robinson	Tate	Wattignay
Roemer	Tobias	Wisham
Roy	Toca	
Shannon	Velazquez	
Total—52.		

NAYS

Delegates—	Duval	Perez
Abraham	Edwards	Perkins
Anzalone	Fayard	Planchard
Arnette	Fontenot	Rayburn
Asseff	Fulco	Riecke
Badeaux	Gauthier	Sandoz
Bel	Grier	Schmitt
Bergeron	Hardee	Singletary
Bollinger	Heine	Smith
Burns	Hernandez	Soniat
Burson	Jack	Stagg
Cannon	Juneau	Stinson
Carmouche	Kean	Sutherland
Casey	Kilbourne	Tapper
Champagne	Lambert	Thompson
Chatelain	Landry, A.	Toomy
Comar	Lanier	Uilo
Conino	LeBleu	Vesich
Conroy	Lennox	Weiss
Cowen	Martin	Willis
De Blieux	Miller	Winchester
Derbes	Nunez	Zervigon
Deshotels	Ourso	
Drew		
Total—68.		

NOT VOTING

Delegates—	Elkins	Segura
Aertker	Giarrusso	Silverberg
Berry	Leigh	Thistlethwaite
Chehardy	McDaniel	Womack
Dennery		
Total—12.		

And the amendment was rejected.

Delegate Perez moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Passage

Committee Proposal No. 17, Section 12, was read, as amended.

Delegate Lanier moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Conroy	Hardee
Mr. Chairman	Corne	Hayes
Abraham	Cowen	Heine
Alario	D'Gerolamo	Hernandez
Alexander	De Blieux	Jack
Anzalone	Dennis	Jenkins
Arnette	Derbes	Juneau
Asseff	Deshotels	Kean
Avant	Drew	Kilpatrick
Badeaux	Dunlap	Kilpatrick
Bel	Duval	Lambert
Bergeron	Edwards	Landry, A.
Blair	Fayard	Lanier
Bollinger	Flory	LeBleu
Brien	Fontenot	Leithman
Brown	Fowler	Lennox
Burns	Fulco	Lowe
Burson	Gauthier	Martin
Cannon	Ginn	Mauberrert
Carmouche	Goldman	Miller
Casey	Gravel	Mire
Champagne	Grier	Munson
Chatelain	Guarisco	Newton
Comar		
Conino		

PAGE 4

55th Days Proceedings—September 27, 1973

Nunez	Schmitt	Tobias
O'Neill	Shannon	Toca
Ourso	Singletary	Toomy
Perez	Slay	Ullio
Perkins	Smith	Vesich
Planchar	Soni	Vick
Pugh	Stagg	Wall
Rayburn	Stephenson	Warren
Reeves	Stinson	Wattigny
Riecke	Stovall	Weiss
Robinson	Sutherland	Willis
Roemer	Tapper	Winchester
Roy	Tate	Wisham
Sandoz	Thompson	Zervigon

Total—114.

NAYS

Delegates—		
Haynes	Landrum	Rachel
Jackson, A.	Landry, E. J.	Velazquez
Jackson, J.		
Total—7.		

NOT VOTING

Delegates—		
Aertker	Giarrusso	Silverberg
Berry	Leigh	Thistlethwaite
Chehardy	McDaniel	Womack
Denney	Segura	
Total—11.		

And the Chair declared that the above Section was passed.

Delegate Lanier moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Delegate Singletary sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Singletary to Committee Proposal No. 17 by Delegate Perez, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 6, between lines 31 and 32, add the following section:

"Section 12.1. Codification of Ordinances
Section 12.1. The governing authority of each political subdivision shall within two years of the effective date of the adoption of this constitution, cause a code to be prepared containing all of the ordinances of the political subdivision of general application which are appropriate for continuation as law. When the code shall have been prepared the governing authority of the political subdivision shall cause copies of the same to be prepared and made available for public distribution. All proposed ordinances of general application adopted after the approval of the code shall be adopted as amendments or additions to the code."

Delegate Singletary moved the adoption of the amendment.

Delegate De Blieux objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Avant	Brown
Abraham	Badeaux	Burns
Alario	Bel	Burson
Alexander	Bergeron	Cannon
Anzalone	Blair	Casey
Arnette	Bollinger	Champagne
Asseff	Brien	Chatelain

Comar	Kean
Conino	Kelly
Conroy	Kilbourne
Corne	Kilpatrick
D'Gerolamo	Lambert
Derbes	Landrum
Deshotels	Landry, A.
Dunlap	Landry, E. J.
Edwards	Lanier
Elkins	LeBleu
Fayard	Lennox
Flory	Lowe
Fontenot	Martin
Fowlr	Mauverret
Fulco	Miller
Gauthier	Mire
Ginn	Munson
Goldman	Newton
Gravel	Nunez
Grier	O'Neill
Hardee	Ourso
Hayes	Perez
Haynes	Perkins
Heine	Planchar
Hernandez	Pugh
Jack	Rachal
Jackson, A.	Rayburn
Jackson, J.	Reeves
Jenkins	Riecke
Juneau	Robinson

Total—109.

NAYS

Delegates—		
Carmouche	Drew	Stovall
De Blieux	Duval	Toomy
Dennis	Guarisco	
Total—8.		

NOT VOTING

Delegates—		
Aertker	Giarrusso	Silverberg
Berry	Leigh	Smith
Chehardy	Leithman	Tate
Cowen	McDaniel	Thistlethwaite
Denney	Segura	Womack
Total—15.		

The amendment having received a majority vote of the total memberships of the Convention, necessary to pass a Section to a Proposal, was passed.

Delegate Singletary moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Passage

Committee Proposal No. 17, Section 12.1, was read.

Delegate Singletary moved the passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Casey	Gauthier
Abraham	Champagne	Ginn
Alario	Chatelain	Goldman
Alexander	Conino	Gravel
Anzalone	Conroy	Grier
Arnette	Corne	Hardee
Asseff	Cowen	Hayes
Avant	D'Gerolamo	Haynes
Badeaux	Derbes	Heine
Bel	Deshotels	Hernandez
Bergeron	Drew	Jack
Blair	Dunlap	Jackson, A.
Bollinger	Edwards	Jackson, J.
Brien	Elkins	Jenkins
Brown	Fayard	Juneau
Burns	Flory	Kelly
Burson	Fontenot	Kilbourne
Cannon	Fowler	Kilpatrick
Carmouche	Fulco	Lambert

PAGE 5

55th Days Proceedings—September 27, 1973

Landry, A.	Pugh	Sutherland
Landry, E. J.	Rayburn	Tapper
Lanier	Reeves	Thompson
LeBlau	Riecke	Tobias
Lennox	Robinson	Toca
Lowe	Roemer	Ullio
Martin	Roy	Velazquez
Mauberret	Sandoz	Vesich
Miller	Schmitt	Vick
Mire	Shannon	Wall
Munson	Singletary	Warren
Nunez	Slay	Wattigny
O'Neill	Soniat	Weiss
Ourso	Stagg	Willis
Perez	Stephenson	Winchester
Perkins	Stinson	Wisham
Planchard	Stovall	Zervigon

Total—108.

NAYS

Delegates—	Guarisco	Toomy
De Bileux	Kean	
Duval		

Total—5.

NOT VOTING

Delegates—	Landrum	Silverberg
Aertker	Leigh	Smith
Berry	Leithman	Tate
Chehardy	McDaniel	Thistlethwaite
Comar	Newton	Womack
Dennery	Rachal	
Dennis	Segura	
Giarrusso		

Total—19.

And the Chair declared that the above Section was passed.

Delegate Singletary moved to reconsider the vote by which the above Section was passed, and, on his own motion, the motion to reconsider was laid on the table.

Section 13. Local Officials

Section 13. The electors of each local governmental subdivision shall have the exclusive right to elect the members of their governing authority and, if a plan or form of government or home rule charter so provides, their chief executive officer at elections held in accordance with the election laws of the state. Such officials shall not be subject to removal by the legislature.

Read.

Delegate Pugh sent up a floor amendment, which were read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Pugh to Committee Proposal No. 17 by Delegate Perez, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 6 delete line 32 in its entirety and on page 7 delete lines 1 through 7, both inclusive, in its entirety

Delegate Pugh moved the adoption of the amendment.

Delegate Lanier objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Flory	Gravel
Bollinger	Fulco	Hayes
Chamagne	Ginn	Jackson, A.
De Bileux	Goldman	Jackson, J.
Duval		

[262]

Kelly	Riecke	Velazquez
Landrum	Soniat	Vick
Munson	Stovall	Warren
Pugh	Tobias	Wattigny
Rachal	Ullio	Wisham

Total—27.

NAYS

Delegates—	Elkins	O'Neill
Abraham	Fayard	Perez
Alario	Fontenot	Perkins
Anzalone	Fowler	Planchard
Arnette	Gauthier	Rayburn
Asseff	Grier	Reeves
Avant	Guarisco	Robinson
Badeaux	Hardee	Roemer
Bel	Heine	Roy
Bergeron	Hernandez	Sandoz
Blair	Jack	Schmitt
Brien	Jenkins	Shannon
Brown	Juneau	Singletary
Burns	Kean	Slay
Burson	Kilbourne	Smith
Cannon	Kilpatrick	Stagg
Carmouche	Lambert	Stephenson
Casey	Landry, A.	Stinson
Chatelain	Landry, E. J.	Sutherland
Comar	Lanier	Tapper
Conino	LeBlau	Thompson
Conroy	Lennox	Toca
Corne	Lowe	Toomy
Cowen	Martin	Vesich
D'Gerolamo	Mauberret	Wall
Dennis	Miller	Weiss
Derbes	Mire	Willis
Deshotels	Newton	Winchester
Drew	Nunez	Zervigon
Dunlap		

Total—87.

NOT VOTING

Delegates—	Edwards	Ourso
Mr. Chairman	Giarrusso	Segura
Aertker	Haynes	Silverberg
Alexander	Leigh	Tate
Berry	Leithman	Thistlethwaite
Chehardy	McDaniel	Womack
Dennery		

Total—18.

And the amendment was rejected.

Delegate Perez moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Delegate Kelly sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates Kelly and Perez to Committee Proposal No. 17 by Delegate Perez, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 7, line 6, immediately after the word and punctuation "state," delete the remainder of the line and delete line 7 in its entirety.

On motion of Delegate Perez the amendment was adopted.

Delegate Perez moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Velazquez sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Velazquez to Committee Proposal No. 17 by Delegate Perez, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 7, line 6, immediately after the word and punctuation "state," add the following:

"Nothing herein shall be construed to prohibit the election of any official based on apportionment by population."

OFFICIAL JOURNAL OF THE CONSTITUTIONAL CONVENTION OF 1973

OF THE STATE OF LOUISIANA

EIGHTY-SIXTH DAY'S PROCEEDINGS

of the Constitutional Convention of 1973
held in accordance with Act 2 of the 1972
Regular Session of the Legislature

Thursday, November 15, 1973, Baton Rouge, La.

The Convention was called to order at 9:00 o'clock a.m., by
Hon. E. L. Henry, Chairman of the Convention.

ROLL CALL

The roll being called, the following delegates answered to
their names:

PRESENT

Delegates—
Mr. Chairman
Abraham
Aertker
Alario
Alexander
Arnette
Asseff
Avant
Badeaux
Bel
Bergeron
Blair
Bollinger
Brien
Brown
Burns
Burson
Cannon
Carmouche
Casey
Champagne
Chatelain
Comar
Conino
Conroy
Corme
Cowen
D'Gerolamo
De Blieux
Dennery
Dennis
Derbes
Drew
Dunlap
Duval
Edwards
Elkins
Fayard
Flory
Fontenot
Fowler
Fulco

Gauthier
Giarrusso
Glen
Graham
Gravel
Grier
Guarisco
Hardee
Hayes
Haynes
Heine
Hernandez
Jack
Jackson, A.
Jackson, J.
Jenkins
Juneau
Kean
Kelly
Kilbourne
Kilpatrick
Lambert
Landrum
Landry, A.
Landry, E. J.
Lanier
LeBleu
Leigh
Leithman
Lowe
McDaniel
Marlin
Mauberret
Maybucc
Miller
Mire
Morris
Munson
Newton
Nunez
O'Neill
Orsuo

Perez
Perkins
Planchard
Pugh
Rachal
Rayburn
Reeves
Riecke
Roemer
Roy
Sandoz
Schmitt
Segura
Shannon
Singletary
Slay
Smith
Soniatt
Stagg
Stephenson
Stinson
Stovall
Sutherland
Tapper
Tate
Thompson
Tobias
Toca
Toomy
Uilo
Velazquez
Vesich
Vick
Wall
Warren
Watigny
Weiss
Willis
Winchester
Wisham
Womack
Zervigon

Total—126.

ABSENT

Delegates—
Anzalone
Chehardy
Total—5.

Deshotels
Goldman

Thistlethwaite

The Chairman announced that there were 126 members
present and a quorum.

Prayer

Prayer was offered by Delegate Abraham.

Pledge of Allegiance

Delegate Conino led the Convention in reciting the Pledge
of Allegiance to the Flag of the United States of America.

Reading of the Journal

On motion of Delegate Roy, the reading of the Journal
was adopted.

On motion of Delegate Roemer, the Journal of yesterday
was adopted.

Morning Hour

Reports of Committees

The following reports of committees were received and
read:

Delegate Dennis, chairman, on behalf of the Committee
on the Judiciary, submitted the following report:

State of Louisiana
Constitutional Convention
of 1973

November 15, 1973, Baton Rouge, La.

To the Chairman and Delegates of the Constitutional Con-
vention:

I am directed by your Committee on the Judiciary to
submit the following report:

DELEGATE PROPOSAL No. 32—

By Delegate Drew:

A PROPOSAL

To provide with respect to the court of appeal circuits and
districts.

Reported without action.

DELEGATE PROPOSAL No. 43—

Introduced by Delegates J. Jackson, A. Jackson, Warren,
Ray, Gravel, Stovall, Pugh, and Gauthier:

A PROPOSAL

Providing for juvenile courts having exclusive original
jurisdiction with the exception for offenses of murder,
aggravated kidnapping, armed robbery, or aggravated
rape.

Reported without action.

Motion

Delegate Chatelain moved that the Convention adopt a
work schedule of Thursday, November 15, 1973 through
Wednesday, November 21, 1973 with the exception of the
morning of Sunday, November 18, 1973.

As a substitute Delegate Cowen moved that the Con-
vention adopt a work schedule of Thursday, November 15, 1973
through Wednesday, November 21, 1973 with the exception
of Sunday, November 18, 1973.

The vote returned on the substitute motion.

By a vote of 31 yeas and 54 nays the Convention re-
fused to adopt a work schedule of Thursday, November 15,
1973 through Wednesday, November 21, 1973, with the ex-
ception of Sunday, November 18, 1973.

Delegate Chatelain insisted upon his original motion.

Delegate Cowen objected.

By a vote of 68 yeas and 18 nays the Convention adopted
a work schedule of Thursday 15, 1973, through Wednesday,
November 21, 1973, with the exception of the morning of
Sunday, November 18, 1973.

Unfinished Business

The following unfinished business in which the Con-
vention was engaged at the time of its adjournment on yes-
terday was taken up and acted on:

PAGE 2

87th Days Proceedings—November 16, 1973

NAYS

Delegates—		
Mr. Chairman	Gauthier	Planchard
Abraham	Giarrusso	Schmitt
Arnette	Hayes	Tobias
Asseff	Jenkins	Warren
Baceaux	Lambert	Wattigny
Brown	Lanier	Weiss
Conno	Lowe	Willis
Conroy	Miller	Womack
Fulco	Nunez	

Total—26.

NOT VOTING

Delegates—		
Alexander	Ginn	Ourso
Anzalone	Goldman	Perez
Carrouche	Guarisco	Reeves
Chatelain	Haynes	Riecke
Cowen	Martin	Roy
Dennis	Mauberrert	Tapper
Derbes	Maybuce	Thistlethwaite
Deshotels	Mire	Velazquez
Edwards	Munson	Wall
Fayard	Newton	Winchester
Fontenot	O'Neill	
Fowler		

Total—34.

And the Convention ordered the Proposal engrossed and passed to its third reading.

Delegate Drew moved to reconsider the vote by which the Proposal was ordered engrossed and passed to its third reading, and, on his own motion, the motion to reconsider was laid on the table.

★ DELEGATE PROPOSAL No. 43—

Introduced by Delegates J. Jackson, A. Jackson, Warren, Ray, Gravel, Stovall, Pugh, and Gauthier:

A PROPOSAL

Providing for juvenile courts having exclusive original jurisdiction with the exception for offenses of murder, aggravated kidnapping, armed robbery, or aggravated rape.

Read.

Reported without action by the Committee on the Judiciary.

Delegate Dennis moved that the Proposal be withdrawn from the files of the convention.

As a substitute, Delegate J. Jackson moved that the Proposal be engrossed and passed to its third reading.

Delegate Dennis objected.

The vote recurred on the substitute.

A record vote was asked for and ordered by the Convention.

ROLL CALL

YEAS

Delegates—		
Abraham	Dennery	Leigh
Alario	Drew	Miller
Asseff	Dunlap	Mire
Bel	Flory	Nunez
Begeron	Gauthier	Perez
Brien	Giarrusso	Perkins
Brown	Gravel	Pugh
Russon	Hayes	Rachal
Carrouche	Jackson, A.	Schmitt
Casey	Jackson, J.	Segura
Champagne	Juneau	Slay
Chehardy	Kipatrick	Soniat
Comar	Lambert	Stephenson
Conno	Landrum	Sutherland
D'Gerolamo	Landry, E. J.	Tate

Toca	Vick	Weiss
Toomy	Wall	Wisham
Uilo	Warren	Zervigon
Vesich	Wattigny	
Total—56.		

NAYS

Delegates—		
Aertker	Fulco	McDaniel
Arnette	Ginn	Morris
Avant	Grier	O'Neill
Badeaux	Guarisco	Planchard
Blair	Hardee	Rayburn
Bollinger	Heine	Reeves
Burns	Hernandez	Riecke
Cannon	Jack	Roemer
Chatelain	Jenkins	Sandoz
Conroy	Kean	Singletary
Corne	Kelly	Smith
Cowen	Kilbourne	Stinson
De Bieux	Landry, A.	Stovall
Dennis	Lanier	Thompson
Duval	LeBlue	Willis
Elkins	Lowe	Womack

Total—48.

NOT VOTING

Delegates—		
Mr. Chairman	Goldman	Ourso
Alexander	Graham	Roy
Anzalone	Haynes	Shannon
Derbes	Leithman	Stagg
Deshotels	Martin	Tapper
Edwards	Mauberrert	Thistlethwaite
Fayard	Maybuce	Tobias
Fontenot	Munson	Velazquez
Fowler	Newton	Winchester

Total—27.

And the Convention ordered the Proposal engrossed and passed to its third reading.

Delegate J. Jackson moved to reconsider the vote by which the Proposal was ordered engrossed and passed to its third reading, and on his own motion, the motion to reconsider was laid on the table.

Unfinished Business

The following unfinished business in which the House was engaged at the time of its adjournment on yesterday was taken up and acted on:

Proposals Delegate and Committee

The following entitled Delegate and Committee Proposals were taken up on their third reading and final passage:

COMMITTEE PROPOSAL No. 7—

Introduced by Delegate Aertker, Chairman, on behalf of the Committee on Education and Welfare and Delegates Carrouche, Cowen, Flory, Hernandez, Landry, Segura, Silverberg, Thistlethwaite, Toca and Wisham:

A PROPOSAL

Making provisions for education and necessary provisions with respect thereto.

Read.

Section 13. Recognition of Existing Boards and Systems; Consolidation

Section 13. (A) Recognition of Boards and Systems. Parish and city school board systems, in existence on the effective date of this constitution, by virtue of special or local legislative acts or previous constitutional provisions, are hereby recognized, subject to control by and supervision of the State Board of Elementary and Secondary Education and the power of the legislature to enact laws affecting them.

(B) Consolidation. Two or more school systems may be consolidated under procedures enacted by the legislature, subject to approval of a majority of the qualified electors voting in each system affected in an election called for that purpose.

Read.

And the Chair declared that the above Proposal was rejected.

Delegate De Blieux moved to reconsider the vote by which the above Proposal was rejected, and, on his own motion, the motion to reconsider was laid on the table.

Motion

Delegate Smith moved that the Convention stand at ease until 12:30 o'clock P.M.

Delegate Nunez objected.

As a substitute Delegate Avant moved that the Convention stand at ease until 1:00 o'clock P.M.

Delegate Lanier objected.

The vote recurred on the substitute motion.

By a vote of 62 yeas and 17 nays the Convention stood at ease until 1:00 o'clock P.M.

Motion

On motion of Delegate Leithman Committee Proposal No. 12 was taken up out of its regular order and acted upon as follows:

COMMITTEE PROPOSAL No. 12—

Introduced by Delegate Aertker, Chairman, on behalf of the Committee on Education and Welfare, and Delegates Armentor, Carmouche, Corne, Cowen, Flory, Grier, Haynes, Hernandez, Landry, Leithman, Lennox, Rachal, Riecke, Robinson, Segura, Silverberg, Sutherland, Thistlethwaite, Toca and Wisham:

A PROPOSAL

Making provisions for human resources by prohibiting the leasing of convicts and the employment of convicts in competition with private enterprise and by providing for reimbursement to parishes for expenses incurred resulting from crimes committed in penal institutions.

Read.

ARTICLE VII, SECTION 1. PENAL INSTITUTIONS AND CONVICT LABOR

Section 1. (A) State Penal Institutions; Reimbursement of Parish Expense. In parishes in which are located penal institutions of the State of Louisiana, the expenses incurred by the parish arising from crimes committed in such institutions or by the inmates or employees thereof shall be reimbursed by the state.

(B) Convict Labor. No convict sentenced to the state penitentiary shall ever be leased, or hired to any person or persons, or corporation, private or public, or quasipublic. No convict sentenced to the state penitentiary shall ever be employed in any enterprise in competition with private enterprise.

Read.

Delegate Gauthier sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegates Gauthier, Roy and Tobias to Committee Proposal No. 12 by Delegate Aertker, et al.

Amend printed proposal as follows:

AMENDMENT No. 1—

On page 1, delete lines 18 through 23, both inclusive, in their entirety.

AMENDMENT No. 2—

On page 1, delete lines 24 through 29, both inclusive, in their entirety.

AMENDMENT No. 3—

On page 1, delete lines 16 and 17, both inclusive, in their entirety.

On motion of Delegate Smith a division of the question was ordered.

Delegate Roy moved the adoption of Amendment No. 2.

Delegate Flory objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Abraham	Fayard	Munson
Alario	Fontenot	Nunez
Arnette	Gauthier	O'Neill
Asseff	Giarrusso	Perez
Badeaux	Ginn	Perkins
Bollinger	Graham	Planchard
Brien	Grier	Pugh
Carmouche	Hardee	Reeves
Casey	Heine	Roemer
Champagne	Jack	Roy
Chatelain	Jackson, J.	Sandoz
Coinco	Kean	Segura
Conroy	Kilpatrick	Singletary
Cowen	Lanier	Smith
De Blieux	LeBleu	Soniati
Dennery	Lowe	Stagg
Dennis	Martin	Stephenson
Drew	Mauberrert	Tate
Dunlap	Miller	Tobias
Duval	Mire	Toomy
Edwards	Morris	Willis
Total—63.		

NAYS

Delegates—		
Alexander	Hayes	Riecke
Avant	Hernandez	Stovall
Bergeron	Jenkins	Velaquez
Burns	Kilbourne	Vick
Cannon	Landry, A.	Warren
Chehardy	Landry, E. J.	Wattigny
D'Gerolamo	Leithman	Winchester
Flory	McDaniel	Wisham
Fulco	Maybuce	Zervigon
Goldman	Ourso	
Total—29.		

NOT VOTING

Delegates—		
Mr. Chairman	Gravel	Shannon
Aertker	Guarisco	Slay
Anzalone	Haynes	Stinson
Bel	Jackson, A.	Sutherland
Blair	Juneau	Tapper
Brown	Kelly	Thistlethwaite
Burson	Lambert	Thompson
Comar	Landrum	Toca
Corne	Leigh	Ullo
Derbes	Newton	Vesich
Deshotels	Rachal	Wall
Elkins	Rayburn	Weiss
Fowler	Schmitt	Womack
Total—39.		

And the amendment was adopted.

Delegate Roy moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Roy moved the adoption of Amendments 1 and 3.

Delegate Flory objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

PAGE 5

90th Days Proceedings—November 19, 1973

YEAS

Delegates—		
Abraham	Duval	Miller
Alario	Pavard	Nunez
Arnette	Pontenot	Perkins
Asseff	Gauthier	Pugh
Bollinger	Giarrusso	Reeves
Brien	Ginn	Roy
Casey	Graham	Sandoz
Champagne	Hardee	Segura
Chatelain	Jack	Singletary
Conino	Jackson, J.	Smith
Conroy	Kilpatrick	Soniati
Cowen	LeBleu	Stagg
De Blieux	Leithman	Stovall
Dennerly	Lowe	Tate
Dennis	McDaniel	Tobias
Drew	Mauberrert	Zervigon
Total—48.		

NAYS

Delegates—		
Alexander	Grier	O'Neill
Avant	Hayes	Oruso
Badeaux	Heine	Perez
Berteron	Hernandez	Planchard
Burns	Jenkins	Riecke
Cannon	Kean	Roemer
Carmouche	Kilbourne	Stephenson
Chehardy	Landry, A.	Toomy
Comar	Landry, E. J.	Velazquez
D'Gerolamo	Lanier	Vick
Dunlap	Martin	Warren
Edwards	Maybuce	Wattigny
Flory	Mire	Willis
Fulco	Morris	Winchester
Goldman	Munson	Wisham
Total—45.		

NOT VOTING

Delegates—		
Mr. Chairman	Guarisco	Slay
Aertker	Haynes	Stinson
Anzalone	Jackson, A.	Sutherland
Bel	Juneau	Tapper
Blair	Kelly	Thistlethwaite
Brown	Lambert	Thompson
Burson	Landrum	Toca
Corne	Leigh	Ullio
Derbes	Newton	Vesich
Deshotels	Rachal	Wall
Elkins	Rayburn	Weles
Fowler	Schmitt	Womack
Gravel	Shannon	
Total—38.		

And the amendments were adopted.

Delegate Tobias moved to reconsider the vote by which the amendments were adopted, and on his own motion, the motion to reconsider was laid on the table.

Explanation of Vote

Delegate Pugh sent up the following explanation of his vote on Committee Proposal No. 12, Section 1, Amendment No. 2, proposed by Delegates Gauthier, et al:

"I voted for Amendment No. 2, because I am of the opinion that Committee Proposal No. 12 is legislative in nature."

Delegate Flory sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Flory to Committee Proposal No. 12 by Delegate Aertker, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 1, at the beginning of line 18, insert the following: "Section 1. Inmate Labor. No person while confined in a state correctional institution shall ever be leased, or hired

by the state to any person or persons, or corporation, private or public, or quasipublic. No such person shall ever be employed in any enterprise in competition with private enterprise, except for the production of goods used or consumed, or maintenance services performed, in state or parish institutions."

On motion of Delegate Flory the amendment was withdrawn.

Delegate Flory sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Flory to Committee Proposal No. 12 by Delegate Aertker, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 1, beginning on line 18, insert the following: "Section 1. Inmate Labor. No person while confined in a state correctional institution shall ever be leased, or hired by the state to any person, entity, or corporation, nor employed in any public enterprise in competition with private enterprise, except for the production of goods used or consumed, or maintenance services performed, in state or parish institutions. Nothing herein shall be construed as prohibiting the employment of such persons in work release programs authorized by law nor in the manufacture and sale of vehicle license plates."

Delegate Flory moved the adoption of the amendment.

Delegate Nunez objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Aertker	Jackson, J.	Riecke
Avant	Jenkins	Roemer
Bergeron	Kilbourne	Soniati
Burns	Kilpatrick	Stagg
Cannon	Landry, E. J.	Stovall
Carmouche	Leithman	Velazquez
Chehardy	Martin	Vick
Comar	Maybuce	Warren
D'Gerolamo	Mire	Wattigny
Edwards	Munson	Winchester
Fayard	O'Neill	Wisham
Flory	Oruso	
Hernandez	Pugh	
Total—37.		

NAYS

Delegates—		
Abraham	Duval	Mauberrert
Alario	Pontenot	Miller
Alexander	Fulco	Morris
Arnette	Gauthier	Nunez
Asseff	Giarrusso	Perez
Badeaux	Ginn	Perkins
Bollinger	Goldman	Planchard
Brien	Graham	Reeves
Brown	Grier	Roy
Casey	Hardee	Sandoz
Champagne	Heine	Segura
Chatelain	Jack	Singletary
Conino	Juneau	Smith
Conroy	Kean	Stephenson
De Blieux	Landry, A.	Tate
Dennerly	Lanier	Tobias
Dennis	LeBleu	Toomy
Dunlap	Lowe	Willis
Total—57.	McDaniel	Zervigon

NOT VOTING

Delegates—		
Mr. Chairman	Burson	Drew
Anzalone	Corne	Elkins
Bel	Derbes	Fowler
Blair	Deshotels	Gravel

PAGE 6

90th Days Proceedings—November 19, 1973

Guarisco	Rachal	Thompson
Hayes	Rayburn	Toca
Haynes	Schmitt	Uilo
Jackson, A.	Shannon	Vesich
Kelly	Slay	Wall
Lambert	Stinson	Weiss
Landrum	Sutherland	Womack
Leigh	Tapper	
Newton	Thistlethwaite	
Total—37.		

Failed to pass.

Delegate Nunez moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Delegate Kilbourne sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Kilbourne to Committee Proposal No. 12 by Delegate Aertker, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 1, line 18, insert the following:
"Section 1 (A). State Penal Institutions; Reimbursement of Parish Expense. In parishes in which are located penal institutions of the State of Louisiana, the expenses incurred by the parish arising from crimes committed in such institutions or by the inmates thereof shall be reimbursed by the state."

Delegate Kilbourne moved the adoption of the amendment.

Delegate Vick objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Giarrusso	Morris
Abraham	Ginn	Munson
Aertker	Goldman	Nunez
Alario	Graham	O'Neill
Alexander	Hardee	Ours
Avant	Hayes	Perez
Badeaux	Heine	Planchard
Bergeron	Hernandez	Pugh
Brown	Jackson, J.	Riecke
Burns	Jenkins	Roemer
Cannon	Kean	Sandoz
Carmouche	Kilbourne	Slagg
Chatelain	Landry, A.	Stephenson
Chehardy	Landry, E. J.	Toomy
Comar	Lanier	Velazquez
Conino	Leithman	Warren
D'Gerolamo	Lowe	Wattigny
Drew	McDaniel	Willis
Dunlap	Martin	Winchester
Edwards	Mauberret	Wisham
Fayard	Maybuce	Zervigon
Flory	Mire	
Fulco		
Total—65.		

NAYS

Delegates—	Duval	Reeves
Arnette	Fontenot	Roy
Assett	Gauthier	Singletary
Bollinger	Grier	Smith
Brien	Jack	Soniat
Casey	Juneau	Stovall
Champagne	Kilpatrick	Tobias
Conroy	LeBleu	Vick
Cowen	Miller	
DeBlieux	Perkins	
Dennery		
Total—28.		

NOT VOTING

Delegates—	Haynes	Stinson
Mr. Chairman	Jackson, A.	Sutherland
Anzalone	Kelly	Tapper
Bel	Lambert	Tate
Blair	Landrum	Thistlethwaite
Burson	Leigh	Thompson
Corne	Newton	Toca
Dennis	Rachal	Uilo
Derbos	Rayburn	Vesich
Deshotels	Schmitt	Wall
Elkins	Segura	Weiss
Fowler	Shannon	Womack
Gravel	Slay	
Guarisco		
Total—38.		

The amendment not having received a vote of a majority of the total membership of the Convention required to add a Section to a Proposal failed to pass.

Motion to reconsider pending.

Delegate Kilbourne moved to reconsider the vote by which the amendment failed to pass.

Delegate Tobias moved to table the motion to reconsider.

By a vote of 18 yeas and 71 nays the Convention refused to table the motion to reconsider.

Delegate Kilbourne insisted upon his motion to reconsider the vote by which the amendment failed to pass at this time.

Delegate Tobias objected.

By a vote of 78 yeas and 13 nays the vote by which the amendment failed to pass was reconsidered.

And the amendment was acted upon as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Kilbourne to Committee Proposal No. 12 by Delegate Aertker, et al.

Amend reprinted as engrossed proposal as follows:

AMENDMENT No. 1—

On page 1, line 18, insert the following:
"Section 1 (A). State Penal Institutions; Reimbursement of Parish Expense. In parishes in which are located penal institutions of the State of Louisiana, the expenses incurred by the parish arising from crimes committed in such institutions or by the inmates thereof shall be reimbursed by the state."

Delegate Kilbourne moved the adoption of the amendment.

Delegate Perkins objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Drew	Kilpatrick
Abraham	Dunlap	Landry, A.
Aertker	Edwards	Landry, E. J.
Alario	Fayard	Lanier
Alexander	Flory	LeBleu
Arnette	Fontenot	Leithman
Avant	Fulco	Lowe
Badeaux	Giarrusso	McDaniel
Bergeron	Ginn	Martin
Brien	Goldman	Mauberret
Brown	Graham	Maybuce
Burns	Grier	Mire
Cannon	Hardee	Morris
Carmouche	Heine	Munson
Casey	Hernandez	Nunez
Chatelain	Jack	O'Neill
Chehardy	Jenkins	Ours
Comar	Juneau	Perez
Conino	Kean	Perkins
Cowen	Kilbourne	Planchard
D'Gerolamo		

PAGE 7

90th Days Proceedings—November 19, 1973

Pugh	Smith	Wattigny
Riecke	Stagg	Willis
Roemer	Siovall	Winchester
Roy	Wisham	
Sandoz	Toomy	Zervigon
Segura	Velazquez	
Singletary	Warren	
Total—79.		

NAYS

Delegates—	De Blieux	Miller
Assett	Dennery	Reeves
Bollinger	Duval	Soniat
Champagne	Gauthier	Vick
Conroy		
Total—12.		

NOT VOTING

Delegates—	Haynes	Stephenson
Mr. Chairman	Jackson, A.	Stinson
Anzalone	Jackson, J.	Sutherland
Bel	Kelly	Tapper
Blair	Lambert	Tate
Burson	Landrum	Thistlethwaite
Corne	Leigh	Tobias
Dennis	Newton	Toca
Derbes	Rachal	Uilo
Deshotels	Rayburn	Vesich
Elkins	Schmitt	Wall
Fowler	Shannon	Weiss
Gravel	Slay	Womack
Guarisco		
Hayes		
Total—40.		

The amendment having received a vote of a majority of the total membership of the Convention, required to add a Section to a Proposal, was adopted.

Delegate Kilbourne sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Kilbourne to Committee Proposal No. 12 by Delegate Aertker, et al.

Amend printed proposal as follows:

AMENDMENT No. 1—

On page 1, at the beginning of line 16, and immediately before the language added by Convention Floor Amendment No. 1 proposed by Delegate Kilbourne and adopted by the convention on November 19, 1973, insert the following:

"ARTICLE VII. HUMAN RESOURCES

Section 1. Penal Institutions"

On motion of Delegate Kilbourne the amendment was adopted.

Delegate Kilbourne moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Passage

Committee Proposal No. 12, Section 1 was read, as amended.

Delegate Kean moved the final passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Badeaux	Chatelain
Mr. Chairman	Bergeron	Chehardy
Abraham	Brien	Comar
Aertker	Brown	Conino
Alario	Burns	Cowen
Alexander	Cannon	D'Gerolamo
Arnette	Casey	Drew
Assett		Dunlap
Avant		

Edwards	Kilpatrick	Reeves
Fayard	Landry, A.	Riecke
Flory	Landry, E. J.	Roemer
Fontenot	Lanier	Roy
Fulco	Leithman	Sandoz
Gauthier	Lowe	Segura
Giarrusso	McDaniel	Singletary
Ginn	Martin	Smith
Goldman	Mauberrert	Stagg
Graham	Maybuce	Stephenson
Gravel	Miller	Stovall
Grier	Mire	Tate
Hardee	Morris	Thompson
Heine	Munson	Toomy
Hernandez	Nunez	Velazquez
Jack	O'Neill	Warren
Jackson, J.	Ouro	Wattigny
Jenkins	Perez	Willis
Juneau	Perkins	Winchester
Kean	Planchard	Wisham
Kilbourne	Pugh	Zervigon
Total—87.		

NAYS

Delegates—	Dennery	Soniat
Bollinger	Duval	Tobias
Champagne	LeBleu	Vick
Conroy		
De Blieux		
Total—10.		

NOT VOTING

Delegates—	Haynes	Stinson
Anzalone	Jackson, A.	Sutherland
Bel	Kelly	Tapper
Blair	Lambert	Thistlethwaite
Burson	Landrum	Toca
Corne	Leigh	Uilo
Dennis	Newton	Vesich
Derbes	Rachal	Wall
Deshotels	Rayburn	Weiss
Elkins	Schmitt	Womack
Fowler	Shannon	
Guarisco	Slay	
Hayes		
Total—34.		

And the Chair declared that the above Section was finally passed.

Delegate Kean moved to reconsider the vote by which the above Section was finally passed, and, on his own motion, the motion to reconsider was laid on the table.

Passage

The Proposal was read, as amended.

Delegate Kilbourne moved the final passage of the entire Proposal.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Drew	Kilbourne
Mr. Chairman	Dunlap	Kilpatrick
Abraham	Edwards	Landry, A.
Aertker	Fayard	Landry, E. J.
Alario	Flory	Lanier
Alexander	Fontenot	Leithman
Arnette	Fulco	Lowe
Avant	Gauthier	McDaniel
Badeaux	Giarrusso	Martin
Bergeron	Ginn	Mauberrert
Brien	Goldman	Maybuce
Brown	Graham	Miller
Burns	Gravel	Mire
Cannon	Grier	Morris
Carmouche	Hardee	Munson
Casey	Heine	Nunez
Chatelain	Hernandez	O'Neill
Chehardy	Jack	Ouro
Comar	Jackson, J.	Perez
Conino	Jenkins	Perkins
Cowen	Juneau	Planchard
D'Gerolamo	Dennery	Pugh

PAGE 8

90th Days Proceedings—November 19, 1973

Reeves	Stagg	Warren
Riecke	Stephenson	Wattigny
Roemer	Stovall	Willis
Roy	Tate	Winchester
Sandoz	Thompson	Wisham
Segura	Toomy	Zervigon
Singletary	Velazquez	
Total—86.		

NAYS

Delegates—	De Blieux	Soniat
Asseff	Duval	Tobias
Bollinger	LeBlau	Vick
Champagne		
Conroy		
Total—10.		

NOT VOTING

Delegates—	Haynes	Smith
Anzalone	Jackson, A.	Stinson
Bel	Kelly	Sutherland
Blair	Lambert	Tapper
Burson	Landrum	Thistlethwaite
Corne	Leigh	Toca
Dennis	Newton	Uilo
Derbes	Rachal	Vesich
Deshotels	Rayburn	Wall
Elkins	Schmitt	Weiss
Fowler	Shannon	Womack
Guarisco	Slay	
Hays		
Total—35.		

And the Chair declared that the above Proposal was finally passed.

Motion

On motion of Delegate Flory Committee Proposal No. 14 was called from the Calendar and taken up as follows:

COMMITTEE PROPOSAL No. 14—

Introduced by Delegate Aertker, Chairman, on behalf of the Committee on Education and Welfare, and Delegates Armentor, Carmouche, Corne, Cowen, Flory, Grier, Haynes, Hernandez, Landry, Leithman, Lennox, Rachal, Riecke, Robinson, Segura, Silverberg, Sutherland, Thistlethwaite, Toca and Wisham:

A PROPOSAL

Making provisions for human resources through a system of economic security, social welfare, unemployment compensation, and public health.

Read.

Article VII. Section 1. Economic Security, Social Welfare, Unemployment Compensation, and Public Health

Section 1. The legislature shall establish a system of economic security, social welfare, unemployment compensation, and public health.

Read.

On motion of Delegate Flory the vote by which Committee Proposal No. 14, Section 1, failed to pass on November 17, 1973, was reconsidered.

Motion

Delegate Riecke moved to limit debate on each amendment to Committee Proposal No. 14, to 5 minutes.

As a substitute Delegate Perez moved to limit debate on each amendment to Committee Proposal No. 14 to 15 minutes.

Delegate De Blieux objected.

The vote recurred on the substitute.

By a vote of 68 yeas and 10 nays the Convention limited debate on each amendment to 15 minutes.

Delegate Jenkins sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates Jenkins and Roemer to Committee Proposal No. 14 by Delegate Aertker, et al.

Amend printed proposal as follows:

AMENDMENT No. 1—

On page 1, delete lines 14 through 18, both inclusive, in their entirety and all floor amendments thereto.

On motion of Delegate Jenkins the amendment was withdrawn.

Delegate Jenkins sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Jenkins to Committee Proposal No. 14 by Delegate Aertker, et al.

Amend printed proposal as follows:

AMENDMENT No. 1—

On page 1 delete lines 14 through 18, both inclusive in their entirety and all floor amendments thereto and insert the following:

“Section 2. Economic and Social Welfare, Unemployment Compensation, and Public Health

Section 2. The legislature may establish a system of economic and social welfare, unemployment compensation and public health.”

Delegate Jenkins moved the adoption of the amendment.

Delegate Zervigon objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Fontenot	Nunez
Abraham	Fulco	O'Neill
Alario	Gauthier	Perez
Arnette	Giarrusso	Perkins
Asseff	Graham	Planchard
Badeaux	Hardee	Reeves
Bergeron	Heine	Riecke
Blair	Jenkins	Roemer
Bollinger	Juneau	Sandoz
Brien	Kilbourne	Schmitt
Carmouche	Kilpatrick	Smith
Champagne	Lanier	Stagg
Chehardy	Leithman	Stephenson
Comar	Low	Stinson
Conino	McDaniel	Thompson
Conroy	Maubaret	Toomy
D'Gerolamo	Miller	Wattigny
Drew	Morris	Willis
Dunlap	Munson	Winchester
Duval		
Fayard		
Total—58.		

NAYS

Delegates—	Goldman	Segura
Aertker	Grier	Singletary
Alexander	Hernandez	Soniat
Avant	Jack	Stovall
Brown	Jackson, J.	Tate
Burns	Landry, A.	Tobias
Cannon	Landry, E. J.	Vick
Cowen	LeBlau	Warren
De Blieux	Maybuce	Wisham
Dennerly	Mire	Zervigon
Flory	Pugh	
Ginn		
Total—32.		

NOT VOTING

Delegates—	Chatelain	Edwards
Mr. Chairman	Corne	Elkins
Anzalone	Dennis	Fowler
Bel	Derbes	Gravel
Burson	Deshotels	Guarisco
Casey		

PAGE 10

90th Days Proceedings—November 19, 1973

On motion of Delegate Aertker the amendment was adopted.

Delegate Aertker moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Passage

Committee Proposal No. 14, Section 1 was read, as amended.

Delegate Aertker moved the final passage of the Section.

ROLL CALL

The roll was called with the following result:

Delegates—	YEAS	
Aertker	Fulco	O'Neill
Alario	Giarruso	Planchard
Alexander	Ginn	Reeves
Arnette	Goldman	Riecke
Avant	Graham	Roemer
Badeaux	Grier	Roy
Bergeron	Hardee	Sandoz
Blair	Heine	Segura
Brien	Hernandez	Singletary
Burns	Jack	Smith
Cannon	Jenkins	Stagg
Carmoushe	Juneau	Stephenson
Casey	Kilbourne	Stinson
Chatelain	Kilpatrick	Stovall
Comar	Landry, E. J.	Thompson
Conino	Leithman	Toomy
Conroy	Lowe	Velazquez
Cowen	McDaniel	Vick
D'Gerolamo	Mauberrert	Warren
Dennerly	Miller	Willis
Duval	Mire	Winchester
Fayard	Morris	Wisham
Flory	Munson	Zervigon
Fontenot	Nunez	
Total—71.		

NAYS

Delegates—		
Abraham	Dunlap	Perez
Asseff	Gauthier	Perkins
Bollinger	Jackson, J.	Pugh
Brown	Landry, A.	Schmitt
Champagne	Lanier	Soniat
Cheardy	LeBleu	Tobias
De Blieux	Maybuce	Wattigny
Total—21.		

NOT VOTING

Delegates—		
Mr. Chairman	Guarisco	Rayburn
Anzalone	Hayes	Shannon
Bel	Haynes	Slay
Burson	Jackson, A.	Sutherland
Corne	Ken	Tapner
Dennis	Kelly	Tate
Derbes	Lambert	Thistlethwaite
Deshotels	Landrum	Toca
Drew	Leigh	Ullio
Edwards	Martin	Vesich
Elkins	Newton	Wall
Fowler	Oursou	Weiss
Gravel	Rachal	Womack
Total—39.		

And the Chair declared that the above Section was finally passed.

Delegate Aertker moved to reconsider the vote by which the above Section was finally passed, and on his own motion, the motion to reconsider was laid on the table.

Passage

The Proposal was read, as amended.

Delegate Aertker moved the final passage of the entire Proposal.

ROLL CALL

The roll was called with the following result:

Delegates—	YEAS	
Abraham	Fulco	O'Neill
Aertker	Gauthier	Perez
Alario	Giarruso	Perkins
Alexander	Ginn	Planchard
Arnette	Goldman	Reeves
Avant	Graham	Riecke
Badeaux	Grier	Roemer
Bergeron	Hardee	Roy
Blair	Heine	Sandoz
Brien	Hernandez	Schmitt
Brown	Jack	Segura
Burns	Jenkins	Singletary
Cannon	Juneau	Smith
Carmouche	Kilbourne	Stagg
Casey	Kilpatrick	Stephenson
Chatelain	Landry, A.	Stinson
Chehardy	Landry, E. J.	Stovall
Comar	Lanier	Thompson
Conino	LeBleu	Toomy
Conroy	Leithman	Vick
Cowen	Lowe	Warren
D'Gerolamo	McDaniel	Wattigny
Dennerly	Mauberrert	Willis
Drew	Miller	Winchester
Duval	Mire	Wisham
Fayard	Morris	Zervigon
Flory	Munson	
Fontenot	Nunez	
Total—82.		

NAYS

Delegates—		
Asseff	Dunlap	Pugh
Bollinger	Jackson, J.	Soniat
Champagne	Maybuce	Tobias
De Blieux		
Total—10.		

NOT VOTING

Delegates—		
Mr. Chairman	Hayes	Shannon
Anzalone	Haynes	Slay
Bel	Jackson, A.	Sutherland
Burson	Kean	Tapner
Corne	Kelly	Tate
Dennis	Lambert	Thistlethwaite
Derbes	Landrum	Toca
Deshotels	Leigh	Ullio
Edwards	Martin	Velazquez
Elkins	Newton	Vesich
Fowler	Oursou	Wall
Gravel	Rachal	Weiss
Guarisco	Rayburn	Womack
Total—49.		

And the Chair declared that the above Proposal was finally passed.

Motion

On motion of Delegate Abraham, the Convention altered the Order of Business to take up other Orders of Business at this time.

Proposals

Delegate Dennerly, Secretary of the Constitutional Convention of 1973, submits the following report:

Constitutional Convention of 1973
State of Louisiana

November 19, 1973, Baton Rouge, La.

To the Chairman and Delegates of the Convention:

I submit the following report:

That the following Committee Proposal has been properly enrolled:

COMMITTEE PROPOSAL No. 12—

Introduced by Delegate Aertker, Chairman, on behalf of the Committee on Education and Welfare, and Delegates Armentor, Carmouche, Corne, Cowen, Flory, Grier, Haynes, Hernandez, Landry, Leitman, Lennox, Rachal, Riecke, Robinson, Segura, Silverberg, Sutherland, Thistlethwaite, Toca, and Wisham:

A PROPOSAL

Making provisions for human resources by prohibiting the leasing of convicts and the employment of convicts in competition with private enterprise and by providing for reimbursement to parishes for expenses incurred resulting from crimes committed in penal institutions.

Be it adopted by the Constitutional Convention of Louisiana of 1973:

ARTICLE VII. HUMAN RESOURCES

Section 1. Penal Institutions

Section 1 (A). State Penal Institutions; Reimbursement of Parish Expense. In parishes in which are located penal institutions of the State of Louisiana, the expenses incurred by the parish arising from crimes committed in such institutions or by the inmates thereof shall be reimbursed by the state.

Respectfully submitted,

MOISE W. DENNERY
Secretary.

Under the Rules, referred to the Committee on Style and Drafting.

Delegate Dennery, Secretary of the Constitutional Convention of 1973, submits the following report:

Constitutional Convention of 1973

State of Louisiana

November 19, 1973, Baton Rouge, La.

To the Chairman and Delegates of the Convention:

I submit the following report:

That the following Committee Proposal has been properly enrolled in final form:

COMMITTEE PROPOSAL No. 3—

Introduced by Delegate Blair, Chairman, on behalf of the Committee on Legislative Powers and Functions, and Delegates Casey, Fayard, Fulco, Ginn, Juneau, Kilpatrick, Landrum, LeBreton, and O'Neill:

A PROPOSAL

Making provisions for the legislative branch of government, impeachment and removal of officials, and necessary provisions with respect thereto.

Be it adopted by the Constitutional Convention of Louisiana of 1973:

ARTICLE III. LEGISLATIVE BRANCH

Section 1. Legislative Power; Composition; Continuous Body

Section 1. (A) Legislative Power of State. The legislative power of the state is vested in a legislature, consisting of a Senate and a House of Representatives. The Senate shall be composed of one senator elected from each senatorial district. The House of Representatives shall be composed of one representative elected from each representative district.

(B) Continuous Body. The legislature is a continuous body during the term for which its members are elected; however, a bill or resolution not finally passed in any session shall be withdrawn from the files of the legislature.

Section 2. Sessions

Section 2. (A) Annual Session. The legislature shall meet annually in regular session in the state capital for not more than sixty legislative days during a period of eighty-five calendar days. A legislative day is a calendar day on which either house is in session. No such session shall continue beyond the eighty-fifth calendar day after convening. The legislature shall convene at noon on the third Monday in April. No new matter intended to have the effect of law

shall be introduced or received by either house after midnight of the fifteenth calendar day, except by a favorable record vote of two-thirds of the elected members of each house. No measure levying a new tax or increasing an existing tax shall be introduced or enacted during a regular session held in an odd-numbered year.

(B) Extraordinary Session. The legislature may be convened at other times by the governor and shall be convened by the presiding officers of both houses upon written petition of a majority of the elected members of each house. The form of the petition shall be provided by law. At least five days prior to convening the legislature in extraordinary session, the governor or the presiding officers, as the case may be, shall issue a proclamation stating the objects of the session, the date on which it shall convene, and the number of days for which it is convened. The power to legislate shall be limited, under penalty of nullity, to the objects specifically enumerated in the proclamation. The session shall be limited to the number of days stated therein; it shall not exceed thirty calendar days.

(C) Emergency Session. The governor may convene the legislature in extraordinary session without prior notice or proclamation in the event of public emergency caused by epidemic, enemy attack, or public catastrophe.

Section 3. Size

Section 3. The number of members of the legislature shall be provided by law, but the number of senators shall not exceed thirty-nine and the number of representatives, one hundred five.

Section 4. Qualifications; Residence and Domicile Requirements; Term; Vacancies

Section 4. (A) Age; Residence; Domicile. An elector who at the time of qualification as a candidate has attained the age of eighteen years, resided in the state for the preceding two years, and been actually domiciled in the preceding year in the legislative district from which he seeks election is eligible for membership in the legislature.

(B) Domicile; Special Provisions. However, at the next regular election for members of the legislature following legislative reapportionment, an elector may qualify as a candidate from any district created in whole or in part from a district existing prior to reapportionment if he was domiciled in that prior district for at least one year immediately preceding his qualification and was a resident of the state for the two years preceding his qualification. The seat of any member who changes his domicile from the district he represents or, if elected after reapportionment, whose domicile is not within the district he represents at the time he is sworn into office, shall be vacated thereby, any declaration of retention of domicile to the contrary notwithstanding.

(C) Term. A member of the legislature shall be elected for a four-year term.

(D) Vacancy. A vacancy in the legislature shall be filled for the remainder of the term only by election by the electors of the respective district as provided by law.

Section 5. Legislative Reapportionment; Reapportionment by Supreme Court; Procedure

Section 5. (A) Reapportionment by Legislature. By the end of the year following the year in which the population of this state is reported to the president of the United States for an decennial federal census, the legislature shall reapportion the representation in each house as equally as practicable on the basis of population shown by the census.

(B) Reapportionment by Supreme Court. If the legislature fails to reapportion as required in Paragraph (A), the supreme court, upon petition of any elector, shall reapportion the representation in each house as provided in Paragraph (A).

(C) Procedure. The procedure for review and for petition shall be provided by law.

Section 6. Judging Qualifications and Elections; Procedural Rules; Discipline; Expulsion; Subpoenas; Contempt; Officers

Section 6. (A) Judging Qualifications and Elections; Procedural Rules; Discipline; Expulsion. Each house shall be the judge of the qualifications and elections of its members; shall determine its rules of procedure, not inconsistent with the provisions of this constitution; may punish its members for disorderly conduct or contempt; and may expel a member with concurrence of two-thirds of its elected members. Expulsion creates a vacancy in the office.

(B) Subpoena Power; Contempt. Each house may compel the attendance and testimony of witnesses and the production of books and papers before it, before any committee thereof, or before joint committees of the houses and may

**OFFICIAL JOURNAL
OF THE
CONSTITUTIONAL CONVENTION
OF 1973**

**OF THE
STATE OF LOUISIANA**

NINETY-FIRST DAY'S PROCEEDINGS

of the Constitutional Convention of 1973
held in accordance with Act 2 of the 1972
Regular Session of the Legislature

Tuesday, November 20, 1973, Baton Rouge, La.

The Convention was called to order at 1:00 o'clock p.m., by
Hon. E. L. Henry, Chairman of the Convention.

ROLL CALL

The roll being called, the following delegates answered to
their names:

PRESENT

Delegates—		
Mr. Chairman	Fontenot	O'Neill
Abraham	Fulco	Oruso
Aertker	Gauthier	Perez
Alario	Giarrusso	Perkins
Alexander	Ginn	Planchard
Anzalone	Goldman	Rachal
Arnette	Graham	Rayburn
Asseff	Gravel	Reeves
Avant	Grier	Riecke
Badeaux	Hardee	Roemer
Bel	Hayes	Roy
Bergeron	Heine	Sandoz
Blair	Hernandez	Schmitt
Bollinger	Jack	Shannon
Brien	Jackson, J.	Singletary
Brown	Jenkins	Smith
Burns	Juneau	Sniat
Cannon	Kean	Stagg
Carmouche	Kilbourne	Stephenson
Casey	Kilpatrick	Stinson
Champagne	Lambert	Stovall
Chatelain	Landrum	Sutherland
Chehardy	Landry, A.	Tapper
Comar	Landry, E. J.	Tate
Conino	Lanier	Thompson
Conroy	LeBleu	Tobias
Cowen	Leithman	Toca
D'Gerolamo	Lowe	Toomy
De Blieux	McDaniel	Uilo
Dennerly	Martin	Velazquez
Dennis	Maubaret	Vick
Drew	Maybuee	Wagen
Dunlap	Miller	Wattigny
Duval	Mire	Willis
Edwards	Morris	Winchester
Elkins	Munson	Wisham
Fayard	Newton	Zervigon
Flory	Nunez	

Total—113.

ABSENT

Delegates—		
Burson	Haynes	Slay
Corne	Jackson, A.	Thistlethwaite
Derbes	Kelly	Vesich
Deshotels	Leigh	Wall
Fowler	Pugh	Weiss
Guarisco	Segura	Womack

Total—18.

The Chairman announced that there were 113 members
present and a quorum.

Prayer

Prayer was offered by Delegate Stovall.

Pledge of Allegiance

Delegate Stephenson led the Convention in reciting the
Pledge of Allegiance to the Flag of the United States of
America.

Reading of the Journal

On motion of Delegate A. Landry, the reading of the Jour-
nal was dispensed with.

On motion of Delegate A. Landry, the Journal of yesterday
was adopted.

Morning Hour

Reports of Committees

The following reports of committees were received and
read:

Delegate Cecil R. Blair, chairman, on behalf of the Com-
mittee on Legislative Powers and Functions, submitted the
following report:

State of Louisiana
Constitutional Convention
of 1973

November 20, 1973, Baton Rouge, La.

To the Chairman and Delegates of the Constitutional Con-
vention:

I am directed by your Committee on Legislative Powers
and Functions to submit the following report:

DELEGATE PROPOSAL No. 18—

Introduced by Delegates Casey, Alario, Dennery, and Gra-
vel:

A PROPOSAL

Providing for meeting of the legislature for the next three
years following the adoption of this constitution.

Reported with amendments.

DELEGATE PROPOSAL No. 22—

Introduced by Delegates Conroy and Newton:

A PROPOSAL

To provide for the prohibition of certain enumerated local
and special laws.

Reported favorably.

Respectfully submitted,

CECIL R. BLAIR,
Chairman.

Delegate Tom Stagg, chairman, on behalf of the Com-
mittee on Executive Department, submitted the following
report:

State of Louisiana
Constitutional Convention
of 1973

November 20, 1973, Baton Rouge, La.

To the Chairman and Delegates of the Constitutional Con-
vention:

I am directed by your Committee on Executive Department
to submit the following report:

DELEGATE PROPOSAL No. 42—

Introduced by Delegates Dennery and Stovall:

A PROPOSAL

Providing for the lieutenant governor as ombudsman.

Reported favorably.

DELEGATE PROPOSAL No. 49—

Introduced by Delegate Brien:

A PROPOSAL

Providing with respect to consumer education and informa-
tion councils.

Reported with amendments.

Respectfully submitted,

TOM STAGG,
Chairman.

PAGE 3

92nd Days Proceedings—December 5, 1973

AMENDMENT No. 1—

On page 1, delete lines 13 through 32, both inclusive, in their entirety and on page 2, delete lines 1 and 2 in their entirety and insert in lieu thereof the following:

"Section —. Management of State Funds: Donation, Loan, or Pledge of Public Credit

Section —. (A) Except as otherwise provided in this constitution, the funds, credit, property or things of value of the state, or of any political subdivision thereof, shall not be loaned, pledged, or donated to or for any person or persons, associations or corporations, public or private, nor shall the state nor any political subdivisions purchase or subscribe to the capital stock or stock of any corporation or association whatever or for any private enterprise.

(B) Nothing contained in this Section shall prevent: (1) intercooperation between the state and its political subdivisions or between political subdivisions, or between the state or its political subdivisions and the United States, or between the state or its political subdivisions and any public or private association or corporation or individual for a public purpose; (2) the use of public funds for programs of social welfare for the aid and support of the needy; (3) contributions of public funds to pension and insurance programs for the benefit of public employees; (4) the legislature by a favorable vote of two-thirds of the elected members of each house from authorizing the loan, pledge, or donation of public funds in the furtherance of facilities and other programs having a public purpose; or (5) the legislature from authorizing the loan or pledge of such funds, credit, property, or things of value for public purposes with respect to the issuance of bonds or other evidences of indebtedness.

(C) Funds, credit, property or things of value of the state or of any political subdivision thereof heretofore loaned, pledged, dedicated or granted by the prior laws of this state, or authorized to be loaned, pledged, dedicated or granted by the prior laws and constitution of this state, shall so remain for the full term as provided by the prior laws and constitution and for the full term as provided by any contract, unless such authorization is revoked by the legislature by a two-thirds vote of the elected membership of each house of the legislature prior to the vesting of any contractual rights pursuant to this Section."

On motion of Delegate Perez the amendment was adopted.

On motion of Delegate Perez the Proposal, as amended, was ordered engrossed and passed to its third reading.

COMMITTEE PROPOSAL No. 28—

Introduced by Delegate Perez, Chairman, on behalf of the Committee on Local and Parochial Government, and Delegates Burson, Cannon, Chatelain, Conino, D'Gerolamo, Fowler, Giarrusso, Hayes, Heine, J. Jackson, Kean, Lanier, Reeves, Shannon, Stephenson, Taylor, Toomy, Uilo, and Zervigon:

A PROPOSAL

Providing for the office of tax assessor and the Board of Assessors in Orleans Parish.

Read.

Reported without action by the Committee on Local and Parochial Government.

On motion of Delegate Perez the Proposal was withdrawn from the files of the Convention.

COMMITTEE PROPOSAL No. 29—

Introduced by Delegate Perez, Chairman, on behalf of the Committee on Local and Parochial Government, and Delegates Burson, Cannon, Chatelain, Conino, D'Gerolamo, Fowler, Giarrusso, Hayes, Heine, J. Jackson, Kean, Lanier, Reeves, Shannon, Stephenson, Taylor, Toomy, Uilo, and Zervigon:

A PROPOSAL

Providing for a Revenue Sharing Fund.

Read.

Reported without action by the Committee on Local and Parochial Government.

On motion of Delegate Perez the Proposal was withdrawn from the files of the Convention.

DELEGATE PROPOSAL No. 18—

Introduced by Delegates Casey, Alario, Dennergy, and Gravel:

A PROPOSAL

Providing for meeting of the legislature for the next three years following the adoption of this constitution.

Read.

Reported with the following amendments by the Committee on Legislative Powers and Functions:

COMMITTEE AMENDMENTS

Amendments proposed by Committee on Legislative Powers and Functions to Delegate Proposal No. 18 by Delegate Blair, et al.

Amend Printed Proposal as follows:

AMENDMENT No. 1—

On page 1, line 11, after the word "first" and before the word "regular" change the word "three" to "two"

AMENDMENT No. 2—

On page 1, line 12, after the word "the" and before the word "of" delete the word "adoption" and insert in lieu thereof the following:
"effective date"

On motion of Delegate Staggs the amendments were adopted.

On motion of Delegate Staggs the Proposal, as amended was ordered engrossed and passed to its third reading.

DELEGATE PROPOSAL No. 22—

Introduced by Delegates Conroy and Newton:

A PROPOSAL

To provide for the prohibition of certain enumerated local and special laws.

Read.

Reported favorably by the Committee on Legislative Powers and Functions.

On motion of Delegate Blair the Proposal was ordered engrossed and passed to its third reading.

DELEGATE PROPOSAL No. 30—

Introduced by Delegate Lennox:

A PROPOSAL

Relative to levee districts

Read.

Reported unfavorably by the Committee on Local and Parochial Government.

On motion of Delegate Perez the Proposal was withdrawn from the files of the Convention.

DELEGATE PROPOSAL No. 42—

Introduced by Delegates Dennergy and Stovall:

A PROPOSAL

Providing for the lieutenant governor as ombudsman.

Read.

Reported favorably by the Committee on Executive Department.

On motion of Delegate Staggs the Proposal was ordered engrossed and passed to its third reading.

DELEGATE PROPOSAL No. 49—

Introduced by Delegate Brien:

A PROPOSAL

Providing with respect to consumer education and information councils.

Read.

Reported with the following amendments by the Committee on Executive Department.

be recommended to the Committee on Revenue, Finance and Taxation.

The vote recurred on the substitute motion.

By a viva voce vote the Proposal was recommended to the Committee on Revenue, Finance and Taxation.

DELEGATE PROPOSAL No. 95—

Introduced by Delegate Bel:

A PROPOSAL

Making provisions for property taxation.

Read.

Reported without action by the Committee on Revenue, Finance and Taxation.

On motion of Delegate Nunez the Proposal was withdrawn from the files of the Convention.

Motion

On motion of Delegate Champagne, the Convention altered the Order of Business to take up Proposals on third reading and Final Passage, at this time.

Proposals, Delegate and Committee

The following entitled Delegate and Committee Proposals were taken up on their third reading and final passage:

COMMITTEE PROPOSAL No. 5—

Introduced by Delegate Stag, Chairman, on behalf of the Committee on Executive Department:

A PROPOSAL

Making provisions for the Public Service Commission and necessary provision with respect thereto.

Read.

On motion of Delegate Stag the Proposal was withdrawn from the files of the Convention.

COMMITTEE PROPOSAL No. 32—

Introduced by Delegates Asseff, Abraham, Alexander, Arnette, Gravel, and Stag (A Substitute for Delegate Proposal No. 29):

A PROPOSAL

Providing for the reorganization of the executive branch of state government.

Read.

On motion of Delegate Abraham the Proposal was returned to the Calendar, subject to call.

COMMITTEE PROPOSAL No. 27—

Introduced by Delegate Perez, Chairman, on behalf of the Committee on Local and Parochial Government and Delegates Burson, Cannon, Chatelain, Conino, D'Gerolamo, Fowler, Giarrusso, Hayes, Heine, J. Jackson, Kean, Lanier, Reeves, Shannon, Stephenson, Taylor, Toomy, Ullo and Zervigon:

A PROPOSAL

Providing with respect to the donation, loan, or pledge of public funds, credit or property.

Read.

On motion of Delegate Kean the Proposal was withdrawn from the files of the Convention.

DELEGATE PROPOSAL No. 27—

Introduced by Delegate Dennery:

A PROPOSAL

To establish state and city civil service.

Read.

On motion of Delegate Dennery the Proposal was withdrawn from the files of the Convention.

DELEGATE PROPOSAL No. 65—

Introduced by Delegate Roy:

A PROPOSAL

Making provisions regarding civil service employment.

Read.

On motion of Delegate Graham the Proposal was returned to the Calendar, subject to call.

DELEGATE PROPOSAL No. 54—

Introduced by Delegates Juneau, Leithman and Corne:

A PROPOSAL

Making provisions for education and necessary provisions with respect thereto.

Read.

On motion of Delegate Juneau, the Proposal was returned to the Calendar, subject to call.

DELEGATE PROPOSAL No. 67—

Introduced by Delegate Abraham:

A PROPOSAL

Making provisions for the inclusion of the attorney general in the Executive Branch of government.

Read.

On motion of Delegate Abraham, the Proposal was returned to the Calendar, subject to call.

DELEGATE PROPOSAL No. 71—

Introduced by Delegate Abraham:

A PROPOSAL

Making provisions for the inclusion of the attorney general in the Executive Branch of government.

Read.

On motion of Delegate Abraham, the Proposal was returned to the Calendar, subject to call.

DELEGATE PROPOSAL No. 72—

Introduced by Delegate Abraham:

A PROPOSAL

Making provisions for the deletion of the attorney general from the Judicial Branch of state government.

Read.

On motion of Delegate Abraham, the Proposal was returned to the Calendar, subject to call.

DELEGATE PROPOSAL No. 43—

Introduced by Delegates J. Jackson, A. Jackson, Warren, Ray, Gravel, Stovall, Pugh and Gauthier:

A PROPOSAL

Providing for juvenile courts having exclusive original jurisdiction with the exception for offenses of murder, aggravated kidnapping, armed robbery, or aggravated rape.

Read.

On motion of Delegate J. Jackson, the Proposal was returned to the Calendar, subject to call.

DELEGATE PROPOSAL No. 22—

Introduced by Delegates Conroy and Newton:

A PROPOSAL

To provide for the prohibition of certain enumerated local and special laws.

Read.

On motion of Delegate Conroy the Proposal was returned to the Calendar, subject to call.

DELEGATE PROPOSAL No. 42—

Introduced by Delegates Dennery and Stovall:

A PROPOSAL

Providing for the lieutenant governor as ombudsman.

Read.

On motion of Delegate Dennery the Proposal was returned to the Calendar, subject to call.

PAGE 3

112th Days Proceedings—January 8, 1974

DELEGATE PROPOSAL No. 49—

Introduced by Delegate Brien:

A PROPOSAL

Providing with respect to consumer education and information councils.

Read.

On motion of Delegate Brien the Proposal was returned to the Calendar, subject to call.

DELEGATE PROPOSAL No. 16—

Introduced by Delegates Alario, Chehardy, Edwards, Mire, Rayburn, Nunez, Winchester, Mauberet, Slay and Planchard:

A PROPOSAL

Making provisions for homestead exemptions.

Read.

On motion of Delegate Alario the Proposal was returned to the Calendar, subject to call.

DELEGATE PROPOSAL No. 17—

Introduced by Delegate Planchard:

A PROPOSAL

Making provisions prohibiting lotteries.

Read.

On motion of Delegate Planchard the Proposal was returned to the Calendar, subject to call.

DELEGATE PROPOSAL No. 20—

Introduced by Delegate Jack:

A PROPOSAL

Limiting the number of proposed constitutional amendments that may be submitted to the voters at any one election.

Read.

On motion of Delegate Fulco the Proposal was withdrawn from the files of the Convention.

DELEGATE PROPOSAL No. 21—

Introduced by Delegate Jack:

A PROPOSAL

Making provisions for a deduction in state income taxes for federal income tax payments made during the same period.

Read.

On motion of Delegate Fulco the Proposal was withdrawn from the files of the Convention.

Motion

On motion of Delegate Conroy Delegate Proposal No. 22 was called from the Calendar.



DELEGATE PROPOSAL No. 22—

Introduced by Delegates Conroy and Newton:

A PROPOSAL

To provide for the prohibition of certain enumerated local and special laws.

Read.

Section 12. Except as otherwise provided in this constitution, the legislature shall not pass any local or special law: (1) For the holding and conducting of elections, or fixing or changing the place of voting.

(2) Changing the names of persons; authorizing the adoption or legitimation of children or the emancipation of minors; affecting the estates of minors or persons under disabilities; granting divorces; changing the law of descent or succession; giving effect to informal or invalid wills or deeds or to any illegal disposition of property.

(3) Concerning any civil or criminal actions, including changing the venue in civil or criminal cases, or regulating the practice or jurisdiction of any court, or changing the rules of evidence in any judicial proceeding or inquiry before courts, or providing or changing methods for the col-

lection of debts or the enforcement of judgments, or prescribing the effects of judicial sales.

(4) Authorizing the laying out, opening, closing, altering, or maintaining of roads, highways, streets, or alleys; relating to ferries and bridges, or incorporating bridge or ferry companies, except for the erection of bridges crossing streams which form boundaries between this and any other state; authorizing the constructing of street passenger railroads in any incorporated town or city.

(5) Exempting property from taxation; extending the time for the assessment or collection of taxes; for the relief of any assessor or collector of taxes from the performance of his official duties or of his sureties from liability; remitting fines, penalties, and forfeitures; or refunding moneys legally paid into the treasury.

(6) Regulating labor, trade, manufacturing, or agriculture; fixing the rate of interest.

(7) Creating private corporations, or amending, renewing, extending, or explaining the charters thereof, or individual any special or exclusive right, privilege, or immunity.

(8) Regulating the management of public schools, the building or repairing of schoolhouses and the raising of money for such purposes.

(9) Legalizing the unauthorized or invalid acts of any officer, employee, or agent of the state, its agencies, or political subdivisions.

Read.

Delegate Conroy sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Conroy to Delegate Proposal No. 22 by Delegates Conroy and Newton.

Amend printed proposal as follows:

AMENDMENT No. 1—

On page 1, delete lines 8 and 9 in their entirety and insert in lieu thereof the following:

"ARTICLE III. LEGISLATIVE BRANCH

Section 12. Prohibited Local and Special Laws"

On motion of Delegate Conroy the amendment was adopted.

Delegate Conroy moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Drew sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegate Drew to Delegate Proposal No. 22 by Delegates Conroy and Newton.

Amend printed proposal as follows:

AMENDMENT No. 1—

On page 1, line 10, after "Section 12." and before the word "Except" insert "(A)"

AMENDMENT No. 2—

On page 2, between lines 19 and 20, add the following: "(B) The legislature shall not indirectly enact special or local laws by the partial repeal or suspension of a general law."

On motion of Delegate Drew the amendments were adopted.

Delegate Drew moved to reconsider the vote by which the amendments were adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Arnette sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegate Arnette to Delegate Proposal No. 22 by Delegates Conroy and Newton.

Amend printed proposal as follows:

PAGE 4

112th Days Proceedings—January 8, 1974

AMENDMENT No. 1—

On page 2, line 14, immediately after the word "of" and before the word "public" insert the following:
"parish or city"

AMENDMENT No. 2—

On page 2, line 15, immediately after the word "of" and before the word "schoolhouses" insert the following:
"parish or city"

On motion of Delegate Arnette the amendments were adopted.

Delegate Arnette moved to reconsider the vote by which the amendments were adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Avant sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Avant to Delegate Proposal No. 22 by Delegates Conroy and Newton.

Amend printed proposal as follows:

AMENDMENT No. 1—

On Page 2, between lines 19 and 20 and before Convention Floor Amendment No. 2 proposed by Delegate Drew and adopted by the Convention on January 8, 1974, add the following paragraph:

"(10) Defining any crime."

Delegate Avant moved the adoption of the amendment.

Delegate Conroy objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Aertker	Gauthier	O'Neill
Alexander	Goldman	Pugh
Arnette	Graham	Riecke
Avant	Gravel	Schmitt
Bel	Hayes	Shannon
Bergeron	Hernandez	Singletary
Burns	Jackson, A.	Smith
Burson	Jackson, J.	Soniat
Cannon	Jenkins	Stagg
Casey	Jones	Stovall
Chehardy	Kilbourne	Sutherland
Comar	Kilpatrick	Tapper
Conino	Landrum	Tate
D'Gerolamo	Landry, E. J.	Tobias
De Blieux	Leithman	Toca
Dennery	Lowe	Velazquez
Dennis	Mauberret	Vick
Derbes	Maybucc	Warren
Drew	Miller	Wattigny
Elkins	Morris	Willis
Flory	Munson	Wisham
Fulco	Nunez	Zervigon
Total—66.		

NAYS

Delegates—		
Abraham	Corne	LeBleu
Asseff	Cowen	McDaniel
Badeaux	Duval	Martin
Bollinger	Grier	Mire
Brien	Guarisco	Planchar
Brown	Hardee	Rachal
Carmouche	Heine	Roemer
Champagne	Juneau	Stephenson
Chatelain	Landry, A.	Stinson
Conroy	Lanier	Toomy
Total—30.		

NOT VOTING

Delegates—		
Mr. Chairman	Haynes	Roy
Alario	Jack	Sandoz
Anzalone	Kean	Segura
Blair	Kelly	Slay
Deshotels	Lambert	Thistlethwaite
Enunlap	Leigh	Thompson
Edwards	Newton	Uilo
Fayard	Ouro	Veich
Fontenot	Perez	Wall
Fowler	Perkins	Weiss
Giarrusso	Rayburn	Winchester
Ginn	Reeves	Womack
Total—36.		

And the amendment was adopted.

Delegate Avant moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Pugh sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates Pugh and Vick to Delegate Proposal No. 22 by Delegates Conroy and Newton.

Amend printed proposal as follows:

AMENDMENT No. 1—

On page 2, between lines 19 and 20, in Floor Amendment No. 1 proposed by Delegate Avant and adopted by the convention on January 8, 1974, on line 1 of the text of the amendment, after the word and punctuation "crime," add the following:

"Nothing herein, however, shall be construed as authorizing the delegation by the legislature to any board, commission, department, or agency the power to define a crime."

Delegate Pugh moved the adoption of the amendment.

Delegate Lanier objected.

By a vote of 47 yeas and 48 nays the amendment was rejected.

Delegate Conroy moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Motion

On motion of Delegate Tobias the rules were suspended in order to allow the required record vote on passage of the Section and the entire Proposal simultaneously.

Passage

Section 12 and the entire Proposal were read, as amended.

Delegate Conroy moved the final passage of Section 12 and the entire Proposal.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Abraham	Corne	Heine
Aertker	Cowen	Hernandez
Alario	D'Gerolamo	Jackson, A.
Alexander	De Blieux	Jackson, J.
Arnette	Dennery	Jenkins
Asseff	Dennis	Jones
Avant	Derbes	Juneau
Bel	Drew	Kilbourne
Bergeron	Elkins	Kilpatrick
Brien	Flory	Landrum
Burns	Fontenot	Landry, E. J.
Cannon	Fulco	Leithman
Casey	Gauthier	Lowe
Champagne	Goldman	Mauberret
Chehardy	Gravel	Maybucc
Comar	Grier	Miller
Conino	Hardee	Mire
Conroy	Hayes	Munson

PAGE 5

112th Days Proceedings—January 8, 1974

Nunez	Smith	Vick
O'Neill	Stagg	Warren
Planchard	Sutherland	Wattigny
Pugh	Tapper	Willis
Riecke	Tate	Wisham
Shannon	Tobias	Zervigon
Singletary	Velazquez	
Total—74.		

NAYS

Delegates—	Fayard	Roemer
Badeaux	Graham	Schmitt
Bollinger	Guarisco	Soniati
Brown	Landry, A.	Stephenson
Burson	Lanier	Stinson
Carmouche	LeBlau	Toomy
Chatelain	Martin	
Duval		
Total—20.		

NOT VOTING

Delegates—	Lambert	Segura
Mr. Chairman	Leigh	Slay
Anzalone	McDaniel	Stovall
Blair	Morris	Thistlethwaite
Deshotels	Newton	Thompson
Dunlap	Ourso	Toca
Edwards	Perez	Ulio
Fowler	Perkins	Vesich
Giarrusso	Rachal	Wall
Ginn	Rayburn	Weiss
Haynes	Reeves	Winchester
Jack	Roy	Womack
Kean	Sandoz	
Kelly		
Total—38.		

And the Chair declared that Section 12 and the entire Proposal were finally passed.

Delegate Conroy moved to reconsider the vote by which the above Section was finally passed, and, on his own motion, the motion to reconsider was laid on the table.

Motion to reconsider the vote by which the entire Proposal was passed, pending.

Motion

On motion of Delegate Lanier Delegate Proposal No. 65 was called from the Calendar.

DELEGATE PROPOSAL No. 65—

Introduced by Delegate Roy:
A PROPOSAL

Making provisions regarding civil service employment.

Read.

On motion of Delegate Lanier the Proposal was withdrawn from the files of the Convention.

Motion

On motion of Delegate Denney Delegate Proposal No. 42 was called from the Calendar.

DELEGATE PROPOSAL No. 42—

Introduced by Delegates Denney and Stovall:

A PROPOSAL

Providing for the lieutenant governor as ombudsman.

Read.

Article IV, Section _____. Powers and Duties of the Lieutenant Governor

Section _____. The lieutenant governor shall be the ombudsman for the people of the state. He shall receive and investigate complaints made against the state, its officials, employees, agencies, boards, or commissions. The legisla-

ture shall prescribe procedures and remedies necessary to effectuate this provision.

Read.

Delegate Denney sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegates Denney and Stovall to Delegate Proposal No. 42 by Delegates Denney and Stovall.

Amend printed Proposal as follows:

AMENDMENT No. 1—

On page 1, delete lines 7 and 8, in their entirety and insert in lieu thereof the following:

"ARTICLE IV. EXECUTIVE BRANCH

Section 24. Powers and Duties of the Lieutenant Governor

AMENDMENT No. 2—

On page 1, line 9, at the beginning of the line, strike out "Section ____" and insert in lieu thereof "Section 24."

On motion of Delegate Denney the amendments were adopted.

Delegate Denney moved to reconsider the vote by which the amendments were adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Denney sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegates Denney and Stovall to Delegate Proposal No. 42 by Delegates Denney and Stovall.

Amend printed proposal as follows:

AMENDMENT No. 1—

On page 1, delete line 4 in its entirety and insert in lieu thereof the following:

"Providing for the duties of the lieutenant governor."

AMENDMENT No. 2—

On page 1, line 9, immediately after the word "shall" delete the remainder of the line and on line 10, before the word "receive" delete the following:

"man for the people of the state. He shall"

AMENDMENT No. 3—

Add Delegate Jones as a co-author

On motion of Delegate Denney the amendments were adopted.

Delegate Denney moved to reconsider the vote by which the amendments were adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Denney sent up a floor amendment, which was read as follows:

FLOOR AMENDMENTS

Amendment proposed by Delegates Denney, Stovall and Jones to Delegate Proposal No. 42 by Delegates Denney and Stovall.

Amend printed proposal as follows:

AMENDMENT No. 1—

On page 1, line 13, immediately after the word "procedures" insert a comma "," and delete the remainder of the line and insert in lieu thereof the following:

"remedies and appropriate the funds necessary to"

Delegate Denney moved the adoption of the amendment.

Delegate Munson objected.

By a vote of 37 yeas and 54 nays the amendment was rejected.

PAGE 7

112th Days Proceedings—January 8, 1974

YEAS

Delegates—		
Alario	Flory	Reeves
Alexander	Fulco	Segura
Badeaux	Gauthier	Singletary
Bergeron	Giarrusso	Soniati
Brien	Gravel	Stagg
Burns	Hayes	Stovall
Carmouche	Sutherland	Sutherland
Casey	Jackson, A.	Tobias
Chatelain	Landrum	Toomy
Chelard	Landry, E. J.	Velazquez
Conino	Leithman	Warren
Corne	McDaniel	Wattigny
D'Gerolamo	Maybuce	Willis
De Blieux	Miller	Zervigon
Denney	Nunez	
Dennis	Planchard	
Derbes	Rachal	
Total—49.		

NAYS

Delegates—		
Abraham	Fowler	Mauberret
Anzalone	Goldman	Mire
Arnette	Grier	Morris
Asseff	Hardee	Munson
Bel	Heine	O'Neill
Blair	Hernandez	Perez
Burson	Jenkins	Rayburn
Champagne	Jones	Riecke
Conroy	Juneau	Roemer
Cowen	Kilbourne	Shannon
Drew	Lambert	Smith
Dunlap	Landry, A.	Stephenson
Duval	Lanier	Stinson
Elkins	LeBleu	Wisham
Fontenot	Martin	
Total—44.		

NOT VOTING

Delegates—		
Mr. Chairman	Haynes	Schmitt
Aertker	Jack	Slay
Avant	Kean	Tapper
Bollinger	Kelly	Tate
Brown	Kilpatrick	Thistlethwaite
Cannon	Leigh	Thompson
Comar	Lowe	Ullo
Deshotels	Newton	Vesich
Edwards	Oruso	Vick
Fayard	Perkins	Wall
Ginn	Pugh	Weiss
Graham	Roy	Winchester
Guarisco	Sandoz	Womack
Total—39.		

And the Chair declared that the above Section failed to pass.

Delegate Fontenot moved to reconsider the vote by which the above Section failed to pass and to lay the motion to reconsider on the table.

Delegate Brien objected to laying the motion to reconsider on the table.

By a vote of 55 yeas and 35 nays the motion to reconsider was tabled.

Motion

On motion of Delegate Brien the Proposal was withdrawn from the files of the Convention.

Motion

On motion of Delegate J. Jackson Delegate Proposal No. 43 was called from the Calendar.

DELEGATE PROPOSAL No. 43—

Introduced by Delegates J. Jackson, A. Jackson, Warren, Roy, Gravel, Stovall, Pugh and Gauthier:

A PROPOSAL

Providing for juvenile courts having exclusive original jurisdiction with the exception for offenses of murder, aggravated kidnapping, armed robbery, or aggravated rape.

Read.

Article ----, Section ---- Juvenile Courts; Jurisdiction

Section ---- Juvenile courts including district courts and parish and city courts when sitting as ex-officio juvenile courts, shall have exclusive original jurisdiction of all offenses committed by persons under the age of seventeen, except that the criminal district courts in the parish of Orleans and the several district courts in the other parishes of the state shall have exclusive original jurisdiction of persons who at the time of the commission of the offense are over the age of fifteen years and who have been indicted by a grand jury for the offenses of murder, aggravated kidnapping, armed robbery, or aggravated rape committed within their respective jurisdictions.

Read.

Delegate J. Jackson sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates J. Jackson, Warren, A. Jackson, Gauthier and Pugh to Delegate Proposal No. 43 by Delegate J. Jackson, et al.

Amend printed proposal as follows:

AMENDMENT No. 1—

On page 1, delete lines 12 through 23, both inclusive, in their entirety and insert in lieu thereof the following:

"Section ---- There shall be a juvenile court for each parish. It shall have jurisdiction of cases of the State of Louisiana in the interest of children under seventeen years of age who are brought before it as delinquent or neglected children, as may be defined by law, except for capital crimes or crimes defining attempted aggravated rape, which are committed by children fifteen years of age or older. It also shall have jurisdiction over cases involving persons charged with the violation of any law for the protection of the physical, moral, or mental well-being of children under seventeen years of age not punishable by death or hard labor. It also shall have jurisdiction of cases of desertion or nonsupport of children by either parent, or nonsupport of a wife by her husband, and also of the adoption of children under seventeen years of age.

Courts serving as ex officio juvenile courts on the effective date of this constitution shall continue to serve in that capacity until such time as their jurisdiction is changed as provided herein.

Notwithstanding the provisions of Section 15 of Article V of this constitution to the contrary, the legislature may provide by law upon a favorable vote of at least two-thirds of the members elected to each house: (1) for merger of juvenile courts with other courts; (2) for the abolition of juvenile courts; (3) for additional jurisdiction to juvenile courts; and (4) that a juvenile court may waive its jurisdiction over children fifteen years of age or older at the time of the commission of any offense, who may then be tried as adults."

Motion

Delegate Shannon moved that debate be limited to thirty minutes on the amendment.

Delegate J. Jackson objected.

By a vote of 33 yeas and 42 nays and the Convention refused to limit debate on the amendment to thirty minutes.

Delegate J. Jackson moved the adoption of the amendment.

Delegate Dennis objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Ginn	Singletary
Abraham	Gravel	Soniat
Alexander	Guarisco	Stagg
Asseff	Hayes	Stephenson
Burson	Jackson, A.	Stovall
Casey	Jackson, J.	Sutherland
Comar	Landrum	Toomy
D'Gerlamo	Landry, E. J.	Velezquez
Dennery	Maybuc	Vick
Derbes	Pugh	Warren
Flory	Rachal	Wisham
Fulco	Reeves	Zervigon
Gauthier	Schmitt	
Total—38.		

NAYS

Delegates—		
Anzalone	Elkins	Miller
Arnette	Fayard	Mire
Avant	Fontenot	Morris
Badeaux	Fowler	Mewton
Bel	Giarrusso	Nunez
Blair	Goldman	O'Neill
Bollinger	Grier	Ours
Brien	Hardee	Perez
Burns	Heine	Planchard
Cannon	Jenkins	Rayburn
Carmouche	Jones	Riecke
Champagne	Juneau	Roemer
Chatelain	Kean	Segura
Conino	Kilbourne	Stinson
Conroy	Landry, A.	Tate
Corne	Lanier	Thompson
Cowen	LeBleu	Tobias
De Blieux	Lowe	Toca
Dennis	McDaniel	Wattigny
Drew	Martin	Willis
Duval	Mauberret	
Total—62.		

NOT VOTING

Delegates—		
Aertker	Jack	Slay
Alario	Kelly	Smith
Bergeron	Kilpatrick	Tapper
Brown	Lambert	Thistlethwaite
Chehardy	Leigh	Uilo
Deshotels	Leithman	Vesich
Dunlap	Munson	Wall
Edwards	Perkins	Weiss
Graham	Roy	Winchester
Haynes	Sandoz	Womack
Hernandez	Shannon	
Total—33.		

And the amendment was rejected.

Delegate Tobias moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Delegate Derbes sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegate Derbes to Delegate Proposal No. 43 by Delegate J. Jackson, et al.

Amend printed proposal as follows:

AMENDMENT No. 1—

On page 1, delete lines 12 through 23, both inclusive, in their entirety and insert in lieu thereof the following:

Section ---- Juvenile Courts
Section ---- (A) Jurisdiction. The juvenile courts shall

have jurisdiction, except for capital crimes and crimes defined by any law defining attempted aggravated rape if committed by children fifteen years of age or older, of cases of the state of Louisiana in the interest of children under seven years of age, brought before said courts as delinquent or neglected children. However, by law enacted by vote of two-thirds of the elected members of each house, a procedure may be established whereby the juvenile court may waive its jurisdiction over children fifteen years of age or older at the time of the commission of any offense so that they may be tried as adults in the district court. They shall also have such other jurisdiction as is now or may hereafter be granted to them by law."

AMENDMENT No. 2—

On page 1, below the language of Floor Amendment No. 1 above, add the following:

"(B) Merger and Abolition. Notwithstanding the provisions of Section 15 of this Article, the legislature may by law merge juvenile courts into district or family courts; and may, by law enacted by vote of two-thirds of the elected members of each house, abolish juvenile courts."

On request of Delegate Tobias a division of the question was ordered.

Delegate Derbes moved the adoption of Amendment No. 1.

Delegate Dennis objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Dennery	Landry, E. J.
Abraham	Derbes	Maybuc
Alexander	Duval	Pugh
Asseff	Fayard	Rachal
Bel	Fulco	Reeves
Bergeron	Gauthier	Riecke
Brien	Ginn	Schmitt
Burson	Graham	Soniat
Casey	Gravel	Stagg
Chatelain	Grier	Stovall
Chehardy	Hardee	Toomy
Comar	Jackson, A.	Velezquez
Conino	Jackson, J.	Vick
Conroy	Juneau	Warren
D'Gerlamo	Kilpatrick	Wisham
De Blieux	Landrum	Zervigon
Total—48.		

NAYS

Delegates—		
Arnette	Heine	O'Neill
Avant	Jenkins	Ours
Badeaux	Jones	Perez
Blair	Kean	Planchard
Bollinger	Kilbourne	Roemer
Burns	Landry, A.	Segura
Cannon	Lanier	Shannon
Carmouche	LeBleu	Singletary
Champagne	Lowe	Smith
Corne	McDaniel	Stephenson
Cowen	Martin	Stinson
Dennis	Mauberret	Sutherland
Drew	Miller	Tate
Elkins	Mire	Thompson
Flory	Morris	Tobias
Fontenot	Munson	Toca
Fowler	Newton	Wattigny
Giarrusso	Nunez	Willis
Goldman		
Total—55.		

NOT VOTING

Delegates—		
Aertker	Dunlap	Hernandez
Alario	Edwards	Jack
Anzalone	Guarisco	Kelly
Brown	Hayes	Lambert
Deshotels	Haynes	Leigh

PAGE 9

112th Days Proceedings—January 8, 1974

Leithman	Slay	Wall
Perkins	Tapper	Weiss
Rayburn	Thistlethwaite	Winchester
Roy	Uilo	Womack
Sandoz	Vesich	
Total—29.		

And the amendment was rejected.

Delegate Dennis moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

On motion of Delegate Derbes, and under a suspension of the rules, Amendment No. 2 was withdrawn.

Delegate Warren sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Warren to Delegate Proposal No. 43 by Delegate J. Jackson, et al.

Amend printed proposal as follows:

AMENDMENT No. 1—

On page 1, delete lines 12 through 23, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 38. Jurisdiction of juvenile and family courts shall be as provided in Sections 52 and 53 of Article VII of the Constitution of 1921, as existing on the effective date of this constitution."

Motion

Delegate Shannon moved the previous question on the entire subject matter.

Delegate Dennis objected.

By a vote of 45 yeas and 52 nays the Convention refused to order the previous question at this time.

Delegate Warren moved the adoption of the amendment.

Delegate Dennis objected.

By a vote of 24 yeas and 64 nays the amendment was rejected.

Delegate Dennis moved to reconsider the vote by which the amendment was rejected, and on his own motion, the motion to reconsider was laid on the table.

Delegate Dennis sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Dennis to Delegate Proposal No. 43 by Delegate J. Jackson, et al.

Amend printed Proposal as follows:

AMENDMENT No. 1—

On page 1, delete lines 5 through 23, both inclusive, in their entirety

Delegate Dennis moved the adoption of the amendment.

Delegate J. Jackson objected.

By a vote of 53 yeas and 39 nays the amendment was adopted.

Delegate Dennis moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Motion

Delegate J. Jackson moved that the Proposal be returned to the Calendar, subject to call.

Delegate Tobias objected.

By a vote of 46 yeas and 40 nays the Proposal was returned to the Calendar, subject to call.

Motion

On motion of Delegate Planchard Delegate Proposal No. 17 was called from the Calendar.

DELEGATE PROPOSAL No. 17—

Introduced by Delegate Planchard:
A PROPOSAL
Making provisions prohibiting lotteries.

Read.

Article II, Section 14. Lotteries

Section 14. Neither the state nor any of its political subdivisions shall conduct a lottery.

Read.

Delegate Burns sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegates Burns, Smith, Stovall, Jack, Fulco, Shannon, Slay, Landrum, Fowler, Stinson and Drew to Delegate Proposal No. 17 by Delegate Planchard.

Amend printed proposal as follows:

AMENDMENT No. 1—

On page 1, line 4, at the end of the line, delete the period "." and insert the following:
"and gambling."

AMENDMENT No. 2—

On page 1, line 7, at the end of the line, add the following:
"; Gambling"

AMENDMENT No. 3—

On page 1, delete lines 8 and 9, in their entirety and insert in lieu thereof the following:
"Section 14. Gambling is a vice and the legislature shall pass laws to suppress it."

AMENDMENT No. 4—

On page 1, line 10, add the following:
"Lotteries and the sale of lottery tickets are prohibited in this state."

Motion

Delegate Champagne moved to limit debate on the amendment to 20 minutes.

Delegate Landrum objected.

By a vote of 40 yeas and 39 nays debate on the amendment was limited to 20 minutes.

Point of Order

Delegate Shannon suggested an absence of a quorum.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

PRESENT

Delegates—		
Mr. Chairman	Carmouche	Duval
Alario	Casey	Elkins
Alexander	Champagne	Fayard
Arnette	Chateain	Flary
Asseff	Chehardy	Fontenot
Avant	Comar	Fowler
Badeaux	Conino	Fulco
Bel	Conroy	Gauthier
Bergeron	Corne	Giarrusso
Blair	D'Gerolamo	Ginn
Bollinger	De Blieux	Goldman
Brien	Dennery	Graham
Burns	Dennis	Grier
Burson	Derbes	Guarisco
Cannon	Drew	Hayes

Leigh	Segura	Vesich
Leithman	Slay	Wall
Mason	Tapper	Weiss
Rachal	Tate	Wisham
Roy	Thistlethwaite	Womack
Sandoz	Ullo	
Total—35.		

And the amendment was adopted.

Delegate Burns moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Motion

Delegate Smith moved that the Convention take up other orders of business at this time.

Delegate Schmitt objected.

By a vote of 31 yeas and 60 nays the Convention refused to take up other orders of business, at this time.

Delegate Velazquez sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegate Velazquez to Delegate Proposal No. 17 by Delegate Planchard.

Amend printed proposal as follows:

AMENDMENT No. 1—

On page 1, line 8, in Floor Amendment No. 3 proposed by Delegate Burns, et al. and adopted by the convention on January 8, 1974, at the end of line 2 of the text of the amendment, after the word "it" change the period "." to a comma "," and add the following:

"but if it does exist, it shall be taxed."

AMENDMENT No. 2—

On page 1, line 10, in Floor Amendment No. 4 proposed by Delegate Burns, et al. and adopted by the convention on January 8, 1974, at the end of line 2 of the text of the amendment, after the word "state" change the period "." to a comma "," and add the following:

"but if they do exist, they shall be taxed."

Delegate Velazquez moved the adoption of the amendments.

Delegate Champagne objected.

By a vote of 59 yeas and 29 nays the amendments were adopted.

Delegate Velazquez moved to reconsider the vote by which the amendments were adopted, and on his own motion, the motion to reconsider was laid on the table.

Motion

Delegate Shannon moved that the Convention take up other orders of business at this time.

Delegate Jenkins objected.

By a vote of 49 yeas and 46 nays the Convention took up other orders of business.

Reports of Committees

The following reports of committees were received and read.

Delegate Tate, chairman, on behalf of the Committee on Style and Drafting, submitted the following report:

State of Louisiana
Constitutional Convention
of 1973

January 8, 1974, Baton Rouge, La.

To the Chairman and Delegates of the Constitutional Convention:

I am directed by your Committee on Style and Drafting to submit the following report:

COMMITTEE PROPOSAL No. 21—

Introduced by Delegate Dennis, Chairman on behalf of the Committee on the Judiciary, and Delegates Avant, Bel, Bergeron, Burns, Deshotel, Drew, Gauthier, Kelly, Kilbourne, Landry, Martin, Ours, Sandoz, Tate and Vesich (A Substitute for Committee Proposal No. 6):

A PROPOSAL

Making provisions for the judiciary branch of government.

Reported with the following amendments.

COMMITTEE AMENDMENTS

Amendments proposed by Committee on Style and Drafting to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend first enrolled Proposal as follows:

AMENDMENT No. 1—

On page 1, line 17, after the word "power" and before the word "vested" delete the words "shall be" and insert in lieu thereof the word "is" and on line 19, at the end of the line, delete the word "constitution" and insert in lieu thereof the word "Article"

AMENDMENT No. 2—

On page 1, delete lines 20 through 27, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 2. Habeas Corpus, Needful Writs, Orders and Process; Contempt

Section 2. A judge may issue writs of habeas corpus and all other needful writs, orders, and process in aid of the jurisdiction of his court. Exercise of this authority by a judge of the supreme court or of a court of appeal is subject to review by the whole court. The power to punish for contempt of court shall be limited by law."

AMENDMENT No. 3—

On page 1, line 32, after the word and punctuation "judgment," delete the remainder of the line and delete line 33 in its entirety and insert in lieu thereof the following:

"The term of a supreme court judge shall be ten years."

AMENDMENT No. 4—

On page 1, delete line 35 in its entirety and on page 2, delete lines 1 through 5, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 4. The state shall be divided into at least six supreme court districts, and at least one judge shall be elected from each. The districts and the number of judges assigned to each on the effective date of this constitution are retained, subject to change by law enacted by two-thirds of the elected members of each house of the legislature."

AMENDMENT No. 5—

On page 2, delete lines 6 through 33, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 5. Supreme Court; Jurisdiction; Rule-Making Power; Assignment of Judges

Section 5. (A) Supervisory Jurisdiction; Rule-Making Power; Assignment of Judges. The supreme court has general supervisory jurisdiction over all other courts. It may establish procedural and administrative rules not in conflict with law and may assign a sitting or retired judge to any court.

(B) Original Jurisdiction. The supreme court has exclusive original jurisdiction of disciplinary proceedings against a member of the bar.

(C) Scope of Review. Except as otherwise provided by this constitution, the jurisdiction of the supreme court in civil cases extends to both law and facts. In criminal matters, its appellate jurisdiction extends only to questions of law.

(D) Appellate Jurisdiction. In addition to other appeals provided by this constitution, a case shall be appealable to the supreme court if (1) a law or ordinance has been declared unconstitutional; (2) the defendant has been convicted of a felony or a fine exceeding five hundred dollars or imprisonment exceeding six months actually has been imposed.

(E) Other Criminal Cases; Review. In all criminal cases not provided in Paragraph (D) (2) of this Section, a defendant has a right of appeal or review, as provided by law.

PAGE 12

112th Days Proceedings—January 8, 1974

(F) Appellate Jurisdiction; Civil Cases; Extent. Subject to the provisions in Paragraph (C), the supreme court has appellate jurisdiction over all issues involved in a civil action properly before it."

AMENDMENT No. 6—

On page 2, delete lines 34 and 35 in their entirety and on page 3, delete lines 1 through 5, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 6. Supreme Court; Chief Justice

Section 6. The judge oldest in point of service on the supreme court shall be chief justice. He is the chief administrative officer of the judicial system of the state, subject to rules adopted by the court."

AMENDMENT No. 7—

On page 3, delete lines 6 through 10, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 7. Supreme Court; Personnel

Section 7. The supreme court may select a judicial administrator, its clerks, and other personnel and prescribe their duties."

AMENDMENT No. 8—

On page 3, delete lines 11 through 22, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 8. Courts of Appeal; Circuits; Panels; Judgments; Terms

Section 8. (A) Circuits; Panels. The state shall be divided into at least four circuits, with one court of appeal in each. Each court shall sit in panels of at least three judges selected according to rules adopted by the court.

(B) Judgments. A majority of the judges sitting in a case must concur to render judgment. However, when a judgment of a district court is to be modified or reversed and one judge dissents, the case shall be reargued before a panel of at least five judges prior to rendition of judgment, and a majority must concur to render judgment.

(C) Terms. The term of a court of appeal judge shall be ten years."

AMENDMENT No. 9—

On page 3, delete lines 24 through 30, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 9. Each circuit shall be divided into at least three districts, and at least one judge shall be elected from each. After January 1, 1975, no judge shall be elected at large from within the circuit. The circuits and districts and the number of judges as elected in each circuit on the effective date of this constitution are retained, subject to change by law enacted by two-thirds of the elected members of each house of the legislature."

AMENDMENT No. 10—

On page 3, delete lines 31 through 35, both inclusive, in their entirety and on page 4, delete lines 1 through 8, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 10. Courts of Appeal; Jurisdiction

Section 10. (A) Jurisdiction. Except in cases appealable to the supreme court and except as otherwise provided by this constitution, a court of appeal has appellate jurisdiction of all (1) civil matters decided within its circuit and (2) matters appealed from family and juvenile courts, except criminal prosecutions of persons other than juveniles. It has supervisory jurisdiction over cases in which an appeal would lie to it.

(B) Scope of Review. Except as limited to questions of law by this constitution, or as provided by law in the review of administrative agency determinations, appellate jurisdiction of a court of appeal extends to law and facts."

AMENDMENT No. 11—

On page 4, delete lines 9 through 14, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 11. Courts of Appeal; Certification

Section 11. A court of appeal may certify any question of law before it to the supreme court, and the supreme court then may give its binding instruction or decide the case upon the whole record."

AMENDMENT No. 12—

On page 4, delete lines 15 through 19, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 12. Courts of Appeal; Chief Judge

Section 12. The judge oldest in point of service on each court of appeal shall be chief judge of that court and shall administer the court subject to rules adopted by it."

AMENDMENT No. 13—

On page 4, delete lines 20 through 22, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 13. Courts of Appeal; Personnel

Section 13. Each court of appeal may select its clerk and other personnel and prescribe their duties."

AMENDMENT No. 14—

On page 4, delete lines 24 through 26, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 14. The state shall be divided into judicial districts,

each composed of at least one parish and served by at least one district judge."

AMENDMENT No. 15—

On page 4, delete lines 27 through 35, both inclusive, in their entirety and on page 5, delete lines 1 through 16, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 15. Courts; Retention; Jurisdiction; Judicial District Changes; Terms

Section 15. (A) Court Retention; Trial Courts of Limited Jurisdiction. The district, family, juvenile, parish, city, and magistrate courts existing on the effective date of this constitution are retained. Subject to the limitations in Sections 16 and 20 of this Article, the legislature may abolish or merge trial courts of limited or specialized jurisdiction. The legislature may establish trial courts of limited jurisdiction with parishwide territorial jurisdiction and subject matter jurisdiction which shall be uniform throughout the state. The office of city marshal is continued until the city court he serves is abolished.

(B) Judicial Districts. The judicial districts existing on the effective date of this constitution are retained. Subject to the limitations in Section 20 of this Article, the legislature may establish, divide, or merge judicial districts with approval in a referendum in each district and parish affected.

(C) Term. The term of a district, parish, or city court judge shall be six years.

(D) Number of Judges. The legislature may change the number of judges in any judicial district by law enacted by two-thirds of the elected members of each house."

AMENDMENT No. 16—

On page 5, delete lines 17 through 27, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 16. District Courts; Jurisdiction

Section 16. (A) Original Jurisdiction. Except as otherwise authorized by this constitution, a district court shall have original jurisdiction of all civil and criminal matters. It shall have exclusive original jurisdiction of felony cases and of cases involving title to immovable property; the right to office or other public position; civil or political rights; probate and succession matters; the state, a political corporation, or a succession, as a defendant; and the appointment of receivers and liquidators for corporations or partnerships.

(B) Appellate Jurisdiction. A district court shall have appellate jurisdiction as provided by law."

AMENDMENT No. 17—

On page 5, delete lines 29 through 31, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 17. Each district court shall elect from its members a chief judge who shall exercise for a term designated by the court, the administrative functions prescribed by rule of court."

AMENDMENT No. 18—

On page 5, delete lines 33 through 35, both inclusive, in their entirety and insert in lieu thereof the following:

"Notwithstanding any contrary provision of Section 16 of this Article, juvenile and family courts shall have jurisdiction as provided by law."

AMENDMENT No. 19—

On page 6, delete lines 1 through 5, both inclusive, in their entirety and insert in lieu thereof the following:

PAGE 13

112th Days Proceedings—January 8, 1974

"Section 19. Mayors' Courts; Justice of the Peace Courts
Section 19. Mayors' courts and justice of the peace courts existing on the effective date of this constitution are continued, subject to change by law."

AMENDMENT No. 20—

On page 6, delete lines 6 through 9, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 20. Judges; Decrease in Terms and Compensation
Prohibited

Section 20. The term of office, retirement benefits, and compensation of a judge shall not be decreased during the term for which he is elected."

AMENDMENT No. 21—

On page 6, delete lines 10 through 31, both inclusive, in their entirety and on page 7, delete lines 1 through 4, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 21. Judges; Elections; Vacancy

Section 21. (A) Election. Except as otherwise provided in this Section, all judges shall be elected. Election shall be at the regular congressional election.

(B) Vacancy. A newly-created judgeship or a vacancy in the office of a judge shall be filled by special election called by the governor and held within six months after the day on which the vacancy occurs or the judgeship is established, except when the vacancy occurs in the last six months of an existing term. Until the vacancy is filled, the supreme court shall appoint a person meeting the qualifications for the office, other than domicile, to serve at its pleasure. The appointee shall be ineligible as a candidate at the election to fill the vacancy or the newly-created judicial office. No person serving as an appointed judge, other than a retired judge, shall be eligible for retirement benefits provided for the elected judiciary.

End of Term. A judge serving on the effective date of this constitution shall serve through December thirty-first of the last year of his term or, if the last year of his term is not in the year of a regular congressional election, then through December thirty-first of the following year. The election for the next term shall be held in the year in which the term expires, as provided above."

AMENDMENT No. 22—

On page 7, delete lines 5 through 20, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 22. Judges; Retirement

Section 22. (A) Retirement System. Within two years after the effective date of this constitution, the legislature shall provide for a retirement system for judges which shall apply to a judge taking office after the effective date of the law enacting the system and in which a judge in office at that time may elect to become a member, with credit for all prior years of judicial service and without contribution therefor. The retirement benefits and judicial service rights of a judge in office or retired on the effective date of this constitution shall not be diminished, nor shall the benefits to which a surviving spouse is entitled be reduced.

(B) Mandatory Retirement. Except as otherwise provided in this Section, a judge shall not remain in office beyond his seventieth birthday."

AMENDMENT No. 23—

On page 7, delete lines 21 through 29, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 23. Judges; Qualifications

Section 23. A judge of the supreme court, a court of appeal, district court, family court, parish court, or court having solely juvenile jurisdiction shall have been admitted to the practice of law in this state for at least five years prior to his election, and shall have been domiciled in the respective district, circuit, or parish for the two years preceding election. He shall not practice law."

AMENDMENT No. 24—

On page 7, delete lines 30 through 35, both inclusive, in their entirety and on page 8, delete lines 1 through 25, both inclusive, in their entirety and on page 9, delete lines 1 through 3,

both inclusive, in their entirety and insert in lieu thereof the following:

"Section 24. Judiciary Commission

Section 24. (A) Composition. The judiciary commission shall consist of

(1) one court of appeal judge and two district court judges selected by the supreme court;

(2) two attorneys admitted to the practice of law for at least ten years and one attorney admitted to the practice of law for at least three years but not more than ten years, selected by the Conference of Court of Appeal Judges or its successor. They shall not be judges, active or retired, or public officials, other than notaries public; and

(3) three citizens, not lawyers, judges active or retired, or public officials, selected by the Louisiana District Judges' Association or its successor.

(B) Term; Vacancy. A member of the commission shall serve a four-year term and shall be ineligible to succeed himself. His term shall end upon the occurrence of any event which would have made him ineligible for appointment. When a vacancy occurs, a successor shall be appointed for a four-year term by the authority which appointed his predecessor.

(C) Powers. On recommendation of the judiciary commission, the supreme court may censure, suspend with or without salary, remove from office, or retire involuntarily a judge for willful misconduct relating to his official duty, willful and persistent failure to perform his duty, persistent and public conduct prejudicial to the administration of justice that brings the judicial office into disrepute, conduct while in office which would constitute a felony, or conviction of a felony. On recommendation of the judiciary commission, the supreme court may disqualify a judge from exercising any judicial function, without loss of salary, during pendency of proceedings in the supreme court. On recommendation of the judiciary commission, the supreme court may retire involuntarily a judge for disability that seriously interferes with the performance of his duties and that is or is likely to become permanent. The supreme court shall make rules implementing this Section and providing for confidentiality and privilege of commission proceedings.

(D) Other Disciplinary Action. Action against a judge under this Section shall not preclude disciplinary action against him concerning his license to practice law."

AMENDMENT No. 25—

On page 9, delete lines 4 through 11, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 25. Department of Justice; Attorney General; Assistants

Section 25. There shall be a Department of Justice consisting of an attorney general, a first assistant attorney general, and other necessary assistants and staff. The attorney general shall be elected for a term of four years at the state general election. He shall appoint assistants to serve at his pleasure."

AMENDMENT No. 26—

On page 9, delete lines 12 through 27, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 26. Attorney General; Powers and Duties

Section 26. The attorney general shall be the chief legal officer of the state. As necessary for the assertion or protection of the rights and interests of the state, the attorney general may

(1) institute and prosecute or intervene in any civil action or proceeding;

(2) advise and assist, upon request of a district attorney, in the prosecution of a criminal case; and

(3) for cause, when authorized by the court of original jurisdiction in which any proceeding or affidavit is pending and subject to judicial review, supersede any attorney representing the state in any civil or criminal action.

He shall have other powers and perform other duties authorized by this constitution or provided by law."

AMENDMENT No. 27—

On page 9, delete lines 28 through 35, both inclusive, in their entirety and on page 10, delete lines 1 through 6, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 27. District Attorneys

Section 27. (A) Election; Qualifications; Assistants. In each judicial district a district attorney shall be elected for a term of six years. He shall have been admitted to the practice of law in the state for at least five years prior to his election

PAGE 14

112th Days Proceedings—January 8, 1974

and shall have resided in the district for the two years preceding election. A district attorney may select assistants as authorized by law, and other personnel.

(B) Powers, Except as otherwise provided by this constitution, a district attorney, or his designated assistant, shall have charge of every criminal prosecution by the state in his district, be the representative of the state before the grand jury in his district, and be the legal advisor to the grand jury. He shall perform other duties provided by law.

(C) Prohibition. No district attorney or assistant district attorney shall appear, plead, or in any way defend or assist in defending any criminal prosecution or charge. A violation of this Paragraph shall be cause for removal."

AMENDMENT No. 28—

On page 10, delete lines 7 through 15, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 28. Sheriffs

Section 28. In each parish a sheriff shall be elected for a term of four years. He shall be the chief law enforcement officer in the parish, except as otherwise provided by this constitution, and shall execute court orders and process. He shall be the collector of state and parish ad valorem taxes and such other taxes and license fees as provided by law. This Section shall not apply to Orleans Parish."

AMENDMENT No. 29—

On page 10, delete lines 16 through 29, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 29. Clerks of Court

Section 29. (A) Powers and Duties; Deputies. In each parish a clerk of the district court shall be elected for a term of four years. He shall be ex officio notary public and parish recorder of conveyances, mortgages, and other acts and shall have other duties and powers provided by law. The clerk may appoint deputies with duties and powers provided by law and, with the approval of the district judges, he may appoint minute clerks with duties and powers provided by law.

(B) Office Hours. The legislature shall establish uniform statewide office hours for clerks of the district courts."

AMENDMENT No. 30—

On page 10, delete lines 30 through 35, both inclusive, in their entirety and on page 11, delete lines 1 through 3, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 30. Coroners

Section 30. In each parish a coroner shall be elected for a term of four years. He shall be a licensed physician and possess the other qualifications and perform the duties provided by law. The requirement that he be a licensed physician shall be inapplicable in any parish in which no licensed physician will accept the office."

AMENDMENT No. 31—

On page 11, delete lines 4 through 14, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 31. Vacancies

Section 31. When a vacancy occurs in the following offices, the duties of the office, until it is filled by election as provided by law, shall be assumed by the persons herein designated: (1) sheriff, by the chief criminal deputy; (2) district attorney, by the first assistant; (3) clerk of a district court, by the chief deputy; (4) coroner, by the chief deputy. If there is no such person to assume the duties when the vacancy occurs, the governing authority or authorities of the parish or parishes concerned shall appoint a qualified person to assume the duties of the office until filled by election."

AMENDMENT No. 32—

On page 11, delete lines 15 through 20, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 32. Reduction of Salaries and Benefits Prohibited
Section 32. The salary and retirement benefits of an attorney general, district attorney, sheriff, coroner, or clerk of the district court shall not be diminished during his term of office."

AMENDMENT No. 33—

On page 11, delete lines 21 through 33, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 33. Orleans Parish Courts, Officials

Section 33. Except for provisions relating to terms of office as provided elsewhere in this Article, and notwithstanding any other contrary provision of this constitution, the following courts and officers in Orleans Parish are continued, subject to change by law: the civil and criminal district courts; the city, municipal, traffic, and juvenile courts; the clerks of the civil and criminal district courts; the civil and criminal sheriffs; the constables and the clerks of the first and second city courts; the register of conveyances; and the recorder of mortgages."

AMENDMENT No. 34—

On page 11, delete lines 34 and 35 and on page 12, delete lines 1 through 6, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 34. Jurors

Section 34. (A) Qualifications. A citizen of the state who has reached the age of majority is eligible to serve as a juror within the parish in which he is domiciled. The legislature may provide additional qualifications.

(B) Exemptions. The supreme court shall provide by rule for exemption of jurors."

AMENDMENT No. 35—

On page 12, delete lines 7 through 21, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 35. Grand Jury

Section 35. (A) Grand Jury. There shall be a grand jury or grand juries in each parish, whose qualifications, duties, and responsibilities shall be provided by law. The secrecy of the proceedings, including the identity of witnesses, shall be provided by law.

(B) Right to Counsel. A person testifying at any stage in grand jury proceedings shall have the right to the advice of counsel while testifying."

AMENDMENT No. 36—

On page 3, delete lines 24 through 30, both inclusive, in their entirety and delete all amendments thereto and insert in lieu thereof the following:

"Section 9. Each circuit shall be divided into at least three districts, and at least one judge shall be elected from each. The circuits and districts and the number of judges as elected in each circuit on the effective date of this constitution are retained, subject to change by law enacted by two-thirds of the elected members of each house of the legislature."

AMENDMENT No. 37—

On page 5, line 23, after the word "corporation" and before the comma "," and the word "or" insert the words "or political subdivision"

AMENDMENT No. 38—

On page 7, delete lines 21 through 29, both inclusive, in their entirety, and delete all amendments thereto and insert in lieu thereof the following:

"Section 23. Judges; Qualifications

Section 23. A judge of the supreme court, a court of appeal, district court, family court, parish court, or court having solely juvenile jurisdiction shall have been admitted to the practice of law in this state for at least five years prior to his qualification as a candidate, and shall have been domiciled in the respective district, circuit or parish for the two years preceding qualification. He shall not practice law."

AMENDMENT No. 39—

On page 9, delete lines 28 through 35, both inclusive, in their entirety and on page 10, delete line 1 and delete all amendments thereto and insert in lieu thereof the following:

"Section 27. District Attorneys

Section 27. (A) Election; Qualifications; Assistants. In each judicial district a district attorney shall be elected for a term of six years. He shall have been admitted to the practice of law in the state for at least five years prior to his qualification as a candidate and shall have been domiciled in the two years preceding qualification. A district attorney may select assistants as authorized by law, and other personnel."

COMMITTEE PROPOSAL No. 25—

Introduced by Delegate A. Jackson, Chairman, Committee on Bill of Rights and Elections (Substitute for Committee Proposal No. 2, by Delegate A. Jackson, Chairman, on behalf

PAGE 15

112th Days Proceedings—January 8, 1974

of the Committee on Bill of Rights and Elections, and Delegates Dunlap, Guarisco, Jenkins, Roy, Soniat, Stinson, Vick, Wall and Weiss):

A PROPOSAL

To provide a preamble and a declaration of rights to the constitution.

Reported with the following amendments.

COMMITTEE AMENDMENTS

Amendments proposed by Committee on Style and Drafting to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend first enrolled proposal as follows:

AMENDMENT No. 1—

On page 1, at the beginning of line 18, delete the word "A"

AMENDMENT No. 2—

On page 1, at the end of line 35, delete the comma ","

AMENDMENT No. 3—

On page 2, line 5, after the word "liberty" and before the word "or" insert a comma ","

AMENDMENT No. 4—

On page 2, delete lines 8 through 15, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 3. No person shall be denied the equal protection of the laws. No law shall discriminate against a person because of race or religious ideas, beliefs, or affiliations. No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations. Slavery and involuntary servitude are prohibited, except in the latter case as punishment for crime."

AMENDMENT No. 5—

On page 2, delete lines 17 through 25, both inclusive, in their entirety and on page 3, delete lines 1 and 2 in their entirety and insert in lieu thereof the following:

"Section 4. Every person has the right to acquire, own, control, use, enjoy, protect, and dispose of private property. This right is subject to reasonable statutory restrictions and the reasonable exercise of the police power.

Property shall not be taken or damaged by the state or its political subdivisions except for public purposes and with just compensation paid to the owner or into court for his benefit. Property shall not be taken or damaged by any private entity authorized by law to expropriate, except for a public and necessary purpose and with just compensation paid to the owner; in such proceedings, whether the purpose is public and necessary shall be a judicial question. In every expropriation, a party has the right to trial by jury to determine compensation, and the owner shall be compensated to the full extent of his loss. No business enterprise or any of its assets shall be taken for the purpose of operating that enterprise or halting competition with a government enterprise. However, a municipality may expropriate a utility within its jurisdiction. Personal effects, other than contraband, shall never be taken.

This Section shall not apply to appropriation of property necessary for levee and levee drainage purposes."

AMENDMENT No. 6—

On page 3, delete lines 4 through 13, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 5. Every person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy. No warrant shall issue without probable cause supported by oath or affirmation, and particularly describing the place to be searched, the persons or things to be seized, and the lawful purpose or reason for the search. Any person adversely affected by a search or seizure conducted in violation of this Section shall have standing to raise its illegality in the appropriate court."

AMENDMENT No. 7—

On page 3, delete lines 17 through 22, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 9. Freedom of Expression

Section 9. No law shall curtail or restrain the freedom of speech or of the press. Every person may speak, write, and publish his sentiments on any subject, but is responsible for abuse of that freedom."

AMENDMENT No. 8—

On page 3, delete lines 26 through 29, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 11. Right of Assembly and Petition

Section 11. No law shall impair the right of any person to assemble peaceably or to petition government for a redress of grievances."

AMENDMENT No. 9—

On page 5, delete lines 33 through 35, both inclusive, in their entirety and on page 6, delete lines 1 and 2 in their entirety and insert in lieu thereof the following:

"Section 19. Every citizen of the state, upon reaching eighteen years of age, shall have the right to register and vote, except that this right may be suspended while a person is interdicted and judicially declared mentally incompetent or is under an order of imprisonment for conviction of a felony."

AMENDMENT No. 10—

On page 6, delete line 24 in its entirety and insert in lieu thereof the following:

"and facilities, every person shall be free from"

AMENDMENT No. 11—

On page 3, delete lines 31 through 35, both inclusive, in their entirety and on page 4, delete lines 1 through 14, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 12. When any person has been arrested or detained in connection with the investigation or commission of any offense, he shall be advised fully of the reason for his arrest or detention, his right to remain silent, his right against self incrimination, his right to the assistance of counsel and, if indigent, his right to court appointed counsel. In a criminal prosecution, an accused shall be informed of the nature and cause of the accusation against him. At each stage of the proceedings, every person is entitled to assistance of counsel of his choice, or appointed by the court if he is indigent and charged with an offense punishable by imprisonment. The legislature shall provide for a uniform system for securing and compensating qualified counsel for indigents.

No person shall be subjected to imprisonment or forfeiture of rights or property without the right of judicial review based upon a complete record of all evidence upon which the judgment is based. This right may be intelligently waived. The cost of transcribing the record shall be paid as provided by law."

AMENDMENT No. 12—

On page 6, delete lines 29 through 31, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 27. The right to a preliminary examination shall not be denied in felony cases except when the accused is indicted by a grand jury."

AMENDMENT No. 13—

On page 4, delete lines 16 through 22, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 13. Prosecution of a felony shall be initiated by indictment or information, but no person shall be held to answer for a capital crime or a crime punishable by life imprisonment except on indictment by a grand jury. No person shall be twice placed in jeopardy for the same offense, except on his application for a new trial, when a mistrial is declared, or when a motion in arrest of judgment is sustained."

AMENDMENT No. 14—

On page 4, delete lines 23 through 32, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 15. Right to a Fair Trial

Section 15. Every person charged with a crime is presumed innocent until proven guilty and is entitled to a speedy, public, and impartial trial in the parish where the offense or an element of the offense occurred, unless venue is changed in accordance with law. No person shall be com-

Perkins	James	Waller
Reynolds	Thompson	Wills
Reynolds	Watts	Wright
Reynolds	Watts	Wright

Reynolds	Watts	Wright
Reynolds	Watts	Wright
Reynolds	Watts	Wright
Reynolds	Watts	Wright
Reynolds	Watts	Wright
Reynolds	Watts	Wright
Reynolds	Watts	Wright
Reynolds	Watts	Wright
Reynolds	Watts	Wright
Reynolds	Watts	Wright

And the Chair declared that the above Proposals were finally passed.

Motion to reconsider pending.

Explanation of Vote

Delegates Sullivan sent up the following explanation of his vote on Committee Proposal No. 7:

The legislation of gambling is a moral question and should be decided only after much research and public input. I am opposed to a constitutional amendment of the question of allowing the legislature to vote with the issue of gambling because of the concern of the citizens of North Louisiana with respect to the passage of a constitutional amendment on gambling. I am casting my vote in favor of D.P. 10.

Motion

On motion of Delegate Tate, the Convention entered the State of Louisiana to take up proposals on Calendar for Approval or Final Signing of this date.

Proposals on Calendar for Approval or Final Signing

The following Proposals returned from the Committee on Style and Drafting for approval of final signing were taken up and acted upon as follows:

★ **COMMITTEE PROPOSAL No. 11—**
Introduced by Delegate Dennis, Chairman on behalf of the Committee on the Judiciary and Delegates Amos, Ben, Bergerson, Burns, Davidson, Davis, Gauthier, Klein, Hildebrand, Landry, Martin, Owen, Sisson, Tate and Watts (A Substitute for Committee Proposal No. 8).

MAKING PROVISIONS FOR THE JUDICIARY BRANCH OF GOVERNMENT.

Reported with the following amendments:

COMMITTEE AMENDMENTS

Amendment proposed by Committee on Style and Drafting to Committee Proposal No. 11 by Delegate Dennis et al.

Amend first sentence proposal as follows:

AMENDMENT No. 1—

On page 1 line 17, after the word "power" and before the word "vested" delete the words "shall be" and insert in lieu thereof the word "is" and on line 18 at the end of the line delete the word "hereinafter" and insert in lieu thereof the word "herein".

Read.

On motion of Delegate Tate Amendment No. 1 was adopted.

AMENDMENT No. 2—

On page 1 line 18 through 19, delete "herein" in these sentences and insert in lieu thereof the following:

"Section 2. The State of Louisiana, hereinafter referred to as the State, shall have the power to create, alter, amend, and abolish the courts of the State."

Read.

On motion of Delegate Tate Amendment No. 2 was adopted.

AMENDMENT No. 3—

On page 1 line 2, after the word "and" and before the word "herein" delete the word "shall be" and insert in lieu thereof the word "is".

"The term of a justice of the peace shall be six years."

Read.

On motion of Delegate Tate Amendment No. 3 was adopted.

AMENDMENT No. 4—

On page 1 line 18 through 19, delete "herein" in these sentences and insert in lieu thereof the following:

"Section 4. The State shall have the power to create, alter, amend, and abolish the courts of the State."

"The term of a justice of the peace shall be six years."

Read.

On motion of Delegate Tate Amendment No. 4 was adopted.

AMENDMENT No. 5—

On page 1 line 18 through 19, delete "herein" in these sentences and insert in lieu thereof the following:

"Section 5. The State shall have the power to create, alter, amend, and abolish the courts of the State."

"The term of a justice of the peace shall be six years."

"The term of a justice of the peace shall be six years."

"The term of a justice of the peace shall be six years."

"The term of a justice of the peace shall be six years."

"The term of a justice of the peace shall be six years."

"The term of a justice of the peace shall be six years."

"The term of a justice of the peace shall be six years."

"The term of a justice of the peace shall be six years."

"The term of a justice of the peace shall be six years."

"The term of a justice of the peace shall be six years."

"The term of a justice of the peace shall be six years."

"The term of a justice of the peace shall be six years."

"The term of a justice of the peace shall be six years."

"The term of a justice of the peace shall be six years."

"The term of a justice of the peace shall be six years."

"The term of a justice of the peace shall be six years."

PAGE 8

113th Days Proceedings—January 9, 1974

On motion of Delegate Tate Amendment No. 6 was adopted.

AMENDMENT No. 7—

On page 3, delete lines 6 through 10, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 7. Supreme Court; Personnel

Section 7. The supreme court may select a judicial administrator, its clerks, and other personnel and prescribe their duties."

Read.

On motion of Delegate Tate Amendment No. 7 was adopted.

AMENDMENT No. 8—

On page 3, delete lines 11 through 22, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 8. Courts of Appeal; Circuits; Panels; Judgments; Terms

Section 8. (A) Circuits; Panels. The state shall be divided into at least four circuits, with one court of appeal in each. Each court shall sit in panels of at least three judges selected according to rules adopted by the court.

(B) Judgments. A majority of the judges sitting in a case must concur to render judgment. However, when a judgment of a district court is to be modified or reversed and one judge dissents, the case shall be rearranged before a panel of at least five judges prior to rendition of judgment, and a majority must concur to render judgment.

(C) Terms. The term of a court of appeal judge shall be ten years."

Read.

On motion of Delegate Tate Amendment No. 8 was adopted.

AMENDMENT No. 9—

On page 3, delete lines 24 through 30, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 9. Each circuit shall be divided into at least three districts, and at least one judge shall be elected from each. After January 1, 1975, no judge shall be elected at large from within the circuit. The circuits and districts and the number of judges as elected in each circuit on the effective date of this constitution are retained, subject to change by law enacted by two-thirds of the elected members of each house of the legislature."

Read.

On motion of Delegate Tate Amendment No. 9 was adopted.

AMENDMENT No. 10—

On page 3, delete lines 31 through 35, both inclusive, in their entirety and on page 4, delete lines 1 through 8, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 10. Courts of Appeal; Jurisdiction

Section 10. (A) Jurisdiction. Except in cases appealable to the supreme court and except as otherwise provided by this constitution, a court of appeal has appellate jurisdiction of all (1) civil matters decided within its circuit and (2) matters appealed from family and juvenile courts, except criminal prosecutions of persons other than juveniles. It has supervisory jurisdiction over cases in which an appeal would lie to it.

(B) Scope of Review. Except as limited to questions of law by this constitution, or as provided by law in the review of administrative agency determinations, appellate jurisdiction of a court of appeal extends to law and facts."

Read.

On motion of Delegate Tate Amendment No. 10 was adopted.

AMENDMENT No. 11—

On page 4, delete lines 9 through 14, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 11. Courts of Appeal; Certification

Section 11. A court of appeal may certify any question of

law before it to the supreme court, and the supreme court then may give its binding instruction or decide the case upon the whole record."

Read.

On motion of Delegate Tate Amendment No. 11 was adopted.

AMENDMENT No. 12—

On page 4, delete lines 15 through 19, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 12. Courts of Appeal; Chief Judge

Section 12. The judge oldest in point of service on each court of appeal shall be chief judge of that court and shall administer the court subject to rules adopted by it."

Read.

On motion of Delegate Tate Amendment No. 12 was adopted.

AMENDMENT No. 13—

On page 4, delete lines 20 through 22, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 13. Courts of Appeal; Personnel

Section 13. Each court of appeal may select its clerk and other personnel and prescribe their duties."

Read.

On motion of Delegate Tate Amendment No. 13 was adopted.

AMENDMENT No. 14—

On page 4, delete lines 24 through 26, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 14. The state shall be divided into judicial districts, each composed of at least one parish and served by at least one district judge."

Read.

On motion of Delegate Tate Amendment No. 14 was adopted.

AMENDMENT No. 15—

On page 4, delete lines 27 through 35, both inclusive, in their entirety and on page 5, delete lines 1 through 16, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 15. Courts; Retention; Jurisdiction; Judicial District Changes; Terms

Section 15. (A) Court Retention; Trial Courts of Limited Jurisdiction. The district, family, juvenile, parish, city, and magistrate courts existing on the effective date of this constitution are retained. Subject to the limitations in Sections 16 and 20 of this Article, the legislature may abolish or merge trial courts of limited or specialized jurisdiction. The legislature may establish trial courts of limited jurisdiction with parishwide territorial jurisdiction and subject matter jurisdiction which shall be uniform throughout the state. The office of city marshal is continued until the city court he serves is abolished.

(B) Judicial Districts. The judicial districts existing on the effective date of this constitution are retained. Subject to the limitations in Section 20 of this Article, the legislature may establish, divide, or merge judicial districts with approval in a referendum in each district and parish affected.

(C) Term. The term of a district, parish, or city court judge shall be six years.

(D) Number of Judges. The legislature may change the number of judges in any judicial district by law enacted by two-thirds of the elected members of each house."

Read.

On motion of Delegate Tate Amendment No. 15 was adopted.

AMENDMENT No. 16—

On page 5, delete lines 17 through 27, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 16. District Courts; Jurisdiction

Section 16. (A) Original Jurisdiction. Except as otherwise authorized by this constitution, a district court shall have original jurisdiction of all civil and criminal matters. It shall have exclusive original jurisdiction of felony cases and of cases involving title to immovable property; the right to

PAGE 9

113th Days Proceedings—January 9, 1974

office or other public position; civil or political rights; probate and succession matters; the state, a political corporation, or a succession, as a defendant; and the appointment of receivers or liquidators for corporations or partnerships.

(B) Appellate Jurisdiction. A district court shall have appellate jurisdiction as provided by law."

Read.

On motion of Delegate Tate Amendment No. 16 was adopted.

AMENDMENT No. 17—

On page 5, delete lines 29 through 31, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 17. Each district court shall elect from its members a chief judge who shall exercise, for a term designated by the court, the administrative functions prescribed by rule of court."

Read.

On motion of Delegate Tate Amendment No. 17 was adopted.

AMENDMENT No. 18—

On page 5, delete lines 33 through 35, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 18. Notwithstanding any contrary provision of Section 16 of this Article, juvenile and family courts shall have jurisdiction as provided by law."

Read.

Delegate Tate moved the adoption of Amendment No. 18.

Delegate Gauthier objected.

By a vote of 77 yeas and 6 nays the amendment was adopted.

AMENDMENT No. 19—

On page 6, delete lines 1 through 5, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 19. Mayors' Courts; Justice of the Peace Courts. Section 19. Mayors' courts and justice of the peace courts existing on the effective date of this constitution are continued, subject to change by law."

Read.

On motion of Delegate Tate Amendment No. 19 was adopted.

AMENDMENT No. 20—

On page 6, delete lines 6 through 9, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 20. Judges; Decrease in Terms and Compensation Prohibited

Section 20. The term of office, retirement benefits, and compensation of a judge shall not be decreased during the term for which he is elected."

Read.

On motion of Delegate Tate Amendment No. 20 was adopted.

AMENDMENT No. 21—

On page 6, delete lines 10 through 31, both inclusive, in their entirety and on page 7, delete lines 1 through 4, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 21. Judges; Election; Vacancy

Section 21. (A) Election. Except as otherwise provided in this Section, all judges shall be elected. Election shall be at the regular congressional election.

(B) Vacancy. A newly-created judgeship or a vacancy in the office of a judge shall be filled by special election called by the governor and held within six months after the day on which the vacancy occurs or the judgeship is established, except when the vacancy occurs in the last six months of an existing term. Until the vacancy is filled, the supreme court shall appoint a person meeting the qualifications for the

office, other than domicile, to serve at its pleasure. The appointee shall be ineligible as a candidate at the election to fill the vacancy or the newly-created judicial office. No person serving as an appointed judge, other than a retired judge, shall be eligible for retirement benefits provided for the elected judiciary.

(C) End of Term. A judge serving on the effective date of this constitution shall serve through December thirty-first of the last year of his term or, if the last year of his term is not in the year of a regular congressional election, then through December thirty-first of the following year. The election for the next term shall be held in the year in which the term expires, as provided above."

Read.

On motion of Delegate Tate Amendment No. 21 was adopted.

AMENDMENT No. 22—

On page 7, delete lines 5 through 20, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 22. Judges; Retirement

Section 22. (A) Retirement System. Within two years after the effective date of this constitution, the legislature shall provide for a retirement system for judges which shall apply to a judge taking office after the effective date of the law enacting the system and in which a judge in office at that time may elect to become a member, with credit for all prior years of judicial service and without contribution therefor. The retirement benefits and judicial service rights of a judge in office or retired on the effective date of this constitution shall not be diminished, nor shall the benefits to which a surviving spouse is entitled be reduced.

(B) Mandatory Retirement. Except as otherwise provided in this Section, a judge shall not remain in office beyond his seventieth birthday."

Read.

On motion of Delegate Tate Amendment No. 22 was adopted.

AMENDMENT No. 23—

On page 7, delete lines 21 through 29, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 23. Judges; Qualifications

Section 23. A judge of the supreme court, a court of appeal, district court, family court, parish court, or court having solely juvenile jurisdiction shall have been admitted to the practice of law in this state for at least five years prior to his election, and shall have been domiciled in the respective district, circuit, or parish for the two years preceding election. He shall not practice law."

Read.

On motion of Delegate Tate Amendment No. 23 was adopted.

AMENDMENT No. 24—

On page 7, delete lines 30 through 35, both inclusive, in their entirety and on page 8, delete lines 1 through 35, both inclusive, in their entirety and on page 9, delete lines 1 through 3, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 24. Judiciary Commission

Section 24. (A) Composition. The judiciary commission shall consist of:
(1) one court of appeal judge and two district court judges selected by the supreme court;

(2) two attorneys admitted to the practice of law for at least ten years and one attorney admitted to the practice of law for at least three years but not more than ten years, selected by the Conference of Court of Appeal Judges or its successor. They shall not be judges, active or retired, or public officials, other than notaries public; and

(3) three citizens, not lawyers, judges active or retired, or public officials, selected by the Louisiana District Judges' Association or its successor.

(B) Term; Vacancy. A member of the commission shall serve a four-year term and shall be ineligible to succeed himself. His term shall end upon the occurrence of any event which would have made him ineligible for appointment. When a vacancy occurs, a successor shall be appointed for a four-year term by the authority which appointed his predecessor.

PAGE 10

113th Days Proceedings—January 9, 1974

(C) Powers. On recommendation of the judiciary commission, the supreme court may censure, suspend with or without salary, remove from office, or retire involuntarily a judge for willful misconduct relating to his official duty, willful and persistent failure to perform his duty, persistent and public conduct prejudicial to the administration of justice that brings the judicial office into disrepute, conduct while in office which would constitute a felony, or conviction of a felony. On recommendation of the judiciary commission, the supreme court may disqualify a judge from exercising any judicial function, without loss of salary, during pendency of proceedings in the supreme court. On recommendation of the judiciary commission, the supreme court may retire involuntarily a judge for disability that seriously interferes with the performance of his duties and that is or is likely to become permanent. The supreme court shall make rules implementing this Section and providing for confidentiality and privilege of commission proceedings.

(D) Other Disciplinary Action. Action against a judge under this Section shall not preclude disciplinary action against him concerning his license to practice law."

Read.

On motion of Delegate Tate Amendment No. 24 was adopted.

AMENDMENT No. 25—

On page 9, delete lines 4 through 11, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 25. Department of Justice; Attorney General; Assistants

Section 25. There shall be a Department of Justice consisting of an attorney general, a first assistant attorney general, and other necessary assistants and staff. The attorney general shall be elected for a term of four years at the state general election. He shall appoint assistants to serve at his pleasure."

Read.

On motion of Delegate Tate Amendment No. 25 was adopted.

AMENDMENT No. 26—

On page 9, delete lines 12 through 27, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 26. Attorney General; Powers and Duties

Section 26. The attorney general shall be the chief legal officer of the state. As necessary for the assertion or protection of the rights and interests of the state, the attorney general may

(1) institute and prosecute or intervene in any civil action or proceeding;

(2) advise and assist, upon request of a district attorney, in the prosecution of a criminal case; and

(3) for cause, when authorized by the court of original jurisdiction in which any proceeding or affidavit is pending and subject to judicial review, supersede any attorney representing the state in any civil or criminal action.

He shall have other powers and perform other duties authorized by this constitution or provided by law."

Read.

On motion of Delegate Tate Amendment No. 26 was adopted.

AMENDMENT No. 27—

On page 9, delete lines 28 through 35, both inclusive, in their entirety and on page 10, delete lines 1 through 6, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 27. District Attorneys

Section 27. (A) Election. Qualifications; Assistants. In each judicial district a district attorney shall be elected for a term of six years. He shall have been admitted to the practice of law in the state for at least five years prior to his election and shall have resided in the district for the two years preceding election. A district attorney may select assistants as authorized by law, and other personnel.

(B) Powers. Except as otherwise provided by this con-

stitution, a district attorney, or his designated assistant, shall have charge of every criminal prosecution by the state in his district, be the representative of the state before the grand jury in his district, and be the legal advisor to the grand jury. He shall perform other duties provided by law.

(C) Prohibition. No district attorney or assistant district attorney shall appear, plead, or in any way defend or assist in defending any criminal prosecution or charge. A violation of this Paragraph shall be cause for removal."

Read.

On motion of Delegate Tate Amendment No. 27 was adopted.

AMENDMENT No. 28—

On page 10, delete lines 7 through 15, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 28. Sheriffs

Section 28. In each parish a sheriff shall be elected for a term of four years. He shall be the chief law enforcement officer in the parish, except as otherwise provided by this constitution, and shall execute court orders and process. He shall be the collector of state and parish ad valorem taxes and such other taxes and license fees as provided by law. This Section shall not apply to Orleans Parish."

Read.

On motion of Delegate Tate Amendment No. 28 was adopted.

AMENDMENT No. 29—

On page 10, delete lines 16 through 29, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 29. Clerks of Court

Section 29. (A) Powers and Duties; Deputies. In each parish a clerk of the district court shall be elected for a term of four years. He shall be ex officio notary public and parish recorder of conveyances, mortgages, and other acts and shall have other duties and powers provided by law. The clerk may appoint deputies with duties and powers provided by law and, with the approval of the district judges, he may appoint minute clerks with duties and powers provided by law.

(B) Office Hours. The legislature shall establish uniform statewide office hours for clerks of the district courts."

Read.

On motion of Delegate Tate Amendment No. 29 was adopted.

AMENDMENT No. 30—

On page 10, delete lines 30 through 35, both inclusive, in their entirety and on page 11, delete lines 1 through 3, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 30. Coroners

Section 30. In each parish a coroner shall be elected for a term of four years. He shall be a licensed physician and possess the other qualifications and perform the duties provided by law. The requirements for him to be a licensed physician shall be inapplicable in any parish in which no licensed physician will accept the office."

Read.

On motion of Delegate Tate Amendment No. 30 was adopted.

AMENDMENT No. 31—

On page 11, delete lines 4 through 14, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 31. Vacancies

Section 31. When a vacancy occurs in the following offices, the duties of the office, until it is filled by election as provided by law, shall be assumed by the persons herein designated: (1) sheriff, by the chief criminal deputy; (2) district attorney, by the first assistant; (3) clerk of a district court, by the chief deputy; (4) coroner, by the chief deputy. If there is no such person to assume the duties when the vacancy occurs, the governing authority or authorities of the parish or parishes concerned shall appoint a qualified person to assume the duties of the office until filled by election."

Read.

PAGE 11

113th Days Proceedings—January 9, 1974

On motion of Delegate Tate Amendment No. 31 was adopted.

AMENDMENT No. 32—

On page 11, delete lines 15 through 20, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 32. Reduction of Salaries and Benefits Prohibited
Section 32. The salary and retirement benefits of an attorney general, district attorney, sheriff, coroner, or clerk of the district court shall not be diminished during his term of office."

Read.

On motion of Delegate Tate Amendment No. 32 was adopted.

AMENDMENT No. 33—

On page 11, delete lines 21 through 33, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 33. Orleans Parish Courts, Officials
Section 33. Except for provisions relating to terms of office as provided elsewhere in this Article, and notwithstanding any other contrary provision of this constitution, the following courts and officers in Orleans Parish are continued, subject to change by law: the civil and criminal district courts; the city, municipal, traffic, and juvenile courts; the clerks of the civil and criminal district courts; the civil and criminal sheriffs; the constables and the clerks of the first and second city courts; the register of conveyances; and the recorder of mortgages."

Read.

On motion of Delegate Tate Amendment No. 33 was adopted.

AMENDMENT No. 34—

On page 11, delete lines 34 and 35 and on page 12, delete lines 1 through 6, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 34. Jurors
Section 34. (A) Qualifications. A citizen of the state who has reached the age of majority is eligible to serve as a juror within the parish in which he is domiciled. The legislature may provide additional qualifications.
(B) Exemptions. The supreme court shall provide by rule for exemption of jurors."

Read.

On motion of Delegate Tate Amendment No. 34 was adopted.

AMENDMENT No. 35—

On page 12, delete lines 7 through 21, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 35. Grand Jury
Section 35. (A) Grand Jury. There shall be a grand jury or grand juries in each parish, whose qualifications, duties, and responsibilities shall be provided by law. The secrecy of the proceedings, including the identity of witnesses, shall be provided by law.
(B) Right to Counsel. A person testifying at any stage in grand jury proceedings shall have the right to the advice of counsel while testifying."

Read.

On motion of Delegate Tate Amendment No. 35 was adopted.

AMENDMENT No. 36—

On page 3, delete lines 24 through 30, both inclusive, in their entirety and delete all amendments thereto and insert in lieu thereof the following:

"Section 9. Each circuit shall be divided into at least three districts, and at least one judge shall be elected from each. The circuits and districts and the number of judges as elected in each circuit on the effective date of this constitution are retained, subject to change by law enacted by two-

thirds of the elected members of each house of the legislature."

Read.

On motion of Delegate Tate Amendment No. 36 was adopted.

AMENDMENT No. 37—

On page 5, line 17, in Committee Amendment No. 16 proposed by the Committee on Style and Drafting and adopted by the convention on January 9, 1974, on line 10 of the text of the amendment, after the word and punctuation "corporation," and before the word "or" insert the words "or political subdivisions."

Read.

On motion of Delegate Tate Amendment No. 37 was adopted.

AMENDMENT No. 38—

On page 7, delete lines 21 through 29, both inclusive, in their entirety, and delete all amendments thereto and insert in lieu thereof the following:

"Section 23. Judges: Qualifications
Section 23. A judge of the supreme court, a court of appeal, district court, family court, parish court, or court having solely juvenile jurisdiction shall have been admitted to the practice of law in this state for at least five years prior to his qualification as a candidate, and shall have been domiciled in the respective district, circuit, or parish for the two years preceding qualification. He shall not practice law."

Read.

Delegate Tate moved the adoption of Amendment No. 38.

Delegate Kean objected.

Point of Order

Delegate Newton rose to a point of order, and asked a ruling from the Chair, that the Committee on Style and Drafting had exceeded its authority by submitting Amendment No. 38 in that the amendment contained a substantive change to the Proposal, and therefore the amendment was out of order at this time.

Ruling of the Chair

The Chair declined to rule and put the question to the Convention, under the rules.

The question was put to declare the amendment in order.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS		
Delegates—	De Bieux	Smith
Alexander	Dennis	Stovall
Anzalone	Deshotels	Tate
Blair	Fulco	Wattigny
Casey	Lanier	Willis
Conino		
Total—15.		
NAYS		
Delegates—	Chatelain	Goldman
Abraham	Comar	Gravel
Alario	Conroy	Grier
Arnette	D'Gerolamo	Hardee
Asseff	Dennerly	Hayes
Avant	Derbes	Haynes
Badeaux	Drew	Heine
Bel	Duval	Hernandez
Bergeron	Elkins	Jackson, A.
Bollinger	Foyard	Jackson, J.
Brien	Flory	Jenkins
Brown	Fontenot	Kean
Burson	Fowler	Kipatrack
Cannon	Gauthier	Landrums
Carmouche	Giarrusso	Landry, A.
Champagne		

PAGE 12

113th Days Proceedings—January 9, 1974

Landry, E. J.	Perkins	Sutherland
Leihman	Planchard	Tapner
Lowe	Pugh	Thistlethwaite
McDaniel	Roemer	Thompson
Martin	Roy	Toca
Maybuc	Sandoz	Toomy
Miller	Segura	Uilo
Morris	Singletary	Velazquez
Newton	Soniat	Vick
Nunez	Stagg	Warren
O'Neill	Stephenson	Wisham
Perez	Stinson	Zervigon
Total—81.		

NOT VOTING

Delegates—	Jones	Rayburn
Mr. Chairman	Juneau	Reeves
Aertker	Kelly	Riecke
Burns	Kilbourne	Schmitt
Chehardy	Lambert	Shannon
Corne	LeBleu	Slay
Cowen	Leigh	Tobias
Dunlap	Edwards	Vesich
Edwards	Mire	Wall
Ginn	Munson	Weiss
Graham	Ourso	Winchester
Guarisco	Rachal	Womack
Jack		
Total—36.		

And the Convention ruled the amendment out of order, at this time.

Motion

Delegate Tate moved for a suspension of the rules to call from the table the motion to reconsider the vote by which Committee Proposal No. 21, Section 33 was passed.

Delegate Miller objected.

By a vote of 53 yeas and 35 nays the Convention refused to suspend the rules.

Motion

On motion of Delegate Tate Amendment No. 38 was withdrawn from the files of the Convention.

AMENDMENT No. 39—

On page 9, delete lines 28 through 35, both inclusive, in their entirety and on page 10, delete line 1 and delete all amendments thereto and insert in lieu thereof the following: "Section 27. District Attorneys

Section 27. (A) Election; Qualifications; Assistants. In each judicial district a district attorney shall be elected for a term of six years. He shall have been admitted to the practice of law in the state for at least five years prior to his qualification as a candidate and shall have resided in the district for the two years preceding qualification. A district attorney

may select assistants as authorized by law, and other personnel."

Read.

Motion

On motion of Delegate Tate the amendment was withdrawn from the files of the Convention.

Motion

On motion of Delegate Perez, the Convention altered the Order of Business to take up other Orders of Business at this time.

Delegate Dennery, Secretary of the Constitutional Convention of 1973, submits the following report:

Constitutional Convention of 1973
State of Louisiana

January 9, 1974, Baton Rouge, La.

To the Chairman and Delegates of the Convention:

I submit the following report:

That the following Delegate Proposal has been properly enrolled:

DELEGATE PROPOSAL No. 17—

Introduced by Delegate Planchard:

A PROPOSAL

Making provisions prohibiting lotteries and gambling.

Be it adopted by the Constitutional Convention of Louisiana of 1973:

ARTICLE XII. GENERAL PROVISIONS

Section 12. Lotteries; Gambling

Section 12. Neither the state nor any of its political subdivisions shall conduct a lottery. Gambling shall be defined by and suppressed by the legislature.

Respectfully submitted,

MOISE W. DENNERY,
Secretary.

Under the Rules, referred to the Committee on Style and Drafting.

Leave of Absence

Delegate Jack—1 day.

Delegate Weiss—1 day.

Adjournment

Delegate Duval moved that the Convention do now adjourn until Thursday, January 10, 1974, at 9:00 o'clock A.M.

Which motion was agreed to.

And Chairman Henry declared the Convention adjourned to Thursday, January 10, 1974, at 9:00 o'clock A.M.

MOISE W. DENNERY
Secretary

DAVID R. POYNTER
Chief Clerk

**OFFICIAL JOURNAL
OF THE
CONSTITUTIONAL CONVENTION
OF 1973
OF THE
STATE OF LOUISIANA**

ONE HUNDRED FOURTEENTH DAY'S PROCEEDINGS

of the Constitutional Convention of 1973
held in accordance with Act 2 of the
1972 Regular Session of the Legislature

Thursday, January 10, 1974, Baton Rouge, La.

The Convention was called to order at 9:00 o'clock a.m., by Hon. E. L. Henry, Chairman of the Convention.

ROLL CALL

The roll being called, the following delegates answered to their names:

PRESENT

Delegates—		
Mr. Chairman	Fowler	Ouroso
Abraham	Fulco	Perez
Aertker	Gauthier	Perkins
Alario	Giarrusso	Planchard
Alexander	Ginn	Pugh
Anzalone	Goldman	Rachal
Arnette	Graham	Reeves
Asseff	Gravel	Riecke
Avant	Grier	Roemer
Badeaux	Guarisco	Roy
Bel	Hardee	Sandoz
Bergeron	Hayes	Schmitt
Blair	Haynes	Segura
Bollinger	Heine	Shannon
Brien	Hernandez	Singletary
Brown	Jack	Slay
Burns	Jackson, A.	Smith
Burson	Jackson, J.	Soniati
Cannon	Jenkins	Stagg
Carrouche	Jones	Stephenson
Casey	Juneau	Stinson
Champagne	Kean	Stovall
Chatalein	Kelly	Sutherland
Chehard	Kilpatrick	Tapper
Comar	Lambert	Tate
Conino	Landrum	Thistlethwaite
Conroy	Landry, A.	Thompson
Corne	Landry, E. J.	Tobias
Cowen	Lanier	Toca
D'Gerolamo	LeBlau	Toomy
De Blieux	Leithman	Ullo
Dennery	Lowe	Velazquez
Dennis	McDaniel	Vesich
Derbes	Martin	Vick
Deshotels	Mauberret	Warren
Drew	Maybucc	Wattigny
Dunlap	Miller	Weiss
Duval	Mire	Willis
Edwards	Morris	Winchester
Elkins	Munson	Wisham
Fayard	Newton	Womack
Flory	Plunex	Zervignon
Fontenot	O'Neill	
Total—128.		

ABSENT

Delegates—		
Kilbourne	Rayburn	Wall
Leigh		
Total—4.		

The Chairman announced that there were 128 members present and a quorum.

Prayer

Prayer was offered by Delegate Asseff.

Pledge of Allegiance

Delegate Burson led the Convention in reciting the Pledge of Allegiance to the Flag of the United States of America.

Reading of the Journal

On motion of Delegate Singletary, the reading of the Journal was dispensed with.

On motion of Delegate Singletary, the Journal of yesterday was adopted.

Morning Hour

Motion

On motion of Delegate Tate, the Convention altered the Order of Business to take up proposals on Calendar for Approval of Final Styling at this time.

**Proposals on Calendar for Approval
of Final Styling**

The following Proposals returned from the Committee on Style and Drafting for approval of final styling were taken up and acted upon as follows:

COMMITTEE PROPOSAL No. 25—

Introduced by Delegate A. Jackson, Chairman, Committee on Bill of Rights and Elections (Substitute for Committee Proposal No. 2, by Delegate A. Jackson, Chairman, on behalf of the Committee on Bill of Rights and Elections, and Delegates Dunlap, Guarisco, Jenkins, Roy, Soniat, Stinson, Vick, Wall and Weiss):

A PROPOSAL

To provide a preamble and a declaration of rights to the constitution.

Reported with the following amendments.

COMMITTEE AMENDMENTS

Amendments proposed by Committee on Style and Drafting to Committee Proposal No. 25 by Delegate A. Jackson, et al.

Amend first enrolled Proposal as follows:

AMENDMENT No. 1—

On page 1, at the beginning of line 18, delete the word "A"

Read.

On motion of Delegate Tate Amendment No. 1 was adopted.

AMENDMENT No. 2—

On page 1, at the end of line 35, delete the comma ","

Read.

On motion of Delegate Tate Amendment No. 2 was adopted.

AMENDMENT No. 3—

On page 2, line 5, after the word "liberty" and before the word "or" insert a comma ","

Read.

On motion of Delegate Tate Amendment No. 3 was adopted.

AMENDMENT No. 4—

On page 2, delete lines 8 through 15, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 3. No person shall be denied the equal protection of the laws. No law shall discriminate against a person because of race or religious ideas, beliefs, or affiliations. No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations. Slavery and

PAGE 2

114th Days Proceedings—January 10, 1974

involuntary servitude are prohibited, except in the latter case as punishment for crime."

Read.

On motion of Delegate Tate Amendment No. 4 was adopted.

AMENDMENT No. 5—

On page 2, delete lines 17 through 35, both inclusive, in their entirety and on page 3, delete lines 1 and 2 in their entirety and insert in lieu thereof the following:

"Section 4. Every person has the right to acquire, own, control, use, enjoy, protect, and dispose of private property. This right is subject to reasonable statutory restrictions and the reasonable exercise of the police power.

Property shall not be taken or damaged by the state or its political subdivisions except for public purposes and with just compensation paid to the owner or into court for his benefit. Property shall not be taken or damaged by any private entity authorized by law to expropriate, except for a public and necessary purpose and with just compensation paid to the owner; in such proceedings, whether the purpose is public and necessary shall be a judicial question. In every expropriation, a party has the right to trial by jury to determine compensation, and the owner shall be compensated to the full extent of his loss. No business enterprise or any of its assets shall be taken for the purpose of operating that enterprise or halting competition with a government enterprise. However, a municipality may expropriate a utility within its jurisdiction. Personal effects, other than contraband, shall never be taken.

This Section shall not apply to appropriation of property necessary for levee and levee drainage purposes."

Read.

On motion of Delegate Tate Amendment No. 5 was adopted.

AMENDMENT No. 6—

On page 3, delete lines 4 through 13, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 5. Every person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy. No warrant shall issue without probable cause supported by oath or affirmation, and particularly describing the place to be searched, the persons or things to be seized, and the lawful purpose or reason for the search. Any person adversely affected by a search or seizure conducted in violation of this Section shall have standing to raise its illegality in the appropriate court."

Read.

On motion of Delegate Tate Amendment No. 6 was adopted.

AMENDMENT No. 7—

On page 3, delete lines 17 through 22, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 9. Freedom of Expression
Section 9. No law shall curtail or restrain the freedom of speech or of the press. Every person may speak, write, and publish his sentiments on any subject, but is responsible for abuse of that freedom."

Read.

On motion of Delegate Tate Amendment No. 7 was adopted.

AMENDMENT No. 8—

On page 3, delete lines 26 through 29, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 11. Right of Assembly and Petition
Section 11. No law shall impair the right of any person to assemble peaceably or to petition government for a redress of grievances."

Read.

On motion of Delegate Tate Amendment No. 8 was adopted.

AMENDMENT No. 9—

On page 5, delete lines 33 through 35, both inclusive, in their entirety and on page 6, delete lines 1 and 2 in their entirety and insert in lieu thereof the following:

"Section 19. Every citizen of the state, upon reaching eighteen years of age, shall have the right to register and vote, except that this right may be suspended while a person is interdicted and judicially declared mentally incompetent or is under an order of imprisonment for conviction of a felony."

Read.

On motion of Delegate Tate Amendment No. 9 was adopted.

AMENDMENT No. 10—

On page 6, delete line 24 in its entirety and insert in lieu thereof the following:
"and facilities, every person shall be free from"

Read.

On motion of Delegate Tate Amendment No. 10 was adopted.

AMENDMENT No. 11—

On page 3, delete lines 31 through 35, both inclusive, in their entirety and on page 4, delete lines 1 through 14, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 12. When any person has been arrested or detained in connection with the investigation or commission of any offense, he shall be advised fully of the reason for his arrest or detention, his right to remain silent, his right against self incrimination, his right to the assistance of counsel and, if indigent, his right to court appointed counsel. In a criminal prosecution, an accused shall be informed of the nature and cause of the accusation against him. At each stage of the proceedings every person is entitled to assistance of counsel of his choice, or appointed by the court if he is indigent and charged with an offense punishable by imprisonment. The legislature shall provide for a uniform system for securing and compensating qualified counsel for indigents.

No person shall be subjected to imprisonment or forfeiture of rights or property without the right of judicial review based upon a complete record of all evidence upon which the judgment is based. This right may be intelligently waived. The cost of transcribing the record shall be paid as provided by law."

Read.

On motion of Delegate Tate Amendment No. 11 was adopted.

AMENDMENT No. 12—

On page 6, delete lines 29 through 31, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 27. The right to a preliminary examination shall not be denied in felony cases except when the accused is indicted by a grand jury."

Read.

On motion of Delegate Tate Amendment No. 12 was adopted.

AMENDMENT No. 13—

On page 4, delete lines 16 through 22, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 13. Prosecution of a felony shall be initiated by indictment or information, but no person shall be held to answer for a capital crime or a crime punishable by life imprisonment except on indictment by a grand jury. No person shall be twice placed in jeopardy for the same offense, except on his application for a new trial, when a mistrial is declared, or when a motion in arrest of judgment is sustained."

Read.

On motion of Delegate Tate Amendment No. 13 was adopted.

AMENDMENT No. 14—

On page 4, delete lines 23 through 32, both inclusive, in their entirety and insert in lieu thereof the following:

PAGE 3

114th Days Proceedings—January 10, 1974

"Section 15. Right to a Fair Trial

Section 15. Every person charged with a crime is presumed innocent until proven guilty and is entitled to a speedy, public, and impartial trial in the parish where the offense or an element of the offense occurred, unless venue is changed in accordance with law. No person shall be compelled to give evidence against himself. An accused is entitled to confront and cross-examine the witnesses against him, to compel the attendance of witnesses, to present a defense, and to testify in his own behalf."

Read.

On motion of Delegate Tate Amendment No. 14 was adopted.

AMENDMENT No. 15—

On page 4, delete lines 33 through 35, both inclusive, in their entirety and on page 5, delete lines 1 through 13, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 16. Jury Trial in Criminal Cases

"Section 16. A criminal case in which the punishment may be capital shall be tried before a jury of twelve persons, all of whom must concur to render a verdict. A case in which the punishment is necessarily confinement at hard labor shall be tried before a jury of twelve persons, ten of whom must concur to render a verdict. A case in which the punishment may be confinement at hard labor or confinement without hard labor for more than six months shall be tried before a jury of six persons, five of whom must concur to render a verdict. The accused shall have the right to full voir dire examination of prospective jurors and to challenge jurors peremptorily. The number of challenges shall be fixed by law. Except in capital cases, a defendant may knowingly and intelligently waive his right to a trial by jury."

Read.

On motion of Delegate Tate Amendment No. 15 was adopted.

AMENDMENT No. 16—

On page 5, delete lines 15 through 26, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 17. Excessive bail shall not be required. Before and during a trial, a person shall be bailable by sufficient surety, except when he is charged with a capital offense and the proof is evident and the presumption of guilt is great. After conviction and before sentencing, a person shall be bailable if the maximum sentence which may be imposed is imprisonment for five years or less; and the judge may grant bail if the maximum sentence which may be imposed is imprisonment exceeding five years. After sentencing and until final judgment, a person shall be bailable if the sentence actually imposed is five years or less; and the judge may grant bail if the sentence actually imposed exceeds imprisonment for five years."

Read.

On motion of Delegate Tate Amendment No. 16 was adopted.

AMENDMENT No. 17—

On page 5, delete lines 28 through 31, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 18. No law shall subject any person to euthanasia, to torture, or to cruel, excessive, or unusual punishment. Full rights of citizenship shall be restored upon termination of state and federal supervision following conviction for any offense."

Read.

On motion of Delegate Tate Amendment No. 17 was adopted.

AMENDMENT No. 18—

On page 6, line 13, immediately after the word "delay" and before the word "for" insert a comma ","

Read.

On motion of Delegate Tate Amendment No. 18 was adopted.

AMENDMENT No. 19—

On page 6, line 20, immediately after the word "not" and before the words "deny or disparage" delete the words "be construed to"

Read.

On motion of Delegate Tate Amendment No. 19 was adopted.

AMENDMENT No. 20—

Renumber the following sections and place in numerical order as follows:

Section Number as Enrolled

Renumbered As

Section 9	Section 7
Section 10	Section 8
Section 11	Section 9
Section 19	Section 10
Section 20	Section 11
Section 26	Section 12
Section 12	Section 13
Section 27	Section 14
Section 13	Section 15
Section 15	Section 16
Section 16	Section 17
Section 17	Section 18
Section 18	Section 20
Section 25	Section 24

and on page 3, line 30, in Committee Amendment No. 11 adopted by the convention this date, between lines 13 and 14 of the text of the amendment insert: "Section 19. Right to Judicial Review" and on line 14 of the text of the amendment, at the beginning of the line, insert "Section 19." and place in numerical order.

Read.

On motion of Delegate Tate Amendment No. 20 was adopted.

COMMITTEE PROPOSAL No. 33—

Introduced by Delegate A. Jackson, Chairman, Committee on Bill of Rights and Elections (Substitute for Committee Proposal No. 20, by Delegate A. Jackson, Chairman on behalf of the Committee on Bill of Rights and Elections, and Delegates Dunlap, Guarisco, Jenkins, Roy, Soniat, Stinson, Vick, Wall and Weiss):

A PROPOSAL

Making general provisions for elections.

Reported with the following amendments.

COMMITTEE AMENDMENTS

Amendments proposed by Committee on Style and Drafting to Committee Proposal No. 33 by Delegate A. Jackson, et al.

Amend first enrollment Proposal as follows:

AMENDMENT No. 1—

On page 1, delete lines 17 through 24, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 1. Election Code

"Section 1. The legislature shall adopt an election code which shall provide for permanent registration of voters and for the conduct of all elections."

Read.

On motion of Delegate Tate Amendment No. 1 was adopted.

AMENDMENT No. 2—

On page 1, delete lines 25 through 33, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 2. Secret Ballot; Absentee Voting; Preseraction of Ballot

"Section 2. In all elections by the people, voting shall be by secret ballot. The legislature shall provide a method for absentee voting. Proxy voting is prohibited. Ballots shall be counted publicly and presented inviolate as provided by law until any election contests have been settled. In all elec-

PAGE 10

114th Days Proceedings—January 10, 1974

The above notice was read in open session and publicly posted as provided by the Rules of Procedure of the Convention.

Motion

On motion of Delegate Tate, the Convention altered the Order of Business to take up Reports of Committees at this time.

Reports of Committees

The following reports of committees were received and read:

Delegate Tate, chairman, on behalf of the Committee on Style and Drafting, submitted the following report:

State of Louisiana
Constitutional Convention
of 1973

January 10, 1974, Baton Rouge, La.

To the Chairman and Delegates of the Constitutional Convention:

I am directed by your Committee on Style and Drafting to submit the following report:

★ COMMITTEE PROPOSAL No. 12—

Introduced by Delegate Aertker, Chairman, on behalf of the Committee on Education and Welfare, and Delegates Armentor, Carmouche, Corne, Cowen, Flory, Grier, Haynes, Hernandez, Landry, Leithman, Lennox, Rachal, Riecke, Robinson, Segura, Silverberg, Sutherland, Thistlethwaite, Toca and Wisham:

A PROPOSAL

Making provisions for human resources by prohibiting the leasing of convicts and the employment of convicts in competition with private enterprise and by providing for reimbursement to parishes for expenses incurred resulting from crimes committed in penal institutions.

Reported with the following amendments.

COMMITTEE AMENDMENT

Amendment proposed by Committee on Style and Drafting to Committee Proposal No. 12 by Delegate Aertker, et al.

Amend First Enrollment Proposal as follows:

AMENDMENT No. 1—

On page 1, delete lines 21 through 26, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 1. State Penal Institutions; Reimbursement of Parish Expenses

Section 1. The state shall reimburse a parish in which state penal institution is located for expenses the parish incurs arising from crime committed in the institution or by an inmate thereof."

COMMITTEE PROPOSAL No. 14—

Introduced by Delegate Aertker, Chairman, on behalf of the Committee on Education and Welfare and Delegates Armentor, Carmouche, Corne, Cowen, Flory, Grier, Haynes, Hernandez, Landry, Leithman, Lennox, Rachal, Riecke, Robinson, Segura, Silverberg, Sutherland, Thistlethwaite, Toca and Wisham:

A PROPOSAL

Making provisions for human resources through a system of economic security, social welfare, unemployment compensation, and public health.

Reported with the following amendments.

COMMITTEE AMENDMENT

Amendment proposed by Committee on Style and Drafting to Committee Proposal No. 14 by Delegate Aertker, et al.

Amend First Enrollment Proposal as follows:

AMENDMENT No. 1—

On page 1, delete lines 19 through 23, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 2. Welfare, Unemployment Compensation, and Health

Section 2. The legislature may establish a system of economic and social welfare, unemployment compensation, and public health."

COMMITTEE PROPOSAL No. 22—

Introduced by Delegate Stagg, Chairman, on behalf of the Committee on Executive Department, and Delegates Abraham, Alexander, Anzalone, Arnette, Brien, Denney, Duval, Gravel, Stovall and Tapper:

A PROPOSAL

Making provisions for a code of ethics and the Louisiana Board of Ethics.

Reported with the following amendments.

COMMITTEE AMENDMENT

Amendment proposed by Committee on Style and Drafting to Committee Proposal No. 22 by Delegate Stagg, et al.

Amend First Enrollment Proposal as follows:

AMENDMENT No. 1—

On page 1, delete lines 15 through 25, both inclusive, in their entirety, and insert in lieu thereof the following:

"Article ----

Section 1. Code of Ethics

Section 1. The legislature shall enact a code of ethics for all officials and employees of the state and its political subdivisions. The code shall be administered by one or more boards created by the legislature with qualifications, terms of office, duties, and powers provided by law. Decisions of a board shall be appealable, and the legislature shall provide the method of appeal."

COMMITTEE PROPOSAL No. 23—

Introduced by Delegate Stagg, Chairman, on behalf of the Committee on Executive Department, and Delegates Abraham, Arnette, Brien, Denney, Gravel, Stovall and Tapper:

A PROPOSAL

Prohibiting dual employment and dual officeholding in state and local government.

Reported with the following amendments.

COMMITTEE AMENDMENTS

Amendments proposed by Committee on Style and Drafting to Committee Proposal No. 23 by Delegate Stagg, et al.

Amend First Enrollment Proposal as follows:

AMENDMENT No. 1—

On page 1, line 18, after "Section ----" and before the word "The" delete the letter and punctuation "(A)"

AMENDMENT No. 2—

On page 1, line 20, after the word "regulating" and before the word "and" insert a comma ","

COMMITTEE PROPOSAL No. 31—

Introduced by Delegate Stagg, Chairman, on behalf of the Committee on Executive Department, and Delegates Abraham, Alexander, Anzalone, Arnette, Asseff, Brien, Denney, Duval, Gravel, Stovall and Tapper (A Substitute for Committee Proposal No. 19):

A PROPOSAL

Making provisions in the Schedule provisions of the constitution for mandatory reorganization of the executive branch of state government.

Reported with the following amendments.

COMMITTEE AMENDMENTS

Amendments proposed by Committee on Style and Drafting to Committee Proposal No. 31 by Delegate Stagg, et al.

Amend First Enrollment Proposal as follows:

AMENDMENT No. 1—

On page 1, line 19, after "Section 1." and before the word "The" delete the letter and punctuation "(A)"

PAGE 11

114th Days Proceedings—January 10, 1974

AMENDMENT No. 2—

On page 1, line 23, after the word and punctuation "constitution," and before the word "allocation" delete the word "Such" and insert in lieu thereof the word "The"

Respectfully submitted,

CHALIN O. PEREZ,
Chairman.

Suspension of the Rules

On motion of Delegate Tate the rules were suspended in order to take up the Proposals Contained in the Report at this time.

Proposals on Calendar for Approval of Final Styling

The following Proposals returned from the Committee on

Style and Drafting for approval of final styling were taken up and acted upon as follows:

- ★ **COMMITTEE PROPOSAL No. 12—**
Introduced by Delegate Aertker, Chairman, on behalf of the Committee on Education and Welfare, and Delegates Armentor, Carmouche, Corne, Cowen, Flory, Grier, Haynes, Hernandez, Landry, Leithman, Lennox, Rachal, Riecke, Robinson, Segura, Silverberg, Sutherland, Thistlethwaite, Toca and Wisham:

A PROPOSAL

Making provisions for human resources by prohibiting the leasing of convicts and the employment of convicts in competition with private enterprise and by providing for reimbursement to parishes for expenses incurred resulting from crimes committed in penal institutions.

Reported with the following amendments.

COMMITTEE AMENDMENT

Amendment proposed by Committee on Style and Drafting to Committee Proposal No. 12 by Delegate Aertker, et al.

Amend first enrollment proposal as follows:

AMENDMENT No. 1—

On page 1, delete lines 21 through 26, both inclusive, in their entirety and insert in lieu thereof the following:
"Section 1. State Penal Institutions; Reimbursement of Parish Expense

Section 1. The state shall reimburse a parish in which a state penal institution is located for expenses the parish incurs arising from crime committed in the institution or by an inmate thereof."

Read.

Delegate Tate moved the adoption of Amendment No. 1.

Delegate Avant objected.

By a vote of 81 yeas and 2 nays the amendment was adopted.

COMMITTEE PROPOSAL No. 14—

Introduced by Delegate Aertker, Chairman, on behalf of the Committee on Education and Welfare, and Delegates Armentor, Carmouche, Corne, Cowen, Flory, Grier, Haynes, Hernandez, Landry, Leithman, Lennox, Rachal, Riecke, Robinson, Segura, Silverberg, Sutherland, Thistlethwaite, Toca and Wisham:

A PROPOSAL

Making provisions for human resources through a system of economic security, social welfare, unemployment compensation, and public health.

Reported with the following amendments.

COMMITTEE AMENDMENT

Amendment proposed by Committee on Style and Drafting to Committee Proposal No. 14 by Delegate Aertker, et al.

Amend First Enrollment Proposal as follows:

AMENDMENT No. 1—

On page 1, delete lines 19 through 23, both inclusive, in their entirety and insert in lieu thereof the following:
"Section 2. Welfare, Unemployment Compensation, and Health

Section 2. The legislature may establish a system of economic and social welfare, unemployment compensation, and public health."

Read.

On motion of Delegate Tate Amendment No. 1 was adopted.

COMMITTEE PROPOSAL No. 22—

Introduced by Delegate Stagg, Chairman, on behalf of the Committee on Executive Department, and Delegates Abraham, Alexander, Anzalone, Arnette, Brien, Dennery, Duval, Gravel, Stovall, and Tapper:

A PROPOSAL

Making provisions for a code of ethics and the Louisiana Board of Ethics.

Reported with the following amendments.

COMMITTEE AMENDMENT

Amendment proposed by Committee on Style and Drafting to Committee Proposal No. 22 by Delegate Stagg, et al.

Amend First Enrollment Proposal as follows:

AMENDMENT No. 1—

On page 1, delete lines 15 through 25, both inclusive, in their entirety, and insert in lieu thereof the following:

"Article . . .

Section 1. Code of Ethics
Section 1. The legislature shall enact a code of ethics for all officials and employees of the state and its political subdivisions. The code shall be administered by one or more boards created by the legislature with qualifications, terms of office, duties, and powers provided by law. Decisions of a board shall be appealable, and the legislature shall provide the method of appeal."

Read.

On motion of Delegate Tate Amendment No. 1 was adopted.

COMMITTEE PROPOSAL No. 23—

Introduced by Delegate Stagg, Chairman, on behalf of the Committee on Executive Department, and Delegates Abraham, Arnette, Brien, Dennery, Gravel, Stovall and Tapper:

A PROPOSAL

Prohibiting dual employment and dual officeholding in state and local government.

Reported with the following amendments:

COMMITTEE AMENDMENTS

Amendments proposed by Committee on Style and Drafting to Committee Proposal No. 23 by Delegate Stagg, et al.

Amend first enrollment proposal as follows:

AMENDMENT No. 1—

On page 1, line 18, after "Section ----" and before the word "The" delete the letter and punctuation "(A)"

AMENDMENT No. 2—

On page 1, line 20, after the word "regulating" and before the word "and" insert a comma ","

Read.

On motion of Delegate Tate Amendment No. 1 and 2 was adopted.

COMMITTEE PROPOSAL No. 31—

Introduced by Delegate Stagg, Chairman, on behalf of the ★

PAGE 14

114th Days Proceedings—January 10, 1974

elections, and all other executive offices, agencies, and instrumentalities of the state."

AMENDMENT No. 2—

On page 1, delete lines 19 through 23, both inclusive, in their entirety and insert in lieu thereof the following:

"B' Number of Departments. Except for the offices of governor and lieutenant governor, all offices, agencies, and other instrumentalities of the executive branch and their functions, powers, duties, and responsibilities shall be allocated according to function within not more than twenty departments."

AMENDMENT No. 3—

On page 1, between lines 23 and 24, insert the following:

"(C) Reorganization. Reallocation of the functions, powers, and duties of all departments, offices, agencies, and other instrumentalities of the executive branch, except those functions, powers, duties, and responsibilities allocated by this constitution, shall be as provided by law."

AMENDMENT No. 4—

On page 1, delete lines 24 through 34, both inclusive, in their entirety, and on page 2, delete lines 1 and 2 in their entirety and insert in lieu thereof the following:

"Section 2. Qualifications.

Section 2. To be eligible for any statewide elective office, a person, by the date of his qualification as a candidate, shall have attained the age of twenty-five years, be an elector, and have been a citizen of the United States and of this state for at least the preceding five years. In addition, the attorney general shall have been admitted to the practice of law in the state for at least the five years preceding his election. During his tenure in office, a statewide elected official shall hold no other public office except by virtue of his elected office."

AMENDMENT No. 5—

On page 2, delete lines 3 through 15, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 3. Election; Term

Section 3. (A) Election. The governor, lieutenant governor, secretary of state, attorney general, treasurer, commissioner of agriculture, commissioner of insurance, superintendent of education, and commissioner of elections each shall be elected for a term of four years by the electors of the state at the time and place of voting for members of the legislature. The term of each official shall begin at noon on the second Monday in March next following the election.

(B) Limitation on Governor. A person who has served as governor for more than one and one-half terms in two consecutive terms shall not be elected governor for the succeeding term."

AMENDMENT No. 6—

On page 2, delete lines 16 and 17 in their entirety and insert in lieu thereof the following:

"(C) Additional Limitation. Except as provided by this constitution, no official shall be elected statewide."

AMENDMENT No. 7—

On page 2, delete lines 18 through 21 both inclusive in their entirety and insert in lieu thereof the following:

"Section 4. Compensation

Section 4. Except as otherwise provided by this constitution, the compensation of each statewide elected official shall be provided by law."

AMENDMENT No. 8—

On page 2, delete lines 22 through 26, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 5. Governor; Powers and Duties

Section 5. (A) Executive Authority. The governor shall be the chief executive officer of the state. He shall faithfully support the constitution and laws of the state and of the United States."

AMENDMENT No. 9—

On page 2, delete lines 27 through 32, both inclusive, in their entirety and insert in lieu thereof the following:

"(B) Legislative Reports and Recommendations. The governor shall, at the beginning of each regular session, and may, at other times, make reports and recommendations and give information to the legislature concerning the affairs of state, including its complete financial condition."

AMENDMENT No. 10—

On page 2, delete lines 33 through 35, both inclusive, in their entirety, and on page 3, delete lines 1 and 2 in their entirety and insert in lieu thereof the following:

"(C) Departmental Reports and Information. When requested by the governor, a department head shall provide him with reports and information, in writing or otherwise, on any subject relating to the department, except matters concerning investigations of the governor's office."

AMENDMENT No. 11—

On page 3, delete lines 7 through 10, both inclusive, in their entirety and insert in lieu thereof the following:

"(E) Capital Budget. The governor shall submit to the legislature, at each regular session, a proposed five-year capital outlay program and shall request implementation of the first year of the program."

AMENDMENT No. 12—

On page 3, delete lines 11 through 25, both inclusive, in their entirety and insert in lieu thereof the following:

"(F) Pardon, Commutation, Reprieve, and Remission; Board of Pardons. (1) The governor may grant reprieves to persons convicted of offenses against the state and, upon recommendation of the Board of Pardons, may commute sentences, pardon those convicted of offenses against the state, and remit fines and forfeitures imposed for such offenses. However, a first offender never previously convicted of a felony shall be eligible automatically for pardon upon completion of his sentence without recommendation of the board.

(2) The Board of Pardons shall consist of five electors appointed by the governor, subject to confirmation by the Senate. Each member of the board shall serve a term concurrent with that of the governor appointing him."

AMENDMENT No. 13—

On page 3, delete lines 26 through 28, both inclusive, in their entirety and insert in lieu thereof the following:

"(G) Receipt of Bills from the Legislature. The date and hour when a bill finally passed by the legislature is delivered to the governor shall be endorsed thereon."

AMENDMENT No. 14—

On page 3, delete lines 29 through 35, both inclusive, in their entirety and on page 4, delete line 1 and insert in lieu thereof the following:

"(H) Item Veto. (1) Except as otherwise provided by this constitution, the governor may veto any line item in an appropriation bill. Any item vetoed shall be void unless the veto is overridden as prescribed for the passage of a bill over a veto.

(2) The governor shall veto line items or use means provided in the bill so that total appropriations for the year shall not exceed anticipated revenues for that year."

AMENDMENT No. 15—

On page 4, delete lines 2 through 21, both inclusive, in their entirety and insert in lieu thereof the following:

"(I) Appointments. (1) The governor shall appoint, subject to confirmation by the Senate, the head of each department in the executive branch whose election or appointment is not provided by this constitution and the members of each board and commission in the executive branch whose election or appointment is not provided by this constitution or by law.

(2) Should the legislature be in session, the governor shall submit for confirmation by the Senate the name of an appointee within forty-eight hours after the appointment is made. Failure of the Senate to confirm the appointment, prior to the end of the session, shall constitute rejection.

(3) If the legislature is not in session, the governor may make interim appointments, which shall expire at the end of the next session, unless submitted to and confirmed by the Senate during that session.

(4) A person not confirmed by the Senate shall not be appointed to the same office during any recess of the legislature."

AMENDMENT No. 16—

On page 4, delete lines 22 through 24, both inclusive, in their entirety and insert in lieu thereof the following:

PAGE 15

114th Days Proceedings—January 10, 1974

"(J) Removal Power. The governor may remove from office a person he appoints, except a person appointed for a term fixed by this constitution or by law."

AMENDMENT No. 17—

On page 4, line 28, after the words "call out" and before the words "to preserve" delete the words "the armed forces of the state" and insert in lieu thereof the words "these forces"

AMENDMENT No. 18—

On page 4, delete lines 31 through 33, both inclusive, in their entirety and insert in lieu thereof the following:

"(L) Other Powers and Duties. The governor shall have other powers and perform other duties authorized by this constitution or provided by law."

AMENDMENT No. 19—

On page 4, delete lines 34 and 35 and on page 5, delete lines 1 through 5, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 6. Lieutenant Governor: Powers and Duties
Section 6. The lieutenant governor shall serve ex officio as a member of each committee, board, and commission on which the governor serves. He shall exercise the powers delegated to him by the governor and shall have other powers and perform other duties in the executive branch authorized by this constitution or provided by law."

AMENDMENT No. 20—

On page 5, delete lines 6 through 21, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 7. Secretary of State: Powers and Duties

Section 7. There shall be a Department of State. The secretary of state shall head the department and shall be the chief election officer of the state. He shall prepare and certify the ballots for all elections, promulgate all election returns, and administer the election laws, except those relating to voter registration and custody of voting machines. He shall administer the state corporation and trademark laws; serve as keeper of the Great Seal of the State of Louisiana and attest therewith all official laws, documents, proclamations, and commissions; administer and preserve the official archives of the state; promulgate and publish all laws enacted by the legislature and retain the originals thereof; and countersign and keep an official registry of all commissions. He may administer oaths, and shall have other powers and perform other duties authorized by this constitution or provided by law."

AMENDMENT No. 21—

On page 5, delete lines 22 through 24, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 8. Attorney General: Powers and Duties

Section 8. There shall be a Department of Justice. The attorney general shall head the department and shall be the chief legal officer of the state."

AMENDMENT No. 22—

On page 5, delete lines 25 through 34, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 9. Treasurer: Powers and Duties

Section 9. There shall be a Department of the Treasury. The treasurer shall head the department and shall be responsible for the custody, investment, and disbursement of the public funds of the state, except as otherwise provided by this constitution. He shall report annually to the governor and to the legislature at least one month before each regular session on the financial condition of the state, and shall have other powers and perform other duties authorized by this constitution or provided by law."

AMENDMENT No. 23—

On page 5, delete line 35 in its entirety, and on page 6, delete lines 1 through 10, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 10. Commissioner of Agriculture; Powers and Duties

Section 10. There shall be a Department of Agriculture. The commissioner of agriculture shall head the department

and shall exercise all functions of the state relating to the promotion, protection, and advancement of agriculture, except research and educational functions expressly allocated by this constitution or by law to other state agencies. The department shall exercise such functions and the commissioner shall have other powers and perform other duties authorized by this constitution or provided by law."

AMENDMENT No. 24—

On page 6, delete lines 11 through 17, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 11. Commissioner of Insurance; Powers and Duties

Section 11. There shall be a Department of Insurance, headed by the commissioner of insurance. The department shall exercise such functions and the commissioner shall have powers and perform duties authorized by this constitution or provided by law."

AMENDMENT No. 25—

On page 6, delete lines 18 through 24, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 12. Commissioner of Elections; Powers and Duties

Section 12. There shall be a Department of Elections and Registration. The commissioner of elections shall head the department and shall administer the laws relating to custody of voting machines and voter registration. He shall have other powers and perform other duties authorized by this constitution or provided by law."

AMENDMENT No. 26—

On page 6, delete lines 25 through 35, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 13. First Assistants; Appointment

Section 13. Each statewide elected official except the governor and lieutenant governor shall appoint a first assistant, subject to public confirmation by the Senate, and may remove him at his pleasure. The official shall submit the appointment to the Senate in the manner and subject to the procedures and limitations applicable to appointments submitted by the governor. The first assistant shall possess the qualifications required for election to the office."

AMENDMENT No. 27—

On page 7, delete lines 1 through 9, both inclusive, in their entirety, and insert in lieu thereof the following:

"Section 14. Vacancy in Office of Governor

Section 14. When a vacancy occurs in the office of governor, the order of succession shall be (1) the elected lieutenant governor, (2) the elected secretary of state, (3) the elected attorney general, (4) the elected treasurer, (5) the presiding officer of the Senate, (6) the presiding officer of the House of Representatives, and then (7) as provided by law. The successor shall serve the remainder of the term for which the governor was elected."

AMENDMENT No. 28—

On page 7, delete lines 10 through 15 both inclusive in their entirety and insert in lieu thereof the following:

"Section 15. Vacancy in Office of Lieutenant Governor

Section 15. Should a vacancy occur in the office of lieutenant governor, the governor shall nominate a lieutenant governor, who shall take office upon confirmation by a majority vote of the elected members of each house of the legislature."

AMENDMENT No. 29—

On page 7, delete lines 16 through 24, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 16. Vacancies in Other Statewide Elective Offices

Section 16. A vacancy in a statewide elective office other than that of governor or lieutenant governor shall be filled by the first assistant. If the unexpired term exceeds one year, the office shall be filled by election at the next regularly scheduled congressional or statewide election, and the first assistant shall serve only until the person then elected takes office."

AMENDMENT No. 30—

On page 7, delete lines 25 through 35, both inclusive, in their entirety, and on page 8, delete lines 1 through 4, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 17. Other Vacancies

Section 17. (A) gubernatorial Appointment; Election. If no other provision therefor is made by this constitution, by

PAGE 16

114th Days Proceedings—January 10, 1974

statute, by local government charter, by home rule charter or plan of government, or by ordinance, the governor may fill a vacancy occurring in any elective office. When a vacancy occurs in the office and the unexpired portion of the term exceeds one year, the vacancy shall be filled at an election, as provided by law, and the appointment shall be effective only until a successor takes office.

(B) Qualifications. Nothing in this Section shall change the qualifications for any office, and every appointee must be otherwise eligible to hold the office to which appointed."

AMENDMENT No. 31—

On page 8, delete lines 5 through 8, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 18. Definition of Vacancy

"Section 18. A vacancy, as used in this Article, shall occur in the event of death, resignation, removal by any means, or failure to take office for any reason."

AMENDMENT No. 32—

On page 8, delete lines 9 through 18, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 19. Declaration of Inability by Statewide Elected Officials

"Section 19. When a statewide elected official transmits to the presiding officer of the Senate and House of Representatives a written declaration of his inability to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, the person who would succeed to the office when a vacancy occurs shall assume the powers and duties of the office as acting official."

AMENDMENT No. 33—

On page 8, delete lines 19 through 33, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 20. Determination of Inability of Statewide Elected Official

"Section 20. (A) Declaration and Counter-Declaration. When a majority of the statewide elected officials determine that any other such official is unable to discharge the powers and duties of his office, they shall transmit a written declaration to this effect to the presiding officer of each house and to the official, and shall file a copy of the declaration in the office of the secretary of state. Thereafter, the constitutional successor shall assume the office as acting official unless, within forty-eight hours after the declaration is filed in the office of the secretary of state, the elected official files in that office and transmits to the presiding officer of each house his written counter-declaration of his ability to exercise the powers and perform the duties of his office."

AMENDMENT No. 34—

On page 8, delete lines 34 and 35 in their entirety, and on page 9, delete lines 1 through 6, both inclusive, in their entirety and insert in lieu thereof the following:

"(B) Determination by the Legislature. The legislature shall convene at noon on the third calendar day after the filing of any counter-declaration, which may be filed by the official at any time. Should two-thirds of the elected members of each house fail to adopt a resolution within seventy-two hours declaring probable justification for the determination that inability exists, the official shall continue in or resume office."

AMENDMENT No. 35—

On page 9, delete lines 7 through 12, both inclusive, in their entirety and insert in lieu thereof the following:

"(C) Assumption of Office by Constitutional Successor. If two-thirds of the elected members of each house adopt a resolution declaring that probable justification exists for the declaration of inability, the constitutional successor shall assume the powers and duties of the office and a copy of the resolution shall be transmitted forthwith to the supreme court."

AMENDMENT No. 36—

On page 9, delete lines 13 through 16, both inclusive, in their entirety and insert in lieu thereof the following:

"(D) Determination by Supreme Court. By preference and with priority over all other matters, the supreme court shall determine the issue of inability after due notice and hearing,

by a majority vote of members elected to the court, under such rules as it may adopt."

AMENDMENT No. 37—

On page 9, delete lines 17 through 24, both inclusive, in their entirety and insert in lieu thereof the following:

"(E) Reconsideration by Supreme Court. A judgment of the supreme court affirming inability may be reconsidered by the court, after due notice and hearing, either upon its own motion or upon the application of the official. Upon proper showing and by majority vote of its elected members, the court may determine that no inability then exists, whereupon the official shall immediately resume the powers and duties of his office."

AMENDMENT No. 38—

On page 9, delete lines 25 through 30, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 21. Temporary Absences

"Section 21. When the governor is temporarily absent from the state, the lieutenant governor shall act as governor. When any other statewide elected official is temporarily absent from the state, the appointed first assistant shall act in his absence."

AMENDMENT No. 39—

On page 9, delete lines 31 through 35, both inclusive, in their entirety and on page 10, delete line 1 in its entirety

AMENDMENT No. 40—

On page 10, delete lines 2 through 19, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 22. Appointment of Officials; Merger, Consolidation of Offices and Departments

"Section 22. After the first election of state officials following the adoption of this constitution, the legislature may provide, by law enacted by two-thirds of the elected members of each house, for appointment, in lieu of election, of the commissioner of agriculture, the commissioner of insurance, the superintendent of education, the commissioner of elections, or any of them. In that event, the legislature shall prescribe qualifications and method of appointment and by similar vote, may provide by law for the merger or consolidation of any such office, its department, and functions with any other office or department in the executive branch. No action of the legislature pursuant hereto shall reduce the term or compensation of any incumbent elected official. By law enacted by two-thirds of the elected members of each house, the legislature may reestablish any such office as elective and, in that event, shall prescribe qualifications."

AMENDMENT No. 41—

On page 1, line 24, in the text of Committee Amendment No. 4 proposed by the Committee on Style and Drafting and adopted by the convention this date, on line 10 of the text of the amendment, after the word "preceding" and before the period " " delete the word "election" and insert in lieu thereof the words "qualification as a candidate"

AMENDMENT No. 42—

On page 3, line 11, in Committee Amendment No. 12 proposed by the Committee on Style and Drafting and adopted by the convention this date, on line 8 of the text of the amendment, after the word and punctuation "offenses" delete the remainder of the line, and delete lines 9 through 12, both inclusive, in their entirety and insert in lieu thereof the following:

"However, a first offender never previously convicted of a felony shall be pardoned automatically upon completion of his sentence, without a recommendation of the Board of Pardons and without action by the governor."

AMENDMENT No. 43—

On page 4, line 2, in Committee Amendment No. 15 proposed by the Committee on Style and Drafting and adopted by the convention this date, on line 2 of the text of the amendment, after the word "to" and before the word "confirmation" insert the word "public"

AMENDMENT No. 44—

On page 4, line 2, in Committee Amendment No. 15 proposed by the Committee on Style and Drafting and adopted by the convention this date, delete lines 9 through 19 both inclusive in their entirety and insert in lieu thereof the following:

"(2) Should the legislature be in regular session, the gov-

PAGE 18

114th Days Proceedings—January 10, 1974

cutive terms shall not be elected governor for the succeeding term."

Read.

On motion of Delegate Tate Amendment No. 5 was adopted.

AMENDMENT No. 6—

On page 2, delete lines 16 and 17 in their entirety and insert in lieu thereof the following:

"(C) Additional Limitation. Except as provided by this constitution, no official shall be elected statewide."

Read.

On motion of Delegate Tate Amendment No. 6 was adopted.

AMENDMENT No. 7—

On page 2, delete lines 18 through 21 both inclusive in their entirety and insert in lieu thereof the following:

"Section 4. Compensation

Section 4. Except as otherwise provided by this constitution, the compensation of each statewide elected official shall be provided by law."

Read.

On motion of Delegate Tate Amendment No. 7 was adopted.

AMENDMENT No. 8—

On page 2, delete lines 22 through 26, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 5. Governor; Powers and Duties

Section 5. (A) Executive Authority. The governor shall be the chief executive officer of the state. He shall faithfully support the constitution and laws of the state and of the United States."

Read.

On motion of Delegate Tate Amendment No. 8 was adopted.

AMENDMENT No. 9—

On page 2, delete lines 27 through 32, both inclusive, in their entirety and insert in lieu thereof the following:

"(B) Legislative Reports and Recommendations. The governor shall, at the beginning of each regular session, and may, at other times, make reports and recommendations and give information to the legislature concerning the affairs of state, including its complete financial condition."

Read.

On motion of Delegate Tate Amendment No. 9 was adopted.

AMENDMENT No. 10—

On page 2, delete lines 33 through 35, both inclusive, in their entirety, and on page 3, delete lines 1 and 2 in their entirety and insert in lieu thereof the following:

"(C) Departmental Reports and Information. When requested by the governor, a department head shall provide him with reports and information, in writing or otherwise, on any subject relating to the department, except matters concerning investigations of the governor's office."

Read.

On motion of Delegate Tate Amendment No. 10 was adopted.

AMENDMENT No. 11—

On page 3, delete lines 7 through 10, both inclusive, in their entirety and insert in lieu thereof the following:

"(E) Capital Budget. The governor shall submit to the legislature, at each regular session, a proposed five-year capital outlay program and shall request implementation of the first year of the program."

Read.

On motion of Delegate Tate Amendment No. 11 was adopted.

AMENDMENT No. 12—

On page 3, delete lines 11 through 25, both inclusive, in their entirety and insert in lieu thereof the following:

"(F) Pardon, Commutation, Reprieve, and Remission; Board of Pardons. (1) The governor may grant reprieves to persons convicted of offenses against the state and, upon recommendation of the Board of Pardons, may commute sentences, remit fines and forfeitures imposed for such offenses. However, a first offender never previously convicted of a felony shall be eligible automatically or pardon upon completion of his sentence without recommendation of the board.

(2) The Board of Pardons shall consist of five electors appointed by the governor, subject to confirmation by the Senate. Each member of the board shall serve a term concurrent with that of the governor appointing him."

Read.

On motion of Delegate Tate Amendment No. 12 was adopted.

AMENDMENT No. 13—

On page 3, delete lines 26 through 28, both inclusive, in their entirety and insert in lieu thereof the following:

"(G) Receipt of Bills from the Legislature. The date and hour when a bill finally passed by the legislature is delivered to the governor shall be endorsed thereon."

Read.

On motion of Delegate Tate Amendment No. 13 was adopted.

AMENDMENT No. 14—

On page 3, delete lines 29 through 35, both inclusive, in their entirety and on page 4, delete line 1 and insert in lieu thereof the following:

"(H) Item Veto. (1) Except as otherwise provided by this constitution, the governor may veto any line item in an appropriation bill. Any item vetoed shall be void unless the veto is overridden as prescribed for the passage of a bill over a veto.

(2) The governor shall veto line items or use means provided in the bill so that total appropriations for the year shall not exceed anticipated revenues for that year."

Read.

On motion of Delegate Tate Amendment No. 14 was adopted.

AMENDMENT No. 15—

On page 4, delete lines 2 through 21, both inclusive, in their entirety and insert in lieu thereof the following:

"(I) Appointments. (1) The governor shall appoint, subject to confirmation by the Senate, the head of each department in the executive branch whose election or appointment is not provided by this constitution and the members of each board and commission in the executive branch whose election or appointment is not provided by this constitution or by law. (2) Should the legislature be in session, the governor shall submit for confirmation by the Senate the name of an appointee within forty-eight hours after the appointment is made. Failure of the Senate to confirm the appointment, prior to the end of the session, shall constitute rejection.

(3) If the legislature is not in session, the governor may make interim appointments, which shall expire at the end of the next session, unless submitted to and confirmed by the Senate during that session.

(4) A person not confirmed by the Senate shall not be appointed to the same office during any recess of the legislature."

Read.

On motion of Delegate Tate Amendment No. 15 was adopted.

AMENDMENT No. 16—

On page 4, delete lines 22 through 24, both inclusive, in their entirety and insert in lieu thereof the following:

"(J) Removal Power. The governor may remove from

PAGE 19

114th Days Proceedings—January 10, 1974

office a person he appoints, except a person appointed for a term fixed by this constitution or by law."

Read.

On motion of Delegate Tate Amendment No. 16 was adopted.

AMENDMENT No. 17—

On page 4, line 28, after the words "call out" and before the words "to preserve" delete the words "the armed forces of the state" and insert in lieu thereof the words "these forces"

Read.

On motion of Delegate Tate Amendment No. 17 was adopted.

AMENDMENT No. 18—

On page 4, delete lines 31 through 33, both inclusive, in their entirety and insert in lieu thereof the following:

"(L) Other Powers and Duties. The governor shall have other powers and perform other duties authorized by this constitution or provided by law."

Read.

On motion of Delegate Tate Amendment No. 18 was adopted.

AMENDMENT No. 19—

On page 4, delete lines 34 and 35 and on page 5, delete lines 1 through 5, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 6. Lieutenant Governor; Powers and Duties

Section 6. The lieutenant governor shall serve ex officio as a member of each committee, board, and commission on which the governor serves. He shall exercise the powers delegated to him by the governor and shall have other powers and perform other duties in the executive branch authorized by this constitution or provided by law."

Read.

On motion of Delegate Tate Amendment No. 19 was adopted.

AMENDMENT No. 20—

On page 5, delete lines 6 through 21, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 7. Secretary of State; Powers and Duties

Section 7. There shall be a Department of State. The secretary of state shall head the department and shall be the chief election officer of the state. He shall prepare and certify the ballots for all elections, promulgate all election returns, and administer the election laws, except those relating to voter registration and custody of voting machines. He shall administer the state corporation and trademark laws; serve as keeper of the Great Seal of the State of Louisiana and attest therewith all official laws, documents, proclamations, and commissions; administer and preserve the official archives of the state; promulgate and publish all laws enacted thereof; and countersign and keep an official registry of all by the legislature and retain the originals thereof; and countersign and keep an official registry of all commissions. He may administer oaths, and shall have other powers and perform other duties authorized by this constitution or provided by law."

Read.

On motion of Delegate Tate Amendment No. 20 was adopted.

AMENDMENT No. 21—

On page 5, delete lines 22 through 24, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 8. Attorney General; Powers and Duties

Section 8. There shall be a Department of Justice. The attorney general shall head the department and shall be the chief legal officer of the state."

Read.

On motion of Delegate Tate Amendment No. 21 was adopted.

AMENDMENT No. 22—

On page 5, delete lines 25 through 34, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 9. Treasurer; Powers and Duties

Section 9. There shall be a Department of the Treasury. The treasurer shall head the department and shall be responsible for the custody, investment, and disbursement of the public funds of the state, except as otherwise provided by this constitution. He shall report annually to the governor and to the legislature at least one month before each regular session on the financial condition of the state, and shall have other powers and perform other duties authorized by this constitution or provided by law."

Read.

On motion of Delegate Tate Amendment No. 22 was adopted.

AMENDMENT No. 23—

On page 5, delete line 35 in its entirety, and on page 6, delete lines 1 through 10, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 10. Commissioner of Agriculture; Powers and Duties

Section 10. There shall be a Department of Agriculture. The commissioner of agriculture shall head the department and shall exercise all functions of the state relating to the promotion, protection, and advancement of agriculture, except research and educational functions expressly allocated by this constitution or by law to other state agencies. The department shall exercise such functions and the commissioner shall have other powers and perform other duties authorized by this constitution or provided by law."

Read.

On motion of Delegate Tate Amendment No. 23 was adopted.

AMENDMENT No. 24—

On page 6, delete lines 11 through 17, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 11. Commissioner of Insurance; Powers and Duties

Section 11. There shall be a Department of Insurance, headed by the commissioner of insurance. The department shall exercise such functions and the commissioner shall have powers and perform duties authorized by this constitution or provided by law."

Read.

On motion of Delegate Tate Amendment No. 24 was adopted.

AMENDMENT No. 25—

On page 6, delete lines 18 through 24, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 12. Commissioner of Elections; Powers and Duties

Section 12. There shall be a Department of Elections and Registration. The commissioner of elections shall head the department and shall administer the laws relating to custody of voting machines and voter registration. He shall have other powers and perform other duties authorized by this constitution or provided by law."

Read.

On motion of Delegate Tate Amendment No. 25 was adopted.

AMENDMENT No. 26—

On page 6, delete lines 25 through 35, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 13. First Assistants; Appointment

Section 13. Each statewide elected official except the governor and lieutenant governor shall appoint a first assistant, subject to public confirmation by the Senate, and may remove him at his pleasure. The official shall submit the appointment to the Senate in the manner and subject to the procedures and limitations applicable to appointments submitted by the governor. The first assistant shall possess the qualifications required for election to the office."

Read.

PAGE 21

114th Days Proceedings—January 10, 1974

with priority over all other matters, the supreme court shall determine the issue of inability after due notice and hearing, by a majority vote of members elected to the court, under such rules as it may adopt."

Read.

On motion of Delegate Tate Amendment No. 36 was adopted.

AMENDMENT No. 37—

On page 9, delete lines 17 through 24, both inclusive, in their entirety and insert in lieu thereof the following:

"(E) Reconsideration by Supreme Court. A judgment of the supreme court affirming inability may be reconsidered by the court, after due notice and hearing, either upon its own motion or upon the application of the official. Upon proper showing and by majority vote of its elected members, the court may determine that no inability then exists, whereupon the official shall immediately resume the powers and duties of his office."

Read.

On motion of Delegate Tate Amendment No. 37 was adopted.

AMENDMENT No. 38—

On page 9, delete lines 25 through 30, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 21. Temporary Absences

Section 21. When the governor is temporarily absent from the state, the lieutenant governor shall act as governor. When any other statewide elected official is temporarily absent from the state, the appointed first assistant shall act in his absence."

Read.

On motion of Delegate Tate Amendment No. 38 was adopted.

AMENDMENT No. 39—

On page 9, delete lines 31 through 35, both inclusive, in their entirety and on page 10, delete line 1 in its entirety.

Read.

On motion of Delegate Tate Amendment No. 39 was adopted.

AMENDMENT No. 40—

On page 10, delete lines 2 through 19, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 22. Appointment of Officials; Merger, Consolidation of Offices and Departments

Section 22. After the first election of state officials following adoption of this constitution, the legislature may provide, by law enacted by two-thirds of the elected members of each house, for appointment, in lieu of election, of the commissioner of agriculture, the commissioner of insurance, the superintendent of education, the commissioner of elections, or any of them. In that event, the legislature shall prescribe qualifications and method of appointment and by similar vote, may provide by law for the merger or consolidation of any such office, its department, and functions with any other office or department in the executive branch. No action of the legislature pursuant hereto shall reduce the term or compensation of any incumbent elected official. By law enacted by two-thirds of the elected members of each house, the legislature may reestablish any such office as elective and, in that event, shall prescribe qualifications.

Read.

On motion of Delegate Tate Amendment No. 40 was adopted.

AMENDMENT No. 41—

On page 1, line 24, in the text of Committee Amendment No. 4 proposed by the Committee on Style and Drafting and adopted by the convention this date, on line 10 of the text of

the amendment, after the word "preceding" and before the period," delete the word "election" and insert in lieu thereof the words "qualification as a candidate"

On motion of Delegate Tate the amendment was withdrawn.

AMENDMENT No. 42—

On page 3, line 11, in Committee Amendment No. 12 proposed by the Committee on Style and Drafting and adopted by the convention this date, on line 8 of the text of the amendment, after the word and punctuation "offenses," delete the remainder of the line, and delete lines 9 through 12, both inclusive, in their entirety and insert in lieu thereof the following:

"However, a first offender never previously convicted of a felony shall be pardoned automatically upon completion of his sentence, without a recommendation of the Board of Pardons and without action by the governor."

Read.

Point of Order

Delegate Conroy rose to a point of order, and asked a ruling from the Chair, that the Committee on Style and Drafting had exceeded its authority by submitting Amendment No. 42 in that the amendment contained a substantive change to the Proposal, and therefore the amendment was out of order at this time.

Ruling of the Chair

The Chair declined to rule and put the question to the Convention, under the rules.

The question was put to declare the amendment in order.

By a vote of 57 yeas and 39 nays the Convention declared the amendment in order.

Delegate Tate moved the adoption of Amendment No. 42.

Delegate Conroy objected.

By a vote of 77 yeas and 19 nays the amendment was adopted.

AMENDMENT No. 43—

On page 4, line 2, in Committee Amendment No. 15 proposed by the Committee on Style and Drafting and adopted by the convention this date, on line 2 of the text of the amendment, after the word "to" and before the word "Confirmation" insert the word "public"

Read.

Point of Order

Delegate Denney rose to a point of order, and asked a ruling from the Chair, that the Committee on Style and Drafting had exceeded its authority by submitting Amendment No. 43 in that the amendment contained a substantive change to the Proposal, and therefore the amendment was out of order at this time.

Ruling of the Chair

The Chair declined to rule and put the question to the Convention, under the rules.

The question was put to declare the amendment in order.

By a vote of 11 yeas and 73 nays the Convention declared the amendment out of order.

Motion

Delegate Tobias moved for a suspension of the rules in order to call from the table the motion to reconsider the vote by which Committee Proposal No. 4, Section 5, was passed, for the limited purpose of offering Amendment No. 43 proposed by the Committee on Style and Drafting.

Delegate Duval objected.

By a vote of 37 yeas and 52 nays the Convention refused to suspend the rules.

On motion of Delegate Tate the amendment was withdrawn.

COMMITTEE NOTICE

Delegate A. Jackson, chairman of the Committee on Bill of Rights and Elections, sent up the following notice:

The Committee on Bill of Rights and Elections will meet on Friday, January 11, 1974, at 10:00 o'clock a.m. in the Convention Hall and will consider the following agenda:

AGENDA

To complete the business of the Committee.

Respectfully submitted,
ALPHONSE JACKSON, JR.,
Chairman of the Committee on
Bill of Rights and Elections

The above notice was read in open session and publicly posted as provided by the Rules of Procedure of the Convention.

PROPOSALS

Delegate Denny, Secretary of the Constitutional Convention of 1973, submits the following report:

Constitutional Convention of 1973
State of Louisiana

January 10, 1974, Baton Rouge, La.

To the Chairman and Delegates of the Convention:

I submit the following report:

That the following Committee Proposals have been properly enrolled in final form:

★ COMMITTEE PROPOSAL No. 25—

Introduced by Delegate A. Jackson, Chairman, Committee on Bill of Rights and Elections (Substitute for Committee Proposal No. 2, by Delegate A. Jackson, Chairman, on behalf of the Committee on Bill of Rights and Elections, and Delegates Dunlap, Guarisco, Jenkins, Roy, Soniat, Stinson, Vick, Wall and Weiss):

A PROPOSAL

To provide a preamble and a declaration of rights to the constitution.

Be it adopted by the Constitutional Convention of Louisiana of 1973:

PREAMBLE

We, the people of Louisiana, grateful to Almighty God for the civil, political, economic, and religious liberties we enjoy, and desiring to protect individual rights to life, liberty, and property; afford opportunity for the fullest development of the individual; assure equality of rights; promote the health, safety, education, and welfare of the people; maintain a representative and orderly government; ensure domestic tranquility; provide for the common defense; and secure the blessings of freedom and justice to ourselves and our posterity, do ordain and establish this constitution.

ARTICLE I. DECLARATION OF RIGHTS

Section 1. Origin and Purpose of Government

Section 1. All government, of right, originates with the people, is founded on their will alone, and is instituted to protect the rights of the individual and for good of the whole. Its only legitimate ends are to secure justice for all, preserve peace, protect the rights, and promote the happiness and general welfare of the people. The rights enumerated in this Article are inalienable by the state and shall be preserved inviolate by the state.

Section 2. Due Process of Law

Section 2. No person shall be deprived of life, liberty, or property, except by due process of law.

Section 3. Right to Individual Dignity

Section 3. No person shall be denied the equal protection of the laws. No law shall discriminate against a person because of race or religious ideas, beliefs, or affiliations. No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations. Slavery and in-

voluntary servitude are prohibited, except in the latter case as punishment for crime.

Section 4. Right to Property

Section 4. Every person has the right to acquire, own, control, use, enjoy, protect, and dispose of private property. This right is subject to reasonable statutory restrictions and the reasonable exercise of the police power.

Property shall not be taken or damaged by the state or its political subdivisions except for public purposes and with just compensation paid to the owner or into court for his benefit. Property shall not be taken or damaged by any private entity authorized by law to expropriate, except for a public and necessary purpose and with just compensation paid to the owner; in such proceedings, whether the purpose is public and necessary shall be a judicial question. In every expropriation, a party has the right to trial by jury to determine compensation, and the owner shall be compensated to the full extent of his loss. No business enterprise or any of its assets shall be taken for the purpose of operating that enterprise or halting competition with a government enterprise. However, a municipality may expropriate a utility within its jurisdiction. Personal effects, other than contraband, shall never be taken.

This Section shall not apply to appropriation of property necessary for levee and levee drainage purposes.

Section 5. Right to Privacy

Section 5. Every person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy. No warrant shall issue without probable cause supported by oath or affirmation, and particularly describing the place to be searched, the persons or things to be seized, and the lawful purpose or reason for the search. Any person adversely affected by a search or seizure conducted in violation of this Section shall have standing to raise its illegality in the appropriate court.

Section 6. Freedom from Intrusion

Section 6. No person shall be quartered in any house without the consent of the owner or lawful occupant.

Section 7. Freedom of Expression

Section 7. No law shall curtail or restrain the freedom of speech or of the press. Every person may speak, write, and publish his sentiments on any subject, but is responsible for abuse of that freedom.

Section 8. Freedom of Religion

Section 8. No law shall be enacted respecting an establishment of religion or prohibiting the free exercise thereof.

Section 9. Right of Assembly and Petition

Section 9. No law shall impair the right of any person to assemble peaceably or to petition government for a redress of grievances.

Section 10. Right to Vote

Section 10. Every citizen of the state, upon reaching eighteen years of age, shall have the right to register and vote, except that this right may be suspended while a person is interdicted and judicially declared mentally incompetent or is under an order of imprisonment for conviction of a felony.

Section 11. Right to Keep and Bear Arms

Section 11. The right of each citizen to keep and bear arms shall not be abridged, but this provision shall not prevent the passage of laws to prohibit the carrying of weapons concealed on the person.

Section 12. Freedom from Discrimination

Section 12. In access to public areas, accommodations, and facilities, every person shall be free from discrimination based on race, religion, or national ancestry and from arbitrary, capricious, or unreasonable discrimination based on age, sex, or physical condition.

Section 13. Rights of the Accused

Section 13. When any person has been arrested or detained in connection with the investigation or commission of any offense, he shall be advised fully of the reason for his arrest or detention, his right to remain silent, his right against self incrimination, his right to the assistance of counsel and, if indigent, his right to counsel appointed counsel. In a criminal prosecution, an accused shall be informed of the nature and cause of the accusation against him. At each stage of the proceedings, every person is entitled to assistance of counsel of his choice, or appointed by the court if he is indigent and charged with an offense punishable by imprisonment. The legislature shall provide for a uniform system for securing and compensating qualified counsel for indigents.

Section 14. Right to Preliminary Examination
Section 14. The right to a preliminary examination shall not

be denied in felony cases except when the accused is indicted by a grand jury.

Section 15. Initiation of Prosecution

Section 15. Prosecution of a felony shall be initiated by indictment or information, but no person shall be held to answer for a capital crime or a crime punishable by life imprisonment except on indictment by a grand jury. No person shall be twice placed in jeopardy for the same offense, except on his application for a new trial, when a mistrial is declared, or when a motion in arrest of judgment is sustained.

Section 16. Right to a Fair Trial

Section 16. Every person charged with a crime is presumed innocent until proven guilty and is entitled to a speedy, public, and impartial trial in the parish where the offense or an element of the offense occurred, unless venue is changed in accordance with law. No person shall be compelled to give evidence against himself. An accused is entitled to confront and cross-examine the witnesses against him, to compel the attendance of witnesses, to present a defense, and to testify in his own behalf.

Section 17. Jury Trial in Criminal Cases

Section 17. A criminal case in which the punishment may be capital shall be tried before a jury of twelve persons, all of whom must concur to render a verdict. A case in which the punishment is necessarily confinement at hard labor shall be tried before a jury of twelve persons, ten of whom must concur to render a verdict. A case in which the punishment may be confinement at hard labor or confinement without hard labor for more than six months shall be tried before a jury of six persons, five of whom must concur to render a verdict. The accused shall have the right to full voir dire examination of prospective jurors and to challenge jurors peremptorily. The number of challenges shall be fixed by law. Except in capital cases, a defendant may knowingly and intelligently waive his right to a trial by jury.

Section 18. Right to Bail

Section 18. Excessive bail shall not be required. Before and during a trial, a person shall be bailable by sufficient surety, except when he is charged with a capital offense and the proof is evident and the presumption of guilt is great. After conviction and before sentencing, a person shall be bailable if the maximum sentence which may be imposed is imprisonment for five years or less; and the judge may grant bail if the maximum sentence which may be imposed is imprisonment exceeding five years. After sentencing and until final judgment, a person shall be bailable if the sentence actually imposed is five years or less; and the judge may grant bail if the sentence actually imposed exceeds imprisonment for five years.

Section 19. Right to Judicial Review

Section 19. No person shall be subjected to imprisonment or forfeiture of rights or property without the right of judicial review based upon a complete record of all evidence upon which the judgment is based. This right may be intelligently waived. The cost of transcribing the record shall be paid as provided by law.

Section 20. Right to Humane Treatment

Section 20. No law shall subject any person to euthanasia, to torture, or to cruel, excessive, or unusual punishment. Full rights of citizenship shall be restored upon termination of state and federal supervision following conviction for any offense.

Section 21. Writ of Habeas Corpus

Section 21. The writ of habeas corpus shall not be suspended.

Section 22. Access to Courts

Section 22. All courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay, for injury to him in his person, property, reputation, or other rights.

Section 23. Prohibited Laws

Section 23. No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall be enacted.

Section 24. Unenumerated Rights

Section 24. The enumeration in this constitution of certain rights shall not deny or disparage other rights retained by the individual citizens of the state.

COMMITTEE PROPOSAL No. 33—

Introduced by Delegate A. Jackson, Chairman, Committee on Bill of Rights and Elections (Substitute for Committee Proposal No. 20, by Delegate A. Jackson, Chairman on behalf of the Committee on Bill of Rights and Elections, and Delegates Dunlap, Guarisco, Jenkins, Roy, Soniat, Stinson, Vick, Wall and Weiss):

A PROPOSAL

Making general provisions for elections.

Be it adopted by the Constitutional Convention of Louisiana of 1973:

ARTICLE X. ELECTIONS

Section 1. Election Code

Section 1. The legislature shall adopt an election code which shall provide for permanent registration of voters and for the conduct of all elections.

Section 2. Secret Ballot; Absentee Voting; Preservation of Ballot

Section 2. In all elections by the people, voting shall be by secret ballot. The legislature shall provide a method for absentee voting. Proxy voting is prohibited. Ballots shall be counted publicly and preserved inviolate as provided by law until any election contests have been settled. In all elections by persons in a representative capacity, voting shall be viva-voce.

Section 3. Privilege from Arrest

Section 3. While going to and returning from voting and while exercising the right to vote, an elector shall be privileged from arrest, except for felony or breach of the peace.

Section 4. Prohibited Use of Public Funds

Section 4. No public funds shall be used to urge any elector to vote for or against any candidate or proposition, or be appropriated to a candidate or political organization. This provision shall not prohibit the use of public funds for dissemination of factual information relative to a proposition appearing on an election ballot.

Section 5. Registrar of Voters

Section 5. The governing authority of each parish shall appoint a registrar of voters, whose compensation, removal from office for cause, bond, powers, and functions shall be provided by law. Upon qualifying as a candidate for other public office, a registrar shall forfeit his office. No law shall provide for the removal from office of a registrar by the appointing authority.

Respectfully submitted,

MOISE W. DENNERY
Secretary

The Proposals contained in the report were signed by the Chairman of the Convention and attested by the Secretary in accordance with the Rules.

Delegate Dennery, Secretary of the Constitutional Convention of 1973, submits the following report:

Constitutional Convention of 1973
State of Louisiana

January 10, 1974, Baton Rouge, La.

To the Chairman and Delegates of the Convention:

I submit the following report:

That the following Committee Proposal has been properly enrolled in final form:

COMMITTEE PROPOSAL No. 21—

Introduced by Delegate Dennis, Chairman, on behalf of the Committee on the Judiciary, and Delegates Avant, Bel, Bergeron, Burns, Deshotels, Drew, Gauthier, Kelly, Kilbourne, Landry, Martin, Ourso, Sandoz, Tate, and Vesich (A Substitute for Committee Proposal No. 6):

A PROPOSAL

Making provisions for the judiciary branch of government and necessary provisions with respect thereto.

Be it adopted by the Constitutional Convention of Louisiana of 1973:

ARTICLE V. JUDICIAL BRANCH

Section 1. Judicial Power

Section 1. The judicial power is vested in a supreme court, courts of appeal, district courts, and other courts authorized by this Article.

Section 2. Habeas Corpus, Needful Writs, Orders and Process; Contempt

Section 2. Habeas Corpus, Needful Writs, Orders and all other needful writs, orders, and process in aid of the jurisdiction of his court. Exercise of this authority by a judge of the supreme court or of a court of appeal is subject to review by the whole court. The power to punish for contempt of court shall be limited by law.

Section 3. Supreme Court; Composition; Judgments; Terms. The supreme court shall be composed of a chief justice and six associate justices, four of whom must concur to render judgment. The term of a supreme court judge shall be ten years.

Section 4. Supreme Court; Districts

Section 4. The state shall be divided into at least six supreme court districts, and at least one judge shall be elected from each. The districts and the number of judges assigned to each on the effective date of this constitution are retained, subject to change by law enacted by two-thirds of the elected members of each house of the legislature.

Section 5. Supreme Court; Jurisdiction; Rule-Making Power; Assignment of Judges

Section 5. (A) Supervisory Jurisdiction; Rule-Making Power; Assignment of Judges. The supreme court has general supervisory jurisdiction over all other courts. It may establish procedural and administrative rules not in conflict with law and may assign a sitting or retired judge to any court.

(B) Original Jurisdiction. The supreme court has exclusive original jurisdiction of disciplinary proceedings against a member of the bar.

(C) Scope of Review. Except as otherwise provided by this constitution, the jurisdiction of the supreme court in civil cases extends to both law and facts. In criminal matters, its appellate jurisdiction extends only to questions of law.

(D) Appellate Jurisdiction. In addition to other appeals provided by this constitution, a case shall be appealable to the supreme court if (1) a law or ordinance has been declared unconstitutional; (2) the defendant has been convicted of a felony or a fine exceeding five hundred dollars or imprisonment exceeding six months has been imposed.

(E) Other Criminal Cases; Review. In all criminal cases not provided in Paragraph (D) (2) of this Section, a defendant has a right of appeal or review, as provided by law.

(F) Appellate Jurisdiction; Civil Cases; Extent. Subject to the provisions in Paragraph (C), the supreme court has appellate jurisdiction over all issues involved in a civil action properly before it.

Section 6. Supreme Court; Chief Justice

Section 6. The judge oldest in point of service on the supreme court shall be chief justice. He is the chief administrative officer of the judicial system of the state, subject to rules adopted by the court.

Section 7. Supreme Court; Personnel

Section 7. The supreme court may select a judicial administrator, its clerks, and other personnel and prescribe their duties.

Section 8. Courts of Appeal; Circuits; Panels; Judgments; Terms

Section 8. (A) Circuits; Panels. The state shall be divided into at least four circuits, with one court of appeal in each. Each court shall sit in panels of at least three judges selected according to rules adopted by the court.

(B) Judgments. A majority of the judges sitting in a case must concur to render judgment. However, when a judgment of a district court is to be modified or reversed and one judge dissents, the case shall be reargued before a panel of at least five judges prior to rendition of judgment, and a majority must concur to render judgment.

(C) Terms. The term of a court of appeal judge shall be ten years.

Section 9. Courts of Appeal; Circuits and Districts

Section 9. Each circuit shall be divided into at least three districts, and at least one judge shall be elected from each. The circuits and districts and the number of judges as elected in each circuit on the effective date of this constitution are retained, subject to change by law enacted by two-thirds of the elected members of each house of the legislature.

Section 10. (A) Jurisdiction. Except in cases appealable to the supreme court and except as otherwise provided by this constitution, a court of appeal has appellate jurisdiction of all

(1) civil matters decided within its circuit and (2) matters appealed from family and juvenile courts, except criminal prosecutions of persons other than juveniles. It has supervisory jurisdiction over cases in which an appeal would lie to it.

(B) Scope of Review. Except as limited to questions of law by this constitution, or as provided by law in the review of administrative agency determinations, appellate jurisdiction of a court of appeal extends to law and facts.

Section 11. Courts of Appeal; Certification

Section 11. A court of appeal may certify any question of law before it to the supreme court, and the supreme court then may give its binding instruction or decide the case upon the whole record.

Section 12. Courts of Appeal; Chief Judge

Section 12. The judge oldest in point of service on each court of appeal shall be chief judge of that court and shall administer the court subject to rules adopted by it.

Section 13. Courts of Appeal; Personnel

Section 13. Each court of appeal may select its clerk and other personnel and prescribe their duties.

Section 14. District Courts; Judicial Districts

Section 14. The state shall be divided into judicial districts, each composed of at least one parish and served by at least one district judge.

Section 15. Courts; Retention; Jurisdiction; Judicial District Changes; Terms

Section 15. (A) Court Retention; Trial Courts of Limited Jurisdiction. The district, family, juvenile, parish, city, and magistrate courts existing on the effective date of this constitution are retained. Subject to the limitations in Sections 16 and 20 of this Article, the legislature may abolish or merge trial courts of limited or specialized jurisdiction. The legislature may establish trial courts of limited jurisdiction with parishwide territorial jurisdiction and subject matter jurisdiction which shall be uniform throughout the state. The office of the marshal is continued until the city court he serves is abolished.

(B) Judicial Districts. The judicial districts existing on the effective date of this constitution are retained. Subject to the limitations in Section 20 of this Article, the legislature may establish, divide, or merge judicial districts with approval in a referendum in each district and parish affected.

(C) Term. The term of a district, parish, or city court judge shall be six years.

(D) Number of Judges. The legislature may change the number of judges in any judicial district by law enacted by two-thirds of the elected members of each house.

Section 16. District Courts; Jurisdiction

Section 16. (A) Original Jurisdiction. Except as otherwise authorized by this constitution, a district court shall have original jurisdiction of all civil and criminal matters. It shall have exclusive original jurisdiction of felony cases and of cases involving title to immovable property; the right to office or other public position; civil or political rights; probate and succession matters; the state, a political corporation, or political subdivisions, or a succession, as a defendant; and the appointment of receivers or liquidators for corporations or partnerships.

(B) Appellate Jurisdiction. A district court shall have appellate jurisdiction as provided by law.

Section 17. District Courts; Chief Judge

Section 17. Each district court shall elect from its members a chief judge who shall exercise, for a term designated by the court, the administrative functions prescribed by rule of court.

Section 18. Juvenile Courts; Jurisdiction

Section 18. Notwithstanding any contrary provision of Section 16 of this Article, juvenile and family courts shall have jurisdiction as provided by law.

Section 19. Mayors' Courts; Justice of the Peace Courts

Section 19. Mayors' courts and justice of the peace courts existing on the effective date of this constitution are continued, subject to change by law.

Section 20. Judges; Decrease in Terms and Compensation Prohibited

Section 20. The term of office, retirement benefits, and compensation of judge shall not be decreased during the term for which he is elected.

Section 21. Judges; Election; Vacancy

Section 21. (A) Election. Except as otherwise provided in this Section, all judges shall be elected. Election shall be at the regular congressional election.

(B) Vacancy. A newly-created judgeship or a vacancy in the office of a judge shall be filled by special election called

by the governor and held within six months after the day on which the vacancy occurs or the judgeship is established, except when the vacancy occurs in the last six months of an existing term. Until the vacancy is filled, the supreme court shall appoint a person meeting the qualifications for the office, other than domicile, to serve at its pleasure. The appointee shall be ineligible as a candidate at the election to fill the vacancy or the newly-created judicial office. No person serving as an appointed judge, other than a retired judge, shall be eligible for retirement benefits provided for the elected judiciary.

(C) End of Term. A judge serving on the effective date of this constitution shall serve through December thirty-first of the last year of his term or, if the last year of his term is not in the year of a regular congressional election, then through December thirty-first of the following year. The election for the next term shall be held in the year in which the term expires, as provided above.

Section 22. Judges; Retirement

Section 22. (A) Retirement System. Within two years after the effective date of this constitution, the legislature shall provide for a retirement system for judges which shall apply to a judge taking office after the effective date of the law enacting the system and in which a judge in office at that time may elect to become a member, with credit for all prior years of judicial service and without contribution therefor. The retirement benefits and judicial service rights of a judge in office or retired on the effective date of this constitution shall not be diminished, nor shall the benefits to which a surviving spouse is entitled be reduced.

(B) Mandatory Retirement. Except as otherwise provided in this Section, a judge shall not remain in office beyond his seventieth birthday.

Section 23. Judges; Qualifications

Section 23. A judge of the supreme court, a court of appeal, district court, family court, parish court, or court having solely juvenile jurisdiction shall have been admitted to the practice of law in this state for at least five years prior to his election, and shall have been domiciled in the respective district, circuit, or parish for the two years preceding election. He shall not practice law.

Section 24. Judiciary Commission

Section 24. (A) Composition. The judiciary commission shall consist of

(1) one court of appeal judge and two district court judges selected by the supreme court;

(2) two attorneys admitted to the practice of law for at least ten years and one attorney admitted to the practice of law for at least three years but not more than ten years, selected by the Conference of Court of Appeal Judges or its successor. They shall not be judges, active or retired, or public officials, other than notaries public; and

(3) three citizens, not lawyers, judges active or retired, or public officials, selected by the Louisiana District Judges' Association or its successor.

(B) Term; Vacancy. A member of the commission shall serve a four-year term and shall be ineligible to succeed himself. His term shall end upon the occurrence of any event which would have made him ineligible for appointment. When a vacancy occurs, a successor shall be appointed for a four-year term by the authority which appointed his predecessor.

(C) Powers. On recommendation of the judiciary commission, the supreme court may censure, suspend with or without salary, remove from office, or retire involuntarily a judge for willful misconduct relating to his official duty, willful and persistent failure to perform his duty, persistent and public conduct prejudicial to the administration of justice that brings the judicial office into disrepute, conduct while in office which would constitute a felony, or conviction of a felony. On recommendation of the judiciary commission, the supreme court may disqualify a judge from exercising any judicial function, without loss of salary, during pendency of proceedings in the supreme court. On recommendation of the judiciary commission, the supreme court may retire involuntarily a judge for disability that seriously interferes with the performance of his duties and

that is or is likely to become permanent. The supreme court shall make rules implementing this Section and providing for confidentiality and privilege of commission proceedings.

(D) Other Disciplinary Action. Action against a judge under this Section shall not preclude disciplinary action against him concerning his license to practice law.

Section 25. Department of Justice; Attorney General; Assistants

Section 25. There shall be a Department of Justice consisting of an attorney general, a first assistant attorney general, and other necessary assistants and staff. The attorney general shall be elected for a term of four years at the state general election. He shall appoint assistants to serve at his pleasure.

Section 26. Attorney General; Powers and Duties

Section 26. The attorney general shall be the chief legal officer of the state. As necessary for the assertion or protection of the rights and interests of the state, the attorney general may

(1) institute and prosecute or intervene in any civil action or proceeding;

(2) advise and assist, upon request of district attorney, in the prosecution of a criminal case;

(3) for cause, when authorized by the court of original jurisdiction in which any proceeding or affidavit is pending and subject to judicial review, supersede any attorney representing the state in any civil or criminal action.

He shall have other powers and perform other duties authorized by this constitution or provided by law.

Section 27. District Attorneys

Section 27. (A) Election; Qualifications; Assistants. In each judicial district a district attorney shall be elected for a term of six years. He shall have been admitted to the practice of law in the state for at least five years prior to his election and shall have resided in the district for the two years preceding election. A district attorney may select assistants as authorized by law, and other personnel.

(B) Powers. Except as otherwise provided by this constitution, a district attorney, of his designated assistant, shall have charge of every criminal prosecution by the state in his district, be the representative of the state before the grand jury in his district, and be the legal advisor to the grand jury. He shall perform other duties provided by law.

(C) Prohibition. No district attorney or assistant district attorney shall appear, plead, or in any way defend or assist in defending any criminal prosecution or charge. A violation of this Paragraph shall be cause for removal.

Section 28. Sheriffs

Section 28. In each parish a sheriff shall be elected for a term of four years. He shall be the chief law enforcement officer in the parish, except as otherwise provided by this constitution, and shall execute court orders and process. He shall be the collector of state and parish ad valorem taxes and such other taxes and license fees as provided by law.

This Section shall not apply to Orleans Parish.

Section 29. Clerks of Court

Section 29. (A) Powers and Duties; Deputies. In each parish a clerk of the district court shall be elected for a term of four years. He shall be ex officio notary public and shall have charge of all mortgages, any other acts and shall have other duties and powers provided by law. The clerk may appoint deputies with duties and powers provided by law and, with the approval of the district judges, he may appoint minute clerks with duties and powers provided by law.

(B) Office Hours. The legislature shall establish uniform statewide office hours for clerks of the district courts.

Section 30. Coroners

Section 30. In each parish a coroner shall be elected for a term of four years. He shall be a licensed physician and possess the other qualifications and perform the duties provided by law. The requirement that he be a licensed physician shall be inapplicable in any parish in which no licensed physician will accept the office.

Section 31. Vacancies

Section 31. When a vacancy occurs in the following offices, the duties of the office, until it is filled by election as provided by law, shall be assumed by the persons herein designated: (1) sheriff, by the chief criminal deputy; (2) district attorney, by the first assistant; (3) clerk of a district court, by the chief deputy; (4) coroner, by the chief deputy. If there is no such person to assume the duties when the vacancy occurs, the governing authority or authorities of the parish or parishes concerned shall appoint a qualified person to assume the duties of the office until filled by election.

PAGE 30

114th Days Proceedings—January 10, 1974

Section 32. Reduction of Salaries and Benefits Prohibited

Section 32. The salary and retirement benefits of an attorney general, district attorney, sheriff, coroner, or clerk of the district court shall not be diminished during his term of office.

Section 33. Orleans Parish Courts, Officials

Section 33. Except for provisions relating to terms of office as provided elsewhere in this Article, and not withstanding any other contrary provision of this constitution, the following courts and officers in Orleans Parish are continued, subject to change by law: the civil and criminal district courts; the city, municipal, traffic, and juvenile courts; the clerks of the civil and criminal district courts; the civil and criminal sheriffs; the constables and the clerks of the first and second city courts; the register of conveyances; and the recorder of mortgages.

Section 34. Jurors

Section 34. (A) Qualifications. A citizen of the state who has reached the age of majority is eligible to serve as a juror within the parish in which he is domiciled. The legislature may provide additional qualifications.

(B) Exemptions. The supreme court shall provide by rule for exemption of jurors.

Section 35. Grand Jury

Section 35. (A) Grand Jury. There shall be a grand jury or grand juries in each parish, whose qualifications, duties, and responsibilities shall be provided by law. The secrecy of the proceedings, including the identity of witnesses, shall be provided by law.

(B) Right to Counsel. A person testifying at any stage in grand jury proceedings shall have the right to the advice of counsel while testifying.

Respectfully submitted,

MOISE DENNERY
Secretary.

The Proposals contained in the report were signed by the Chairman of the Convention and attested by the Secretary in accordance with the Rules.

Delegate Dennery, Secretary of the Constitutional Convention of 1973, submits the following report:

Constitutional Convention of 1973
State of Louisiana

January 10, 1974 Baton Rouge, La.

To the Chairman and Delegates of the Convention:

That the following Committee Proposals have been properly enrolled in final form:

COMMITTEE PROPOSAL No. 12—

Introduced by Delegate Aertker, Chairman, on behalf of the Committee on Education and Welfare, and Delegates Armentor, Carmouche, Corne, Cowen, Flory, Grier, Haynes, Hernandez, Landry, Leithman, Lennox, Rachal, Riecke, Robinson, Segura, Silverberg, Sutherland, Thistlethwaite, Toca, and Wisham:

A PROPOSAL

Making provisions for human resources by prohibiting the leasing of convicts and the employment of convicts in competition with private enterprise and by providing for reimbursement to parishes for expenses incurred resulting from crimes committed in penal institutions.

Be it adopted by the Constitutional Convention of Louisiana of 1973:

ARTICLE VII. HUMAN RESOURCES

Section 1. State Penal Institutions; Reimbursement of Parish Expense

Section 1. The state shall reimburse a parish in which a state penal institution is located for expenses the parish incurs arising from crime committed in the institution or by an inmate thereof.

COMMITTEE PROPOSAL No. 14—

Introduced by Delegate Aertker, Chairman, on behalf of the Committee on Education and Welfare, and Delegates Armentor, Carmouche, Corne, Cowen, Flory, Grier, Haynes, Hernandez, Landry, Leithman, Lennox, Rachal, Riecke, Robinson, Segura, Silverberg, Sutherland, Thistlethwaite, Toca, and Wisham:

A PROPOSAL

Making provisions for human resources through a system of economic security, social welfare, unemployment compensation, and public health.

Be it adopted by the Constitutional Convention of Louisiana of 1973:

ARTICLE VII. HUMAN RESOURCES

Section 2. Welfare, Unemployment Compensation, and Health

Section 2. The legislature may establish a system of economic and social welfare, unemployment compensation, and public health.

COMMITTEE PROPOSAL No. 22—

Introduced by Delegate Staggs, Chairman, on behalf of the Committee on Executive Department, and Delegates Abraham, Alexander, Anzalone, Arnette, Brien, Dennery, Duval, Gravel, Stovall, and Tapper:

A PROPOSAL

Making provisions for a code of ethics and the Louisiana Board of Ethics.

Be it adopted by the Constitutional Convention of Louisiana of 1973:

Article —.

Section 1. Code of Ethics

Section 1. The legislature shall enact a code of ethics for all officials and employees of the state and its political subdivisions. The code shall be administered by one or more boards created by the legislature with qualifications, terms of office, duties, and powers provided by law. Decisions of a board shall be appealable, and the legislature shall provide the method of appeal.

COMMITTEE PROPOSAL No. 23—

Introduced by Delegate Staggs, Chairman, on behalf of the Committee on Executive Department, and Delegates Abraham, Arnette, Brien, Dennery, Gravel, Stovall, and Tapper:

A PROPOSAL

Defining and regulating dual employment and defining, regulating and prohibiting dual officeholding in state and local government.

Be it adopted by the Constitutional Convention of Louisiana of 1973:

Article . Section . Dual Employment and Dual Officeholding.

Section. The legislature shall enact laws defining and regulating dual employment and defining, regulating, and prohibiting dual officeholding in state and local government.

COMMITTEE PROPOSAL No. 31—

Introduced by Delegate Staggs, Chairman, on behalf of the Committee on Executive Department, and Delegates Abraham, Alexander, Anzalone, Arnette, Asseff, Brien, Dennery, Duval, Gravel, Stovall, and Tapper (A Substitute for Committee Proposal No. 19):

A PROPOSAL

Making provisions in the Schedule provisions of the constitution for mandatory reorganization of the executive branch of state government.

Be it adopted by the Constitutional Convention of Louisiana of 1973:

ARTICLE XIV. SCHEDULE

Section 1. Mandatory Reorganization of State Government

Section 1. The legislature shall allocate, within not more than twenty departments, the functions, powers, duties and responsibilities of all departments, offices, agencies, and other instrumentalities within the executive branch, except those allocated by this constitution. The allocation, which shall not be subject to veto by the governor, shall become operative not later than December 31, 1977.

Respectfully submitted,

MOISE DENNERY
Secretary.

The Proposals contained in the report were signed by the Chairman of the Convention and attested by the Secretary in accordance with the Rules.

PAGE 17

115th Days Proceedings—January 11, 1974

NOT VOTING

Delegates—

Alario	Haynes	Rayburn
Anzalone	Jones	Thompson
Brown	Kilbourne	Vick
Dunlap	Lambert	Wall
Edwards	Morris	Warren
Fontenot	Munson	Womack
Fowler	Ourso	

Total—20.

And the Resolution was adopted.

And the Chair declared that the above Resolution was adopted.

Delegate Staggs moved to reconsider the vote by which the Resolution was adopted, and, on his own motion, the motion to reconsider was laid on the table.

Motion

Delegate Burson moved for a suspension of the rules in order to discharge Committee Proposal No. 21 from the Committee on Style and Drafting.

Delegate Tapper objected.

By a vote of 74 yeas and 10 nays the rules were suspended.

Reconsideration

Delegate Burson moved to reconsider the vote by which Committee Proposal No. 21 was passed.

Delegate Tapper objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—

Mr. Chairman	Flory	O'Neill
Abraham	Fontenot	Perez
Alexander	Fulco	Perkins
Arnette	Gauthier	Planchard
Asselt	Ginn	Pugh
Avant	Graham	Reeves
Badeaux	Gravel	Riecke
Bel	Grier	Sandoz
Bergeron	Guarisco	Schmitt
Blair	Hayes	Segura
Bollinger	Jack	Shannon
Brien	Jackson, A.	Singletary
Burns	Jenkins	Slay
Burson	Juneau	Smith
Cannon	Kelly	Soniak
Casey	Kilpatrick	Stagg
Champagne	Landrum	Stephenson
Chatelain	Landry, A.	Sutherland
Chehard	Landry, E. J.	Tate
Conino	Lanier	Thistlethwaite
Corne	LeBleu	Tobias
Cowen	Leigh	Toca
D'Gerolamo	Leithman	Toomy
De Blieux	Low	Ulio
Dennery	McDaniel	Warren
Dennis	Martin	Wattigny
Derbes	Maubert	Weiss
Deshotels	Maybuc	Willis
Drew	Miller	Winchester
Duval	Mire	Wisham
Elkins	Newton	Zervigon
Fayard		

Total—94.

NAYS

Delegates—

Conroy	Jones	Tapper
Giarrusso	Nunez	Velazquez
Goldman	Roemer	Vesich
Hardee	Stinson	

Total—11.

NOT VOTING

Delegates—

Aertker	Haynes	Ourso
Alario	Heine	Rachal
Anzalone	Hernandez	Rayburn
Brown	Jackson, J.	Roy
Carmouche	Kean	Slovall
Comar	Kilbourne	Thompson
Dunlap	Lambré	Vick
Edwards	Morris	Wall
Fowler	Munson	Womack

Total—27.

And the vote by which Committee Proposal No. 21 was passed, was reconsidered.

Motion

On motion of Delegate Burson the rules were suspended in order to call from the table the motion to reconsider the vote by which Committee Proposal No. 21, Section 35, was passed for the limited purpose of offering an amendment thereto.

Reconsideration

On motion of Delegate Burson the vote by which Committee Proposal No. 21, Section 33, was passed, was reconsidered.

Proposals, Delegate and Committee

The following entitled Delegate and Committee Proposals were taken up on their third reading and final passage:

COMMITTEE PROPOSAL No. 21—

Introduced by Delegate Dennis, Chairman, on behalf of the Committee on the Judiciary and Delegates Avant, Bel, Bergeron, Burns, Deshotels, Drew, Gauthier, Kelly, Kilbourne, Landry, Martin, Ourso, Sandoz, Tate and Vesich (A Substitute for Committee Proposal No. 6):

A PROPOSAL

Making provisions for the judiciary branch of government and necessary provisions with respect thereto.

Read.

Section 35. Orleans Parish Courts, Officials; Continued

Section 33. Orleans Parish Courts, Officials

Section 33. Except for provisions relating to terms of office as provided elsewhere in this Article, and notwithstanding any other contrary provision of this constitution, the following courts and officers in Orleans Parish are continued, subject to change by law: the civil and criminal district courts; the city, municipal, traffic, and juvenile courts; the clerks of the civil and criminal district courts; the civil and criminal sheriffs; the constables and the clerks of the first and second city courts; the register of conveyances; and the recorder of mortgages.

Read.

Delegate Burson sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates Henry, Gravel, Pugh, Graham, A. Jackson and Burson to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend Final Enrolled Proposal as follows:

AMENDMENT No. 1—

On page 11, delete lines 24 through 26, both inclusive, in their entirety, being the entirety of Paragraph (B) of Section 35, and insert in lieu thereof the following:

"(B) Right to Counsel. The legislature may establish by law terms and conditions under which a witness may have the right to the advice of counsel while testifying before the grand jury."

Delegate Burson moved the adoption of the amendment.

Delegate Stinson objected.

A record vote was asked for and ordered by the Convention.

PAGE 18

115th Days Proceedings—January 11, 1974

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Gauthier	Perkins
Abraham	Giarrusso	Planchard
Alexander	Ginn	Pugh
Arnette	Goldman	Rachal
Asseff	Graham	Reeves
Avant	Gravel	Riecke
Badeaux	Grier	Roy
Bel	Hardee	Sandoz
Bergeron	Jack	Schmitt
Blair	Jackson, A.	Segura
Bollinger	Jackson, J.	Shannon
Brien	Jenkins	Singletery
Burns	Juneau	Slay
Burson	Kelly	Smith
Cannon	Kilpatrick	Soniat
Casey	Landrum	Stagg
Champagne	Landry, A.	Stephenson
Chatelain	Landry, E. J.	Sutherland
Chehardy	Lanier	Tate
Conino	Leigh	Thistlethwaite
D'Gerolamo	Leithman	Tobias
De Blieux	Lowe	Toca
Dennery	McDaniel	Toomy
Dennis	Martin	Uilo
Derbes	Maubert	Velazquez
Deshotels	Maybuce	Vesich
Drew	Miller	Warren
Duval	Mire	Wattigny
Elkins	Morris	Weiss
Fayard	Newton	Willis
Flory	Nunez	Winchester
Fulco	O'Neill	Wisham
	Perez	Zervigon
Total—99.		

NAYS

Delegates—		
Conroy	LeBleu	Tapper
Hernandez	Roemer	Vick
Jones	Stinson	
Total—8.		

NOT VOTING

Delegates—		
Aertker	Fontenot	Lambert
Alario	Fowler	Munson
Anzalone	Guarisco	Ours
Brown	Hayes	Rayburn
Carmouche	Haynes	Slovall
Comar	Heine	Thompson
Cowen	Kean	Wall
Dunlap	Kilbourne	Womack
Edwards		
Total—25.		

And the amendment was adopted.

Delegate Burson moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Passage

Committee Proposal No. 21, Section 33 was read, as amended.

Delegate Burson moved the final passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Arnette	Badeaux
Abraham	Asseff	Bel
Alexander	Avant	Bergeron

Delegates—		
Blair	Hardee	Rachal
Bollinger	Hayes	Reeves
Brien	Hernandez	Riecke
Burson	Jack	Roy
Cannon	Jackson, A.	Sandoz
Casey	Jackson, J.	Schmitt
Champagne	Jenkins	Segura
Chatelain	Juneau	Shannon
Chehardy	Kelly	Singletery
Conino	Kilpatrick	Slay
Conroy	Landry, A.	Smith
Corne	Landry, E. J.	Stagg
D'Gerolamo	Lanier	Stephenson
De Blieux	LeBlau	Sutherland
Dennery	Leigh	Tapper
Dennis	Leithman	Tate
Derbes	Lowe	Thistlethwaite
Deshotels	McDaniel	Tobias
Drew	Martin	Toca
Duval	Maubert	Toomy
Elkins	Maybuce	Uilo
Fayard	Miller	Velazquez
Flory	Mire	Vesich
Fulco	Morris	Vick
Giarrusso	Newton	Warren
Ginn	Nunez	Wattigny
Goldman	O'Neill	Weiss
Graham	Perez	Willis
Gravel	Perkins	Winchester
Grier	Planchard	Wisham
Guarisco	Pugh	Zervigon
Total—101.		

NAYS

Delegates—		
Landrum	Roemer	Stinson
Total—3.		

NOT VOTING

Delegates—		
Aertker	Edwards	Lambert
Alario	Fontenot	Munson
Anzalone	Fowler	Ours
Brown	Gauthier	Rayburn
Burns	Haynes	Sonia
Carmouche	Heine	Stovall
Comar	Jones	Thompson
Cowen	Kean	Wall
Dunlap	Kilbourne	Womack
Total—28.		

And the Chair declared that the above Section was finally passed.

Delegate Burson moved to reconsider the vote by which the above Section was finally passed, and, on his own motion, the motion to reconsider was laid on the table.

Passage

The Proposal was read, as amended.

Delegate Dennis moved the final passage of the entire Proposal.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Chehardy	Ginn
Abraham	Conino	Goldman
Alexander	Conroy	Graham
Arnette	Corne	Gravel
Asseff	Cowen	Grier
Avant	D'Gerolamo	Guarisco
Badeaux	De Blieux	Hardee
Bel	Dennery	Hayes
Bergeron	Dennis	Hernandez
Blair	Derbes	Jack
Bollinger	Deshotels	Jackson, A.
Brien	Drew	Jackson, J.
Burson	Duval	Jenkins
Cannon	Fayard	Jones
Casey	Flory	Juneau
Champagne	Fulco	Kelly
Chatelain	Giarrusso	Kilpatrick

PAGE 19

115th Days Proceedings—January 11, 1974

Landrum	Perkins	Tapper
Landry, A.	Planchar	Tate
Landry, E. J.	Pugh	Thistlethwaite
Lanier	Rachal	Tobias
LeBleu	Reeves	Toca
Leithman	Riecke	Toomy
Lewis	Roy	Ullio
McDaniel	Sandoz	Velazquez
Martin	Schmitt	Vesich
Mauberet	Segura	Vick
Maybuce	Shannon	Warren
Miller	Singletary	Wattigny
Mire	Slay	Weiss
Morris	Smith	Willis
Newton	Soniat	Winchester
Nunez	Stagg	Wisham
O'Neill	Stephenson	Zervigon
Perez	Sutherland	

Total—104.

Delegates—
Roemer
Total—2.

NAYS

Stinson

NOT VOTING

Delegates—
Aertker
Alario
Anzalone
Brown
Burns
Carmouche
Comar
Dunlap
Edwards
Total—26.

Elkins
Fontenot
Fowler
Gauthier
Haynes
Heine
Kean
Kilbourne
Lambert

Leigh
Munson
Ours
Rayburn
Stovall
Thompson
Wall
Womack

And the Chair declared that the above Proposal was finally passed.

Motion to reconsider pending.

Motion

Delegate Roy moved for a suspension of the rules in order to discharge Committee Proposal No. 35 from the Committee on Style and Drafting.

Delegate Bollinger objected.

By a vote of 83 yeas and 7 nays the rules were suspended.

Reconsideration

Delegate Roy moved to reconsider the vote by which Committee Proposal No. 35 was passed.

Delegate Bollinger objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates— Mr. Chairman Abraham Alexander Arnette Asseff Avant Badeaux Bergeron Blair Brien Burson Cannon Casey Champagne	Chatelain Chehardy Comar Conino Conroy Corne Cowen De Blieux Dennery Dennis Derbes Fayard Flory Fulco	Ginn Goldman Graham Gravel Hayes Haynes Jack Jackson, A. Jackson, J. Jenkins Jones Juneau Kelly Kilpatrick
---	--	---

Landrum
Landry, A.
Landry, E. J.
Lanier
LeBleu
Leithman
Martin
Mauberet
Maybuce
Miller
Newton
O'Neill
Perkins
Total—81.

Pugh
Reeves
Roy
Sandoz
Schmitt
Segura
Singletary
Slay
Soniat
Stagg
Sutherland
Tapper
Tate

Thistlethwaite
Tobias
Toca
Toomy
Ullio
Velazquez
Vick
Warren
Wattigny
Weiss
Willis
Wisham
Zervigon

Delegates—

Aertker
Bollinger
D'Gerolamo
Deshotels
Drew
Duval
Elkins
Gauthier
Giarrusso
Total—24.

NAYS

Grier
Guarisco
Hardee
Heine
Hernandez
Kean
Lowe
McDaniel
Mire

Nunez
Perez
Planchar
Riecke
Roemer
Shannon
Smith
Stinson
Winchester

NOT VOTING

Delegates—
Alario
Anzalone
Bel
Brown
Burns
Carmouche
Dunlap
Edwards
Total—26.

Fontenot
Fowler
Kilbourne
Lambert
Leigh
Morris
Munson
Ours

Rachal
Rayburn
Stephenson
Stovall
Thompson
Vesich
Wall
Womack

And the vote by which Committee Proposal No. 35 was passed was reconsidered.

Motion

Delegate Roy moved for a suspension of the rules and the rules were suspended in order to reconsider the vote by which Committee Proposal No. 35, Section 9, was passed, was passed for the limited purpose of offering an amendment thereto.

Delegate Winchester objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—
Mr. Chairman
Abraham
Alexander
Arnette
Asseff
Avant
Badeaux
Bergeron
Blair
Brien
Burson
Cannon
Casey
Champagne
Chatelain
Chehardy
Conino
Conroy
Corne
De Blieux
Dennery
Dennis
Derbes
Fayard
Flory
Ginn
Total—78.

Graham
Gravel
Guarisco
Hayes
Haynes
Jack
Jackson, A.
Jackson, J.
Jenkins
Jones
Juneau
Kelly
Kilpatrick
Landrum
Landry, A.
Landry, E. J.
Lanier
LeBleu
Leithman
Martin
Mauberet
Maybuce
Miller
Newton
O'Neill
Perkins

Pugh
Reeves
Roy
Sandoz
Schmitt
Segura
Singletary
Slay
Soniat
Stagg
Sutherland
Tapper
Tate
Thistlethwaite
Tobias
Toca
Toomy
Ullio
Velazquez
Vick
Warren
Wattigny
Weiss
Willis
Wisham
Zervigon

PAGE 10

116th Days Proceedings—January 12, 1974

Section 4. Right to Direct Participation

Section 4. No person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law.

Section 5. Oath of Office

Section 5. All officers shall take the following oath or affirmation: "I, (A B), do solemnly swear (or affirm) that I will support the constitution and laws of the United States and the constitution and laws of this state and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _____ according to the best of my ability and understanding, so help me God."

Section 6. State Capital

Section 6. The capital of Louisiana is the city of Baton Rouge.

Section 7. Forced Heirship and Trusts

Section 7. No law shall abolish forced heirship. The determination of forced heirs, the amount of the forced portion, and the grounds for disinheritance shall be provided by law. Trusts may be authorized by law and a forced portion may be placed in trust.

Section 10. Administrative and Quasi-Judicial Agency Code
Section 10. Rules, regulations and procedures adopted by all state administrative and quasi-judicial agencies, boards and commissions shall be published in one or more codes and made available to the public.

Section 11. Preservation of Linguistic and Cultural Origin

Section 11. The right of the people to preserve, foster, and promote their respective historic linguistic and cultural origin is recognized.

Respectfully submitted,

MOISE W. DENNERY
Secretary

Under the Rules, referred to the Committee on Style and Drafting.

Delegate Dennery, Secretary of the Constitutional Convention of 1973, submits the following report:

Constitutional Convention of 1973 State of Louisiana

January 12, 1974, Baton Rouge, La.

To the Chairman and Delegates of the Convention:

I submit the following report:

That the following Committee Proposal has been properly enrolled in final form:

COMMITTEE PROPOSAL No. 35—

Introduced by Delegate A. Jackson, Chairman, on behalf of the Committee on Bill of Rights and Elections (Substitute for Committee Proposal No. 1, by Delegate A. Jackson, Chairman, on behalf of the Committee on Bill of Rights and Elections, and Delegates Dunlap, Guarisco, Roy, Soniat, Stinson, Vick and Wall):

A PROPOSAL

Providing for general governmental provisions.

Be it adopted by the Constitutional Convention of Louisiana of 1973:

ARTICLE II. DISTRIBUTION OF POWERS

Section 1. Three Branches

Section 1. The powers of government of the state are divided into three separate branches: legislative, executive, and judicial.

Section 2. Limitations on Each Branch

Section 2. Except as otherwise provided by this constitution, no one of these branches, nor any person holding office in one of them, shall exercise power belonging to either of the others.

ARTICLE XII. GENERAL PROVISIONS

Section 1. Civilian-Military Relations

Section 1. The military shall be subordinate to the civil power.

Section 2. Right to Direct Participation

Section 2. No person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law.

Section 3. Oath of Office

Section 3. Every official shall take the following oath or affirmation: "I, _____, do solemnly swear (or affirm) that I will support the constitution and laws of the United States and the constitution and laws of this state and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _____ according to the best of my ability and understanding, so help me God."

Section 4. State Capital

Section 4. The capital of Louisiana is the city of Baton Rouge.

Section 5. Forced Heirship and Trusts

Section 5. No law shall abolish forced heirship. The determination of forced heirs, the amount of the forced portion, and the grounds for disinheritance shall be provided by law. Trusts may be authorized by law, and a forced portion may be placed in trust.

Section 7. Administrative and Quasi-Judicial Agency Code

Section 7. Rules, regulations, and procedures adopted by all state administrative and quasi-judicial agencies, boards, and commissions shall be published in one or more codes and made available to the public.

Section 8. Preservation of Linguistic and Cultural Origins

Section 8. The right of the people to preserve, foster, and promote their respective historic linguistic and cultural origins is recognized.

Respectfully submitted,

MOISE W. DENNERY
Secretary

The Proposal contained in the report was signed by the Chairman of the Convention and attested by the Secretary in accordance with the Rules.

Delegate Dennery, Secretary of the Constitutional Convention of 1973, submits the following report:

Constitutional Convention of 1973 State of Louisiana

January 12, 1974, Baton Rouge, La.

To the Chairman and Delegates of the Convention:

I submit the following report:

That the following Committee Proposal has been properly re-enrolled in final form:

COMMITTEE PROPOSAL No. 21—

Introduced by Delegate Dennis, Chairman, on behalf of the Committee on the Judiciary, and Delegates Avant, Bel, Bergeron, Burns, Deshetels, Drew, Gauthier, Kelly, Kibbourne, Landry, Martin, Ourso, Sandoz, Tate, and Vesich (A Substitute for Committee Proposal No. 6):

A PROPOSAL

Making provisions for the judiciary branch of government and necessary provisions with respect thereto.

Be it adopted by the Constitutional Convention of Louisiana of 1973:

ARTICLE V. JUDICIAL BRANCH

Section 1. Judicial Power

Section 1. The judicial power is vested in a supreme court, courts of appeal, district courts, and other courts authorized by this Article.

Section 2. A Habeas Corpus, Needful Writs, Orders and Process Contempt.

Section 2. A judge may issue writs of habeas corpus and all other needful writs, orders, and process in aid of the jurisdiction of his court. Exercise of this authority by a judge of the supreme court or of a court of appeal is subject to review by the whole court. The power to punish for contempt of court shall be limited by law.

Section 3. Supreme Court; Composition; Judgments; Terms
Section 3. The supreme court shall be composed of a chief justice and six associate justices, four of whom must concur to render judgment. The term of a supreme court judge shall be ten years.

Section 4. Supreme Court; Districts

Section 4. The state shall be divided into at least six supreme court districts, and at least one judge shall be elected from each. The districts and the number of judges assigned to each on the effective date of this constitution are retained, subject to change by law enacted by two-thirds of the elected members of each house of the legislature.

Section 5. Supreme Court; Jurisdiction; Rule-Making Power; Assignment of Judges

Section 5. (A) Supervisory Jurisdiction: Rule-Making Power; Assignment of Judges. The supreme court has general supervisory jurisdiction over all other courts. It may establish procedural and administrative rules not in conflict with law and may assign a sitting or retired judge to any court.

(B) Original Jurisdiction. The supreme court has exclusive original jurisdiction of disciplinary proceedings against a member of the bar.

(C) Scope of Review. Except as otherwise provided by this constitution, the jurisdiction of the supreme court in civil cases extends to both law and facts. In criminal matters, its appellate jurisdiction extends only to questions of law.

(D) Appellate Jurisdiction. In addition to other appeals provided by this constitution, a case shall be appealable to the supreme court if (1) a law or ordinance has been declared unconstitutional; (2) the defendant has been convicted of a felony or a fine exceeding five hundred dollars or imprisonment exceeding six months actually has been imposed.

(E) Other Criminal Cases. Review. In all criminal cases not provided in Paragraph (D) (2) of this Section, a defendant has a right of appeal or review, as provided by law.

(F) Appellate Jurisdiction; Civil Cases; Extent. Subject to the provisions in Paragraph (C), the supreme court has appellate jurisdiction over all issues involved in a civil action properly before it.

Section 6. Supreme Court; Chief Justice

Section 6. The judge oldest in point of service on the supreme court shall be chief justice. He is the chief administrative officer of the judicial system of the state, subject to rules adopted by the court.

Section 7. Supreme Court; Personnel

Section 7. The supreme court may select a judicial administrator, its clerks, and other personnel and prescribe their duties.

Section 8. Courts of Appeal; Circuits; Panels; Judgments; Terms

Section 8. (A) Circuits; Panels. The state shall be divided into at least four circuits, with one court of appeal in each. Each court shall sit in panels of at least three judges selected according to rules adopted by the court.

(B) Judgments. A majority of the judges sitting in a case must concur to render judgment. However, when a judgment of a district court is to be modified or reversed and one judge dissents, the case shall be reargued before a panel of at least five judges prior to rendition of judgment, and a majority must concur to render judgment.

(C) Terms. The term of a court of appeal judge shall be ten years.

Section 9. Courts of Appeal; Circuits and Districts

Section 9. Each circuit shall be divided into at least three districts, and at least one judge shall be elected from each. The circuits and districts and the number of judges as elected in each circuit on the effective date of this constitution are retained, subject to change by law enacted by two-thirds of the elected members of each house of the legislature.

Section 10. Courts of Appeal; Jurisdiction

Section 10. (A) Jurisdiction. Except in cases appealable to the supreme court and except as otherwise provided by this constitution, a court of appeal has appellate jurisdiction of all (1) civil matters decided within its circuit and (2) matters appealed from family and juvenile courts, except criminal prosecutions of persons other than juveniles. It has supervisory jurisdiction over cases in which an appeal would lie to it.

(B) Scope of Review. Except as limited to questions of law by this constitution, or as provided by law in the review of administrative agency determinations, appellate jurisdiction of a court of appeal extends to law and facts.

Section 11. Courts of Appeal; Certification

Section 11. A court of appeal may certify any question of law before it to the supreme court, and the supreme court then may give its binding instruction or decide the case upon the whole record.

Section 12. Courts of Appeal; Chief Judge

Section 12. The judge oldest in point of service on each court of appeal shall be chief judge of that court and shall administer the court subject to rules adopted by it.

Section 13. Courts of Appeal; Personnel

Section 13. Each court of appeal may select its clerk and other personnel and prescribe their duties.

Section 14. District Courts; Judicial Districts

Section 14. The state shall be divided into judicial districts, each composed of at least one parish and served by at least one district judge.

Section 15. Courts; Retention; Jurisdiction; Judicial District Changes; Terms

Section 15. (A) Court Retention; Trial Courts of Limited Jurisdiction. The district, family, juvenile, parish, city, and magistrate courts existing on the effective date of this constitution are retained. Subject to the limitations in Sections 16 and 20 of this Article, the legislature may abolish or merge trial courts of limited or specialized jurisdiction. The legislature may establish trial courts of limited jurisdiction with parishwide territorial jurisdiction and subject matter jurisdiction which shall be uniform throughout the state. The office of city marshal is continued until the city court he serves is abolished.

(B) Judicial Districts. The judicial districts existing on the effective date of this constitution are retained. Subject to the limitations in Section 20 of this Article, the legislature may establish, divide, or merge judicial districts with approval in a referendum in each district and parish affected.

(C) Term. The term of a district, parish, or city court judge shall be six years.

(D) Number of Judges. The legislature may change the number of judges in any judicial district by law enacted by two-thirds of the elected members of each house.

Section 16. District Courts; Jurisdiction

Section 16. (A) Original Jurisdiction. Except as otherwise authorized by this constitution, a district court shall have original jurisdiction of all civil and criminal matters. It shall have exclusive original jurisdiction of felony cases and of cases involving title to immovable property; the right to office or other public position; civil or political rights; probate and succession matters; the state, a political corporation, or political subdivisions, or a succession, as a defendant; and the appointment of receivers or liquidators for corporations or partnerships.

(B) Appellate Jurisdiction. A district court shall have appellate jurisdiction as provided by law.

Section 17. District Courts; Chief Judge

Section 17. Each district court shall elect from its members a chief judge who shall exercise, for a term designated by the court, the administrative functions prescribed by rule of court.

Section 18. Juvenile Courts; Jurisdiction

Section 18. Notwithstanding any contrary provision of Section 16 of this Article, juvenile and family courts shall have jurisdiction as provided by law.

Section 19. Mayors' Courts; Justice of the Peace Courts

Section 19. Mayors' courts and justice of the peace courts existing on the effective date of this constitution are continued, subject to change by law.

Section 20. Judges; Decrease in Terms and Compensation Prohibited

Section 20. The term of office, retirement benefits, and compensation of a judge shall not be decreased during the term for which he is elected.

Section 21. Judges; Election; Vacancy

Section 21. (A) Election. Except as otherwise provided in this Section, all judges shall be elected. Election shall be at the regular congressional election.

(B) Vacancy. A newly-created judgeship or a vacancy in the office of a judge shall be filled by special election called by the governor and held within 90 days after the day on which the vacancy occurs or the judgeship is established, except when the vacancy occurs in the last six months of an existing term. Until the vacancy is filled, the supreme court shall appoint a person meeting the qualifications for the office, other than domicile, to serve at its pleasure. The appointee shall be ineligible as a candidate at the election to fill the vacancy or the newly-created judicial office. No person serving as an appointed judge, other than a retired judge, shall be eligible for retirement benefits provided for the elected judiciary.

(C) End of Term. A judge serving on the effective date of this constitution shall serve through December thirty-first of the last year of his term or, if the last year of his term is not in the year of a regular congressional election, then through December thirty-first of the following year. The

PAGE 12

116th Days Proceedings—January 12, 1974

election for the next term shall be held in the year in which the term expires, as provided above.

Section 22. Judges; Retirement

Section 22. (A) Retirement System. Within two years after the effective date of this constitution, the legislature shall provide for a retirement system for judges which shall apply to a judge taking office after the effective date of the law enacting the system and in which a judge in office at that time may elect to become a member, with credit for all prior years of judicial service and without contribution therefor. The retirement benefits and judicial service rights of a judge in office or retired on the effective date of this constitution shall not be diminished, nor shall the benefits to which a surviving spouse is entitled be reduced.

(B) Mandatory Retirement. Except as otherwise provided in this Section, a judge shall not remain in office beyond his seventieth birthday.

Section 23. Judges; Qualifications

Section 23. A judge of the supreme court, a court of appeal, district court, family court, parish court, or court having solely juvenile jurisdiction shall have been admitted to the practice of law in this state for at least five years prior to his election, and shall have been domiciled in the respective district, circuit, or parish for the two years preceding election. He shall not practice law.

Section 24. Judicial Commission

Section 24. (A) Composition. The judiciary commission shall consist of

(1) one court of appeal judge and two district court judges selected by the supreme court;

(2) two attorneys admitted to the practice of law for at least ten years and one attorney admitted to the practice of law for at least three years but not more than ten years, selected by the Conference Court of Appeal Judges or its successor. They shall not be judges, active or retired, or public officials, other than notaries public; and

(3) three citizens, not lawyers, judges active or retired, or public officials, selected by the Louisiana District Judges Association or its successor.

(B) Term; Vacancy. A member of the commission shall serve a four-year term and shall be ineligible to succeed himself. His term shall end upon the occurrence of any event which would have made him ineligible for appointment. When a vacancy occurs, a successor shall be appointed for a four-year term by the authority which appointed his predecessor.

(C) Powers. On recommendation of the judiciary commission, the supreme court may censure, suspend with or without salary, remove from office, or retire involuntarily a judge for willful misconduct relating to his official duty, willful and persistent failure to perform his duty, persistent and public conduct pre-judicial to the administration of justice that brings the judicial office into disrepute, conduct while in office which would constitute a felony, or conviction of a felony. On recommendation of the judiciary commission, the supreme court may disqualify a judge from exercising any judicial function, without loss of salary, during pendency of proceedings in the supreme court. On recommendation of the judiciary commission, the supreme court may retire involuntarily a judge for disability that seriously interferes with the performance of his duties and that is or is likely to become permanent. The supreme court shall make rules implementing this Section and providing for confidentiality and privilege of commission proceedings.

(D) Other Disciplinary Action. Action against a judge under this Section shall not preclude disciplinary action against him concerning his license to practice law.

Section 25. Department of Justice; Attorney General; Assistants

Section 25. There shall be a Department of Justice consisting of an attorney general, a first assistant attorney general, and other necessary assistants and staff. The attorney general shall be elected for a term of four years at the state general election. He shall appoint assistants to serve at his pleasure.

Section 26. Attorney General; Powers and Duties

Section 26. The attorney general shall be the chief legal officer of the state. As necessary for the assertion or pro-

tection of the rights and interests of the state, the attorney general may

(1) institute and prosecute or intervene in any civil action or proceeding;

(2) advise and assist, upon request of a district attorney, in the prosecution of a criminal case; and

(3) for cause, when authorized by the court of original jurisdiction in which any proceeding or affidavit is pending and subject to judicial review, supersede any attorney representing the state in any civil or criminal action.

He shall have other powers and perform other duties authorized by this constitution or provided by law.

Section 27. District Attorneys

Section 27. (A) Election; Qualifications; Assistants. In each judicial district a district attorney shall be elected for a term of six years. He shall have been admitted to the practice of law in the state for at least five years prior to his election and shall have resided in the district for the two years preceding election. A district attorney may select assistants as authorized by law, and other personnel.

(B) Powers. Except as otherwise provided by this constitution, a district attorney, or his designated assistant, shall have charge of every criminal prosecution by the state in his district, be the representative of the state before the grand jury in his district, and be the legal adviser to the grand jury. He shall perform other duties provided by law.

(C) Prohibition. No district attorney or assistant district attorney shall appear, plead, or in any way defend or assist in defending any criminal prosecution or charge. A violation of this Paragraph shall be cause for removal.

Section 28. Sheriffs

Section 28. In each parish a sheriff shall be elected for a term of four years. He shall be the chief law enforcement officer in the parish, except as otherwise provided by this constitution, and shall execute court orders and process. He shall be the collector of state and parish ad valorem taxes and such other taxes and license fees as provided by law.

This Section shall not apply to Orleans Parish.

Section 29. Clerks of Court

Section 29. (A) Powers and Duties; Deputies. In each parish a clerk of the district court shall be elected for a term of four years. He shall be ex officio notary public and parish recorder of conveyances, mortgages, and other acts and shall have other duties and powers provided by law. This clerk may appoint deputies with duties and powers provided by law and, with the approval of the district judges, he may appoint minute clerks with duties and powers provided by law.

(B) Office Hours. The legislature shall establish uniform statewide office hours for clerks of the district courts.

Section 30. Coroners

Section 30. In each parish a coroner shall be elected for a term of four years. He shall be a licensed physician and possess the other qualifications and perform the duties provided by law. The requirement that he be a licensed physician shall be inapplicable in any parish in which no licensed physician will accept the office.

Section 31. Vacancies

Section 31. When a vacancy occurs in the following offices, the duties of the office, until it is filled by election as provided by law, shall be assumed by the persons herein designated:

(1) sheriff, by the chief criminal deputy; (2) district attorney, by the first assistant; (3) clerk of a district court, by the chief deputy; (4) coroner, by the chief deputy. If there is no such person to assume the duties when the vacancy occurs, the governing authority or authorities of the parish or parishes concerned shall appoint a qualified person to assume the duties of the office until filled by election.

Section 32. Reduction of Salaries and Benefits Prohibited. The salary and retirement benefits of an attorney general, district attorney, sheriff, coroner, or clerk of the district court shall not be diminished during his term of office.

Section 33. Orleans Parish Courts, Officials

Section 33. Except for provisions relating to terms of office as provided elsewhere in this Article, and notwithstanding any other contrary provision of this constitution, the following courts and officers in Orleans Parish are continued, subject to change by law; the civil and criminal district courts; the city, municipal, traffic, and juvenile courts; the clerks of the civil and criminal district courts; the civil and criminal sheriffs; the constables and the clerks of the first and second city courts; the register of conveyances; and the recorder of mortgages.

PAGE 13

116th Days Proceedings—January 12, 1974

Section 34. Jurors

Section 34. (A) Qualifications. A citizen of the state who has reached the age of majority is eligible to serve as a juror within the parish in which he is domiciled. The legislature may provide additional qualifications.

(B) Exemptions. The supreme court shall provide by rule for exemption of jurors.

Section 35. Grand Jury

Section 35. (A) Grand Jury. There shall be a grand jury or grand juries in each parish, whose qualifications, duties, and responsibilities shall be provided by law. The secrecy of the proceedings, including the identity of witnesses, shall be provided by law.

(B) Right to Counsel. The legislature may establish by law terms and conditions under which a witness may have the right to the advice of counsel while testifying before the grand jury.

Respectfully submitted,

MOISE W. DENNERY,
Secretary.

The Proposals contained in the report were signed by the Chairman of the Convention and attested by the Secretary in accordance with the Rules.

Delegate Dennerly, Secretary of the Constitutional Convention of 1973, submits the following report:

Constitutional Convention of 1973
State of Louisiana

January 12, 1974, Baton Rouge, La.

To the Chairman and Delegates of the Convention:

I submit the following report:

That the following entitled Committee Resolution having been finally adopted by the Convention has been properly enrolled in final form:

COMMITTEE RESOLUTION No. 13—

Introduced by Delegate Stovall, Chairman, on behalf of the Committee on Rules, Credentials and Ethics (Substitute for Committee Resolution No. 3, by Delegate Stovall, et al.):

A RESOLUTION

To amend the Standing Rules of the Constitutional Convention to add a new Rule 37.1, to provide expressly for submission of alternative provisions.

WHEREAS, Act 2 of the 1972 Regular Session provides for alternative provisions; and

WHEREAS, the Standing Rules are presently silent on the procedure by which alternative provisions may be introduced and considered; and

WHEREAS, the results of the vote of the people on recently proposed constitutions in other states clearly indicate that a constitution submitted to the people with alternatives will include to a greater extent involvement of all voters of Louisiana in the convention; and

WHEREAS, the delegates of CC/73 are desirous that this convention adopt a constitution that will be ratified by the voters.

THEREFORE, BE IT RESOLVED that Rule No. 37.1 is adopted to read as follows:

Rule No. 37.1. Submission of Alternative Provisions

A. Alternative provisions authorized by Act No. 2 of the 1972 Regular Session to be submitted to a vote of the people shall be determined by the convention only in the manner provided below. Notwithstanding Rule No. 42, a delegate may introduce a proposal setting forth a proposed alternative. Such a proposal shall state specifically (1) the text of the alternative; (2) any deletions of presently adopted paragraphs, or sections, or the like; (3) the effect of the alternative, if adopted by the people, in terms of additions to and deletions from the body of the proposed constitution; and (4) the text of the ballot proposition on the alternative. Any proposal so introduced must bear the names of at least forty delegates. No such proposal may be introduced after January 15, 1974.

C. All proposals setting forth proposed alternatives shall lie over for convention action on January 16, 1974. On that day, there shall be put to the convention the question of the final passage of each such proposal. Debate on the question on each proposal shall be limited to two hours with the time equally divided between proponents and opponents. Each proposal receiving a favorable vote of sixty-seven delegates shall be adopted and shall be referred to the Committee on Style and Drafting. Every proposal shall be subject to floor amendment.

D. Not later than 12:00 Noon, January 17, 1974, the Committee on Style and Drafting shall report each proposal referred to it to the convention.

E. No alternative provision shall be included on the ballot unless approved on final passage by a majority of the membership of the convention, which approval shall be by record vote.

Respectfully submitted,

MOISE W. DENNERY
Secretary.

The Resolution contained in the report was signed by the Chairman of the Convention and attested by the Secretary in accordance with the Rules.

COMMITTEE NOTICE

Delegate Zervigon, chairman of the Committee on Legislative Liason and Transitional Measures, sent up the following notice:

The Committee on Legislative Liason and Transitional Measures will meet on Monday, January 14, 1974, at 8:00 o'clock a.m. in the Treaty Room and will consider the following agenda:

AGENDA

To prepare transitional Measures to be submitted to the Convention.

Respectfully submitted,

MARY ZERVIGON
Chairman of the Committee on
Legislative Liason and Transitional Measures

The above notice was read in open session and publicly posted as provided by the Rules of Procedure of the Convention.

Motion

On motion of Delegate Roemer the rules were suspended for the purpose of calling a meeting of the Committee on Revenue, Finance and Taxation without giving the required 24 hours notice.

COMMITTEE NOTICE

Delegate Edwards, Vice-chairman of the Committee on Revenue, Finance and Taxation, sent up the following notice:

The Committee on Revenue, Finance and Taxation will meet on Saturday, January 12, 1974, after adjournment in Assembly Room—White House Inn, 8th Floor and will consider the following agenda:

AGENDA

Consideration of Style and Drafting material CP 15.

Respectfully submitted,

FRANK EDWARDS, JR.
Vice-chairman of the Committee on
Revenue, Finance and Taxation

The above notice was read in open session and publicly posted as provided by the Rules of Procedure of the Convention.

Leave of Absence

Delegate Vesich—1 day.
Delegate Thompson—1 day.

PAGE 3

117th Days Proceedings—January 14, 1974

"(D) Adoption by Two or More Local Governmental Subdivisions. Two or more local governmental subdivisions within the boundaries of one parish may adopt a home rule charter under this Section if approved by a majority of the electors in each affected local governmental subdivision voting thereon in an election held for that purpose. The legislature shall provide by law the method of appointment or election of a commission to prepare and propose a charter, consistent with Paragraph (A) of this Section and the method by which the electors may petition for an election consistent with Paragraph (B) of this Section. However, at least one member of the commission shall be elected or appointed from each affected local governmental subdivision."

AMENDMENT No. 10—

On page 3, delete line 35 and on page 4, delete lines 1 through 12, both inclusive, in their entirety and insert in lieu thereof the following:

"(E) Structure and Organization; Powers; Functions. A home rule charter adopted under this Section shall provide the structure and organization, powers, and functions of the government of the local governmental subdivision, which may include the exercise of any power and performance of any function necessary, requisite, or proper for the management of its affairs, not denied by general law or inconsistent with this constitution."

AMENDMENT No. 11—

On page 4, delete lines 13 through 18, both inclusive, in their entirety and insert in lieu thereof the following:

"(F) Additional Powers and Functions. Except as prohibited by its charter, a local governmental subdivision adopting a home rule charter under this Section shall have the additional powers and functions granted to local governmental subdivisions by other provisions of this constitution."

AMENDMENT No. 12—

On page 4, delete lines 19 through 24, both inclusive, in their entirety and insert in lieu thereof the following:

"(G) Parish Officials and School Boards Not Affected. No home rule charter or plan of government shall contain any provision affecting a school board or the offices of district attorney, sheriff, assessor, clerk of a district court, or coroner, which is inconsistent with this constitution or law."

AMENDMENT No. 13—

On page 4, delete lines 25 through 27, both inclusive, in their entirety

AMENDMENT No. 14—

On page 4, between lines 27 and 28, insert the following: "Section 6. Home Rule Charter or Plan of Government; Action by Legislature Prohibited. The legislature shall enact no law the effect of which changes or affects the structure and organization or the particular distribution and redistribution of the powers and functions of any local governmental subdivision which operates under a home rule charter."

AMENDMENT No. 15—

On page 4, delete lines 28 through 35, both inclusive, in their entirety and on page 5, delete lines 1 through 6, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 7. Powers of Other Local Governmental Subdivisions

Section 7. (A) Powers and Functions. Subject to and not inconsistent with this constitution, the governing authority of a local governmental subdivision which has no home rule charter or plan of government may exercise any power and perform any function necessary, requisite, or proper for the management of its affairs, not denied by its charter or by general law, if a majority of the electors voting in an election held for that purpose vote in favor of the proposition that the governing authority may exercise such general powers. Otherwise, the local governmental subdivision shall have the powers authorized by this constitution or by law."

AMENDMENT No. 16—

On page 4, delete lines 7 through 10, both inclusive, in their entirety and insert in lieu thereof the following:

"(B) Parish Officials and School Boards Not Affected. Nothing in this Section shall affect the powers and functions of a school board or the offices of district attorney, sheriff, assessor, clerk of a district court, or coroner."

AMENDMENT No. 17—

On page 4, delete lines 11 through 14, both inclusive, in their entirety

AMENDMENT No. 18—

On page 5, delete lines 15 through 19, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 8. Home Rule Parish; Incorporation of Cities, Towns, and Villages

Section 8. No parish plan of government or home rule charter shall prohibit the incorporation of a city, town, or village as provided by general law."

AMENDMENT No. 19—

On page 5, delete lines 20 through 25, both inclusive in their entirety and insert in lieu thereof the following:

"Section 9. Limitations of Local Governmental Subdivisions

Section 9. (A) Limitations. No local governmental subdivision shall (1) define and provide for the punishment of a felony; or (2) except as provided by law, enact an ordinance governing private or civil relationships."

AMENDMENT No. 20—

On page 5, delete lines 26 and 27, both inclusive, in their entirety and insert in lieu thereof the following:

"(B) Police Power Not Abridged. Notwithstanding any provision of this Article, the police power of the state shall never be abridged."

AMENDMENT No. 21—

On page 5, delete lines 28 through 35, both inclusive, in their entirety and on page 6, delete lines 1 through 4, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 10. Codification of Ordinances

Section 10. Within two years after the effective date of this constitution, the governing authority of each political subdivision shall have a code prepared containing all of its general ordinances. When the code is prepared, the governing authority shall make copies available for public distribution. All general ordinances adopted after the approval of the code shall be amendments or additions to the code."

AMENDMENT No. 22—

On page 6, delete lines 5 through 10, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 11. Local Officials

Section 11. The electors of each local governmental subdivision shall have the exclusive right to elect their governing authority. Nothing herein shall be construed to prohibit the election of the members from single-member districts."

AMENDMENT No. 23—

On page 6, delete lines 11 through 20, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 12. Local Officials; Compensation

Section 12. The compensation or method of fixing the compensation of an elected official of any local governmental subdivision which operates under a home rule charter or plan of government, as provided in Sections 4 and 5 of this Article, shall be provided in its charter. The compensation or method of fixing the compensation of an elected official of any other local governmental subdivision shall be provided by law. Compensation of a local official shall not be reduced during the term for which he is elected."

AMENDMENT No. 24—

On page 6, delete lines 21 through 29, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 13. Vacancies

Section 13. (A) Vacancy; Appointment. Except as otherwise provided by this constitution, a vacancy in any local office filled by election wholly within the boundaries of a local governmental subdivision or a school district shall be filled by appointment by the particular governing authority of the local governmental subdivision or school district in which the vacancy occurs, until it is filled by election as provided by law."

PAGE 10

117th Days Proceedings—January 14, 1974

Total—0.

NAME

NOT VOTING

Delegates—	Jones	Riecke
Mr. Chairman	Juneau	Schmitt
Alexander	Kelly	Segura
Anzalone	Kilbourne	Singletary
Dennerly	Kilpatrick	Slay
Dennis	Lambert	Stinson
Derbes	Lanier	Stovall
Deshotels	LeBeau	Tapper
Dunlap	Leigh	Vesich
Duval	Morris	Vick
Edwards	Ourso	Wall
Fayard	Rachal	Weiss
Giarrusso		
Total—36.		

And the amendment was adopted.

Delegate Tate moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

AMENDMENT No. 15—

On page 4, delete lines 28 through 35, both inclusive, in their entirety and on page 5, delete lines 1 through 6, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 7. Powers of Other Local Governmental Subdivisions

Section 7. (A) Powers and Functions. Subject to and not inconsistent with this constitution, the governing authority of a local governmental subdivision which has no home rule charter or plan of government may exercise any power and perform any function necessary, requisite, or proper for the management of its affairs, not denied by its charter or by general law, if a majority of the electors voting in an election held for that purpose vote in favor of the proposition that the governing authority may exercise such general powers. Otherwise, the local governmental subdivision shall have the powers authorized by this constitution or by law."

Read.

On motion of Delegate Tate Amendment No. 15 was adopted.

AMENDMENT No. 16—

On page 5, delete lines 7 through 10, both inclusive, in their entirety and insert in lieu thereof the following:

"(B) Parish Officials and School Boards Not Affected. Nothing in this Section shall affect the powers and functions of a school board or the offices of district attorney, sheriff, assessor, clerk of a district court, or coroner."

Read.

On motion of Delegate Tate Amendment No. 16 was adopted.

AMENDMENT No. 17—

On page 5, delete lines 11 through 14, both inclusive, in their entirety

Read.

On motion of Delegate Tate Amendment No. 17 was adopted.

AMENDMENT No. 18—

On page 5, delete lines 15 through 19, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 8. Home Rule Parish; Incorporation of Cities, Towns, and Villages

Section 8. No parish plan of government or home rule charter shall prohibit the incorporation of a city, town, or village as provided by general law."

Read.

On motion of Delegate Tate Amendment No. 18 was adopted.

AMENDMENT No. 19—

On page 5, delete lines 20 through 25, both inclusive in their entirety and insert in lieu thereof the following:

"Section 9. Limitations of Local Governmental Subdivisions

Section 9. (A) Limitations. No local governmental subdivision shall (1) define and provide for the punishment of a felony; or (2) except as provided by law, enact an ordinance governing private or civil relationships."

Read.

On motion of Delegate Tate Amendment No. 19 was adopted.

AMENDMENT No. 20—

On page 5, delete lines 26 and 27, both inclusive, in their entirety and insert in lieu thereof the following:

"(B) Police Power Not Abridged. Notwithstanding any provision of this Article, the police power of the state shall never be abridged."

Read.

On motion of Delegate Tate Amendment No. 20 was adopted.

AMENDMENT No. 21—

On page 5, delete lines 28 through 35, both inclusive, in their entirety and on page 6, delete lines 1 through 4, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 10. Codification of Ordinances

Section 10. Within two years after the effective date of this constitution, the governing authority of each political subdivision shall have a code prepared containing all of its general ordinances. When the code is prepared, the governing authority shall make copies available for public distribution. All general ordinances adopted after the approval of the code shall be amendments or additions to the code."

Read.

On motion of Delegate Tate Amendment No. 21 was adopted.

AMENDMENT No. 22—

On page 6, delete lines 5 through 10, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 11. Local Officials

Section 11. The electors of each local governmental subdivision shall have the exclusive right to elect their governing authority. Nothing herein shall be construed to prohibit the election of the members from single-member districts."

Read.

On motion of Delegate Tate Amendment No. 22 was adopted.

AMENDMENT No. 23—

On page 6, delete lines 11 through 20, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 12. Local Officials; Compensation

Section 12. The compensation or method of fixing the compensation of an elected official of any local governmental subdivision which operates under a home rule charter or plan of government, as provided in Sections 4 and 5 of this Article, shall be provided in its charter. The compensation or method of fixing the compensation of an elected official of any other local governmental subdivision shall be provided by law. Compensation of a local official shall not be reduced during the term for which he is elected."

Read.

On motion of Delegate Tate Amendment No. 23 was adopted.

AMENDMENT No. 24—

On page 6, delete lines 21 through 29, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 13. Vacancies

Section 13. (A) Vacancy; Appointment. Except as otherwise provided by this constitution, a vacancy in any local office filled by election wholly within the boundaries of a

PAGE 33

117th Days Proceedings—January 14, 1974

Motion

On motion of Delegate Tate, the Convention altered the Order of Business to take up Reports of Committees at this time.

Reports of Committees

The following reports of committees were received and read:

Delegate Tate, chairman, on behalf of the Committee on Style and Drafting, submitted the following report:

State of Louisiana
Constitutional Convention of 1973

January 14, 1974, Baton Rouge, La.

To the Chairman and Delegates of the Constitutional Convention:

I am directed by your Committee on Style and Drafting to submit the following report:

★ DELEGATE PROPOSAL No. 22—

Introduced by Delegates Conroy and Newton:

A PROPOSAL

To provide for the prohibition of certain enumerated local and special laws.

Reported with the following amendments:

COMMITTEE AMENDMENTS

Amendments proposed by Committee on Style and Drafting to Delegate Proposal No. 22 by Delegates Conroy and Newton.

Amend First enrolled proposal as follows:

AMENDMENT No. 1—

On page 1, line 15, immediately after "(A)" and before the word "Except" insert the word and punctuation "Prohibitions;" and on line 16 after the word "pass" and before the word "local" delete the word "any" and insert in lieu thereof "a"

AMENDMENT No. 2—

On page 2, line 5, after the word and punctuation "taxes;" and before the word "assessor" delete the words "for the relief of any" and insert in lieu thereof the words "relieving an" and on line 8, after the partial word and punctuation "feitures;" and before the word "refunding" delete the word "or"

AMENDMENT No. 3—

On page 2, at the end of line 16, after the word "schoolhouses" add a comma ","

AMENDMENT No. 4—

On page 2, at the beginning of line 22 immediately after "(B)" and before the word "The" insert "Additional Prohibition."

Respectfully submitted,

ALBERT TATE, JR.,
Chairman.

Delegate Tate, chairman, on behalf of the Committee on Style and Drafting, submitted the following report:

State of Louisiana
Constitutional Convention
of 1973

January 14, 1974, Baton Rouge, La.

To the Chairman and Delegates of the Constitutional Convention:

I am directed by your Committee on Style and Drafting to submit the following report:

[318]

COMMITTEE PROPOSAL No. 9—

Introduced by Delegate Aertker, Chairman, on behalf of the Committee on Education and Welfare, and Delegates Armentor, Carmouche, Corne, Cowen, Flory, Grier, Haynes, Hernandez, Landry, Leithman, Lennox, Rachal, Riecke, Robinson, Segura, Silverberg, Sutherland, Thistlethwaite, Toca and Wisham:

A PROPOSAL

Making provisions for human resources by providing for state and city civil service.

Reported with the following amendments.

COMMITTEE AMENDMENTS

Amendments proposed by Committee on Style and Drafting to Committee Proposal No. 9 by Delegate Aertker, et al.

Amend First enrollment Proposal as follows:

AMENDMENT No. 1—

On page 1, delete lines 16 through 33, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 1. (A) Civil Service System.

(1) State Civil Service. The state civil service is established and includes all persons holding offices and positions of trust or employment in the employ of the state, or any instrumentality thereof, and any joint state and federal agency, joint state and parochial agency, or joint state and municipal agency, regardless of the source of the funds used to pay for such employment. It shall not include persons holding offices and positions of any municipal board of health or local governmental subdivision.

(2) City Civil Service. The city civil service is established and includes all persons holding offices and positions of trust or employment in the employ of each city having over four hundred thousand population and in every instrumentality thereof. However, paid firemen and municipal policemen may be excluded if a majority of the electors in the affected city voting at an election held for that purpose approve their exclusion. The election shall be called by the municipal governing authority within one year after the effective date of this constitution."

AMENDMENT No. 2—

On page 1, delete lines 34 and 35, in their entirety and on page 2, delete lines 1 through 35, both inclusive, in their entirety and insert in lieu thereof the following:

"(B) Classified and Unclassified Service.

(1) The state and city civil service is divided into the unclassified and the classified service. Persons not included in the unclassified service are in the classified service.

(2) The unclassified service shall include the following officers and employees in the state and city civil service:

(a) elected officials and persons appointed to fill vacancies in elective offices;

(b) the heads of each principal executive department appointed by the governor, the mayor, or the governing authority of a city;

(c) city attorneys;

(d) registrars of voters;

(e) members of state and city boards, authorities, and commissions;

(f) one private secretary to the president of each college or university;

(g) one person holding a confidential position and one principal assistant or deputy to any officer, board, commission, or authority mentioned in (a), (b), (d), or (e) above, except civil service departments;

(h) members of the military or naval forces;

(i) teaching and professional staffs, and administrative officers of schools, colleges, and universities of the state, and bona fide students of those institutions employed by any state, parochial, or municipal agency;

(j) employees, deputies, and officers of the legislature and of the offices of the governor, lieutenant governor, attorney general, each mayor and city attorney, of police juries, school boards, assessors, and of all offices provided for in Article V of this constitution except the offices of clerk of the municipal and traffic courts in New Orleans;

(k) commissioners of elections, watchers, and custodians and deputy custodians of voting machines; and

(l) railroad employees whose working conditions and retirement benefits are regulated by federal agencies in accordance with federal law.

1259

PAGE 3

118th Days Proceedings—January 15, 1974

after the word and punctuation "it," delete the remainder of line 2 and delete lines 3 and 4 in their entirety and insert in lieu thereof the words "the governor shall proclaim its adoption, and it shall become part of this constitution, effective twenty days after the proclamation, unless"

Respectfully submitted,

ALBERT TATE,
Chairman.

Resolutions on Second Reading and Referral

The following entitled Committee and Delegate Resolutions on second reading to be referred to Committees were taken up, read, and referred to Committees, as follows:

DELEGATE RESOLUTION No. 50—

Introduced by Delegate O'Neill:

A RESOLUTION

To amend the Standing Rules of the Constitutional Convention to add a new Rule 47.1, to provide for the printing of an attestation clause for the proposed draft of the constitution and for the distribution of copies of the proposed draft and to urge and request the governor to take the necessary steps to see that a copy of the Louisiana Constitution of 1974 is exhibited permanently in the state capitol.

Read.

Under the rules the above Resolution was referred to the Committee on Rules, Credentials and Ethics.

Proposals on Calendar for Approval of Final Styling

The following Proposals returned from the Committee on Style and Drafting for approval of final styling were taken up and acted upon as follows:

Motion

On motion of Delegate Tate Delegate Proposal No. 22 was taken up out of its regular order and acted upon as follows:

DELEGATE PROPOSAL No. 22—

Introduced by Delegates Conroy and Newton:

A PROPOSAL

To provide for the prohibition of certain enumerated local and special laws.

Read.

COMMITTEE AMENDMENTS

Amendments proposed by Committee on Style and Drafting to Delegate Proposal No. 22 by Delegates Conroy and Newton.

Amend first enrolled proposal as follows:

AMENDMENT No. 1—

On page 1, line 15, immediately after "(A)" and before the word "Except" insert the word and punctuation "Prohibitions" and on line 16 after the word "pass" and before the word "local" delete the word "any" and insert in lieu thereof "a"

AMENDMENT No. 2—

On page 2, line 5, after the word and punctuation "taxes;" and before the word "assessor" delete the words "for the relief of any" and insert in lieu thereof the words "relieving an" and on line 8, after the partial word and punctuation "feitures;" and before the word "refunding" delete the word "or"

AMENDMENT No. 3—

On page 2, at the end of line 16, after the word "schoolhouses" add a comma ","

AMENDMENT No. 4—

On page 2, at the beginning of line 22 immediately after

"(B)" and before the word "The" insert "Additional Prohibition."

Read.

On motion of Delegate Tate Amendments Nos. 1, 2, 3 and 4 were adopted.

COMMITTEE PROPOSAL No. 9—

Introduced by Delegate Aertker, Chairman, on behalf of the Committee on Education and Welfare, and Delegates Armontor, Carmouche, Corne, Cowen, Flory, Grier, Haynes, Hernandez, Landry, Leithman, Lennox, Rachal, Riecke, Robinsen, Segura, Silverberg, Sutherland, Thistlethwaite, Toca and Wisham:

A PROPOSAL

Making provisions for human resources by providing for state and city civil service.

COMMITTEE AMENDMENTS

Amendments proposed by Committee on Style and Drafting to Committee Proposal No. 9 by Delegate Aertker, et al.

Amend First enrollment Proposal as follows:

AMENDMENT No. 1—

On page 1, delete lines 16 through 33, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 1. (A) Civil Service System.

(1) State Civil Service. The state civil service is established and includes all persons holding offices and positions of trust or employment in the employ of the state, or any instrumentality thereof, and any joint state and federal agency, joint state and parochial agency, or joint state and municipal agency, regardless of the source of the funds used to pay for such employment. It shall not include persons holding offices and positions of any municipal board of health or local governmental subdivision.

(2) City Civil Service. The city civil service is established and includes all persons holding offices and positions of trust or employment in the employ of each city having over four hundred thousand population and in every instrumentality thereof. However, paid firemen and municipal policemen be excluded if a majority of the electors in the affected city voting at an election held for that purpose approve their exclusion. The election shall be called by the municipal governing authority within one year after the effective date of this constitution."

Read.

On motion of Delegate Tate Amendment No. 1 was adopted.

AMENDMENT No. 2—

On page 1, delete lines 34 and 35, in their entirety and on page 2, delete lines 1 through 35, both inclusive, in their entirety and insert in lieu thereof the following:

"(B) Classified and Unclassified Service.

(1) The state and city civil service is divided into the unclassified and the classified service. Persons not included in the unclassified service are in the classified service.

(2) The unclassified service shall include the following officers and employees in the state and city civil service:

- (a) elected officials and persons appointed to fill vacancies in elective offices;
- (b) the heads of each principal executive department appointed by the governor, the mayor, or the governing authority of a city;
- (c) city attorneys;
- (d) registrars of voters;
- (e) members of state and city boards, authorities, and commissions;
- (f) one private secretary to the president of each college or university;
- (g) one person holding a confidential position and one principal assistant or deputy to any officer, board, commission, or authority mentioned in (a), (b), (d), or (e) above, except civil service departments;
- (h) members of the military or naval forces;
- (i) teaching and professional staffs, and administrative officers of schools, colleges, and universities of the state, and bona fide students of those institutions employed by any state, parochial, or municipal agency;
- (j) employees, deputies, and officers of the legislature and of the offices of the governor, lieutenant governor, attorney general, each mayor and city attorney, of police juries, school boards, assessors, and of all offices provided for in

PAGE 16

118th Days Proceedings—January 15, 1974

Proposals, Delegate and Committee

The following entitled Delegate and Committee Proposals were taken up on their third reading and final passage:

Motion

On motion of Delegate Derbes Delegate Proposal No. 43 was called from the Calendar:

DELEGATE PROPOSAL No. 43—

Introduced by Delegates J Jackson, A. Jackson, Warren, Ray, Gravel, Stovall, Pugh and Gauthier:

A PROPOSAL

Providing for juvenile courts having exclusive original jurisdiction with the exception for offenses of murder, aggravated kidnapping, armed robbery, or aggravated rape.

Read.

Delegate Derbes sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates Derbes, Dennis, J. Jackson, Pugh, Vesich, Tobias, Henry, Gravel, Tate, A. Jackson, Kelly, Warren, Edwards, Gauthier, Casey, Ginn, Burson, Flory and Ullo to Delegate Proposal No. 43 by Delegate J. Jackson, et al.

Amend printed proposal as follows:
AMENDMENT No. 1—

On page 1, line 5, add the following:

"Providing for special juvenile procedures.

Be it adopted by the Constitutional Convention of Louisiana of 1973:

Article ----- Section ----- Special Juvenile Procedures

Section ----- Except for a person fifteen years of age or older who is alleged to have committed a capital offense or attempted aggravated rape, the determination of guilt or innocence, the detention, and the custody of a person who is alleged to have committed a crime prior to his seventeenth birthday shall be exclusively pursuant to special juvenile procedures which shall be provided by law. However, by law enacted by a two-thirds vote of the elected members of each house, the legislature may (1) lower the maximum ages of persons to whom juvenile procedures would apply and (2) establish a procedure by which the court of original jurisdiction may waive such special juvenile procedures in order that adult procedures would apply in individual cases."

Point of Order

Delegate A. Jackson suggested the absence of a quorum.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Chehardy	Graham
Mr. Chairman	Comar	Grier
Abraham	Conino	Guarisco
Alexander	Conroy	Hardee
Anzalone	Cowen	Hayes
Annette	De Blieux	Haynes
Asseff	Denberry	Jack
Avant	Dennis	Jackson, A.
Badeaux	Derbes	Jackson, J.
Bel	Deshotels	Jenkins
Bergeron	Drew	Jones
Blair	Duval	Juneau
Bollinger	Elkins	Kean
Brien	Flory	Kelly
Brown	Fontenot	Kilbourne
Burns	Fowler	Kilpatrick
Burson	Fulco	Lambert
Cannon	Gauthier	Landrum
Carmouche	Casey	Landry, A.
Casey	Giarrusso	Landry, E. J.
Champagne	Ginn	Lanier
Chatelain	Goldman	

Leithman	Reeves	Thistlethwaite
Lowe	Roemer	Thompson
McDaniel	Roy	Tobias
Martin	Sandoz	Toca
Mauberrert	Schmitt	Toomy
Maybuce	Segura	Ullo
Miller	Singletary	Velazquez
Mire	Slay	Vick
Newton	Smith	Warren
Nunez	Soniat	Wattigny
Ourso	Stagg	Wells
Perez	Stephenson	Winchester
Perkins	Stovall	Wisham
Planchard	Sutherland	Zervigon
Pugh	Tapper	
Rayburn	Tate	

Total—109.

Total—0.

NAYS

NOT VOTING

Delegates—	Heine	Riecke
Aertker	Hernandez	Shannon
Alario	LeBleu	Stinson
Corne	Leigh	Vesich
D'Gerolamo	Morris	Wall
Dunlap	Munson	Weiss
Edwards	Fayard	Womack
Fayard	O'Neill	
Gravel	Rachal	

Total—23.

And the Chairman announced that there were 109 Delegates present and a quorum.

Delegate Derbes moved the adoption of the amendment.

Delegate Jack objected.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Deshotels	Newton
Mr. Chairman	Duval	Perkins
Alexander	Flory	Pugh
Anzalone	Fulco	Reeves
Asseff	Gauthier	Roemer
Avant	Giarrusso	Roy
Badeaux	Ginn	Schmitt
Bel	Goldman	Shannon
Bergeron	Graham	Slay
Blair	Gravel	Smith
Bollinger	Grier	Soniat
Brien	Guarisco	Stagg
Brown	Hardee	Stephenson
Burson	Hayes	Stovall
Casey	Haynes	Sutherland
Champagne	Jackson, A.	Tate
Chatelain	Jackson, J.	Thompson
Chehardy	Jones	Tobias
Comar	Juneau	Toca
Conino	Kelly	Toomy
Conroy	Kilpatrick	Ullo
Cowen	Lambert	Velazquez
D'Gerolamo	Landrum	Vick
De Blieux	Landry, E. J.	Warren
Denberry	Leithman	Wisham
Dennis	Maybuce	Zervigon
Derbes		

Total—78.

NAYS

Delegates—	Fowler	McDaniel
Abraham	Jack	Martin
Annette	Jenkins	Mauberrert
Burns	Kean	Miller
Cannon	Kilbourne	Mire
Carmouche	Landry, A.	Nunez
Drew	Lanier	O'Neill
Elkins	Lowe	Ourso
Fontenot		

PAGE 17

118th Days Proceedings—January 15, 1974

Perez	Segura	Wattigny
Planchard	Singletary	Willis
Rayburn	Tapper	Winchester
Sandoz	Thistlethwaite	
Total—35.		

Delegates— NOT VOTING

Aertker	Hernandez	Riecke
Alario	LeBleu	Stinson
Corne	Leigh	Vesich
Dunlap	Morris	Wall
Edwards	Munson	Weiss
Fayard	Rachal	Womack
Heine		
Total—19.		

And the amendment having received a majority vote of the total membership of the Convention required to add a Section to a Proposal, was passed.

Delegate Derbes moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Committee Proposal No. 43, Section -- was read.

Delegate Derbes moved the final passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Deshotels	Pugh
Abraham	Flory	Rayburn
Alexander	Fulco	Reeves
Anzalone	Gauthier	Roemer
Asseff	Giarrusso	Roy
Avant	Ginn	Schmitt
Badeaux	Goldman	Segura
Bel	Graham	Singletary
Bergeron	Gravel	Slay
Blair	Grier	Soniat
Bollinger	Guarisco	Stagg
Brien	Hardee	Stephenson
Brown	Hayes	Stovall
Burson	Haynes	Tapper
Casey	Jackson, A.	Tate
Champagne	Jackson, J.	Thompson
Chatelain	Jones	Tobias
Chehardy	Juneau	Toca
Comar	Kelly	Toomy
Conino	Kilpatrick	Ullo
Conroy	Landry, E. J.	Velazquez
Cowen	Leithman	Vick
D'Gerolamo	Maybuce	Warren
De Blieux	Mire	Wattigny
Dennery	Munson	Wisham
Dennis	Newton	Zervigon
Derbes	Perkins	
Total—80.		

NAYS

Delegates—		
Arnette	Jenkins	Nunez
Burns	Kean	Ourso
Cannon	Kilbourne	Perez
Carmouche	Landry, A.	Planchard
Drew	Lanier	Sandoz
Elkins	Lowe	Sutherland
Fontenot	McDaniel	Thistlethwaite
Fowler	Martin	Willis
Heine	Mauberret	Winchester
Jack	Miller	
Total—29.		

NOT VOTING

Delegates—		
Aertker	Corne	Duval
Alario	Dunlap	Edwards

Fayard	Morris	Stinson
Hernandez	O'Neill	Vesich
Lambert	Rachal	Wall
Landrum	Riecke	Weiss
LeBleu	Shannon	Womack
Leigh	Smith	
Total—23.		

And the Chair declared that the above Section was finally passed.

Delegate Derbes moved to reconsider the vote by which the above Section was finally passed, and, on his own motion, the motion to reconsider was laid on the table.

The Proposal was read, as amended.

Delegate Derbes moved the final passage of the entire Proposal.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Flory	Perkins
Abraham	Fontenot	Pugh
Alexander	Fowler	Rayburn
Anzalone	Fulco	Reeves
Arnette	Gauthier	Roemer
Asseff	Giarrusso	Roy
Avant	Ginn	Sandoz
Badeaux	Goldman	Schmitt
Bel	Graham	Segura
Bergeron	Gravel	Singletary
Blair	Grier	Slay
Bollinger	Guarisco	Smith
Brien	Hardee	Soniat
Brown	Hayes	Stagg
Burns	Haynes	Stephenson
Burson	Jackson, A.	Stovall
Carmouche	Jackson, J.	Sutherland
Casey	Jones	Tapper
Champagne	Juneau	Tate
Chatelain	Kelly	Thompson
Chehardy	Kilpatrick	Tobias
Comar	Lambert	Toca
Conino	Landry, A.	Toomy
Conroy	Landry, E. J.	Ullo
Corne	Lanier	Velazquez
Cowen	Leithman	Vick
D'Gerolamo	Martin	Warren
De Blieux	Mauberret	Wattigny
Dennery	Maybuce	Willis
Dennis	Miller	Winchester
Derbes	Mire	Wisham
Deshotels	Munson	Zervigon
Elkins	Newton	
Total—98.		

NAYS

Delegates—		
Cannon	Kilbourne	Perez
Heine	Lowe	Planchard
Jack	Nunez	Stinson
Jenkins	Ourso	Thistlethwaite
Kean		
Total—13.		

NOT VOTING

Delegates—		
Aertker	Hernandez	Rachal
Alario	Landrum	Riecke
Drew	LeBleu	Shannon
Dunlap	Leigh	Vesich
Duval	McDaniel	Wall
Edwards	Morris	Weiss
Fayard	O'Neill	Womack
Total—21.		

And the Chair declared that the above Proposal was finally passed.

Motion to reconsider pending.

Section 8. Powers and Duties of the Attorney General

Section 8. There shall be a department of justice, headed by the attorney general who shall be the state's chief legal officer. As may be necessary for the assertion or protection of the rights and interests of the state, the attorney general shall have authority to:

- (1) institute, and prosecute or intervene in any legal actions or other proceedings, civil or criminal;
- (2) exercise supervision over the several district attorneys throughout the state; and
- (3) for cause, supersede any attorney representing the state in any civil or criminal proceeding.

He shall have such other powers and perform such other duties as may be authorized by this constitution or provided by statute.

Read.

Delegate Burson sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates Henry, Gravel, Pugh, Graham, and A. Jackson to Committee Proposal No. 4 by Delegate Stagg, et al.

Amend First Enrollment Proposal as follows:

AMENDMENT No. 1—

On page 5, delete lines 22, 23 and 24 in their entirety and all amendments thereto and insert in lieu thereof the following:

"Section 8. Department of Justice

Section 8. (A) There shall be a Department of Justice, headed by the attorney general, who shall be the state's chief legal officer. The attorney general shall be elected for a term of four years at the state general election. The assistant attorneys general shall be appointed by the attorney general to serve at his pleasure.

(B) As may be necessary for the assertion or protection of any right or interest of the state, the attorney general shall have authority

- (1) to institute, prosecute, or intervene in any civil action or proceeding;
- (2) upon the written request of a district attorney, to advise and assist in the prosecution of any criminal case;
- (3) for cause, when authorized by the court which would have original jurisdiction and subject to judicial review,

(a) to institute, prosecute, or intervene in any criminal action or proceeding, or

(b) to supersede any attorney representing the state in any civil or criminal action.

(C) The attorney general shall exercise such other powers and perform such other duties as may be authorized by this constitution or by law.

Delegate Burson moved the adoption of the amendment.

Delegate Vick objected.

By a vote of 104 yeas and 5 nays the amendment was adopted.

Delegate Burson moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Committee Proposal No. 4, Section 8 was read, as amended.

Delegate Burson moved the final passage of the Section.

ROLL CALL

The roll was called with the following result:

Delegates—	YEAS	
Mr. Chairman	Avant	Bollinger
Abraham	Badeaux	Brien
Alexander	Bel	Brown
Anzalone	Bergeron	Burns
Arnette	Blair	Burson

Cannon	Haynes	Perkins
Carmouche	Heine	Planchard
Casey	Jack	Pugh
Champagne	Jackson, A.	Rayburn
Cherhardy	Jackson, J.	Reeves
Comar	Jenkins	Roemer
Conino	Juneau	Roy
Conroy	Kean	Sandoz
Cowen	Kelly	Schmitt
D'Gerolamo	Kilbourne	Segura
De Blieux	Kilpatrick	Singletary
Dennery	Lambert	Slay
Dennis	Landrum	Smith
Deshotels	Landry, A.	Soniati
Drew	Landry, E. J.	Stagg
Duval	Lanier	Stephenson
Elkins	Leithman	Tapper
Flory	Lowe	Thistlethwaite
Fontenot	McDaniel	Thompson
Fowler	Martin	Tobias
Fulco	Maubert	Toca
Gauthier	Maybue	Tommy
Ginn	Miller	Uilo
Goldman	Mire	Velazquez
Graham	Morris	Wattigny
Gravel	Newton	Willis
Grier	Nunez	Winchester
Hardee	Ouro	Wisham
Hayes	Perez	Zervigon

Total—102.

NAYS

Delegates—	Stinson	Warren
Asseff	Sutherland	
Guarisco	Vick	
Jones		
Total—7.		

NOT VOTING

Delegates—	Giarrusso	Shannon
Aertker	Hernandez	Stovall
Alario	LeBlau	Tate
Chatalein	Leigh	Vesich
Corne	Munson	Wall
Derbes	O'Neill	Weiss
Dunlap	Rachal	Womack
Edwards	Riecke	
Fayard		
Total—23.		

And the Chair declared that the above Section was finally passed.

Delegate Burson moved to reconsider the vote by which the above Section was finally passed, and, on his own motion, the motion to reconsider was laid on the table.

The Proposal was read, as amended.

Delegate Burson moved the final passage of the entire Proposal.

ROLL CALL

The roll was called with the following result:

Delegates—	YEAS	
Mr. Chairman	Comar	Graham
Abraham	Conino	Gravel
Alexander	Conroy	Grier
Anzalone	Corne	Guarisco
Arnette	Cowen	Hardee
Avant	D'Gerolamo	Hayes
Badeaux	De Blieux	Jack
Bel	Dennery	Jackson, A.
Bergeron	Dennis	Jackson, J.
Blair	Deshotels	Jenkins
Bollinger	Drew	Juneau
Brien	Duval	Kean
Brown	Elkins	Kelly
Burns	Flory	Kilpatrick
Burson	Fontenot	Lambert
Cannon	Fowler	Landrum
Carmouche	Fulco	Landry, A.
Casey	Gauthier	Landry, E. J.
Champagne	Ginn	Lanier
Chatalein	Goldman	

PAGE 20

118th Days Proceedings—January 15, 1974

Leithman	Pugh	Stovall
Lowe	Rayburn	Tapper
McDaniel	Reeves	Thistlethwaite
Martin	Roemer	Thompson
Maubaret	Roy	Tobias
Maybue	Sandoz	Toca
Miller	Schmitt	Toomy
Mire	Segura	Ulio
Morris	Singletary	Velazquez
Newton	Slay	Warren
Nunez	Smith	Wattigny
Ourso	Soniati	Willis
Perez	Stagg	Winchester
Perkins	Stephenson	Wisham
Planchard	Stinson	Zervigon

Total—105.

NAYS

Delegates—	Sutherland	Vick
Asseff		
Jones		

Total—4.

NOT VOTING

Delegates—	Haynes	Riecke
Aertker	Hernandez	Shannon
Alario	Kilbourne	Tate
Chehardy	LeBlue	Vesich
Derbes	Leigh	Wil.
Dunlap	Munson	Weiss
Edwards	Fayard	O'Neill
Giarrusso	Rachal	Womack

Total—23.

And the Chair declared that the above Proposal was finally passed.

Motion to reconsider pending.

Motion

On motion of Delegate Tobias the Proposal was returned to the Calendar, subject to call.

Motion

On motion of Delegate Burson the rules were suspended in order to discharge Committee Proposal No. 21 from the Committee on Style and Drafting.

Reconsideration

On motion of Delegate Burson the vote by which Committee Proposal No. 21 was passed, was reconsidered.

Motion

On motion of Delegate Burson the rules were suspended in order to call from the table the motion to reconsider to reconsider the vote by which Committee Proposal No. 21, Section 25, for the limited purpose of offering an amendment proposed by Delegate Gravel, et al.

Reconsideration

On motion of Delegate Burson the vote by which Committee Proposal No. 21, Section 25, was passed was reconsidered.

COMMITTEE PROPOSAL NO. 21—

Introduced by Delegate Dennis, Chairman, on behalf of the Committee on the Judiciary, and Delegates Avant, Bel, Bergeron, Burns, Deshotel, Drew, Gauthier, Kelly, Kilbourne, Landry, Martin, Ourso, Sandoz, Tate, and Vesich: A Substitute for Committee Proposal No. 8.

A PROPOSAL

Making provisions for the judiciary branch of government and necessary provisions with respect thereto.

Read.

AMENDMENT NO. 24—

On page 7, delete lines 30 through 35, both inclusive in their entirety and on page 8, delete lines 1 through 35, both

inclusive, in their entirety and on page 9, delete lines 1 thereof the following:

through 3, inclusive, in their entirety and insert in lieu "Section 24. Judiciary Commission

Section 24. (A) Composition. The judiciary commission shall consist of

(1) one court of appeal judge and two district court judges selected by the supreme court;

(2) two attorneys admitted to the practice of law for at least ten years and one attorney admitted to the practice of law for at least three years but not more than ten years, selected by the Conference of Court of Appeal Judges or its successor. They shall not be judges, active or retired, or public officials, other than notaries public; and

(3) three citizens, not lawyers, judges active or retired, or public officials, selected by the Louisiana District Judges' Association or its successor.

(B) Term; Vacancy. A member of the commission shall serve a four-year term and shall be ineligible to succeed himself. His term shall end upon the occurrence of any event which would have made him ineligible for appointment. When a vacancy occurs, a successor shall be appointed for a four-year term by the authority which appointed his predecessor.

(C) Powers. On recommendation of the judiciary commission, the supreme court may censure, suspend with or without salary, remove from office, or retire involuntarily a judge for willful misconduct relating to his official duty, willful and persistent failure to perform his duty, persistent and public conduct prejudicial to the administration of justice that brings the judicial office into disrepute, conduct while in office which would constitute a felony, or conviction of a felony. On recommendation of the judiciary commission, the supreme court may disqualify a judge from exercising any judicial function, without loss of salary, during pendency of proceedings in the supreme court. On recommendation of the judiciary commission, the supreme court may retire involuntarily a judge for disability that seriously interferes with the performance of his duties and that is or is likely to become permanent. The supreme court shall make rules implementing this Section and providing for confidentiality and privilege of commission proceedings.

(D) Other Disciplinary Action. Action against a judge under this Section shall not preclude disciplinary action against him concerning his license to practice law."

Read.

Delegate Henry sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates Henry, Gravel, Pugh, Graham and A. Jackson to Committee Proposal No. 21 by Delegate Dennis, et al.

Amend final enrollment proposal as follows:

AMENDMENT NO. 1—

On page 8, delete lines 24 through 30, both inclusive, in their entirety, and renumber the succeeding sections in conformity therewith.

Delegate Burson moved the adoption of the amendment.

Delegate Jones objected.

By a vote of 102 yeas and 2 nays the amendment was adopted.

Delegate Burson moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Motion

On motion of Delegate Burson the rules were suspended in order to call from the table the motion to reconsider to reconsider the vote by which Committee Proposal No. 21, Section 25, for the limited purpose of offering amendments proposed by Delegate Gravel, et al.

Reconsideration

On motion of Delegate Burson the vote by which Committee Proposal No. 21, Section 25, was passed, was reconsidered.

PAGE 25

118th Days Proceedings—January 15, 1974

Fayard	Landry, E. J.	Segura
Flory	Lanier	Singletary
Fosterot	Leithman	Slay
Fowler	McDaniel	Smith
Fulco	Martin	Soniart
Gauthier	Maubert	Stagg
Ginn	Maybucc	Stephenson
Goldman	Mire	Stovall
Graham	Morris	Tate
Gravel	Munson	Thistlethwaite
Grier	Newton	Thompson
Guarisco	Nunez	Toca
Hayes	O'Neill	Toomy
Haynes	Perez	Uilo
Jackson, A.	Planchard	Vick
Jackson, J.	Pugh	Wattigny
Jones	Rayburn	Willis
Kean	Reeves	Winchester
Kelly	Roemer	Wisham
Kilpatrick	Roy	Womack
Landry, A.	Sandoz	
Total—92.		

NAYS

Delegates—		
Anzalone	Perkins	Velazquez
Assoff	Schmitt	Warren
Kilbourne	Stinson	Zervigon
Miller	Sutherland	
Total—11.		

NOT VOTING

Delegates—		
Aertker	Heine	Ourso
Alario	Hernandez	Rachal
Carmouche	Jack	Riecke
Corne	Jenkins	Shannon
Cowen	Juneau	Tapper
Derbes	Lambert	Tobias
Dunlap	Landrum	Vesich
Edwards	LeBleu	Wall
Giarrusso	Leigh	Weiss
Hardee	Lowe	
Total—29.		

And the Chair declared that the above Proposal was finally passed.

Motion to reconsider pending.

Motion

On motion of Delegate Graham Committee Proposal No. 26 was recommended to the Committee on Style and Drafting.

Motion

On motion of Delegate Tate, the Convention altered the Order of Business to take up Proposals on Calendar for Approval of Final Styling, at this time.

Proposals on Calendar for Approval of Final Styling

The following Proposals returned from the Committee on Style and Drafting for approval of final styling were taken up and acted upon as follows:

Motion

On motion of Delegate Tate Committee Proposal No. 4 was called from the Calendar.

COMMITTEE PROPOSAL No. 4—

Introduced by Delegate Stagg, Chairman, on behalf of the Committee on Executive Department, and Delegates Abraham, Alexander, Arnette, Brien, Denney, Duval, Gravel, Stovall and Tapper:

A PROPOSAL

Providing for the executive branch of government, for the

filling of vacancies in certain public offices, and with respect to dual office-holding, a code of ethics, and impeachment.

Read.

AMENDMENT No. 46—

Delete Amendments Nos. 4, 5, 6, 7, and 21 proposed by the Committee on Style and Drafting and adopted by the convention on this date and reinsert the text of amendments Nos. 4, 5, 6, and 7 at the end of CP No. 35 and renumber Sections 2, 3, and 4 contained in amendments Nos. 4, 5, 6, and 7 as follows:

Section 2	Section 12
Section 3	Section 13
Section 4	Section 14

Read.

On motion of Delegate Tate the amendment was withdrawn.

AMENDMENT No. 47—

On page 1, line 13, delete Committee Amendment No. 1 proposed by the Committee on Style and Drafting and adopted by the convention this date, and insert in lieu thereof the following:

"Section 1. Composition; Number of Departments; Reorganization

Section 1. (A) Composition. The executive branch shall consist of the governor, lieutenant governor, secretary of state, attorney general, treasurer, commissioner of agriculture, commissioner of insurance, superintendent of education, commissioner of elections, and all other executive offices, agencies, and instrumentalities of the state."

Read.

On motion of Delegate Tate the amendment was withdrawn.

Motion

On motion of Delegate A. Landry, the Convention altered the Order of Business to take up Introduction of Alternative Proposals at this time.

Introduction of Alternative Proposals

The following named delegates and committees introduced the following entitled Delegate and Committee Proposals which were read by their titles and placed on the Calendar for their second reading.

DELEGATE PROPOSAL No. 98—

Introduced by Delegates Henry, Gravel, Graham, Pugh, A. Jackson, Juneau, Kelly, Leithman, Corne, Shannon, Deshotels, Fowler, Zervigon, Riecke, Wattigny, Alario, Kilpatrick, Roemer, LeBleu, Conino, Warren, Guarisco, Arnette, Abraham, Badeaux, Anzalone, Fayard, Derbes, Gauthier, Bollinger, Willis, Newton, A. Landry, Goldman, Ginn, Uilo, Toomy, Sutherland, Stovall, Schmitt, Bergeron, Chatelain, Vick, Conroy, Miller, Casey, Denney, Tobias, O'Neill and Weiss:

A PROPOSAL

To provide with respect to an alternative provision relative to education.

Read.

Lies over under the rules.

DELEGATE PROPOSAL No. 99—

Introduced by Delegates Vick, Abraham, Aertker, Alexander, Arnette, Assoff, Avant, Badeaux, Bel, Bergeron, Bollinger, Brown, Carmouche, Casey, DeBleux, Denney, Dennis, Derbes, Duval, Elkins, Flory, Fulco, Giarrusso, Goldman, Grier, Guarisco, Hardee, Haynes, A. Jackson, J. Jackson, Jones, Juneau, Landrum, A. Landry, E. J. Landry, Leithman, McDaniel, Maybucc, Miller, Riecke, Roemer, Roy, Sandoz, Schmitt, Shannon, Singletary, Soniat, Stagg, Stovall, Sutherland, Tapper, Thistlethwaite, Tobias, Velazquez, Warren, Wisham and Zervigon:

A PROPOSAL

To provide with respect to an alternative provision relative to the Judicial Branch.

Read.

Lies over under the rules.

PAGE 26

118th Days Proceedings—January 15, 1974

DELEGATE PROPOSAL No. 100—

Introduced by Delegates McDaniel, Elkins, Goldman, O'Neill, Asseff, Cowen, Gauthier, Champagne, Avant, Bel, Grier, Drew, Shannon, Ullo, Leigh, Bollinger, Sutherland, Sandoz, A. Landry, Aertker, Hardee, Brown, Perkins, Hernandez, Smith, Alario, Fontenot, Winchester, Miller, Jones, Zervigon, Roemer, Fulco, Henry, Planchard, E. J. Landry, Arnette, Velazquez, Schmitt, Cannon, Leitman, LeBlau and Singletary:

A PROPOSAL

To provide with respect to an alternative provision relative to the Executive Branch prohibiting a person elected as governor from being his own immediate successor.

Read.

Lies over under the rules.

DELEGATE PROPOSAL No. 101—

Introduced by Delegates Staggs, Roemer, Smith, Sutherland, Asseff, Casey, Abraham, Zervigon, Alexander, Kean, Fulco, Bollinger, Bel, Dennerly, Duval, Thistlethwaite, De Blieux, Sandoz, Velazquez, Jones, Conroy, J. Jackson, Drew, Hardee, Grier, Elkins, Dennis, Champagne, A. Landry, Miller, Kilbourne, Warren, Vick, Jack, A. Jackson, Newton, Derbes, Schmitt, Lanier and Shannon:

A PROPOSAL

To provide with respect to an alternative provision relative to Revenue and Finance.

Read.

Lies over under the rules.

DELEGATE PROPOSAL No. 102—

Introduced by Delegates Vick, Abraham, Aertker, Alexander, Arnette, Asseff, Avant, Badeaux, Bel, Bergeron, Bollinger, Brown, Carmouche, Casey, De Blieux, Dennerly, Dennis, Derbes, Duval, Elkins, Flory, Fulco, Giarrusso, Goldman, Grier, Guarisco, Hardee, Haynes, A. Jackson, J. Jackson, Jones, Juneau, Landrum, A. Landry, E. J. Landry, Leitman, McDaniel, Maybucc, Miller, Riecke, Roemer, Roy, Sandoz, Schmitt, Shannon, Singletary, Soniat, Staggs, Stovall, Sutherland, Tapper, Thistlethwaite, Tobias, Velazquez, Warren, Wisham and Zervigon:

A PROPOSAL

To provide with respect to an alternative provision relative to the Judicial Branch.

Read.

Lies over under the rules.

DELEGATE PROPOSAL No. 103—

Introduced by Delegates Elkins, Grier, Toca, Flory, Asseff, Weiss, Cowen, Vick, Jones, E. J. Landry, Carmouche, Hardee, Winchester, Fugh, Dennis, Planchard, Conroy, Wisham, Anzalone, Morris, Goldman, Smith, Conino, Willis, Heine, Tobias, Segura, Ullo, Guarisco, Cannon, Deshotel and Kilbourne:

A PROPOSAL

To provide with respect to an alternative provision relative to the Legislative Branch

Read.

Lies over under the rules.

Motion

On motion of Delegate Zervigon the rules were suspended in order to allow the introduction of a Committee Proposal.

Introduction of Proposals

The following named committees introduced the following entitled Committee Proposals which were read by their titles and placed on the Calendar for their second reading.

COMMITTEE PROPOSAL No. 38—

Introduced by Delegate Zervigon, Chairperson, Committee on Legislative Liaison and Transitional Measures, and De-

legates Casey, Comar, D'Geralamo, Drew, Hardee, J. Jackson, Jones, Lanier, Rayburn, Smith, Thompson, Vick and Womack:

A PROPOSAL

Making provisions relative to transitional provisions.

Read.

Lies over under the rules.

Delegate Dennerly, Secretary of the Constitutional Convention of 1973, submits the following report:

Constitutional Convention of 1973
State of Louisiana

January 15, 1974, Baton Rouge, La.

To the Chairman and Delegates of the Convention:

I submit the following report:

That the following Committee Proposal has been properly re-enrolled in final form:

COMMITTEE PROPOSAL No. 15—

Introduced by Delegate Rayburn, Chairman, on behalf of the Committee on Revenue, Finance and Taxation, and Delegates Alario, Badeaux, Brown, Champagne, Chehardy, Conroy, De Blieux, Edwards, Fontenot, Lowe, McDaniel, Maubere, Mire, Newton, Nunez, Planchard, Roemer, Schmitt, Slay, Smith, Triche and Winchester:

A PROPOSAL

Relative to the tax structure of the state and to public finance.

Be it adopted by the Constitutional Convention of Louisiana of 1973:

ARTICLE XI. REVENUE AND FINANCE

Section 1. Power to Tax; Public Purpose

Section 1. Except as otherwise provided by this constitution, the power of taxation shall be vested in the legislature, shall never be surrendered, suspended, or contracted away, and shall be exercised for public purposes only.

Section 2. Power to Tax; Limitation

Section 2. The levy of a new tax, an increase in an existing tax, or a repeal of an existing tax exemption shall require the enactment of a law by two-thirds of the elected members of each house of the legislature.

Section 3. Collection of Taxes

Section 3. The legislature shall prohibit the issuance of process to restrain the collection of any tax. It shall provide a complete and adequate remedy for the prompt recovery of an illegal tax paid by a taxpayer.

Section 4. Income Tax; Severance Tax; Political Subdivisions

Section 4. (A) Income Tax. Equal and uniform taxes may be levied on net incomes, and these taxes may be graduated according to the amount of net income. However, the state individual and joint income tax schedule of rates shall never exceed the rates set forth in Title 47, Section 32 of the Louisiana Revised Statutes on January 1, 1974. Federal income taxes paid shall be allowed as a deductible item in computing state income taxes for the same period.

(B) Severance Tax. Taxes may be levied on natural resources severed from the soil or water, to be paid proportionately by the owners thereof at the time of severance. Natural resources may be classified for the purpose of taxation. Such taxes may be predicated upon either the quantity or value of the products at the time and place of severance. No further or additional tax or license shall be levied or imposed upon oil, gas, or sulphur leases or rights. No additional value shall be added to the assessment of land by reason of the presence of oil, gas, or sulphur therein or their production therefrom. However, sulphur in place shall be assessed for ad valorem taxation to the person, firm, or corporation having the right to mine or produce the same in the parish where located, at no more than twice the total assessed value of the physical property subject to taxation, excluding the assessed value of sulphur above ground, as is used in sulphur operations in such parish. Likewise, the severance tax shall be the only tax on timber; however, standing timber shall be liable equally with the land on which it stands for ad valorem taxes levied on the land.

(C) Severance Tax; Political Subdivisions. A political subdivision of the state shall not levy a severance tax, income tax, or tax on motor fuel.

(D) Severance Tax Allocation. One-third of the sulphur

fund sufficient to pay all obligations which are secured by the full faith and credit of the state and which become due and payable within the current fiscal year, including principal, interest, premiums, sinking or reserve fund, and other requirements. Thereafter, except as otherwise provided by law, money remaining in the fund shall be credited to the state general fund.

(C) Exception. Nothing in this Section shall apply to a levee district or political subdivision unless the full faith and credit of the state is pledged to the payment of the bonds of the levee district or political subdivision.

Section 10. Expenditure of State Funds

Section 10. (A) Appropriations. Except as otherwise provided by this constitution, money shall be drawn from the state treasury only pursuant to an appropriation made in accordance with law.

(B) Balanced Budget. Total appropriations by the legislature for any fiscal year shall not exceed anticipated state revenues for that fiscal year.

(C) Publication. The legislature shall have published a regular statement of receipts and expenditures of all state money at intervals of not more than one year.

(D) Public Purpose. No appropriation shall be made except for a public purpose.

Section 11. Budget

Section 11. (A) Operating Budget. The governor shall submit to the legislature, at a time fixed by law, a budget estimate for the next fiscal year setting forth all proposed state expenditures and anticipated state revenues. He shall cause to be submitted a general appropriation bill for proposed ordinary operating expenditures and, if necessary, a bill or bills to raise additional revenues.

(B) Capital Budget. The governor shall submit to the legislature, at each regular session, a proposed five-year capital outlay program and request implementation of the first year of the program. Capital outlay projects approved by the legislature shall be made a part of the comprehensive state capital budget, which shall be adopted by the legislature.

Section 12. Reports and Records

Section 12. Reports and records of the collection, expenditure, investment, and use of state money and those relating to state obligations shall be matters of public record, except returns of taxpayers and matters pertaining to those returns.

Section 13. Investment of State Funds

Section 13. All money in the custody of the state treasurer which is available for investment shall be invested as provided by law.

Section 14. Donation, Loan, or Pledge of Public Credit

Section 14. (A) Prohibited Uses. Except as otherwise provided by this constitution, the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private. Neither the state nor a political subdivision shall subscribe to or purchase the stock of a corporation or association or for any private enterprise.

(B) Authorized Uses. Nothing in this Section shall prevent (1) the use of public funds for programs of social welfare for the aid and support of the needy; (2) contributions of public funds to pension and insurance programs for the benefit of public employees; or (3) the pledge of public funds, credit, property, or things of value for public purposes with respect to the issuance of bonds or other evidences of indebtedness to meet public obligations as provided by law.

(C) Cooperative Endeavors. For a public purpose, the state and its political subdivisions or political corporations may engage in cooperative endeavors with each other, with the United States or its agencies, or with any public or private association, corporation, or individual.

(D) Prior Obligations. Funds, credit, property, or things of value of the state or of a political subdivision heretofore loaned, pledged, dedicated, or granted by prior state law or authorized to be loaned, pledged, dedicated, or granted by the prior laws and constitution of this state shall so remain for the full term as provided by the prior laws and constitution, and for the full term as provided by any contract, unless the authorization is revoked by law enacted by two-thirds of

the elected members of each house of the legislature prior to the vesting of any contractual rights pursuant to this Section.

Section 15. Release of Obligations to State, Parish, or Municipality

Section 15. (A) Release. The legislature shall have no power to release, extinguish, or authorize the releasing or extinguishing of any indebtedness, liability, or obligation of a corporation or individual to the state, a parish, or a municipality. However, the legislature, by law, may establish a system under which claims by the state or a political subdivision may be compromised, and may provide for the release of heirs to confiscated property from taxes due thereon at the date of its reversion to them.

(B) Exception. Whenever any immovable property has been forfeited or adjudicated to the state for nonpayment of taxes due prior to January 1, 1880, and the state did not sell or dispose of it or dispossess the tax debtor or his heirs, successors, or assigns prior to the adoption of the Constitution of 1921, it shall be presumed conclusively that the forfeiture or adjudication was irregular and null or that the property has been redeemed. The state and its assigns shall be estopped forever from claiming any title to the property because of such forfeiture or adjudication.

Section 16. Taxes; Prescription

Section 16. (A) Prescription. Taxes, except real property taxes, and licenses shall prescribe in three years after the thirty-first day of December in the year in which they are due, but prescription may be interrupted or suspended as provided by law.

(B) Tidelands. No state, district, parish, or other tax, license, fee, or assessment of any kind, and interest charges and penalties attaching thereto, which are imposed, due, or collectible on any property, minerals or the severance thereof, or due or payable by any person, firm, or corporation on any business operation or activity within the tidelands area in dispute between the state and the United States and within the state's historic gulfward boundary three leagues seaward of the state's coastline established by the act of Congress of April 8, 1812, which admitted this state into the Union, and as redefined in Louisiana Act No. 33 of 1954, shall prescribe until three years after the thirty-first day of December in the year in which the controversy existing between the United States and this state over the state gulfward boundary is finally resolved and settled in accordance with law. However, no interest charge or penalty shall be assessed or collected on any such tax, license, fee, or assessment if it is paid within one year after the thirty-first day of December in the year in which the controversy is finally resolved and settled.

Section 17. Legislation to Obtain Federal Aid

Section 17. The legislature may enact laws to enable the state, its agencies, boards, commissions, and political subdivisions and their agencies to comply with federal laws and regulations in order to secure federal participation in funding capital improvement projects.

Respectfully submitted,

MOISE W. DENNERY
Secretary.

The Proposals contained in the report were signed by the Chairman of the Convention and attested by the Secretary in accordance with the Rules.

Delegate Dennery, Secretary of the Constitutional Convention of 1973, submits the following report:

Constitutional Convention of 1973
State of Louisiana

January 15, 1974, Baton Rouge, La.

To the Chairman and Delegates of the Convention:
I submit the following report:

That the following Delegate Proposal has been properly enrolled:

DELEGATE PROPOSAL No. 43—

Introduced by Delegates J. Jackson, Gauthier, Gravel, A. Jackson, Pugh, Roy, Stoval and Warren:

A PROPOSAL

Providing for special license procedures.
Be it adopted by the Constitutional Convention of Louisiana of 1973:

Article ----, Section ----. Special Juvenile Procedures Section ----. Except for a person fifteen years of age or older who is alleged to have committed a capital offense or attempted aggravated rape, the determination of guilt or innocence, the detention, and the custody of a person who is alleged to have committed a crime prior to his seventeenth birthday shall be exclusively pursuant to special juvenile procedures which shall be provided by law. However, by law enacted by a two-thirds vote of the elected members of each house, the legislature may (1) lower the maximum ages of persons to whom juvenile procedures would apply and (2) establish a procedure by which the court of original jurisdiction may waive such special juvenile procedures in order that adult procedures would apply in individual cases.

Respectfully submitted,

MOISE W. DENNERY
Secretary

Under the rules, referred to the Committee on Style and drafting.

Delegate Dennery, Secretary of the Constitutional Convention of 1973, submits the following report:

Constitutional Convention of 1973 State of Louisiana

January 15, 1974, Baton Rouge, La.

To the Chairman and Delegates of the Convention:

I submit the following report:

That the following Committee Proposals have been properly enrolled in final form:

COMMITTEE PROPOSAL No. 9—

Introduced by Delegate Aertker, Chairman, on behalf of the Committee on Education and Welfare, and Delegates Carmouche, Come, Cowen, Flory, Grier, Hernandez, Landry, Robinson, Toca, Wattigny and Wisham:

A PROPOSAL

Making provisions for human resources by providing for state and city civil service.

Be it adopted by the Constitutional Convention of Louisiana of 1973:

ARTICLE VII. HUMAN RESOURCES

Section 1. State and City Civil Service

Section 1. (A) Civil Service System.

(1) State Civil Service. The state civil service is established and includes all persons holding offices and positions of trust or employment in the employ of the state, or any instrumentality thereof, and any joint state and federal agency, joint state and parochial agency, or joint state and municipal agency, regardless of the source of the funds used to pay for such employment. It shall not include persons holding offices and positions of any municipal board of health or local governmental subdivision.

(2) City Civil Service. The city civil service is established and includes all persons holding offices and positions of trust or employment in the employ of each city having over four hundred thousand population and in every instrumentality thereof. However, paid firemen and municipal policemen may be excluded if a majority of the electors in the affected city voting at an election held for that purpose approve their exclusion. The election shall be called by the municipal governing authority within one year after the effective date of this constitution.

(B) Classified and Unclassified Service.

(1) The state and city civil service is divided into the unclassified and the classified service. Persons not included in the unclassified service are in the classified service.

(2) The unclassified service shall include the following officers and employees in the state and city civil service:

(a) elected officials and persons appointed to fill vacancies in elective offices;

(b) the heads of each principal executive department appointed by the governor, the mayor, or the governing authority of a city;

(c) city attorneys;
(d) registrars of voters;
(e) members of state and city boards, authorities, and commissions;

(f) one private secretary to the president of each college or university;

(g) one person holding a confidential position and one principal assistant or deputy to any officer, board, commission, or authority mentioned in (a), (b), (d), or (e) above, except civil service departments;

(h) members of the military or naval forces;

(i) teachers, professional staffs, and administrative officers of schools, colleges, and universities of the state, and bona fide students of those institutions employed by any state, parochial, or municipal agency;

(j) employees, deputies, and officers of the legislature and of the offices of the governor, lieutenant governor, attorney general, each mayor and city attorney, of police juries, school boards, and of all offices provided for in Article V of this constitution except the offices of clerk of the municipal and traffic courts in New Orleans;

(k) commissioners of elections, watchers, and custodians and deputy custodians of voting machines; and

(l) railroad employees whose working conditions and retirement benefits are regulated by federal agencies in accordance with federal law.

(3) Additional positions may be added to the unclassified service and those positions may be revoked by rules adopted by a commission.

(C) State Civil Service Commission.

(1) The State Civil Service Commission is established and shall be domiciled in the state capital. It shall be composed of seven members who are electors of this state, four of whom shall constitute a quorum. No more than one appointed member shall be from each congressional district.

(2) Appointment. The members shall be appointed by the governor, as hereinafter provided, for overlapping terms of six years.

(3) Nominations. The presidents of Centenary College at Shreveport, Dillard University at New Orleans, Louisiana College at Pineville, Loyola University at New Orleans, Tulane University at New Orleans, and Xavier University at New Orleans, after giving consideration to representation of all groups, each shall nominate three persons. The governor shall appoint one member of the commission from the three persons nominated by each president. One member of the commission shall be elected by the classified employees of the state from their number as provided by law. A vacancy for any cause shall be filled by appointment or election in accordance with the procedure or law governing the original appointment or election, and from the same source. Within thirty days after a vacancy occurs, the president concerned shall submit the required nominations. Within thirty days thereafter, the governor shall make his appointment. If the governor fails to appoint within thirty days, the nominee whose name is first on the list of nominees automatically shall become a member of the commission. If any nominating authority fails to submit nominees in the time required, or if one of the named institutions ceases to exist, the governor shall make the appointment to the commission.

(D) City Civil Service Commission.

(1) Creation; Membership; Domicile. A city civil service commission shall exist in each city having a population exceeding four hundred thousand. The domicile of each commission shall be in the city it serves. Each commission shall be composed of five members, who are electors of the city, three of whom shall constitute a quorum. The members shall serve overlapping terms of six years as hereinafter provided.

(2) New Orleans; Nomination and Appointment. In New Orleans, the presidents of Dillard University, Loyola University, St. Mary's Dominican College, Tulane University, and Xavier University, after giving consideration to representation of all groups, each shall nominate three persons. The municipal governing authority shall appoint one member of the commission from the three persons nominated by each.

(3) Other Cities; Nomination and Appointment. In each other city subject to this Section, the presidents of any five institutions of higher education in the state, selected by the governing authority of the respective city, each shall nominate three persons, after giving consideration to representation of all groups. The municipal governing authority shall appoint one member of the commission from the three persons nominated by each.

under the Louisiana Forestry Commission. The commission shall be in the executive branch and shall consist of seven members. The head of the Department of Forestry at Louisiana State University and Agricultural and Mechanical College and the director of the Wildlife and Fisheries Commission shall serve ex officio as members. The governor shall appoint the remaining five members, subject to confirmation by the Senate, for overlapping terms of five years, as provided by law.

(C) State Forester. The commission shall appoint a state forester. He shall be a graduate of an accredited school of forestry and have at least four years of forestry experience, as provided by law.

COMMITTEE PROPOSAL No. 36—

Introduced by Delegate A. Jackson, Chairman, on behalf of the Committee on Bill of Rights and Elections (Substitute for Committee Proposal No. 24, by Delegate Jackson, Chairman, on behalf of the Committee on Bill of Rights and Elections, and Delegates Dunlap, Guarisco, Jenkins, Roy, Soniat, Stinson, Vick, Wall and Weiss):

A PROPOSAL

Relative to constitutional revision.

Be it adopted by the Constitutional Convention of Louisiana of 1973:

ARTICLE XIII. CONSTITUTIONAL REVISION

Section 1. Amendments

Section 1. (A) Procedure. An amendment to this constitution may be proposed by joint resolution at any regular session of the legislature, but the resolution shall be prefiled, at least ten days before the beginning of the session, in accordance with the Rules of the house in which introduced. An amendment to this constitution may be proposed at any extraordinary session of the legislature if it is within the objects of the call of the session and is introduced in the first five calendar days thereof. If two-thirds of the elected members of each house concur in the resolution, pursuant to all of the procedures and formalities required for passage of a bill except submission to the governor, the secretary of state shall have the proposed amendment published once in the official journal of each parish within not less than thirty nor more than sixty days preceding the election at which the proposed amendment is to be submitted to the electors. Each joint resolution shall specify the statewide election at which the proposed amendment shall be submitted. Special elections for submitting proposed amendments may be authorized by law.

(B) Form of Proposal. A proposed amendment shall have a title containing a brief summary of the changes proposed; shall be confined to one object; and shall set forth the entire article, or the sections or other subdivisions thereof, as proposed to be revised or only the article, sections, or other subdivisions proposed to be added. However, the legislature may propose, as one amendment, a revision of an entire article of this constitution which may contain multiple objects or changes. A section or other subdivision may be repealed by reference. When more than one amendment is submitted at the same election, each shall be submitted so as to enable the electors to vote on them separately.

(C) Ratification. If a majority of the electors voting on the proposed amendment approve it, the governor shall proclaim its adoption, and it shall become part of this constitution, effective twenty days after the proclamation, unless the amendment provides otherwise. A proposed amendment directly affecting not more than five parishes or areas within not more than five parishes shall become part of this constitution only when approved by a majority of the electors voting thereon in the state and also a majority of the electors voting thereon in each affected parish. However, a proposed amendment directly affecting not more than five municipalities, and only such municipalities, shall become part of this constitution only when approved by a majority of the electors voting thereon in the state and also a majority of the electors voting thereon in each such municipality.

Section 2. Constitutional Convention

Section 2. Whenever the legislature considers it desirable to revise this constitution or propose a new constitution, it may provide for the calling of a constitutional convention by law enacted by two-thirds of the elected members of each house. The revision or the proposed constitution and any

alternative propositions agreed upon by the convention shall be submitted to the people for their ratification or rejection. If the proposal is approved by a majority of the electors voting thereon, the governor shall proclaim it to be the Constitution of Louisiana.

Section 3. Laws Effectuating Amendments

Section 3. Whenever the legislature shall submit amendments to this constitution, it may at the same session enact laws to carry them into effect, to become operative when the proposed amendments have been ratified.

Respectfully submitted,

MOISE W. DENNERY
Secretary.

The Proposals contained in the report were signed by the Chairman of the Convention and attested by the Secretary in accordance with the Rules.

Delegate Dennery, Secretary of the Constitutional Convention of 1973, submits the following report:

Constitutional Convention of 1973
State of Louisiana

January 15, 1974, Baton Rouge, La.

To the Chairman and Delegates of the Convention:

I submit the following report:

That the following Delegate Proposal has been properly enrolled in final form:

DELEGATE PROPOSAL No. 22—

Introduced by Delegates Conroy and Newton:

A PROPOSAL

To provide for the prohibition of certain enumerated local and special laws.

Be it adopted by the Constitutional Convention of Louisiana of 1973:

ARTICLE III. LEGISLATIVE BRANCH

Section 12. Prohibited Local and Special Laws

Section 12. (A) Prohibitions. Except as otherwise provided in this constitution, the legislature shall not pass a local or special law:

(1) For the holding and conducting of elections, or fixing or changing the place of voting.

(2) Changing the names of persons; authorizing the adoption or legitimation of children or the emancipation of minors; affecting the estates of minors or persons under disabilities; granting divorces; changing the law of descent or succession; giving effect to informal or invalid wills or deeds or to any illegal disposition of property.

(3) Concerning any civil or criminal actions, including changing the venue in civil or criminal cases, or regulating the practice or jurisdiction of any court, or changing the rules of evidence in any judicial proceeding or inquiry before courts, or providing or changing methods for the collection of debts or the enforcement of judgments, or prescribing the effects of judicial sales.

(4) Authorizing the laying out, opening, closing, altering, or maintaining of roads, highways, streets, or alleys; relating to ferries and bridges, or incorporating bridge or ferry companies, except for the erection of bridges crossing streams or waterways; creating boundaries between this and any other state; authorizing the constructing of street passenger railroads in any incorporated town or city.

(5) Exempting property from taxation; extending the time for the assessment or collection of taxes; relieving an assessor or collector of taxes from the performance of his official duties or of his surties from liability; remitting fines, penalties, and forfeitures; refunding moneys legally paid into the treasury.

(6) Regulating labor, trade, manufacturing, or agriculture; fixing the rate of interest.

(7) Creating private corporations, or amending, renewing, extending, or explaining the charters thereof; granting to any private corporation, association, or individual any special or exclusive right, privilege, or immunity.

(8) Regulating the management of parish or city public schools, the building or repairing of parish or city schoolhouses, and the raising of money for such purposes.

(9) Legalizing the unauthorized or invalid acts of any

★ officer, employee, or agent of the state, its agencies, or political subdivisions.

(10) Defining any crime.

(B) Additional Prohibition. The legislature shall not indirectly enact special or local laws by the partial repeal or suspension of a general law.

Respectfully submitted,

MOISE W. DENNERY
Secretary.

The Proposals contained in the report were signed by the Chairman of the Convention and attested by the Secretary in accordance with the Rules.

Delegate Dennery, Secretary of the Constitutional Convention of 1973, submits the following report:

Constitutional Convention of 1973
State of Louisiana

January 15, 1974, Baton Rouge, La.

To the Chairman and Delegates of the Convention:

I submit the following report:

That the following Committee Proposals have been properly enrolled in final form:

COMMITTEE PROPOSAL NO. 15—

Introduced by Delegate Rayburn, Chairman, on behalf of the Committee on Revenue, Finance and Taxation, and Delegates Alario, Badeaux, Brown, Champagne, Chebardy, Conroy, De Blieux, Edwards, Fontenot, Lowe, McDaniel, Maubert, Mire, Newton, Nunez, Planchard, Roemer, Schmitt, Slay, Smith, Triche and Winchester:

A PROPOSAL

Relative to the tax structure of the state and to public finance.

Be it adopted by the Constitutional Convention of Louisiana of 1973:

ARTICLE XI. REVENUE AND FINANCE

Section 1. Power to Tax; Public Purpose

Section 1. Except as otherwise provided by this constitution, the power of taxation shall be vested in the legislature, shall never be surrendered, suspended, or contracted away, and shall be exercised for public purposes only.

Section 2. Power to Tax; Limitation

Section 2. The levy of a new tax, an increase in an existing tax, or a repeal of an existing tax exemption shall require the enactment of a law by two-thirds of the elected members of each house of the legislature.

Section 3. Collection of Taxes

Section 3. The legislature shall prohibit the issuance of process to restrain the collection of any tax. It shall provide a complete and adequate remedy for the prompt recovery of an illegal tax paid by a taxpayer.

Section 4. Income Tax; Severance Tax; Political Subdivisions

Section 4. (A) Income Tax. Equal and uniform taxes may be levied on net incomes, and these taxes may be graduated according to the amount of net income. However, the state individual and joint income tax schedule of rates shall never exceed the rates set forth in Title 47, Section 32 of the Louisiana Revised Statutes on January 1, 1974. Federal income taxes paid shall be allowed as a deductible item in computing state income taxes for the same period.

(B) Severance Tax. Taxes may be levied on natural resources severed from the soil or water, to be paid proportionately by the owners thereof at the time of severance. Natural resources may be classified for the purpose of taxation. Such taxes may be predicated upon either the quantity or value of the products at the time and place of severance. No further or additional tax or license shall be levied or imposed upon oil, gas, or sulphur leases or rights. No additional value shall be added to the assessment of land by reason of the presence of oil, gas, or sulphur therein or their production therefrom. However, sulphur in place shall be assessed for ad valorem taxation to the person, firm, or corporation

having the right to mine or produce the same in the parish where located, at no more than twice the total assessed value of the physical property subject to taxation, excluding the assessed value of sulphur above ground, as is used in sulphur operations in such parish. Likewise, the severance tax shall be the only tax on timber; however, standing timber shall be liable equally with the land on which it stands for ad valorem taxes levied on the land.

(C) Severance Tax; Political Subdivisions. A political subdivision of the state shall not levy a severance tax, income tax, or tax on motor fuel.

(D) Severance Tax Allocation. One-third of the sulphur severance tax, but not to exceed one hundred thousand dollars; one-fifth of the severance tax on all natural resources, other than sulphur or timber, but not to exceed five hundred thousand dollars; and three-fourths of the timber severance tax shall be remitted to the governing authority of the parish in which severance or production occurs.

(E) Royalties Allocation. One-tenth of the royalties from mineral leases on state-owned land, lake and river beds and other water bottoms belonging to the state or the title to which is in the public for mineral development shall be remitted to the governing authority of the parish in which severance or production occurs. A parish governing authority may fund these royalties into general obligation bonds of the parish in accordance with law. The provisions of this Paragraph shall not apply to properties comprising the Russell Sage Wildlife and Game Refuge.

Section 5. Motor Vehicle License Tax

Section 5. The legislature shall impose an annual license tax of three dollars on automobiles for private use, and on other motor vehicles, an annual license tax based upon horsepower, carrying capacity, weight, or any of these. No parish or municipality may impose a license fee on motor vehicles.

Section 6. Full Faith and Credit Obligations

Section 6. (A) Authorization. Unless otherwise authorized by this constitution, the state shall have no power, directly or indirectly, or through any state board, agency, commission, or otherwise, to incur debt or issue bonds except by law enacted by two-thirds of the elected members of each house of the legislature. The debt may be incurred or the bonds issued only if the funds are to be used to repel invasion; suppress insurrection; provide relief from natural catastrophes; refund outstanding indebtedness at the same or a lower effective interest rate; or make capital improvements, but only in accordance with a comprehensive capital budget, which the legislature shall adopt.

(B) Capital Improvements. If the purpose is to make capital improvements, the nature and extent of the debt more than one project, the amount allocated to each and the order of priority shall be stated in the comprehensive capital budget which the legislature adopts.

(C) Full Faith and Credit. The full faith and credit of the state shall be pledged to the repayment of all bonds or other evidences of indebtedness issued by the state directly or through any state board, agency, or commission. The full faith and credit of the state is not hereby pledged to the repayment of bonds of a levee district, political subdivision, or local public agency.

(D) Referendum. The legislature, by law enacted by two-thirds of the elected members of each house, may propose a statewide public referendum to authorize incurrence of debt for any purpose for which the legislature is not herein authorized to incur debt.

(E) Exception. Nothing in this Section shall apply to any levee district, political subdivision, or local public agency unless the full faith and credit of the state is pledged to the payment of the bonds of the levee district, political subdivision, or local public agency.

Section 7. State Debt; Interim Emergency Board

Section 7. (A) Composition. The Interim Emergency Board is created. It shall be composed of the governor, lieutenant governor, state treasurer, presiding officer of each house of the legislature, chairman of the Senate Finance Committee, and chairman of the House Appropriations Committee, or their designees.

(B) Powers. Between sessions of the legislature, when the board by majority vote determines that an emergency exists, it may appropriate from the state or from the Interim Emergency Board the full faith and credit of the state an amount to meet the emergency. The appropriation may be made or the indebtedness incurred only for a purpose for which the legislature may appropriate funds and then only after the board obtains, as provided by law, the written consent of two-thirds of the elected members of each house of the legislature. For the

PAGE 37

118th Days Proceedings—January 15, 1974

and perform any function necessary, requisite, or proper for the management of its affairs, not denied by its charter or by general law, if a majority of the electors voting in an election held for that purpose vote in favor of the proposition that the governing authority may exercise such general powers. Otherwise, the local governmental subdivision shall have the powers authorized by this constitution or by law.

(B) Parish Officials and School Boards Not Affected. Nothing in this Section shall affect the powers and functions of a school board or the offices of district attorney, sheriff, assessor, clerk of a district court, or coroner.

Section 8. Home Rule Parish; Incorporation of Cities, Towns and Villages.

Section 8. No parish plan of government or home rule charter shall prohibit the incorporation of a city, town, or village as provided by general law.

Section 9. Limitations of Local Governmental Subdivisions

Section 9. (A) Limitations. No local governmental subdivision shall (1) define and provide for the punishment of a felony; or (2) except as provided by law, enact an ordinance governing private or civil relationships.

(B) Police Power Not Abridged. Notwithstanding any provision of this Article, the police power of the state shall never be abridged.

Section 10. Codification of Ordinances

Section 10. Within two years after the effective date of this constitution, the governing authority of each local governmental subdivision shall have a code prepared containing all of its general ordinances. When the code is prepared, the governing authority shall make copies available for public distribution. All general ordinances adopted after the approval of the code shall be amendments or additions to the code.

Section 11. Local Officials

Section 11. The factors of each local governmental subdivision shall have the exclusive right to elect their governing authority. Nothing herein shall be construed to prohibit the election of the members from single-member districts.

Section 12. Local Officials; Compensation

Section 12. The compensation or method of fixing the compensation of an elected official of any local governmental subdivision which operates under a home rule charter or plan of government as provided in Sections 4 and 5 of this Article, shall be provided in its charter. The compensation or method of fixing the compensation of an elected official of any other local governmental subdivision shall be provided by law. Compensation of a local official shall not be reduced during the term for which he is elected.

Section 13. Vacancies

Section 13. (A) Vacancy; Appointment. Except as otherwise provided by this constitution, a vacancy in any local office filled by election wholly within the boundaries of a local governmental subdivision or a school district shall be filled by appointment by the particular governing authority of the local governmental subdivision or school district in which the vacancy occurs, until it is filled by election as provided by law.

(B) Exception. This Section shall apply to each local governmental subdivision unless otherwise provided by its home rule charter or plan of government.

Section 14. Increasing Financial Burden of Political Subdivisions

Section 14. No law requiring increased expenditures for wages, hours, working conditions, pension and retirement benefits, vacation, or sick leave benefits of political subdivision employees, except a law providing for civil service, minimum wages, working conditions, and retirement benefits for firemen and municipal policemen, shall become effective until approved by ordinance enacted by the governing authority of the affected political subdivision or until the legislature appropriates funds for the purpose to the affected political subdivision and only to the extent and amount that such funds are provided. This Section shall not apply to a school board.

Section 15. Local Governmental Subdivisions; Control Over Agencies

Section 15. The governing authority of a local governmental subdivision shall have general power over any agency heretofore or hereafter created by it, including, without limitation, the power to abolish the agency and require

prior approval of any charge or tax levied or bond issued by the agency.

Section 16. Special Districts and Local Public Agencies

Section 16. (A) Consolidation. A local governmental subdivision may consolidate and merge into itself any special district or local public agency, except a school district situated and having jurisdiction entirely within the boundaries of the local governmental subdivision. Upon the consolidation and merger, the local governmental subdivision shall succeed to and be vested with all of the rights, revenues, resources, jurisdiction, authority, and powers of the special district or local public agency. A consolidation and merger shall become effective only if approved by a majority of the electors voting thereon in the local governmental subdivision as a whole and by a majority of the electors voting thereon in the affected special district. A local public agency shall be consolidated and merged only if approved by a majority of the electors voting thereon in an election held for that purpose in the local governmental subdivision in which the agency is located.

(B) Assumption of Debt. If the special district or local public agency which is consolidated and merged has outstanding indebtedness, the authority provided by this Section shall not be exercised unless provision is made for the assumption of the indebtedness by the governing authority of the local governmental subdivision involved.

Section 17. Land Use; Zoning; Historic Preservation

Section 17. Subject to uniform procedures established by law, a local governmental subdivision may (1) adopt regulations for land use, zoning, and historic preservation, which authority is declared to be a public purpose; (2) create commissions and districts to implement those regulations; (3) review decisions of any such commission; and (4) adopt standards for use, construction, demolition, and modification of areas and structures. Existing constitutional authority for historic preservation commissions is retained.

Section 18. Industrial Areas

Section 18. (A) Authorization. The legislature by law may authorize parishes to create and define industrial areas within their boundaries in accordance with procedures and subject to regulations which it determines. An industrial area shall not be a political subdivision of the state.

(B) Access by Public Road; Police Protection. When an industrial area is so created, provision shall be made for access by public road to each entrance to the premises of every plant in the area, which is provided for use by employees of the company, or for use by employees of independent contractors working on the premises, or for delivery of materials or supplies, other than by rail or water transportation, to the premises. Police protection provided by any plant in an industrial area shall be confined to the premises of that plant.

Section 19. Special Districts; Creation

Section 19. Subject to and not inconsistent with this constitution, the legislature by general law or by local or special law may create or authorize the creation of special districts, boards, agencies, commissions, and authorities of every type, define their powers, and grant to the special districts, boards, agencies, commissions, and authorities so created such rights, powers, and authorities as it deems proper, including, but not limited to, the power of taxation and the power to incur debt and issue bonds.

Section 20. Intergovernmental Cooperation

Section 20. Except as otherwise provided by law, a political subdivision may exercise and perform any authorized power and function, including financing, jointly or in cooperation with one or more political subdivisions, either within or without the state, or with the United States or its agencies.

Section 21. Assistance to Local Industry

Section 21. (A) Authorization. In order to (1) induce and encourage the location of or addition to industrial enterprises therein which would have economic impact upon the area and thereby the state, (2) provide for the establishment and furnishing of such industrial plant, or (3) provide movable or immovable property, or both, for pollution control facilities, the legislature by law may authorize, subject to restrictions it may impose, any political subdivision, deep water port, commission, or deep water port, harbor, and terminal district to

(a) issue bonds, subject to approval by the State Bond Commission or its successor, and use the funds derived from the sale of the bonds to acquire and improve industrial

A PROPOSAL

Providing for the executive branch of government, for the filling of vacancies in certain public offices, and with respect to dual office-holding, a code of ethics, and impeachment.

Reported with Amendments.

COMMITTEE AMENDMENTS

Amendments proposed by Committee on Style and Drafting to Committee Proposal No. 4 by Delegate Stagg, et al.

Amend first enrolled proposal as follows:

ADDENDUM:

AMENDMENT No. 48—

On page 1, line 13, in Committee Amendment No. 1, proposed by the Committee on Style and Drafting and adopted by the Convention on January 10, 1974, on line 5 of the amendment, after the word and punctuation "state," and before the word "treasurer" insert the words and punctuation "attorney general."

AMENDMENT No. 49—

On page 2, line 3, in Committee Amendment No. 5, proposed by the Committee on Style and Drafting and adopted by the Convention on January 10, 1974, on line 10 of the amendment, after the words "of each" and before the word "official" insert the word "such"

AMENDMENT No. 50—

Deleted Convention Floor Amendment 1 offered by Delegate Henry et al and adopted by the Convention on January 15, 1974 and insert in lieu thereof the following:

"Section 8. Attorney General; Powers and Duties
Section 8. There shall be a Department of Justice, headed by the attorney general, who shall be the chief legal officer of the state. The attorney general shall be elected for a term of four years at the state general election. The assistant attorneys general shall be appointed by the attorney general to serve at his pleasure.

As necessary for the assertion or protection of any right or interest of the state, the attorney general shall have authority (1) to institute, prosecute, or intervene in any civil action or proceeding; (2) upon the written request of a district attorney, to advise and assist in the prosecution of any criminal case; and (3) for cause, when authorized by the court which would have original jurisdiction and subject to judicial review, (a) to institute, prosecute, or intervene in any criminal action or proceeding, or (b) to supersede any attorney representing the state in any civil or criminal action.

The attorney general shall exercise other powers and perform other duties authorized by this constitution or by law."

Respectfully submitted,

ALBERT TATE, JR.,
Chairman.

Delegate Tate, chairman, on behalf of the Committee on Style and Drafting, submitted the following report:

State of Louisiana
Constitutional Convention of 1973

January 15, 1974, Baton Rouge, La.

To the Chairman and Delegates of the Constitutional Convention:

I am directed by your Committee on Style and Drafting to submit the following report:

SUPPLEMENTAL REPORT

COMMITTEE PROPOSAL No. 15—

Introduced by Delegate Rayburn, Chairman, on behalf of the Committee on Revenue, Finance and Taxation, and Delegates Alario, Badeaux, Brown, Champagne, Chehardy, Conroy, De Blieux, Edwards, Fontenot, Lowe, McDaniel, Maubertier, Mire, Newton, Nunez, Planchard, Roemer, Schmitt, Slay, Smith, Triche and Winchester:

A PROPOSAL

Relative to the tax structure of the state and to public finance.

Reported with Amendment.

FLOOR AMENDMENT

Amendment proposed by Delegate Tate to Committee Proposal No. 15 by Delegate Rayburn, et al.

Amend final enrolled proposal as follows:

AMENDMENT No. 1—

On page 3, line 34, in Floor Amendment No. 1, proposed by Henry, Pugh, et al, and adopted by the Convention on January 15, 1974, delete lines 27, 28, 29, and 30 of said amendment, in their entirety and insert in lieu thereof the following: "rights granted to deep-water port commissions or deep-water port, harbor, and terminal districts under this constitution shall not be impaired by this Section."

Respectfully submitted,

ALBERT TATE, JR.,
Chairman.

Delegate Tate, chairman, on behalf of the Committee on Style and Drafting, submitted the following report:

State of Louisiana
Constitutional Convention of 1973

January 16, 1974, Baton Rouge, La.

To the Chairman and Delegates of the Constitutional Convention:

I am directed by your Committee on Style and Drafting to submit the following report:

DELEGATE PROPOSAL No. 43—

Introduced by Delegates J. Jackson, A. Jackson, Warren, Ray, Gravel, Stovall, Pugh, and Gauthier:

A PROPOSAL

Providing for juvenile courts having exclusive original jurisdiction with the exception for offenses of murder, aggravated kidnapping, armed robbery, or aggravated rape.

Reported with Amendment.

COMMITTEE AMENDMENT

Amendment proposed by Committee on Style and Drafting to Delegate Proposal No. 43 by Delegate J. Jackson, et al.

Amend first enrolled proposal as follows:

AMENDMENT No. 1—

On page 1, line 19, after the words "enacted by" and before the words "of the " delete the words "a two-thirds vote" and insert the words "two-thirds"

Respectfully submitted,

ALBERT TATE, JR.,
Chairman.

Suspension of the Rules

On motion of Delegate Tate the rules were suspended in order to take up Proposals contained in the Committee Report at this time.

Proposals on Calendar for Approval
of Final Styling

The following Proposals returned from the Committee on Style and Drafting for approval of final styling were taken up and acted upon as follows:

DELEGATE PROPOSAL No. 43—

Introduced by Delegates J. Jackson, A. Jackson, Warren, Ray, Gravel, Stovall, Pugh and Gauthier:

A PROPOSAL

Providing for juvenile courts having exclusive original jurisdiction with the exception for offenses of murder, aggravated kidnapping, armed robbery, or aggravated rape.

Read.

PAGE 3

119th Days Proceedings—January 16, 1974

COMMITTEE AMENDMENT

Amendment proposed by Committee on Style and Drafting to Delegate Proposal No. 43 by Delegate J. Jackson, et al.

Amend first enrolled Proposal as follows:

AMENDMENT No. 1—

On page 1, line 19, after the words "enacted by" and before the words "of the" delete the words "a two-thirds vote" and insert the words "two-thirds"

Read.

On motion of Delegate Tate Amendment No. 1 was adopted.

COMMITTEE PROPOSAL No. 15—

Introduced by Delegate Rayburn, Chairman, on behalf of the Committee on Revenue, Finance and Taxation, and Delegates Alario, Badeaux, Brown, Champagne, Cehardy, Conroy, De Blieux, Edwards, Fontenot, Lowe, McDaniel, Maubret, Mire, Newton, Nunes, Planchard, Roemer, Schmitt, Slay, Smith, Triche and Winchester:

A PROPOSAL

Relative to the tax structure of the state and to public finance.

Read.

Amendment proposed by Committee on Style and Drafting to Committee Proposal No. 15 by Delegate Rayburn, et al.

Amend first enrolled Proposal as follows:

AMENDMENT No. 1—

On page 3, line 34, in Floor Amendment No. 1, proposed by Henry, Fugh, et al. and adopted by the Convention on January 15, 1974, delete lines 27, 28, 29, and 30 of said amendment, in their entirety and insert in lieu thereof the following: "rights granted to deep-water port commissions or deep-water port, harbor, and terminal districts under this constitution shall not be impaired by this Section."

Read.

On motion of Delegate Tate Amendment No. 1 was adopted.

COMMITTEE PROPOSAL No. 4—

Introduced by Delegate Stag, Chairman, on behalf of the Committee on Executive Department, and Delegates Abraham, Alexander, Arnette, Brien, Dennery, Duval, Gravel, Stovall and Tapper:

A PROPOSAL

Providing for the executive branch of government, for the filling of vacancies in certain public offices, and with respect to dual office-holding, a code of ethics, and impeachment.

Read.

COMMITTEE AMENDMENTS

Amendments proposed by Committee on Style and Drafting to Committee Proposal No. 4 by Delegate Stag, et al.

Amend first enrolled Proposal as follows:

ADDENDUM:

AMENDMENT No. 48—

On page 1, line 13, in Committee Amendment No. 1, proposed by the Committee on Style and Drafting and adopted by the Convention on January 10, 1974, on line 5 of the amendment, after the word and punctuation "state," and before the word "treasurer" insert the words and punctuation "attorney general."

Read.

On motion of Delegate Tate Amendment No. 48 was adopted.

AMENDMENT No. 49—

On page 2, line 3, in Committee Amendment No. 5, proposed by the Committee on Style and Drafting and adopted by the Convention on January 10, 1974, on line 10 of the

amendment, after the words "of each" and before the word "official" insert the word "such"

Read.

On motion of Delegate Tate Amendment No. 49 was adopted.

AMENDMENT No. 50—

Deleted Convention Floor Amendment 1 offered by Delegate Henry et al and adopted by the Convention on January 15, 1974 and insert in lieu thereof the following:

"Section 8. Attorney General; Powers and Duties

Section 8. There shall be a Department of Justice, headed by the attorney general, who shall be the chief legal officer of the state. The attorney general shall be elected for a term of four years at the state general election. The assistant attorneys general shall be appointed by the attorney general to serve at his pleasure.

As necessary for the assertion or protection of any right or interest of the state, the attorney general shall have authority (1) to institute, prosecute, or intervene in any civil action or proceeding; (2) upon the written request of a district attorney, to advise and assist in the prosecution of any criminal case; and (3) for cause, when authorized by the court which would have original jurisdiction and subject to judicial review, (a) to institute, prosecute, or intervene in any criminal action or proceeding, or (b) to supersede any attorney representing the state in any civil or criminal action.

The attorney general shall exercise other powers and perform other duties authorized by this constitution or by law."

Read.

On motion of Delegate Tate Amendment No. 50 was adopted.

Proposals on Second Reading and Referral

The following entitled Committee and Delegate Proposals on second reading to be referred to committees were taken up, read, and referred to committees, as follows:

COMMITTEE PROPOSAL No. 38—

Introduced by Delegate Zervigon, Chairperson, Committee on Legislative Liaison and Transitional Measures, and Delegates Casey, Comar, D'Geralamo, Drew, Hardee, J. Jackson, Jones, Lanier, Rayburn, Smith, Thompson, Vick and Womack:

A PROPOSAL

Making provisions relative to transitional provisions.

Read.

Motion

On motion of Delegate Zervigon, and, under a suspension of the rules, the Proposal was ordered engrossed and passed to its third reading.

Alternate Proposals On Final Passage

The following Delegate Proposals were taken up on final passage:

Motion

On motion of Delegate Vick Delegate Proposal No. 99 was taken up out of its regular order and acted upon as follows:

DELEGATE PROPOSAL No. 99—

Introduced by Delegates Vick, Abraham, Aertker, Alexander, Arnette, Asselt, Avant, Badeaux, Bel, Bergeron, Bollinger, Brown, Carmouche, Casey, De Blieux, Dennery, Dennis, Derbes, Duval, Elkins, Flory, Fulco, Giarrusso, Goldman, Grier, Guarisco, Hardee, Haynes, A. Jackson, J. Jackson, Jones, Juneau, Landrum, A. Landry, E. J. Landry, Leithman, McDaniel, Maybue, Miller, Riecke, Roemer, Roy, Sandoz, Schmitt, Shannon, Singletary, Soniat, Stag, Stovall, Sutherland, Tapper, Thistlethwaite, Tobias, Velazquez, Warren, Wisham and Zervigon:

A PROPOSAL

To provide with respect to an alternative provision relative to the Judicial Branch.

Read.

Motion

On motion of Delegate Vick Delegate Proposal No. 99 was withdrawn from the files of the convention.

AMENDMENT No. 1—

Delete the Convention Floor Amendment offered by Delegates Henry, et al. and adopted by the Convention on January 15, 1974, and insert in lieu thereof the following:

"the State Board of Commerce and Industry or its successor, with the approval of the governor, may enter into contracts for the exemption from ad valorem taxes of a new manufacturing establishment or an addition to an existing manufacturing establishment, on such terms and conditions as the board, with the approval of the governor, deems in the best interest of the state.

The exemption shall be for an initial term of no more than five calendar years, and may be renewed for an additional five years. All property exempted shall be listed on the assessment rolls and submitted to the Louisiana Tax Commission or its successor, but no taxes shall be collected thereon during the period of exemption.

The terms "manufacturing establishment" and "addition" as used herein mean a new plant or establishment or an addition or additions to any existing plant or establishment which engages in the business of working raw materials into wares suitable for use or which gives new shapes, qualities, or combinations to matter which already has gone through some artificial process."

Respectfully submitted,

ALBERT TATE,
Chairman.

Suspension of the Rules

On motion of Delegate Tate the rules were suspended in order to take up the proposals contained in the Committee Report at this time.

Proposals on Calendar for Approval of Final Styling

The following Proposals returned from the Committee on Style and Drafting for approval of final styling were taken up and acted upon as follows:

COMMITTEE PROPOSAL No. 26—

Introduced by Delegate Rayburn, Chairman, on behalf of the Committee on Revenue, Finance and Taxation, and Delegates Alario, Brown, Chehardy, Edwards, Goldman, Maubaret, Mire, Nunez, Planchard, Slay and Winchester:

A PROPOSAL

Making provisions for property taxation.

Read.

COMMITTEE AMENDMENT

Amendment proposed by Committee on Style and Drafting to Committee Proposal No. 26 by Delegate Rayburn, et al.

Amend first enrollment proposal as follows:

AMENDMENT No. 1—

Delete the Convention Floor Amendment offered by Delegates Henry, et al. and adopted by the Convention on January 15, 1974, and insert in lieu thereof the following:

"the State Board of Commerce and Industry or its successor, with the approval of the governor, may enter into contracts for the exemption from ad valorem taxes of a new manufacturing establishment or an addition to an existing manufacturing establishment, on such terms and conditions as the board, with the approval of the governor, deems in the best interest of the state.

The exemption shall be for an initial term of no more than five calendar years, and may be renewed for an additional five years. All property exempted shall be listed on the assessment rolls and submitted to the Louisiana Tax Commission or its successor, but no taxes shall be collected thereon during the period of exemption.

The terms "manufacturing establishment" and "addition" as used herein mean a new plant or establishment or an addition or additions to any existing plant or establishment which engages in the business of working raw materials into

wares suitable for use or which gives new shapes, qualities, or combinations to matter which already has gone through some artificial process."

Read.

On motion of Delegate Tate Amendment No. 1 was adopted.

Delegate Denny, Secretary of the Constitutional Convention of 1973, submits the following report:

Constitutional Convention of 1973
State of Louisiana

January 16, 1974, Baton Rouge, La.

To the Chairman and Delegates of the Convention:

I submit the following report:

That the following Delegate Proposal has been properly enrolled in final form:

DELEGATE PROPOSAL No. 43—

Introduced by Delegates J. Jackson, Gauthier, Gravel, A. Jackson, Pugh, Roy, Stovall and Warren:

A PROPOSAL

Providing for special juvenile procedures.

Be it adopted by the Constitutional Convention of Louisiana of 1973:

Article ----, Section ----, Special Juvenile Procedures

Section ---- Except for a person fifteen years of age or older who is alleged to have committed a capital offense or attempted aggravated rape, the determination of guilt or innocence, the detention, and the custody of a person who is alleged to have committed a crime prior to his seventeenth birthday shall be exclusively pursuant to special juvenile procedures which shall be provided by law. However, by law enacted by two-thirds of the elected members of each house, the legislature may (1) lower the maximum ages of persons to whom juvenile procedures would apply and (2) establish a procedure by which the court of original jurisdiction may waive such special juvenile procedures in order that adult procedures would apply in individual cases.

Respectfully submitted,

MOISE W. DENNERY
Secretary.

The Proposals contained in the report were signed by the Chairman of the Convention and attested by the Secretary in accordance with the Rules.

Delegate Denny, Secretary of the Constitutional Convention of 1973, submits the following report:

Constitutional Convention of 1973
State of Louisiana

January 16, 1974, Baton Rouge, La.

To the Chairman and Delegates of the Convention:

I submit the following report:

That the following Committee Proposal has been properly enrolled in final form:

COMMITTEE PROPOSAL No. 4—

Introduced by Delegate Stagg, Chairman, on behalf of the Committee on Executive Department, and Delegates Abraham, Alexander, Arnette, Brien, Denny, Duval, Gravel, Stovall and Tapper:

A PROPOSAL

Providing for the executive branch of government, for the declaration and determination of inability of statewide elective officers, and related matters.

Be it adopted by the Constitutional Convention of Louisiana of 1973:

ARTICLE IV. EXECUTIVE BRANCH

Section 1. Composition; Number of Departments; Reorganization

Section 1. (A) Composition. The executive branch shall consist of the governor, lieutenant governor, secretary of state, attorney general, treasurer, commissioner of agriculture, commissioner of insurance, superintendent of education, commissioner of elections, and all other executive offices, agencies, and instrumentalities of the state.

(B) Number of Departments. Except for the offices of

governor and lieutenant governor, all offices, agencies, and other instrumentalities of the executive branch and their functions, powers, duties, and responsibilities shall be allocated according to function within not more than twenty departments. The powers, functions, and duties allocated by this constitution to any executive office or commission shall not be affected or diminished by the allocation provided herein except as authorized by Section 22 of this Article.

(C) Reorganization. Reallocation of the functions, powers, and duties of all departments, offices, agencies, and other instrumentalities of the executive branch, except those functions, powers, duties, and responsibilities allocated by this constitution, shall be as provided by law.

Section 2. Qualifications. Section 2. To be eligible for any statewide elective office, a person, by the date of his qualification as a candidate, shall have attained the age of twenty-five years, be an elector, and have been a citizen of the United States and of this state for at least the preceding five years. In addition, the attorney general shall have been admitted to the practice of law in the state for at least the five years preceding his election. During his tenure in office, a statewide elected official shall hold no other public office except by virtue of his elected office.

Section 3. Election; Term. Section 3. (A) Election. The governor, lieutenant governor, secretary of state, attorney general, treasurer, commissioner of agriculture, commissioner of insurance, superintendent of education and commissioner of elections each shall be elected for a term of four years by the electors of the state at the time and place of voting for members of the legislature. The term of each such official shall begin at noon on the second Monday in March next following the election.

(B) Limitation on Governor. A person who has served as governor for more than one term shall not be elected to two consecutive terms shall not be elected governor for the succeeding term.

(C) Additional Limitation. Except as provided by this constitution, no official shall be elected statewide.

Section 4. Compensation. Section 4. Except as otherwise provided by this constitution, the compensation of each statewide elected official shall be provided by law.

Section 5. Governor; Powers and Duties. Section 5. (A) Executive Authority. The governor shall be the chief executive officer of the state. He shall faithfully support the constitution and laws of the state and of the United States.

(B) Legislative Reports and Recommendations. The governor shall, at the beginning of each regular session, and may, at other times, make reports and recommendations and give information to the legislature concerning the affairs of state, including its complete financial condition.

(C) Departmental Reports and Information. When requested by the governor, a department head shall provide him with reports and information, in writing or otherwise, on any subject relating to the department, except matters concerning investigations of the office.

(D) Operating Budget. The governor shall submit to the legislature, at a time fixed by law, a proposed state budget for the next fiscal year setting forth all proposed state expenditures and anticipated state revenues.

(E) Capital Budget. The governor shall submit to the legislature, at session of a proposed five-year capital outlay program and shall request implementation of the first year of the program.

(F) Pardon, Commutation, Reprieve, and Remission; Board of Pardons. (1) The governor may grant reprieves to persons convicted of offenses against the state and on recommendation of the Board of Pardons, may commute sentences, pardon those convicted of offenses against the state, and remit fines and forfeitures imposed for such offenses. However, a first offender never previously convicted of a felony shall be pardoned automatically upon completion of his sentence, without a recommendation of the Board of Pardons and without action by the governor.

(2) The Board of Pardons shall consist of five electors appointed by the governor, subject to confirmation by the

Senate. Each member of the board shall serve a term concurrent with that of the governor appointing him.

(G) Receipt of Bills from the Legislature. The date and hour when a bill finally passed by the legislature is delivered to the governor shall be endorsed thereon.

(H) Item Veto. (1) Except as otherwise provided by this constitution, the governor may veto any line item in an appropriation bill. Any item vetoed shall be void unless the veto is overridden as prescribed for the passage of a bill over a veto.

(2) The governor shall veto line items or use means provided in the bill so that total appropriations for the year shall not exceed anticipated revenues for that year.

(I) Appointments. (1) The governor shall appoint, subject to confirmation by the Senate, the judges of the supreme and appellate courts, the members of the executive branch whose election or appointment is not provided by this constitution and the members of each board and commission in the executive branch whose election or appointment is not provided by this constitution or by law.

(2) Should the legislature be in regular session, the governor shall submit for confirmation by the Senate the names of persons appointed within forty-eight hours after the appointment is made. Failure of the Senate to confirm the appointment, prior to the end of the session, shall constitute rejection.

(3) If the legislature is not in regular session, the governor may make interim appointments, which shall expire at the end of the next regular session, unless submitted to and confirmed by the Senate during that session.

(4) A person not confirmed by the Senate shall not be appointed to the same office during any recess of the legislature.

(J) Removal Power. The governor may remove from office a person he appoints, except a person appointed for a term fixed by this constitution or by law.

(K) Commander-in-Chief. The governor shall be commander-in-chief of the armed forces of the state, except when they are called into service of the federal government. He may call out these forces to preserve law and order, to suppress insurrection, to repel invasion, or in other times of emergency.

(L) Other Powers and Duties. The governor shall have other powers and perform other duties authorized by this constitution or provided by law.

Section 6. Lieutenant Governor; Powers and Duties. Section 6. The lieutenant governor shall serve ex officio as a member of each committee, board, and commission on which the governor serves. He shall exercise the powers delegated to him by the governor and shall have other powers and perform other duties authorized by this constitution or provided by law.

Section 7. Secretary of State; Powers and Duties. Section 7. There shall be a Department of State. The secretary of state shall head the department and shall be the chief election officer of the state. He shall prepare and certify the ballots for all elections, promulgate all election returns, and administer the election laws, except those relating to voter registration and custody of voting machines. He shall administer the state corporation and trademark laws; serve as keeper of the Great Seal of the State of Louisiana and attest therewith all official laws, documents, proclamations, and commissions; administer and preserve the official archives of the state; promulgate and publish all laws enacted by the legislature, and register the signals thereof; and countersign and keep an official registry of all commissions. He may administer oaths, and shall have other powers and perform other duties authorized by this constitution or provided by law.

Section 8. Attorney General; Powers and Duties

Section 8. There shall be a Department of Justice, headed by the attorney general, who shall be the chief legal officer of the state. The attorney general shall be elected for a term of four years at the state general election. The assistant attorneys general shall be appointed by the attorney general to serve at his pleasure.

As necessary for the assertion or protection of any right or interest of the state, the attorney general shall have authority (1) to institute, prosecute, or intervene in any civil action or proceeding; (2) upon the written request of a district attorney, to advise and assist in the prosecution of any criminal case; and (3) for cause, when authorized by the court which would have original jurisdiction and subject to judicial review, (a) to institute, prosecute, or intervene in any criminal action or proceeding, or (b) to super-

★ sede any attorney representing the state in any civil or criminal action.

The attorney general shall exercise other powers and perform other duties authorized by this constitution or by law.

Section 9. Treasurer; Powers and Duties

Section 9. There shall be a Department of the Treasury. The treasurer shall head the department and shall be responsible for the custody, investment, and disbursement of the public funds of the state, except as otherwise provided by this constitution. He shall report annually to the governor and to the legislature at least one month before each regular session on the financial condition of the state, and shall have other powers and perform other duties authorized by this constitution or provided by law.

Section 10. Commissioner of Agriculture; Powers and Duties

Section 10. There shall be a Department of Agriculture. The commissioner of agriculture shall head the department and shall exercise all functions of the state relating to the promotion, protection, and advancement of agriculture, except research and educational functions expressly allocated by this constitution or by law to other state agencies. The commissioner shall exercise such functions and the commissioner shall have other powers and perform other duties authorized by this constitution or provided by law.

Section 11. Commissioner of Insurance; Powers and Duties

Section 11. There shall be a Department of Insurance, headed by the commissioner of insurance. The department shall exercise such functions and the commissioner shall have powers and perform duties authorized by this constitution or provided by law.

Section 12. Commissioner of Elections; Powers and Duties

Section 12. There shall be a Department of Elections and Registration. The commissioner of elections shall head the department and shall administer the laws relating to custody of voting machines and any other election equipment. He shall have other powers and perform other duties authorized by this constitution or provided by law.

Section 13. First Assistants; Appointment

Section 13. Each statewide elected official except the governor and lieutenant governor shall appoint a first assistant, subject to public confirmation by the Senate, and may remove him at his pleasure. The official who submits the appointment to the Senate in the manner and subject to the procedures and limitations applicable to appointments submitted by the governor. The first assistant shall possess the qualifications required for election to the office.

Section 14. Vacancy in Office of Governor

Section 14. When a vacancy occurs in the office of governor, the order of succession shall be: (1) the elected lieutenant governor, (2) the elected secretary of state, (3) the elected attorney general, (4) the elected treasurer, (5) the presiding officer of the Senate, (6) the presiding officer of the House of Representatives, and then (7) as provided by law. The successor shall serve the remainder of the term for which the governor was elected.

Section 15. Vacancy in Office of Lieutenant Governor

Section 15. Should a vacancy occur in the office of lieutenant governor, the governor shall nominate a lieutenant governor, who shall take office upon confirmation by a majority vote of the elected members of each house of the legislature.

Section 16. Vacancies in Other Statewide Elective Offices

Section 16. A vacancy in a statewide elective office other than that of governor or lieutenant governor shall be filled by the first assistant. If the unexpired term exceeds one year, the office shall be filled by election at the next regularly scheduled congressional or statewide election, and the first assistant shall serve only until the person then elected takes office.

Section 17. Other Vacancies

Section 17. (A) Gubernatorial Appointment; Election. If no other provision therefor is made by this constitution, by statute, by local government charter, by home rule charter or plan of government, or by ordinance, the governor may fill a vacancy occurring in any elective office. When a vacancy occurs in the office and the unexpired portion of the term exceeds one year, the vacancy shall be filled at an

election, as provided by law, and the appointment shall be effective only until a successor takes office.

(B) Qualifications. Nothing in this Section shall change the qualifications for any office, and every appointee must be otherwise eligible to hold the office to which appointed.

Section 18. Definition of Vacancy

Section 18. A vacancy, as used in this Article, shall occur in the event of death, resignation, removal by any means, or failure to take office for any reason.

Section 19. Declaration of Inability by Statewide Elected Officials

Section 19. When a statewide elected official transmits to the presiding officers of the Senate and House of Representatives a written declaration of his inability to discharge the powers of his office, and until he transmits to them a written declaration to the contrary, the person who would succeed to the office when a vacancy occurs shall assume the powers and duties of the office as acting official.

Section 20. Determination of Inability of Statewide Elected Officials

Section 20. (A) Declaration and Counter-Declaration. When a majority of the statewide elected officials determine that any other such official is unable to discharge the powers and duties of his office, they shall transmit a written declaration to this effect to the presiding officer of each house and to the official, and shall file a copy of the declaration in the office of the secretary of state. Thereafter, the constitutional successor shall assume the office as acting official unless, within forty-eight hours after the declaration is filed in the office of the secretary of state, the elected official files in that office and transmits to the presiding officer of each house his written counter-declaration of his ability to exercise the powers and perform the duties of his office.

(B) Determination by the Legislature. The legislature shall convene at noon on the third calendar day after the filing of any counter-declaration, which may be filed by the official at any time. Should two-thirds of the elected members of each house fail to adopt a resolution within seventy-two hours declaring probable justification for the determination that inability exists, the official shall continue in office as acting official.

(C) Assumption of Office by Constitutional Successor. If two-thirds of the elected members of each house adopt a resolution declaring that probable justification exists for the declaration of inability, the constitutional successor shall assume the powers and duties of the office and a copy of the resolution shall be transmitted forthwith to the supreme court.

(D) Determination by Supreme Court. By preference and with priority over all other matters, the supreme court shall determine the issue of inability after due notice and hearing, by a majority vote of members elected to the court, under such rules as it may adopt.

(E) Reconsideration by Supreme Court. A judgment of the supreme court affirming inability may be reconsidered by the court, after due notice and hearing, either upon its own motion or upon the application of the official. Upon proper showing and by majority vote elected members, the court may determine that no inability then exists, whereupon the official shall immediately resume the powers and duties of his office.

Section 21. Temporary Absences

Section 21. When the governor is temporarily absent from the state, the lieutenant governor shall act as governor. When any other statewide elected official is temporarily absent from the state, the appointed first assistant shall act in his absence.

Section 22. Appointment of Officials; Merger, Consolidation of Offices and Departments

Section 22. After the first election of state officials following the effective date of this constitution, the legislature may provide, by law enacted by two-thirds of the elected members of each house, for appointment, in lieu of election, of the commissioner of agriculture, the commissioner of insurance, the superintendent of education, the commissioner of elections, or any of them. In that event, the legislature shall prescribe qualifications and method of appointment and by similar vote, may provide by law for the merger or consolidation of any such office, its department, and functions with any other office or department in the executive branch. No action of the legislature pursuant hereto shall reduce the term or compensation of any incumbent elected official. By law enacted by two-thirds of the elected mem-

PAGE 16

119th Days Proceedings—January 16, 1974

bers of each house, the legislature may reestablish any such office as elective and, in that event, shall prescribe qualifications.

Respectfully submitted,

MOISE W. DENNERY
Secretary.

The Proposal contained in the report was signed by the Chairman of the Convention and attested by the Secretary in accordance with the Rules.

Delegate Dennerly, Secretary of the Constitutional Convention of 1973, submits the following report:

Constitutional Convention of 1973
State of Louisiana

January 16, 1974, Baton Rouge, La.

To the Chairman and Delegates of the Convention:

I submit the following report:

That the following Committee Proposal has been properly enrolled in final form:

★ COMMITTEE PROPOSAL No. 21—

Introduced by Delegate Dennis, Chairman, on behalf of the Committee on the Judiciary, and Delegates Avant, Bel, Bergeron, Burns, Deshotels, Drew, Gauthier, Kelly, Kilbourne, Landry, Martin, Ourso, Sandoz, Tate and Vesich (A Substitute for Committee Proposal No. 6):

A PROPOSAL

Making provisions for the judiciary branch of government and necessary provisions with respect thereto.

Be it adopted by the Constitutional Convention of Louisiana of 1973:

ARTICLE V. JUDICIAL BRANCH

Section 1. Judicial Power

Section 1. The judicial power is vested in a supreme court, courts of appeal, district courts, and other courts authorized by this Article.

Section 2. Habeas Corpus, Needful Writs, Orders and Process; Contempt

Section 2. A judge may issue writs of habeas corpus and all other needful writs, orders, and process in aid of the jurisdiction of his court. Exercise of this authority by a judge of the supreme court or of a court of appeal is subject to review by the whole court. The power to punish for contempt of court shall be limited by law.

Section 3. Supreme Court; Composition; Judgments; Terms

Section 3. The supreme court shall be composed of a chief justice and six associate justices, four of whom must concur to render judgment. The term of a supreme court judge shall be ten years.

Section 4. Supreme Court; Districts

Section 4. The state shall be divided into at least six supreme court districts, and at least one judge shall be elected from each. The districts and the number of judges assigned to each on the effective date of this constitution are retained, subject to change by law enacted by two-thirds of the elected members of each house of the legislature.

Section 5. Supreme Court; Jurisdiction; Rule-Making Power; Assignment of Judges

Section 5. (A) Supervisory Jurisdiction; Rule-Making Power; Assignment of Judges. The supreme court has general supervisory jurisdiction over all other courts. It may establish procedural and administrative rules not in conflict with law and may assign a sitting or retired judge to any court.

(B) Original Jurisdiction. The supreme court has exclusive original jurisdiction of disciplinary proceedings against a member of the bar.

(C) Scope of Review. Except as otherwise provided by this constitution, the jurisdiction of the supreme court in civil cases extends to both law and facts. In criminal matters, its appellate jurisdiction extends only to questions of law.

(D) Appellate Jurisdiction. In addition to other appeals

provided by this constitution, a case shall be appealable to the supreme court if (1) a law or ordinance has been declared unconstitutional; (2) the defendant has been convicted of a felony or a fine exceeding five hundred dollars or imprisonment exceeding six months actually has been imposed.

(E) Other Criminal Cases; Review. In all criminal cases not provided in Paragraph (D) (2) of this Section, a defendant has a right of appeal or review, as provided by law.

(F) Appellate Jurisdiction; Civil Cases; Extent. Subject to the provisions in Paragraph (C), the supreme court has appellate jurisdiction over all issues involved in a civil action properly before it.

Section 6. Supreme Court; Chief Justice

Section 6. The judge oldest in point of service on the supreme court shall be chief justice. He is the chief administrative officer of the judicial system of the state, subject to rules adopted by the court.

Section 7. Supreme Court; Personnel

Section 7. The supreme court may select a judicial administrator, its clerks, and other personnel and prescribe their duties.

Section 8. Courts of Appeal; Circuits; Panels; Judgments; Terms

Section 8. (A) Circuits; Panels. The state shall be divided into at least four circuits, with one court of appeal in each. Each court shall sit in panels of at least three judges selected according to rules adopted by the court.

(B) Judgments. A majority of the judges sitting in a case must concur to render judgment. However, when a judgment of a district court is to be modified or reversed and one judge dissents, the case shall be reargued before a panel of at least five judges prior to rendition of judgment, and a majority must concur to render judgment.

(C) Terms. The term of a court of appeal judge shall be ten years.

Section 9. Courts of Appeal; Circuits and Districts

Section 9. Each circuit shall be divided into at least three districts, and at least one judge shall be elected from each. The circuits and districts and the number of judges as elected in each circuit on the effective date of this constitution are retained, subject to change by law enacted by two-thirds of the elected members of each house of the legislature.

Section 10. Courts of Appeal; Jurisdiction

Section 10. (A) Jurisdiction. Except in cases appealable to the supreme court and except as otherwise provided by this constitution, a court of appeal has appellate jurisdiction of all (1) civil matters decided within its circuit and (2) matters appealed from family and juvenile courts, except criminal prosecutions of persons other than juveniles. It has supervisory jurisdiction over cases in which an appeal would lie to it.

(B) Scope of Review. Except as limited to questions of law by this constitution, or as provided by law in the review of administrative agency determinations, appellate jurisdiction of a court of appeal extends to law and facts.

Section 11. Courts of Appeal; Certification

Section 11. A court of appeal may certify any question of law before it to the supreme court, and the supreme court when may give its binding instruction or decide the case upon the whole record.

Section 12. Courts of Appeal; Chief Judge

Section 12. The judge oldest in point of service on each court of appeal shall be chief judge of that court and shall administer the court subject to rules adopted by it.

Section 13. Courts of Appeal; Personnel

Section 13. Each court of appeal may select its clerk and other personnel and prescribe their duties.

Section 14. District Courts; Judicial Districts

Section 14. The state shall be divided into judicial districts, each composed of at least one parish and served by at least one district judge.

Section 15. Courts; Retention; Jurisdiction; Judicial District Changes; Terms

Section 15. (A) Court Retention; Trial Courts of Limited Jurisdiction. The district, family, juvenile, parish, city, and magistrate courts existing on the effective date of this constitution are retained. Subject to the limitations in Sections 16 and 20 of this Article, the legislature may abolish or merge trial courts of limited or specialized jurisdiction. The legislature may establish trial courts of limited jurisdiction with parishwide territorial jurisdiction and subject matter juris-

PAGE 17

119th Days Proceedings—January 16, 1974

diction which shall be uniform throughout the state. The office of city marshal is continued until the city court he serves is abolished.

(B) Judicial Districts. The judicial districts existing on the effective date of this constitution are retained. Subject to the limitations in Section 20 of this Article, the legislature may establish, divide, or merge judicial districts with approval in a referendum in each district and parish affected.

(C) Term. The term of a district, parish, or city court judge shall be six years.

(D) Number of Judges. The legislature may change the number of judges in any judicial district by law enacted by two-thirds of the elected members of each house.

Section 16. District Courts; Jurisdiction

Section 16. (A) Original Jurisdiction. Except as otherwise authorized by this constitution, a district court shall have original jurisdiction of all civil and criminal matters. It shall have exclusive original jurisdiction of felony cases and of cases involving title to immovable property; the right to office or other public position; civil or political rights; probate and succession matters; the state, a political corporation, or political subdivisions, or a succession, as a defendant; and the appointment of receivers or liquidators for corporations or partnerships.

(B) Appellate Jurisdiction. A district court shall have appellate jurisdiction as provided by law.

Section 17. District Courts; Chief Judge

Section 17. Each district court shall elect from its members a chief judge who shall exercise, for a term designated by the court, the administrative functions prescribed by rule of court.

Section 18. Juvenile Courts; Jurisdiction

Section 18. Notwithstanding any contrary provision of Section 16 of this Article, juvenile and family courts shall have jurisdiction as provided by law.

Section 19. Mayors' Courts; Justice of the Peace Courts

Section 19. Mayors' courts and justice of the peace courts existing on the effective date of this constitution are continued, subject to change by law.

Section 20. Judges; Decrease in Terms and Compensation Prohibited

Section 20. The term of office, retirement benefits, and compensation of a judge shall not be decreased during the term for which he is elected.

Section 21. Judges; Election; Vacancy

Section 21. (A) Election. Except as otherwise provided in this Section, all judges shall be elected. Election shall be at the regular congressional election.

(B) Vacancy. A newly-created judgeship or a vacancy in the office of a judge shall be filled by special election called by the governor and held within six months after the day on which the vacancy occurs or the judgeship is established, except when the vacancy occurs in the last six months of an existing term. Until the vacancy is filled, the supreme court shall appoint a person meeting the qualifications for the office, other than domicile, to serve at its pleasure. The appointee shall be ineligible as a candidate at the election to fill the vacancy or the newly-created judicial office. No person serving as an appointed judge, other than a retired judge, shall be eligible for retirement benefits provided for the elected judiciary.

(C) End of Term. A judge serving on the effective date of this constitution shall serve through December thirty-first of the last year of his term or, if the last year of his term is not in the year of a regular congressional election, then through December thirty-first of the following year. The election for the next term shall be held in the year in which the term expires, as provided above.

Section 22. Judges; Retirement

Section 22. (A) Retirement System. Within two years after the effective date of this constitution, the legislature shall provide for a retirement system for judges which shall apply to a judge taking office after the effective date of the law enacting the system and in which a judge in office at that time may elect to become a member, with credit for all prior years of judicial service and without contribution thereafter. The retirement benefits and judicial service rights of a judge in office or retired on the effective date of this con-

stitution shall not be diminished, nor shall the benefits to which a surviving spouse is entitled be reduced.

(B) Mandatory Retirement. Except as otherwise provided in this Section, a judge shall not remain in office beyond his seventieth birthday.

Section 23. Judges; Qualifications

Section 23. A judge of the supreme court, a court of appeal, district court, family court, parish court, or court having solely juvenile jurisdiction shall have been admitted to the practice of law in this state for at least five years prior to his election, and shall have been domiciled in the respective district, circuit, or parish for the two years preceding election. He shall not practice law.

Section 24. Judiciary Commission

Section 24. (A) Composition. The judiciary commission shall consist of

(1) one court of appeal judge and two district court judges selected by the supreme court;

(2) two attorneys admitted to the practice of law for at least ten years and one attorney admitted to the practice of law for at least three years but not more than ten years, selected by the Conference of Court of Appeal Judges or its successors. They shall not be judges, active or retired, or public officials, other than notaries public; and

(3) three citizens, not lawyers, judges active or retired, or public officials, selected by the Louisiana District Judges' Association or its successor.

(B) Term; Vacancy. A member of the commission shall serve a four-year term and shall be ineligible to succeed himself. His term shall end upon the occurrence of any event which would have made him ineligible for appointment. When a vacancy occurs, a successor shall be appointed for a four-year term by the authority which appointed his predecessor.

(C) Powers. On recommendation of the judiciary commission, the supreme court may censure, suspend with or without salary, remove from office, or retire involuntarily a judge for willful misconduct relating to his official duty, willful and persistent failure to perform his duty, or resistant and public conduct pre-judicial to the administration of justice that brings the judicial office into disrepute, conduct while in office which would constitute a felony, or conviction of a felony. On recommendation of the judiciary commission, the supreme court may disqualify a judge from exercising any judicial function, without loss of salary, during pendency of proceedings in the supreme court. On recommendation of the judiciary commission, the supreme court may retire involuntarily a judge for disability that seriously interferes with the performance of his duties and that is or is likely to become permanent. The supreme court shall make rules implementing this Section and providing for confidentiality and privilege of commission proceedings.

(D) Other Disciplinary Action. Action against a judge under this Section shall not preclude disciplinary action against him concerning his license to practice law.

Section 25. District Attorneys

Section 25. (A) Election; Qualifications; Assistants. In each judicial district a district attorney shall be elected for a term of six years. He shall have been admitted to the practice of law in the state for at least five years prior to his election and shall have resided in the district for the two years preceding election. A district attorney may select assistants as authorized by law, and other personnel.

(B) Powers. Except as otherwise provided by this constitution, a district attorney, or his designated assistant, shall have charge of every criminal prosecution by the state in his district, be the representative of the state before the grand jury in his district, and be the legal advisor to the grand jury. He shall perform other duties provided by law.

(C) Prohibition. No district attorney or assistant district attorney shall appear, plead, or in any way defend or assist in defending any criminal prosecution or charge. A violation of this Paragraph shall be cause for removal.

Section 26. Sheriffs

Section 26. In each parish a sheriff shall be elected for a term of four years. He shall be the chief law enforcement officer in the parish, except as otherwise provided by this constitution, and shall execute court orders and process. He shall be the collector of state and parish ad valorem taxes and such other taxes and license fees as provided by law. This Section shall not apply to Orleans Parish.

Section 27. Clerks of Court

Section 27. (A) Powers and Duties; Deputies. In each parish a clerk of the district court shall be elected for a term of four years. He shall be ex officio notary public and parish

recorder of conveyances, mortgages, and other acts and shall have other duties and powers provided by law. The clerk may appoint deputies with duties and powers provided by law and, with the approval of the district judges, he may appoint minute clerks with duties and powers provided by law.

(B) Office Hours. The legislature shall establish uniform statewide office hours for clerks of the district courts.

Section 28. Coroners

Section 28. In each parish a coroner shall be elected for a term of four years. He shall be a licensed physician and possess the other qualifications and perform the duties provided by law. The requirement that he be a licensed physician shall be inapplicable in any parish in which no licensed physician will accept the office.

Section 29. Vacancies

Section 29. When a vacancy occurs in the following offices, the duties of the office, until it is filled by election as provided by law, shall be assumed by the persons herein designated: (1) sheriff, by the chief criminal deputy; (2) district attorney, by the first assistant; (3) clerk of a district court, by the chief deputy; (4) coroner, by the chief deputy. If there is no such person to assume the duties when the vacancy occurs, the governing authority or authorities of the parish or parishes concerned shall appoint a qualified person to assume the duties when the vacancy occurs, the governing authority or authorities of the parish or parishes concerned shall appoint a qualified person to assume the duties of the office until filled by election.

Section 30. Reduction of Salaries and Benefits Prohibited

Section 30. The salary and retirement benefits of an attorney general, district attorney, sheriff, coroner, or clerk of the district court shall not be diminished during his term of office.

Section 31. Orleans Parish Courts, Officials

Section 31. Except for provisions relating to terms of office as provided elsewhere in this Article, and notwithstanding any other contrary provision of this constitution, the following courts and officers in Orleans Parish are continued, subject to change by law, the civil and criminal district courts; the city, municipal, traffic and juvenile courts; the clerks of the civil and criminal district courts; the civil and criminal sheriffs; the constables and the clerks of the first and second city courts; the register of conveyances; and the recorder of mortgages.

Section 32. Jurors

Section 32. (A) Qualifications. A citizen of the state who has reached the age of majority is eligible to serve as a juror within the parish in which he is domiciled. The legislature may provide additional qualifications.

(B) Exemptions. The supreme court shall provide by rule for exemption of jurors.

Section 33. Grand Jury

Section 33. (A) Grand Jury. There shall be a grand jury or grand juries in each parish, whose qualifications, duties, and responsibilities shall be provided by law. The secrecy of the proceedings, including the identity of witnesses, shall be provided by law.

(B) Right to Counsel. The legislature may establish by law terms and conditions under which a witness may have the right to the advice of counsel while testifying before the grand jury.

Respectfully submitted,
MOISE W. DENNERY
Secretary

The Proposal contained in the report was signed by the Chairman of the Convention and attested by the Secretary in accordance with the Rules.

Delegate Dennery, Secretary of the Constitutional Convention of 1973, submits the following report:

Constitutional Convention of 1973
State of Louisiana

January 16, 1974, Baton Rouge, La.

To the Chairman and Delegates of the Convention:

I submit the following report:

That the following Committee Proposal has been properly Re-Enrolled in final form:

COMMITTEE PROPOSAL No. 26—

Introduced by Delegate Rayburn, Chairman, on behalf of the Committee on Revenue, Finance and Taxation, and Delegates Alario, Brown, Cheahady, Edwards, Goldman, Mauberrert, Mire, Nunez, Planchard, Slay and Winchester:

A PROPOSAL

Making provisions for property taxation.

Be it adopted by the Constitutional Convention of Louisiana of 1973.

ARTICLE XI. REVENUE AND FINANCE

Section 1. Ad Valorem Taxes

Section 1. (A) Assessments. Property subject to ad valorem taxation shall be listed on the assessment rolls at its assessed valuation, which, except as provided in Paragraph (C), shall be a percentage of its fair market value. The percentage of fair market value shall be uniform throughout the state upon the same class of property.

(B) Classification. The classifications of property subject to ad valorem taxation and the percentage of fair market value applicable to each classification for the purpose of determining assessed valuation are as follows:

Classifications	Percentages
1. Land	10%
2. Improvements for residential purposes	10%
3. Other property	15%
(C) Use Value. Bona fide agricultural, horticultural, marsh, and timber lands, as defined by general law, shall be assessed for tax purposes at ten percent of use value rather than fair market value. The legislature may provide by law similarly for buildings of historic architectural importance.	

(D) Valuation. Each assessor shall determine the fair market value of all property subject to taxation within his respective parish or district except public service properties, which shall be valued at fair market value by the Louisiana Tax Commission or its successor. Each assessor shall determine the use value of property which is to be so assessed under the provisions of Paragraph (C). Fair market value and use value of property shall be determined in accordance with criteria which shall be established by law and which shall apply uniformly throughout the state.

(E) Review. The correctness of assessments by the assessor shall be subject to review first by the parish governing authority, then by the Louisiana Tax Commission or its successor, and finally by the courts, all in accordance with procedures established by law.

(F) Reappraisal. All property subject to taxation shall be reappraised and valued in accordance with this Section, at intervals of not more than four years.

Section 2. State Property Taxation; Rate Limitation

Section 2. State taxation on property for all purposes shall not exceed an annual rate of five and three-quarter mills on the dollar of assessed valuation.

Section 3. Homestead Exemption

Section 3. (A) Homeowners.

(1) The bona fide homestead, consisting of a tract of land or two or more tracts of land with a residence on one tract and a field, pasture, or garden on the other tract or tracts, not exceeding one hundred sixty acres, buildings and appurtenances, whether rural or urban, owned and occupied by any person, shall be exempt from state, parish, and special ad valorem taxes to the extent of three thousand dollars of the assessed valuation.

(2) By law enacted by two-thirds of the elected members of each house, the legislature may increase this homestead exemption to an amount which shall not exceed five thousand dollars of the assessed valuation.

(3) The homestead exemption of veterans of the armed forces of the United States, honorably discharged or separated from such services or other persons who served in said armed forces, as defined by general law, and of persons sixty-five years of age or older shall be five thousand dollars of the assessed valuation.

(4) The homestead exemption shall extend to the surviving spouse or minor children of a deceased owner and shall apply when the homestead is occupied as such and title to it is in either husband or wife but not to more than one homestead owned by the husband or wife.

(5) This exemption shall not extend to municipal taxes. However, the exemption shall apply (a) in Orleans Parish, to state, general city, school, levee, and levee district taxes and (b) to any municipal taxes levied for school purposes.

(B) Residential Lessees. Notwithstanding any contrary provision in this constitution, the legislature may provide for tax relief to residential lessees in the form of credits or

Segura	Thompson	Wattigny
Singletary	Tobias	Weiss
Slay	Toca	Willis
Stephenson	Toomy	Winchester
Stinson	Ullo	Wisham
Tate	Warren	
Total—83.		

NOT VOTING

Delegates—		
Gauthier	LeBleu	Riecke
Giarrusso	Miller	Roy
Guarisco	Munson	Tapper
Jack	O'Neill	Vesich
Kilpatrick	Quiso	Wall
Lambert	Pugh	Womack
Total—18.		

And the Chair declared that the above Proposal failed to pass.

Delegate Chehardy moved to reconsider the vote by which the above Proposal failed to pass, and, on his own motion, the motion to reconsider was laid on the table.

DELEGATE PROPOSAL No. 102—

Introduced by Delegates Vick, Abraham, Aertker, Alexander, Arnette, Asseff, Avant, Badeaux, Bel, Bergeron, Bolding, Brown, Carmouche, Casey, De Bileux, Denberry, Dennis, Derbes, Duval, Elkins, Flory, Fulco, Giarrusso, Goldman, Grier, Guarisco, Hardee, Haynes, A. Jackson, J. Jackson, Jones, Juneau, Landrum, A. Landry, E. J. Landry, Lethman, McDaniel, Maybuce, Miller, Riecke, Roemer, Roy, Sandoz, Schmitt, Shannon, Singletary, Soniat, Stagg, Stovall, Sutherland, Tapper, Thistlethwaite, Tobias, Velazquez, Warren, Wisham and Zervigon:

A PROPOSAL

To provide with respect to an alternative provision relative to the Judicial Branch.

Read.

Section 1. Section 8 of Article IV as set forth in Committee Proposal Number 4 as finally enrolled is hereby deleted from said proposal.

Section 2. There shall be placed on the ballot submitted to the people for the ratification of the proposed new constitution, as an alternative, the following propositions:

- ☐ 2A. FOR authorizing the attorney general to institute, prosecute, or intervene in both civil and criminal suits to protect the interests of the state.
- ☐ 2B. FOR authorizing the attorney general to institute, prosecute, or intervene in only civil suits to protect the interests of the state.

Section 3. (A) If Alternative Proposition No. 2A authorizing the attorney general to institute, prosecute, or intervene in both civil and criminal suits to protect the interests of the state is approved by the electors and if the proposed constitution is approved by the electors, then the following section shall become Section 8 of Article IV of the new constitution:

"ARTICLE IV. EXECUTIVE BRANCH

Section 8. Attorney General; Qualifications; Powers and Duties; Vacancies

Section 8. The attorney general and the assistants shall be learned in the law and shall have actually resided and practiced law, as duly licensed attorneys, in the state for at least five years preceding their election and appointment. They, or one of them, shall attend to, and have charge of all legal matters in which the state has an interest, or to which the state is a party, with power and authority to institute and prosecute or to intervene in any and all suits or other proceedings, civil or criminal, as they may deem necessary for the assertion or protection of the rights and interests of the state. They shall exercise supervision over the several district attorneys throughout the state, and perform all other duties imposed by law.

In case of a vacancy in the office of attorney general,

the first assistant attorney general shall perform the duties of the attorney general until his successor shall have been duly elected and qualified."

(B) If Alternative Proposition No. 2B authorizing the attorney general to institute, prosecute, or intervene in only civil suits to protect the interests of the state is approved by the electors and if the proposed constitution is approved by the electors, then the following section shall become Section 8 of Article IV of the new constitution:

"ARTICLE IV. EXECUTIVE BRANCH

Section 8. Attorney General; Powers and Duties

Section 8. There shall be a Department of Justice, headed by the attorney general, who shall be the chief legal officer of the state. The attorney general shall be elected for a term of four years at the state general election. The assistant attorneys general shall be appointed by the attorney general to serve at his pleasure.

As necessary for the assertion or protection of any right or interest of the state, the attorney general may

(1) institute, prosecute, or intervene in any civil action or proceeding;

(2) advise and assist, upon the written request of a district attorney, in the prosecution of any criminal case; and

(3) for cause, when authorized by the court which would have original jurisdiction and subject to judicial review, (a) institute, prosecute, or intervene in any criminal action or proceeding, or (b) supersede any attorney representing the state in any civil or criminal action.

The attorney general shall exercise other powers and perform other duties authorized by this constitution or by law."

Delegate Vick sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegate Vick to Delegate Proposal No. 102 by Delegate Vick, et al.

Amend printed proposal as follows:

AMENDMENT No. 1—

On page 1, delete lines 17 through 32, both inclusive, in their entirety and on page 2, delete lines 1 through 3, both inclusive in their entirety and insert in lieu thereof the following:

"Section 1. There shall be placed on the ballot submitted to the people for the ratification of the proposed new constitution, as an alternative, the following propositions:

- 2A. FOR authorizing the attorney general to institute, prosecute, or intervene in both civil and criminal suits to protect the interests of the state.
- 2B. AGAINST authorizing the attorney general to institute, prosecute, or intervene in both civil and criminal suits to protect the interests of the state.

Section 2. (A) If Alternative Proposition No. 2A concerning authorizing the attorney general to institute, prosecute, or intervene in both civil and criminal suits to protect the interests of the state is approved by the electors and if the proposed constitution is approved by the electors, then the following sections shall become Section 8 of Article IV of the new constitution and Section 8 of Article IV as set forth in Committee Proposal No. 4 shall be null, void and of no effect and shall be deemed stricken from the proposed constitution."

AMENDMENT No. 2—

On page 2, delete lines 25 through 32, both inclusive, in their entirety and on page 3, delete lines 1 through 20, both inclusive in their entirety and insert in lieu thereof the following:

"(B) If Alternative Proposition No. 2A concerning authorizing the attorney general to institute, prosecute, or intervene in both civil and criminal suits to protect the interests of the state is not approved by the electors but the proposed constitution is approved by the electors then no change shall be made therein."

On motion of Delegate Vick the amendments were adopted.

Delegate Vick moved to reconsider the vote by which the amendments were adopted, and on his own motion, the motion to reconsider was laid on the table.

The Proposal was read, as amended.

PAGE 7

120th Days Proceedings—January 17, 1974

Delegate Vick moved the final passage of the entire Proposal.

ROLL CALL

The roll was called with the following result:

YEAS		
Delegates—		
Alexander	Guarisco	Smith
Arnette	Jackson, A.	Smiat
Bel	Jackson, J.	Stagg
Brown	Jones	Stovall
Casey	Kean	Sutherland
De Blieux	Landry, E. J.	Tobias
Derbes	Leigh	Velazquez
Duval	Maybucci	Vick
Flory	O'Neill	Warren
Fulco	Rachal	Weiss
Giarrusso	Roemer	Wisham
Goldman	Shannon	Zervigon
Total—36.		

NAYS		
Delegates—		
Abraham	Fontenot	Munson
Anzalone	Fowler	Newton
Asseff	Gauthier	Nunez
Avant	Graham	Ourso
Badeaux	Gravel	Perez
Bergeron	Grier	Perkins
Blair	Hardee	Planchard
Bollinger	Hayes	Rayburn
Brien	Heine	Reeves
Burns	Hernandez	Roy
Burson	Jenkins	Schmitt
Cannon	Juneau	Segura
Carmouche	Kilbourne	Slay
Champagne	Lambert	Stephenson
Chatelain	Landry, A.	Stinson
Conino	Lanier	Toca
Conroy	Leithman	Toomy
Cowen	Lowe	Uilo
Deshotels	McDaniel	Wattigny
Drew	Martin	Willis
Edwards	Maubert	Winchester
Elkins	Mire	
Fayard	Morris	
Total—67.		

NOT VOTING		
Delegates—		
Mr. Chairman	Ginn	Sandoz
Aertker	Haynes	Singletary
Alario	Jack	Tappier
Chehardy	Kelly	Tate
Comar	Kilpatrick	Thistlethwaite
Corne	Landrum	Thompson
D'Gerolamo	LeBleu	Vesich
Dennery	Miller	Wall
Dennis	Pugh	Womack
Dunlap	Riecke	
Total—29.		

And the Chair declared that the above Proposal failed to pass.

Delegate Burson moved to reconsider the vote by which the above Proposal failed to pass, and, on his own motion, the motion to reconsider was laid on the table.

DELEGATE PROPOSAL No. 103—

Introduced by Delegates Elkins, Grier, Toca, Flory, Asseff, Weiss, Cowen, Vick, Jones, E. J. Landry, Carmouche, Hardee, Winchester, Dennis, Planchard, Conroy, Wisham, Anzalone, Morris, Goldman, Smith, Conino, Willis, Heine, Tobias, Segura, Uilo, Guarisco, Cannon, Deshotels and Kilbourne:

A PROPOSAL
To provide with respect to an alternative provision relative to the Legislative Branch.

Read.

Section 1. There shall be placed on the ballot submitted to the people for the ratification of the proposed new constitution, as an alternative, the following proposition:

☐ 2A. FOR reducing the number of days within which legislative sessions may be held.

☐ 2B. AGAINST reducing the number of days within which legislative sessions may be held.

Section 2(A). If Alternative Proposition No. 2A concerning the legislature and the legislative sessions is approved by the electors, and if the proposed constitution is approved by the electors, then the following Paragraph shall become Paragraph (A) of Section 2 of Article III of the new constitution and Paragraph (A) of Section 2 of Article III as set forth in Committee Proposal Number 3 shall be null, void and of no effect and shall be deemed stricken from the proposed constitution.

"ARTICLE III. LEGISLATIVE BRANCH

Section 2. Sessions

Section 2. (A) Annual Session. The legislature shall meet annually in regular session in the state capitol for not more than sixty calendar days. The legislature shall convene at noon on the second Monday in May. No new matter intended to have the effect of law shall be introduced or received by either house after midnight of the fifteenth calendar day, except by a favorable record vote of two-thirds of the elected members of each house. No measure levying a new tax or increasing an existing tax shall be introduced or enacted during a regular session held in odd-numbered year."

...

"2(B) If Alternative Proposition No. 2A concerning the legislature and legislative sessions is not approved by the electors but the proposed constitution is approved by the electors then no change shall be made therein."

Read.

Acting Chairman Lowe in the Chair

Motion

On motion of Delegate Flory the Proposal was withdrawn from the files of the Convention.

Chairman Henry in the Chair

Motion

Delegate Jenkins moved for a suspension of the rules in order to allow him ten minutes in which to explain a proposed amendment to Committee Proposal No. 26.

Delegate Roemer objected.

By a vote of 53 yeas and 36 nays the Convention refused to suspend the rules at this time.

Motion

Delegate Schmitt moved for a suspension of the rules in order to discharge Committee Proposal No. 26 from the Committee on Style and Drafting.

Delegate Newton objected.

By a vote of 23 yeas and 63 nays the Convention refused to suspend the rules, at this time.

Explanation of Vote

Delegate A. Landry sent up the following Explanation of Vote with respect to the motion for a Rules Suspension proposed by Delegate Schmitt:

"I voted not to re-open Committee Proposal No. 26 to consider the Schmitt amendment, due to the fact that penalties are set out in the Statutes for faithful performance of their duties, by the Assessors."

Motion

On motion of Delegate Dennery, the Convention withheld the Order of Business to take up other Orders of Business at this time.

Delegate Dennery, Secretary of the Constitutional Convention of 1973, submits the following report:

PAGE 4

121st Days Proceedings—January 18, 1974

Schmitt	Stovall	Velazquez
Shannon	Sutherland	Vick
Singletary	Tate	Warren
Slay	Thistlethwaite	Wattigny
Smith	Thompson	Weiss
Soniati	Tobias	Willis
Stagg	Toca	Winchester
Stephenson	Toomy	Wisham
Stinson	Uilo	Zervigon

Total—102.

NAYS

Total—0.

NOT VOTING

Delegates—		
Mr. Chairman	Jones	Reeves
Anzalone	Kean	Riecke
Badeaux	Kelly	Roemer
Brown	Kilpatrick	Roy
Bursen	Lambert	Sandoz
Conroy	LeBleu	Segura
Deshotels	Munson	Tapper
Dunlap	O'Neill	Vesich
Edwards	Perez	Wall
Haynes	Perkins	Womack

Total—30.

And the Chair declared that the above Section was finally passed.

Motion to reconsider pending.

Section 4. Inherent Power of Legislature

Section 4. The legislature shall have all powers not prohibited or denied by this constitution or by or under the constitution and laws of the United States and the absence in this constitution of a grant of power contained in the constitution hereby superseded shall not be construed as a limitation of the powers of state government.

Read.

Delegate Zervigon sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates Kean, Perez, Zervigon, Conroy, Jenkins, Casey, Lanier, Tate, Avant and Flory to Committee Proposal No. 38 by Delegate Zervigon.

Amend printed proposal as follows:

AMENDMENT No. 1—

On page 1, delete lines 28 through 32, both inclusive, in their entirety and on page 2, delete lines 1 and 2 in their entirety.

On motion of Delegate Zervigon the amendment was adopted.

Delegate Zervigon moved to reconsider the vote by which the amendment was adopted, and on her own motion, the motion to reconsider was laid on the table.

★ Section 5. Continuation of Actions and Rights

Section 5. Continuation of Actions and Rights

Section 5. All writs, actions, suits, proceedings, civil or criminal liabilities, prosecutions, judgments, sentences, orders, decrees, appeals, rights or causes of action, contracts, obligations, claims, demands, titles, and rights existing on the effective date of this constitution shall continue unaffected except as modified in accordance with this constitution. All sentences as punishment for crime shall be executed according to their terms.

Read.

Delegate Duval sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates Conroy and Duval to Committee Proposal No. 38 by Delegate Zervigon, et al.

Amend printed proposal as follows:

AMENDMENT No. 1—

On page 2, line 9, after the partial word "fected" delete the remainder of the line, and on line 10, delete the partial word "tion"

Delegate Duval moved the adoption of the amendment.

Delegate De Bieux objected.

By a vivi voce vote the amendment was adopted.

Delegate Duval moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Delegate Pugh sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Pugh to Committee Proposal No. 38 by Delegate Zervigon.

Amend printed proposal as follows:

AMENDMENT No. 1—

On page 2, at the end of line 11, delete the period "." and add a comma "," and the following: "subject, however, to the provisions relative to pardon, parole, and commutation of sentence existing at the time this constitution becomes effective."

On motion of Delegate Pugh the amendment was withdrawn.

Passage

Committee Proposal No. 38, Section 5 was read as amended.

Delegate Zervigon moved the final passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Fontenot	Newton
Abraham	Fowler	Nunez
Aertker	Fulco	O'Neill
Alexander	Gaulhier	Ourso
Anzalone	Ginn	Perkins
Annette	Goldman	Plancharde
Asseff	Graham	Rachal
Avant	Gravel	Rayburn
Badeaux	Grier	Reeves
Bel	Guarisco	Roemer
Bergeron	Hardee	Roy
Blair	Heine	Schmitt
Bollinger	Hernandez	Shannon
Brien	Jack	Singletary
Brown	Jackson, A.	Slay
Burns	Jackson, J.	Smith
Cannon	Jenkins	Soniati
Carmouche	Jones	Stagg
Casey	JunEAU	Stephenson
Chapagnie	Kelly	Stinson
Chatelain	Kilbourne	Stovall
Chehardy	Lambert	Sutherland
Comar	Landrum	Thistlethwaite
Conino	Landry, A.	Thompson
Corne	Landry, E. J.	Tobias
Cowan	Lanier	Toomy
D'Gerolamo	Leigh	Uilo
De Bieux	Leithman	Vick
Dennery	Lowe	Warren
Dennis	Martin	Wattigny
Derbes	Maubertret	Weiss
Drew	Maybucc	Willis
Duval	Miller	Winchester
Elkins	Mire	Wisham
Fayard	Morris	Zervigon
Flory		

Total—106.

PAGE 5

121st Days Proceedings—January 18, 1974

NAYS		
Delegates—	Pugh	Velazquez
Hayes		
Total—3.		

NOT VOTING		
Delegates—	Kean	Segura
Alario	Kilpatrick	Tapper
Burson	LeBlau	Tate
Conroy	McDaniel	Toca
Deshotels	Munson	Vesich
Dunlap	Perez	Wall
Edwards	Riecke	Womack
Giarrusso	Sandoz	
Haynes		
Total—23.		

And the Chair declared that the above Section was finally passed.

Motion to reconsider pending.

Explanation of Vote

Delegate Pugh sent up the following explanation of his vote on Committee Proposal 38, Section 5:

I voted against the adoption of this Section for the reason that, in my opinion, the last sentence deprives a person under sentence, for a crime, the benefits of pardon, parole and commutation of sentence available to him under the law at the time this Proposal becomes effective.

Section 6. Protection of Existing Taxes

Section 6. All taxes, penalties, fines, and forfeitures owing to the state or any political subdivision levied and collectible under the Constitution of 1921 and valid laws enacted thereunder shall inure to the entity entitled thereto. The provisions of this constitution shall not be construed or applied in such a manner as to invalidate taxes levied or authorized under the Constitution of 1921.

Read.

Delegate Jenkins sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegate Jenkins to Committee Proposal No. 38 by Delegate Zervigon.

Amend printed proposal as follows:

AMENDMENT No. 1—

On page 2, at the end of line 16, delete the words "The provi-" and delete lines 17 through 19, both inclusive, in their entirety.

On motion of Delegate Jenkins the amendment was adopted.

Delegate Jenkins moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Passage

Committee Proposal No. 38, Section 6 was read, as amended.

Delegate Zervigon moved the final passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS		
Delegates—	Asseff	Blair
Abraham	Avant	Bollinger
Aertker	Badeaux	Brien
Alexander	Bel	Brown
Anzalone	Bergeron	Burns
Arnette		

Cannon	Jackson, J.	Rachal
Carmouche	Jenkins	Rayburn
Casey	Jones	Reeves
Champagne	Juneau	Roemer
Chatelain	Kean	Roy
Chehardy	Kelly	Schmitt
Comar	Kilbourne	Shannon
Conino	Kilpatrick	Singletary
Corne	Lambert	Slay
Cowen	Landrum	Smith
D'Gerolamo	Landry, A.	Soniati
De Blieux	Landry, E. J.	Stagg
Dennery	Lanier	Stephenson
Derbes	LeBlau	Stinson
Deshotels	Leigh	Sivall
Duval	Leithman	Sutherland
Ekins	Lowe	Tapper
Fayard	McDaniel	Tate
Flory	Martin	Thistlethwaite
Fontenot	Maubere	Tobias
Fulco	Maybucc	Toca
Giarrusso	Miller	Toomy
Ginn	Mire	Uilo
Goldman	Morris	Velazquez
Graham	Newton	Warren
Gravel	Nunez	Watigny
Grier	O'Neill	Weiss
Guarisco	Ouro	Willis
Heine	Pewz	Winchester
Hernandez	Perkins	Wisham
Jack	Planchard	Womack
Jackson, A.	Pugh	Zervigon
Total—111.		

NAYS	
Total—0.	

NOT VOTING		
Delegates—	Edwards	Riecke
Mr. Chairman	Fowler	Sandoz
Alario	Gauthier	Segura
Burson	Hardee	Thompson
Conroy	Hayes	Vesich
Dennis	Haynes	Vick
Drew	Munson	Wall
Dunlap		
Total—21.		

And the Chair declared that the above Section was finally passed.

Motion to reconsider pending.

Section 7. Impairment of Debt Obligations Prohibited

Section 7. Nothing in this constitution shall be construed or applied in such a manner as to impair the obligation, validity, or security of any bonds or other debt obligations authorized under the Constitution of 1921.

Passage

Committee Proposal No. 38, Section 7 was read.

Delegate Zervigon moved the final passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS		
Delegates—	Champagne	Fontenot
Abraham	Chatelain	Fulco
Aertker	Chehardy	Giarrusso
Alexander	Comar	Ginn
Anzalone	Conino	Goldman
Arnette	Corne	Graham
Asseff	Cowen	Gravel
Avant	D'Gerolamo	Grier
Badeaux	De Blieux	Guarisco
Bel	Dennery	Heine
Bergeron	Derbes	Hernandez
Blair	Deshotels	Jack
Bollinger	Drew	Jackson, A.
Brien	Duval	Jackson, J.
Brown	Elkins	Jenkins
Burns	Carmouche	Jones
Casey	Casey	

PAGE 6

121st Days Proceedings—January 18, 1974

Juneau	Morris	Stephenson
Kean	Newton	Stinson
Kelly	Nunez	Stovall
Kilbourne	O'Neill	Sutherland
Kilpatrick	Ourso	Tapper
Lambert	Perez	Tate
Landrum	Perkins	Thistlethwaite
Landry, A.	Planchard	Tobias
Landry, E. J.	Pugh	Toca
Lanier	Rachal	Toomy
LeBleu	Rayburn	Ullo
Leigh	Reeves	Velazquez
Leithman	Roy	Warren
Lowe	Schmitt	Wattigny
McDaniel	Shannon	Weiss
Martin	Singletary	Willis
Maubert	Slay	Winchester
Maybuce	Smith	Wisham
Miller	Soniat	Womack
Mire	Stagg	Zervigon
Total—111.		

NAYS

Total—0.

NOT VOTING

Delegates—		
Mr. Chairman	Edwards	Roemer
Alario	Fowler	Sandoz
Burson	Hardee	Segura
Cannon	Hayes	Thompson
Conroy	Haynes	Vesich
Dennis	Munson	Vick
Dunlap	Riecke	Wall
Total—21.		

And the Chair declared that the above Section was finally passed.

Motion to reconsider pending.

Delegate Casey sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates Casey, Lanier, Tate, Flory, Avant, Conroy, Perez, Zervigon, Kean and Jenkins to Committee Proposal No. 38 by Delegate Zervigon.

Amend Printed Proposal as follows:

On page 5, between lines 7 and 8, insert the following:
PART III"

On motion of Delegate Casey the amendment was adopted.

Delegate Casey moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Motion

On motion of Delegate Zervigon the Convention took up Section 12, out of its regular order, and acted upon as follows:

★ Section 12. Constitution Not Retroactive

Section 12. Except as otherwise specifically provided in this constitution, this constitution shall not be retroactive and shall not create any right or liability which did not exist under the Constitution of 1921 based upon actions or matters occurring prior to the effective date of this constitution.

Passage

Committee Proposal No. 38, Section 12 was read.

Delegate Zervigon moved the final passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Abraham	Fulco	Newton
Aertker	Gauthier	Nunez
Alexander	Giarrusso	O'Neill
Anzalone	Ginn	Ourso
Arnette	Goldman	Perez
Asseff	Graham	Perkins
Avant	Gravel	Planchard
Badeaux	Grier	Pugh
Bel	Guarisco	Rayburn
Bergeron	Haynes	Reeves
Blair	Heine	Roy
Bollinger	Hernandez	Sandoz
Brien	Jack	Schmitt
Brown	Jackson, A.	Shannon
Burns	Jenkins	Singletary
Cannon	Jones	Slay
Carmouche	Juneau	Soniat
Casey	Kean	Stagg
Champagne	Kelly	Stagg
Chatelain	Kilbourne	Stephenson
Chehard	Kilpatrick	Stinson
Comar	Lambert	Stovall
Conino	Landrum	Sutherland
Corne	Landry, A.	Tapper
Cowen	Landry, E. J.	Tate
D'Gerolamo	Lanier	Thistlethwaite
De Blieux	LeBleu	Thompson
Dennery	Leigh	Toca
Dennis	Leithman	Toomy
Derbes	Lowe	Ulo
Deshotels	McDaniel	Velazquez
Drew	Marlin	Warren
Duval	Maubert	Weiss
Elkins	Maybuce	Willis
Fayard	Miller	Winchester
Flory	Mire	Womack
Fontenot	Morris	Zervigon
Fowler		
Total—112.		

NAYS

Total—0.

NOT VOTING

Delegates—		
Mr. Chairman	Hayes	Tobias
Alario	Jackson, J.	Vesich
Burson	Munson	Vick
Conroy	Rachal	Wall
Dunlap	Riecke	Wattigny
Edwards	Roemer	Wisham
Hardee	Segura	
Total—20.		

And the Chair declared that the above Section was finally passed.

Motion to reconsider pending.

Section 13. Legislative Provisions

Section 13. (A) President of Senate. The lieutenant governor in office on the effective date of this constitution shall continue to serve as president of the Senate until his term expires in 1976.

(B) First Session. The provisions of Article III of this constitution shall become effective for the first session of the legislature to be held in 1975. However, in 1976, the legislature shall convene in regular session at twelve o'clock noon on the second Monday in May, at which time the members elected at the statewide election in 1976 shall take office; otherwise, the legislature shall conduct that session as provided in Article III of this constitution.

(C) Legislative Auditor. The legislative auditor shall continue to exercise the powers and perform the functions set forth in Article VI, Section 26(2) of the Constitution of 1921 until otherwise provided by law.

(D) Legislative Reapportionment. The requirement for legislative reapportionment in Section 5 of Article III of this constitution shall apply to the reapportionment of the

PAGE 9

121st Days Proceedings—January 18, 1974

Motion

On motion of Delegate Zervignon Committee Proposal No. 38, Section 21, was taken up out of its regular order, and acted upon as follows:

Section 21. Pardon Board

Section 21. Until a pardon board is appointed under the terms of this constitution, the lieutenant governor, attorney general, and presiding judge of the sentencing court shall continue to serve as a board of pardons.

Passage

Committee Proposal No. 38, Section 21 was read.

Delegate Zervignon moved the final passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Abraham	Graham	Perkins
Aertker	Gravel	Pianchard
Alexander	Grier	Pugh
Anzalone	Guarisco	Rachal
Arnette	Hayes	Rayburn
Asseff	Haynes	Reeves
Avant	Heine	Roy
Badeaux	Hernandez	Sandoz
Bel	Jack	Schmitt
Elair	Jackson, A.	Shannon
Bollinger	Jackson, J.	Singletary
Blien	Jenkins	Slay
Brown	Jones	Smith
Burns	Juneau	Soniatt
Cannon	Kean	Stagg
Carmouche	Kelly	Stephenson
Casey	Kilbourne	Stinson
Chehardy	Kilpatrick	Sovall
Conino	Landrum	Sutherland
Cowen	Landry, A.	Tapper
De Blieux	Landry, E. J.	Tate
Dennerly	Lanier	Thistlethwaite
Dennis	LeBleu	Thompson
Derbes	Leigh	Tobias
Deshotels	Leithman	Toomy
Duval	Lowe	Uilo
Elkins	Martin	Velazquez
Fayard	Mauberrert	Warren
Flory	Maybuce	Wattigny
Fontenot	Miller	Weiss
Fowler	Mire	Willis
Fulco	Morris	Winchester
Gauthier	Newton	Wisham
Giarrusso	Nunez	Womack
Ginn	O'Neill	Zervignon
Goldman	Ourso	
Total—109.		

NAYS

Total—0.

NOT VOTING

Delegates—		
Mr. Chairman	D'Gerolamo	Riecke
Alario	Drew	Roemer
Bergeron	Dunlap	Segura
Burson	Edwards	Toca
Chatelain	Hardee	Vesich
Comar	Lambert	Vick
Conroy	McDaniel	Wall
Corne	Munson	
Total—23.		

And the Chair declared that the above Section was finally passed.

[344]

Motion to reconsider pending.

Section 22. Levee Districts; Compensation for Property

Section 22. The provisions of Article XVI, Section 6 of the Constitution of 1921 shall be continued as a statute, subject to change by the legislature, and the amount of compensation therein required to be paid for property used or destroyed for levee or levee drainage purposes shall be paid as provided in Section 6 of Article XVI of the Constitution of 1921 until the legislature enacts a law to effectuate Article VI, Section 43 of this constitution.

Passage

Committee Proposal No. 38, Section 22 was read.

Delegate Lanier moved the final passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Abraham	Giarrusso	Perez
Aertker	Ginn	Perkins
Alexander	Goldman	Pianchard
Anzalone	Graham	Pugh
Arnette	Gravel	Rachal
Asseff	Grier	Rayburn
Avant	Guarisco	Reeves
Badeaux	Hayes	Roy
Bel	Haynes	Sandoz
Bergeron	Heine	Schmitt
Blair	Hernandez	Shannon
Bollinger	Jack	Singletary
Brien	Jackson, A.	Slay
Brown	Jackson, J.	Smith
Burns	Jenkins	Soniatt
Cannon	Jones	Stagg
Carmouche	Juneau	Stephenson
Casey	Kean	Stinson
Champagne	Kelly	Stovall
Chatelain	Kilbourne	Sutherland
Chehardy	Kilpatrick	Tapper
Comar	Landrum	Tate
Conino	Landry, A.	Thistlethwaite
Conroy	Landry, E. J.	Thompson
Cowen	Lanier	Tobias
D'Gerolamo	LeBleu	Toca
De Blieux	Leigh	Toomy
Dennerly	Leithman	Uilo
Dennis	Lowe	Velazquez
Derbes	McDaniel	Vick
Deshotels	Martin	Warren
Drew	Mauberrert	Wattigny
Duval	Maybuce	Weiss
Elkins	Miller	Willis
Fayard	Mire	Winchester
Flory	Morris	Wisham
Fowler	Newton	Womack
Fulco	Nunez	Zervignon
Gauthier	Ourso	
Total—116.		

Total—0.

NAYS

NOT VOTING

Delegates—		
Mr. Chairman	Fontenot	Riecke
Alario	Hardee	Roemer
Burson	Lambert	Segura
Corne	Munson	Vesich
Dunlap	O'Neill	Wall
Edwards		
Total—16.		

And the Chair declared that the above Section was finally passed.

Motion to reconsider pending.

Motion

On motion of Delegate Zervignon Committee Proposal No. 38, Section 20 was taken up out of its regular order, and acted upon as follows:

PAGE 15

121st Days Proceedings—January 18, 1974

AMENDMENT No. 2—

On page 4, line 19, after the word and punctuation "constitution," and before the word "provisions" delete the word "all other" and insert in lieu thereof the word "the"

AMENDMENT No. 3—

On page 4, line 20 immediately after the word "repealed" change the comma "," to a period "." and delete the remainder of the line and delete lines 21 through 25, both inclusive, in their entirety

On motion of Delegate Perez the amendments were adopted.

Delegate Perez moved to reconsider the vote by which the amendments were adopted, and on his own motion, the motion to reconsider was laid on the table.

Passage

Committee Proposal No. 38, Section 10 was read.

Delegate Zervigon moved the final passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Graham	Planchar
Abraham	Grier	Pugh
Alexander	Hardee	Rayburn
Arnette	Haynes	Reeves
Avant	Heine	Roemer
Badeaux	Hernandez	Roy
Bel	Jack	Schmitt
Bergeron	Jackson, A.	Shannon
Blair	Jackson, J.	Singletary
Brien	Jenkins	Slay
Burns	Jones	Smith
Burson	Juneau	Soniast
Casey	Kilpatrick	Stagg
Champagne	Landrum	Stephenson
Chatelain	Landry, A.	Stovall
Chehardy	Landry, E. J.	Sutherland
Conino	Lanier	Tate
Conroy	LeBlue	Thistlethwaite
Corne	Leigh	Thompson
De Blieux	Leithman	Tobias
Denney	Lowe	Tommy
Dennis	McDaniel	Uilo
Deshotels	Maybue	Velazquez
Drew	Miller	Vick
Elkins	Mire	Warren
Flory	Newton	Weiss
Fowler	Nunez	Willis
Fulco	O'Neill	Wisham
Gauthier	Perez	Womack
Ginn	Perkins	Zervigon
Goldman		
Total—91.		

Delegate Asseff
Total—1.

NAYS

NOT VOTING

Delegates—		
Aertker	Fayard	Munson
Alario	Fontenot	Ourso
Anzalone	Giarrusso	Rachal
Bollinger	Gravel	Sacke
Brown	Guarisco	Sandoz
Cannon	Hayes	Segura
Carmouche	Kean	Stinson
Comar	Kelly	Tapper
Cowen	Kilbourne	Toca
D'Gerolamo	Lambert	Vesich
Derbes	Marlin	Wall
Dunlap	Maubert	Wattigny
Duval	Morris	Winchester
Edwards		
Total—40.		

And the Chair declared that the above Section was finally passed.

Motion to reconsider pending.

Section 11. Existing Laws

Section 11. (A) Retention. Laws in force on the effective date of this constitution, which were constitutional when enacted and are not inconsistent with this constitution, shall remain in effect until altered or repealed by the authority which enacted them or until they expire by their own limitation.

(B) Expiration of Inconsistent Laws. Laws which are inconsistent with this constitution shall cease upon its effective date. However, a law which is inconsistent with a provision of this constitution requiring legislation to implement it shall remain in effect for three years after the effective date of this constitution, unless sooner repealed by the legislature.

Read.

Delegate Perez sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegates Conroy, Perez, Zervigon, Kean, Jenkins, Casey, Lanier, Tate, Flory and Avant to Committee Proposal No. 38 by Delegate Zervigon, et al.

Amend printed Proposal as follows:

AMENDMENT No. 1—

On page 4, line 29, after the word "not" and before the word "with" delete the word "inconsistent" and insert in lieu thereof the word "in conflict"

AMENDMENT No. 2—

On page 4, line 30, after the word "repealed" delete the remainder of the line and at the beginning of line 31, delete the words "which enacted them"

AMENDMENT No. 3—

On page 5, line 3, after the word and punctuation "date," "in-" and at the beginning of line 2, delete the word "consistent" and insert in lieu thereof the words "in conflict"

AMENDMENT No. 4—

On page 5, line 3, after the word and punctuation "date," delete the remainder of the line and delete lines 4 through 7, both inclusive in their entirety

On motion of Delegate Perez the amendments were withdrawn.

Delegate Perez sent up floor amendments, which were read as follows:

FLOOR AMENDMENTS

Amendments proposed by Delegates Conroy, Perez, Zervigon, Kean, Casey, Lanier, Tate, Flory and Avant to Committee Proposal No. 38 by Delegate Zervigon, et al.

Amend printed Proposal as follows:

AMENDMENT No. 1—

On page 4, line 29, after the word "not" and before the word "with" delete the word "inconsistent" and insert in lieu thereof the words "in conflict"

AMENDMENT No. 2—

On page 4, line 30, after the word "repealed" delete the remainder of the line and at the beginning of line 31, delete the words "which enacted them"

AMENDMENT No. 3—

On page 5, at the end of line 1, delete the partial word "in-" and at the beginning of line 2, delete the word "consistent" and insert in lieu thereof the words "in conflict"

AMENDMENT No. 4—

On page 5, line 3, after the word and punctuation "date," delete the remainder of the line and delete lines 4 through 7, both inclusive in their entirety

AMENDMENT No. 5—

On page 5, line 1, after the words "Expiration of" strike

PAGE 16

121st Days Proceedings—January 18, 1974

out the word "Inconsistent" and insert in lieu thereof "conflicting"

On motion of Delegate Perez the amendments were adopted.

Delegate Perez moved to reconsider the vote by which the amendments were adopted, and on his own motion, the motion to reconsider was laid on the table.

Passage

Committee Proposal No. 38, Section 11 was read, as amended.

Delegate Zervigon moved the final passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—

Abraham	Goldman	Perkins
Alexander	Graham	Planchard
Arnette	Grier	Pugh
Avant	Hardee	Rayburn
Badeaux	Hayes	Reeves
Bel	Haynes	Roemer
Bergeron	Heine	Roy
Blair	Hernandez	Schmitt
Brien	Jack	Shannon
Burns	Jackson, A.	Singletary
Burson	Jackson, J.	Slay
Casey	Jenkins	Smith
Champagne	Jones	Soniata
Chatelain	Juneau	Stagg
Chehardy	Kilpatrick	Stephenson
Conino	Landrum	Stovall
Conroy	Landry, A.	Sutherland
Corne	Landry, E. J.	Tate
D'Gerolamo	Lanier	Thistlethwaite
De Blieux	LeBleu	Thompson
Dennery	Leigh	Tobias
Dennis	Leithman	Toca
Derbes	Lowe	Toomy
Deshotels	McDaniel	Ullio
Drew	Martin	Velazquez
Elkins	Maybuce	Warren
Flory	Miller	Weiss
Fontenot	Mire	Willis
Fowler	Newton	Wisham
Fulco	Nunez	Womack
Gauthier	O'Neill	Zervigon
Ginn	Perez	

Total—95.

NAYS

Delegate Asseff
Total—1.

NOT VOTING

Delegates—

Mr. Chairman	Edwards	Ourso
Aertker	Fayard	Rachal
Alario	Giarrusso	Riecke
Anzalone	Gravel	Sandoz
Bollinger	Guarisco	Segura
Brown	Kean	Stinson
Cannon	Kelly	Tapper
Carmouche	Kilbourne	Vesich
Comar	Lambert	Vick
Cowen	Maubertret	Wall
Dunlap	Morris	Wattigny
Duval	Munson	Winchester

Total—36.

And the Chair declared that the above Section was finally passed.

Motion to reconsider pending.

[346]

Section 16. Ports; Transition to Statutes

Section 16. All provisions of Article VI, Sections 16, 16.1, 16.2, 16.3, 16.4, 16.5, 16.6, 17, 29, 29.1, 29.2, 29.3, 29.4, 33.1, 34 and Article XIV, Section 30.2 of the Constitution of 1921 shall become statutes subject to amendment or repeal only as provided in Article VI, Section 44 of this constitution.

Read.

Delegate Jenkins sent up a floor amendment, which was read as follows:

FLOOR AMENDMENT

Amendment proposed by Delegates Jenkins, Casey, Lanier, Tate, Flory, Avant, Conroy, Perez, Zervigon and Kean to Committee Proposal No. 38 by Delegate Zervigon.

Amend printed proposal as follows:

AMENDMENT No. 1—

On page 6, between lines 23 and 24, insert the following:
"PART II"

On motion of Delegate Jenkins the amendment was adopted.

Delegate Jenkins moved to reconsider the vote by which the amendment was adopted, and on his own motion, the motion to reconsider was laid on the table.

Passage

Committee Proposal No. 38, Section 16 was read, as amended.

Delegate Zervigon moved the final passage of the Section.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—

Mr. Chairman	Fulco	O'Neill
Abraham	Gauthier	Perez
Alexander	Ginn	Perkins
Arnette	Goldman	Planchard
Asseff	Graham	Pugh
Avant	Grier	Rayburn
Badeaux	Hardee	Reeves
Bel	Hayes	Roemer
Bergeron	Haynes	Roy
Blair	Heine	Schmitt
Brien	Hernandez	Shannon
Burns	Jack	Singletary
Burson	Jackson, A.	Slay
Cannon	Jackson, J.	Smith
Casey	Jenkins	Soniata
Champagne	Jones	Stagg
Chatelain	Juneau	Stephenson
Chehardy	Kean	Stovall
Conino	Landrum	Sutherland
Conroy	Landry, A.	Tate
Corne	Landry, E. J.	Thistlethwaite
D'Gerolamo	Lanier	Thompson
De Blieux	LeBleu	Toca
Dennery	Leigh	Toomy
Dennis	Leithman	Ullio
Derbes	Lowe	Velazquez
Deshotels	McDaniel	Vick
Drew	Martin	Warren
Duval	Maybuce	Weiss
Elkins	Miller	Willis
Flory	Mire	Wisham
Fontenot	Newton	Womack
Fowler	Nunez	Zervigon

Total—99.

NAYS

Total—0.

NOT VOTING

Delegates—

Aertker	Bollinger	Comar
Alario	Brown	Cowen
Anzalone	Carmouche	Dunlap

PAGE 27

121st Days Proceedings—January 18, 1974

taxes, and licenses shall prescribe in three years after the thirty-first day of December in the year in which they are due, but prescription may be interrupted or suspended as provided by law.

(B) Tidelands. No state, district, parish, or other tax, license, fee, or assessment of any kind, and interest charges and penalties attaching thereto, which are imposed, due, or collectible on any property, minerals or the severance thereof, or due or payable by any person, firm, or corporation on any business operation or activity within the tidelands area in dispute between the state and the United States and within the state's historic gulfward boundary three leagues from coast, as established and defined by the Act of Congress of April 8, 1812, which admitted this state into the Union, and as redefined in Louisiana Act No. 33 of 1954, shall prescribe until three years after the thirty-first day of December in the year in which the controversy existing between the United States and this state over the state gulfward boundary is finally resolved and settled in accordance with law. However, no interest charge or penalty shall be assessed or collected on any such tax, license, fee, or assessment if it is paid within one year after the thirty-first day of December in the year in which the controversy is finally resolved and settled.

Section 17. Legislation to Obtain Federal Aid

Section 17. The legislature may enact laws to enable the state, its agencies, boards, commissions, and political subdivisions and their agencies to comply with federal laws and regulations in order to secure federal participation in funding capital improvement projects.

Respectfully submitted,

MOISE W. DENNERY
Secretary.

The Proposals contained in the report were signed by the Chairman of the Convention and attested by the Secretary in accordance with the Rules.

Delegate Tate, chairman, on behalf of the Committee on Style and Drafting, submitted the following report:

State of Louisiana
Constitutional Convention of 1973

January 18, 1974, Baton Rouge, La.

To the Chairman and Delegates of the Constitutional Convention:

I am directed by your Committee on Style and Drafting to submit the following report:

In accordance with the Rules of the Convention all proposals previously adopted by the Convention, excepting Committee Proposal No. 38, Delegate Proposal 198 and certain Sections of the proposed Article XIV are hereby reported with final styling amendments as a proposed Constitution for the State of Louisiana.

COMMITTEE AMENDMENT

Amendments proposed by Committee on Style and Drafting

AMENDMENT No. 1—

The organization of the constitution of 1974 shall be as follows:

"CONSTITUTION OF THE STATE OF LOUISIANA OF 1974

PREAMBLE

- I. DECLARATION OF RIGHTS
- II. DISTRIBUTION OF POWERS
- III. LEGISLATIVE BRANCH
- IV. EXECUTIVE BRANCH
- V. JUDICIAL BRANCH
- VI. LOCAL GOVERNMENT

PART I. General Provisions

PART II. Finance

PART III. Levee Districts

PART IV. Port Commissions and Districts

PART V. Definitions

VII. REVENUE AND FINANCE

PART I. General Provisions

PART II. Property Taxation

PART III. Revenue Sharing

VIII. EDUCATION

IX. NATURAL RESOURCES

X. PUBLIC OFFICIALS AND EMPLOYEES

PART I. State and City Civil Service

PART II. Fire and Police Civil Service

PART III. Other Provisions

XI. ELECTIONS

XII. GENERAL PROVISIONS

XIII. CONSTITUTIONAL REVISION

XIV. TRANSITIONAL PROVISIONS

PART I.

PART II.

PART III."

AMENDMENT No. 2—

Delete Section 18 of Committee Proposal Number 3 and insert in lieu thereof the following:

"Section 16. Appropriations

"Section 16. (A) Specific Appropriation for One Year. Except as otherwise provided by this constitution, no money shall be withdrawn from the state treasury except through specific appropriation, and no appropriation shall be made under the heading of contingencies or for longer than one year.

(B) Origin in House of Representatives. All bills for raising revenue or appropriating money shall originate in the House of Representatives, but the Senate may propose or concur in amendments, as in other bills.

(C) General Appropriation Bill; Limitations. The general appropriation bill shall be itemized and shall contain only appropriations for the ordinary operating expenses of government, public charities, pensions, and the public debt or interest thereon.

(D) Specific Purpose and Amount. All other bills for appropriating money shall be for a specific purpose and amount.

(E) Extraordinary Session. Except for expenses of the legislature, a bill appropriating money in an extraordinary session convened after final adjournment of the regular session in the last year of the term of office of a governor shall require the favorable vote of three-fourths of the elected members of each house."

AMENDMENT No. 3—

Delete Paragraphs (D) and (E) of Section 5 of Committee Proposal Number 4 and insert in lieu thereof the following and re-letter the succeeding paragraphs of Section 5 appropriately:

"(D) Operating and Capital Budget. The governor shall submit to the legislature an operating budget and a capital budget, as provided by Article VII, Section 11 of this constitution."

AMENDMENT No. 3A—

In Section 18 of Committee Proposal No. 4, delete the word "Article" and insert in lieu thereof the word "constitution"

AMENDMENT No. 4—

Delete the text of Committee Proposal No. 11 and make the following Section 29 in Part III of Article X:

"Section 29. Retirement and Survivor's Benefits

Section 29. (A) Public School Employees. The legislature shall provide for retirement of teachers and other employees of the public educational system through establishment of one or more retirement systems. Membership in such a retirement system shall be a contractual relationship between employee and employer, and the state shall guarantee benefits payable to a member or retiree or to his lawful beneficiary upon his death.

(B) Other Officials and Employees. The legislature shall enact laws providing for retirement of officials and employees of the state, its agencies, and its political subdivisions, including persons employed jointly by state and federal agencies other than those in military service, through the establishment of one or more retirement systems. Membership in any retirement system of the state of a political subdivision thereof shall be a contractual relationship between employee and employer, and the state shall guarantee benefits payable to a member of a state retirement system or retiree or to his lawful beneficiary upon his death.

(C) Retirement Systems; Change; Notice. No proposal to effect any change in existing laws or constitutional pro-

PAGE 28

121st Days Proceedings—January 18, 1974

visions relating to any retirement system for public employees shall be introduced in the legislature unless notice of intention to introduce the proposal has been published, without cost to the state, in the official state journal on two separate days. The last day of publication shall be at least thirty days before introduction of the bill. The notice shall state the substance of the contemplated law or proposal, and the bill shall contain a recital that the notice has been given.

(D) Compensation for Survivors of Law Enforcement Officers and Firemen. The legislature shall establish a system, including the expenditure of public funds, for compensating the surviving spouses and dependent children of law enforcement officers, firemen, and personnel, as defined by law, who die, or who died after June 30, 1972, as a result of injury sustained in the performance of official duties or in the protection of life or property while on or off duty."

AMENDMENT No. 5—

In Committee Proposal No. 15, Section 15 delete "(A) Release," and delete Paragraph (B) of Section 15 and make the following Section 12 of Article XIV:

"Section 12. Forfeiture Prior to 1880

"Section 12. Whenever any inmovable property has been forfeited or adjudicated to the state for nonpayment of taxes due prior to January 1, 1880, and the state did not sell or dispose of it or dispossess the tax debtor or his heirs, successors, or assigns prior to the adoption of the Constitution of 1921, it shall be presumed conclusively that the forfeiture or adjudication was irregular and null and that the property has been redeemed. The state and its assigns shall be estopped forever from claiming any title to the property because of such forfeiture or adjudication."

AMENDMENT No. 6—

In Committee Proposal No. 15, Section 16 delete "(A) Prescription," and delete Paragraph (B) of Section 16 and make the following Section 11 of Article XIV:

"Section 11. Prescription; Tidelands Taxes

Section 11. No state, district, parish, or other tax, license, fee, or assessment of any kind, and interest charges and penalties attaching thereto, which are imposed, due, or collectible on any property, minerals or the severance thereof, or due or payable by any person, firm, or corporation or any business operation or activity within the tidelands area in dispute between the state and the United States and within the state's historic gulfward boundary three leagues from coast, as established and defined by the Act of Congress of April 8, 1812, which admitted this state into the Union, and as redefined in Louisiana Act No. 33 of 1854, shall prescribe until three years after the thirty-first day of December in the year in which the controversy existing between the United States and this state over the state gulfward boundary is finally resolved and settled in accordance with law. However, no interest charge or penalty shall be assessed or collected on any such tax, license, fee, or assessment if it is paid within one year after the thirty-first day of December in the year in which the controversy is finally resolved and settled."

AMENDMENT No. 7—

Delete Section 43 of Committee Proposal No. 17 and insert in lieu thereof the following:

"Section 42. Compensation for Property Used or Destroyed: Tax

Section 42. (A) Compensation. Notwithstanding any contrary provision of this constitution, lands and improvements thereon hereafter actually used or destroyed for levees or levee drainage purposes shall be paid for as provided by law. However, nothing contained in this Paragraph with respect to compensation for lands and improvements shall apply to batture or to property the control of which is vested in the state or any political subdivision for the purpose of commerce. If the district has no other funds or resources from which the payment can be made, it shall levy on all taxable property within the district a tax sufficient to pay for property used or destroyed to be used solely in the district where collected.

(B) Appropriation. Nothing in this Section shall prevent the appropriation of such property before payment."

AMENDMENT No. 8—

Delete Section 15 of Committee Proposal Number 21 and insert in lieu thereof the following:

"Section 15. Courts; Retention; Jurisdiction; Judicial District Changes; Terms

Section 15. (A) Court Retention; Trial Courts of Limited Jurisdiction. The district, family, juvenile, parish, city, and magistrate courts existing on the effective date of this constitution are retained. Subject to the limitations in Sections 16 and 21 of this Article, the legislature by law may abolish or merge trial courts of limited or specialized jurisdiction. The legislature by law may establish trial courts of limited jurisdiction with parishwide territorial jurisdiction and subject matter jurisdiction which shall be uniform throughout the state. The office of city marshal is continued until the city court he serves is abolished.

(B) Judicial Districts. The judicial districts existing on the effective date of this constitution are retained. Subject to the limitations in Section 21 of this Article, the legislature by law may establish, divide, or merge judicial districts with approval in a referendum in each district and parish affected.

(C) Term. The term of a district, parish, or city court judge shall be six years.

(D) Number of Judges. The legislature may change the number of judges in any judicial district by law enacted by two-thirds of the elected members of each house."

AMENDMENT No. 9—

Delete Section 10 of Committee Proposal No. 26 and insert the following as Section 13 in Part I of Article XIV:

"Section 13. Effective Date of Property Tax Provisions

Section 13. Section 18 and Section 20 of Article VII shall become effective January 1 of the year following the end of three years after the effective date of this constitution. Until that date, the provisions of the Constitution of 1921 governing matters covered by those Sections shall continue to apply, notwithstanding any contrary expiration date stated in any provision thereof concerning the veterans' homestead exemption."

AMENDMENT No. 10—

Delete Section 7 of Committee Proposal No. 35 and insert the following as Section 14 of Article XII:

"Section 14. Administrative Agency Codes

Section 14. Rules, regulations, and procedures adopted by all state administrative and quasi-judicial agencies, boards, and commissions shall be published in one or more codes and made available to the public."

AMENDMENT No. 11—

Change the title of Paragraph (A) of Section 24 of Committee Proposal No. 3 from "(A) Persons Liable" to "(A) Persons Liable."

AMENDMENT No. 12—

Change the title of Section 17 of Committee Proposal No. 4 from "Section 17. Other Vacancies" to "Section 17. Filling of Vacancies"

AMENDMENT No. 13—

Change the title of Section 18 of Committee Proposal No. 21 from "Section 18. Juvenile Courts; Jurisdiction" to "Section 18. Juvenile and Family Courts; Jurisdiction"

AMENDMENT No. 14—

Change the title of Section 1 of Delegate Proposal No. 28 from "Article XIV, Section 1. Transition; Civil Service Commission; State; Cities" to "Section 8. Civil Service Commission; State; Cities" and insert in Part I of Article XIV

AMENDMENT No. 15—

Change the title of Section 2 of Delegate Proposal No. 28 from "Section 2. Transition; Civil Service Officers; Employees; State; Cities" to "Section 9. Civil Service Officers; Employees; State; Cities" and insert in Part I of Article XIV

AMENDMENT No. 16—

In Paragraph (B) of Section 1 of Committee Proposal Number 4 change the reference from Section 22 to Section 20 in the text of the Paragraph.

AMENDMENT No. 17—

In Section 2 of Committee Proposal Number 7 change the reference from Section 22 to Section 20 in the text of the Section.

PAGE 32

121st Days Proceedings—January 18, 1974

legislature or by the respective municipal governing authority of a municipal civil service system in one or more municipalities having a population of less than four hundred thousand, in any manner now or hereafter provided by law. However, paid firemen and paid municipal policemen in a municipality operating a regularly paid fire and police department and having a population exceeding thirteen thousand, and paid firemen in all parishes and in fire protection districts, are expressly excluded from such a civil service system.

Nothing in this Part shall permit inclusion in the local civil service of officials and employees listed in Section 2 of this Article.

No law enacted after the effective date of this constitution establishing a civil service system applicable to one or more parishes or to one or more municipalities having a population of less than four hundred thousand shall be effective in any parish or in any municipality until approved by ordinance adopted by the governing authority of the parish or municipality."

AMENDMENT No. 29—

Renumber Sections 5, 6, 7, 8, 9, and 10 of Committee Proposal Number 3 as Sections 6, 7, 8, 9, 10, and 11 respectively.

AMENDMENT No. 30—

Make Section 11 of Committee Proposal Number 3, Section 23 in Part III of Article X.

AMENDMENT No. 31—

Make Section 14 of Committee Proposal Number 3, Section 10 of Article XII.

AMENDMENT No. 32—

Make Section 15 of Committee Proposal Number 3, Section 11 of Article XII.

AMENDMENT No. 33—

Renumber Sections 16, 17, 19, 20, 21, and 22 of Committee Proposal Number 3 as Sections 14, 15, 17, 18, 19, and 20 respectively.

AMENDMENT No. 34—

Make Section 23 of Committee Proposal Number 3, Section 12 of Article XII.

AMENDMENT No. 35—

Make Section 24 of Committee Proposal Number 3, Section 24 in Part III of Article X.

AMENDMENT No. 36—

Make Section 25 of Committee Proposal Number 3, Section 25 in Part III of Article X.

AMENDMENT No. 37—

Make Section 26 of Committee Proposal Number 3, Section 26 in Part III of Article X.

AMENDMENT No. 38—

Make Section 27 of Committee Proposal Number 3, Section 5 of Article III.

AMENDMENT No. 39—

Make Section 17 of Committee Proposal Number 4, Section 27 in Part III of Article X.

AMENDMENT No. 40—

Make Section 18 of Committee Proposal Number 4, Section 28 in Part III of Article X.

AMENDMENT No. 41—

Renumber Sections 19, 20, 21, and 22 of Committee Proposal Number 4 as Sections 17, 18, 19, and 20 respectively.

AMENDMENT No. 42—

Make Section 1 of Committee Proposal Number 12, Section 7 of Article XII.

AMENDMENT No. 43—

Make Section 2 of Committee Proposal Number 14, Section 8 of Article XII.

AMENDMENT No. 44—

Place Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17 of Committee Proposal Number 15 in Part I of Article VII.

AMENDMENT No. 45—

Make Section 1 of Delegate Proposal Number 16, Section 9 of Article XII.

AMENDMENT No. 46—

Make Section 1 of Delegate Proposal No. 18 Section 7 in Part I of Article XIV.

AMENDMENT No. 47—

Make Section 12 of Delegate Proposal Number 17, Section 6 of Article XII.

AMENDMENT No. 48—

Make Section 25 of Committee Proposal Number 17, Section 13 of Article XII.

AMENDMENT No. 49—

Renumber Sections 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 44, and 45 of Committee Proposal Number 17 as Sections 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 43, and 44 respectively.

AMENDMENT No. 50—

Renumber Sections 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, and 33 of Committee Proposal Number 21 as Sections 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, and 34 respectively.

AMENDMENT No. 51—

Make Section 1 of Committee Proposal Number 22, Section 21 in Part III of Article X.

AMENDMENT No. 52—

Make the text of Committee Proposal Number 23, Section 22 in Part III of Article X.

AMENDMENT No. 53—

Place Sections 1, 2, 3, 4, 5, 6, 8, and 9 of Committee Proposal Number 26 in Part II of Article VII and renumber as Sections 18, 19, 20, 21, 22, 23, 24, and 25 respectively.

AMENDMENT No. 54—

Make Section 7 of Committee Proposal Number 26, Section 26 in Part III of Article VII.

AMENDMENT No. 55—

Make Section 7 of Committee Proposal Number 34, Section 10 of Article XIV.

AMENDMENT No. 56—

Make Section 8 of Committee Proposal Number 34, Section 7

AMENDMENT No. 57—

Make Section 9 of Committee Proposal Number 34, Section 8

AMENDMENT No. 58—

Make Section 3 of Article XII of Committee Proposal Number 35, Section 30 in Part III of Article X.

AMENDMENT No. 59—

Renumber Sections 4, 1, 2, 8, and 5 of Article XII of Committee Proposal Number 35 as Sections 1, 2, 3, 4, and 5 of Article XII respectively.

AMENDMENT No. 60—

Make Section 14 of Committee Proposal Number 37, Section 21 of Article IV.

AMENDMENT No. 61—

Make the text of Delegate Proposal Number 43, Section 19 of Article V.

AMENDMENT No. 62—

Make Section 1 of Committee Proposal No. 31 Section 6 in Part I of Article XIV

Respectfully submitted,

ALBERT TATE, JR.

Chairman.

Adjournment

Delegate Abraham moved that the Convention do now adjourn until Saturday, January 19, 1974 at 12:01 o'clock A.M. Which motion was agreed to.

And Chairman Henry declared the Convention adjourned to Saturday, January 19, 1974, at 12:01 o'clock A.M.

MOISE W. DENNEY

Secretary

DAVID R. POYNTER

Chief Clerk

PAGE 3

122nd Days Proceedings—January 19, 1974

scription." and delete Paragraph (B) of Section 16 and make the following Section 11 of Article XIV:

"Section 11. Prescription; Tidelands Taxes
Section 11. No state, district, parish, or other tax, license, fee, or assessment of any kind, and interest charges and penalties attaching thereto, which are imposed, due, or collectible on any property, minerals or the severance thereof, or due or payable by any person, firm, or corporation on any business operation or activity within the tidelands area in dispute between the state and the United States and within the state's historic gulfward boundary three leagues from coast, as established and defined by the Act of Congress of April 8, 1812, which admitted this state into the Union, and as redefined in Louisiana Act No. 33 of 1954, shall prescribe until three years after the thirty-first day of December in the year in which the controversy existing between the United States and this state over the state gulfward boundary is finally resolved and settled in accordance with law. However, no interest charge or penalty shall be assessed or collected on any such tax, license, fee, or assessment if it is paid within one year after the thirty-first day of December in the year in which the controversy is finally resolved and settled."

Read.

Delegate Tate moved the adoption of the amendment.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—		
Mr. Chairman	Goldman	Nunez
Abraham	Graham	O'Neill
Alexander	Grier	Perez
Arnette	Hayes	Perkins
Asseff	Haynes	Planchard
Avant	Heine	Reeves
Bergeron	Jack	Roemer
Blair	Jackson, A.	Roy
Brien	Jackson, J.	Schmitt
Burson	Jenkins	Singletary
Cannon	Jones	Slay
Casey	Juneau	Smith
Chatelain	Kean	Somiat
Cheshardy	Kelly	Stagg
Comar	Kilpatrick	Stephenson
Conino	Landrum	Stinson
Conroy	Landry, A.	Stovall
D'Gerolamo	Landry, E. J.	Tate
De Blieux	Lanier	Thompson
Denberry	LeBleu	Tobias
Dennis	Leigh	Toomy
Derbes	Leithman	Ulio
Elkins	Lowe	Velazquez
Flory	McDaniel	Weiss
Fowler	Martin	Willis
Fulco	Morris	Winchester
Ginn	Newton	Zervigon

Total—81.

NAYS

Total—0.

NOT VOTING

Delegates—		
Aetker	Corne	Giarrusso
Alario	Cowen	Gravel
Anzalone	Deshotels	Guariseo
Badeaux	Drew	Hardee
Bel	Dunlap	Hernandez
Bollinger	Duval	Kilbourne
Brown	Edwards	Lambert
Burns	Fayard	Maubert
Carmouche	Fontenot	Maybucc
Champagne	Gauthier	Miller

[350]

Mire	Sandoz	Vesich
Munson	Segura	Vick
Ours	Shannon	Wall
Pugh	Sutherland	Warren
Rachal	Tapper	Wattigny
Rayburn	Thistlethwaite	Wisham
Riecke	Toca	Womack

Total—51.

And Amendment No. 6 was adopted.

AMENDMENT No. 7—

Delete Section 43 of Committee Proposal No. 17 and insert in lieu thereof the following:

"Section 42. Compensation for Property Used or Destroyed; Tax

Section 42. (A) Compensation. Notwithstanding any contrary provision of this constitution, lands and improvements thereon hereafter actually used or destroyed for levees or levee drainage purposes shall be paid for as provided by law. However, nothing contained in this Paragraph with respect to compensation for lands and improvements shall apply to bature or to property the control of which is vested in the state or any political subdivision for the purpose of commerce. If the district has no other funds or resources from which the payment can be made, it shall levy on all taxable property within the district a tax sufficient to pay for property used or destroyed to be used solely in the district where collected.

(B) Appropriation. Nothing in this Section shall prevent the appropriation of such property before payment."

Read.

On motion of Delegate Tate Amendment No. 7 was adopted.

AMENDMENT No. 8—

Delete Section 15 of Committee Proposal Number 21 and insert in lieu thereof the following:

"Section 15. Courts; Retention; Jurisdiction; Judicial District Changes; Terms

Section 15. (A) Court Retention; Trial Courts of Limited Jurisdiction. The district, family, juvenile, parish, city, and magistrate courts existing on the effective date of this constitution are retained. Subject to the limitations in Sections 16 and 21 of this Article, the legislature by law may abolish or merge trial courts of limited or specialized jurisdiction. The legislature by law may establish trial courts of limited jurisdiction with parishwide territorial jurisdiction and subject matter jurisdiction which shall be uniform throughout the state. The office of city marshal is continued until the city court be serves is abolished.

(B) Judicial Districts. The judicial Districts existing on the effective date of this constitution are retained. Subject to the limitations in Section 21 of this Article, the legislature by law may establish, divide, or merge judicial districts with approval in a referendum in each district and parish affected.

(C) Term. The term of a district, parish, or city court judge shall be six years.

(D) Number of Judges. The legislature may change the number of judges in any judicial district by law enacted by two-thirds of the elected members of each house."

Read.

On motion of Delegate Tate Amendment No. 8 was adopted.

AMENDMENT No. 9—

Delete Section 10 of Committee Proposal No. 26 and insert the following as Section 13 in Part I of Article XIV:

"Section 13. Effective Date of Property Tax Provisions
Section 13. Section 18 and Section 20 of Article VII shall become effective January 1 of the year following the end of three years after the effective date of this constitution. Until that date, the provisions of the Constitution of 1921 governing matters covered by those Sections shall continue to apply, notwithstanding any contrary expiration date stated in any provision thereof concerning the veterans' homestead exemption."

Read.

On motion of Delegate Tate Amendment No. 9 was adopted.

PAGE 4

122nd Days Proceedings—January 19, 1974

AMENDMENT No. 10—

Delete Section 7 of Committee Proposal No. 35 and insert the following as Section 14 of Article XII:

"Section 14. Administrative Agency Codes

Section 14. Rules, regulations, and procedures adopted by all state administrative and quasi-judicial agencies, boards, and commissions shall be published in one or more codes and made available to the public."

Read.

On motion of Delegate Tate Amendment No. 10 was adopted.

AMENDMENT No. 11—

Change the title of Paragraph (A) of Section 24 of Committee Proposal No. 3 from "(A) Persons liable." to "(A) Persons Liable."

AMENDMENT No. 12—

Change the title of Section 17 of Committee Proposal No. 4 from "Section 17. Other Vacancies" to "Section 17. Filling of Vacancies"

Read.

On motion of Delegate Tate Amendment Nos. 11 and 12 were adopted.

AMENDMENT No. 13—

Change the title of Section 18 of Committee Proposal No. 21 from "Section 18. Juvenile Courts; Jurisdiction" to "Section 18. Juvenile and Family Courts; Jurisdiction"

AMENDMENT No. 14—

Change the title of Section 1 of Delegate Proposal No. 28 from "Article XIV, Section 1, Transition; Civil Service Commission; State; Cities" to "Section 8. Civil Service Commission; State; Cities" and insert in Part 1 of Article XIV

AMENDMENT No. 15—

Change the title of Section 2 of Delegate Proposal No. 28 from "Section 2. Transition; Civil Service Officers; Employees; State; Cities" to "Section 9. Civil Service Officers; Employees; State; Cities" and insert in Part I of Article XIV

Read.

On motion of Delegate Tate Amendment Nos. 13, 14 and 15 were adopted.

AMENDMENT No. 16—

In Paragraph (B) of Section 1 of Committee Proposal Number 4 change the reference from Section 22 to Section 20 in the text of the Paragraph.

Read.

On motion of Delegate Tate Amendment No. 16 was adopted.

AMENDMENT No. 17—

In Section 2 of Committee Proposal Number 7 change the reference from Section 22 to Section 20 in the text of the Section.

AMENDMENT No. 18—

In Subparagraph (3) of Paragraph (D) of Section 4 in Committee Proposal 26 delete the letter "(a)" and "(b)"

AMENDMENT No. 19—

In Section 4 of Committee Proposal Number 26 change the reference from Section 3 to Section 20 in the text of the Section.

AMENDMENT No. 20—

In Section 5 of Committee Proposal No. 26, delete the word "Article" and insert in lieu thereof the word "Part"

AMENDMENT No. 21—

In Section 6 of Committee Proposal Number 26 change the references from Section 1 to Section 18 in the text of the

Section and change the references from Section 3 to Section 20 in the text of the Section.

AMENDMENT No. 22—

In Section 10 of Committee Proposal Number 26 change the reference from Section 1 to Section 18 in the text of the Section and change the reference from Section 3 to Section 20 in the text of the section.

AMENDMENT No. 23—

In Paragraph (A) of Section 1 of Delegate Proposal Number 28 change the reference from Article VII to Article X in the text of the Paragraph and change the reference from Section 1 to Section 3 in the text of the paragraph and delete reference to Paragraph (C).

AMENDMENT No. 24—

In Paragraph (B) of Section 1 of Delegate Proposal Number 28 change the reference from Article VII to Article X in the text of the paragraph and change the reference to Paragraph (D) Section 1 to Section 4 in the text of the paragraph.

Read.

On motion of Delegate Tate Amendment Nos. 17 through 24 were adopted.

AMENDMENT No. 25—

Delete Section 5 of Committee Proposal No. 30 and make the following Section 5 of Article XIV:

"Section 5. Boards; New Appointments

Section 5. In making new appointments to a board created by Sections 5, 6, or 7 of Article VIII, the governor shall consider appropriate representation on the board by alumni of the institutions under the control of the board."

AMENDMENT No. 26—

In Committee Proposal Number 30 change all references from Section 9 to Section 8 in the text of the proposal.

Read.

On motion of Delegate Tate Amendment Nos. 25 and 26 were adopted.

AMENDMENT No. 27—

Delete the entire text of Committee Proposal No. 10 and insert the following as PART II of Article X:

PART II. FIRE AND POLICE CIVIL SERVICE

Section 16. Establishment of System

Section 16. A system of classified fire and police civil service is created and established. It shall apply to all municipalities having a population exceeding thirteen thousand and operating a regularly paid fire and municipal police department and to all parishes and fire protection districts operating a regularly paid fire department.

Section 17. Appointments and Promotions

Section 17. Permanent appointments and promotions in municipal fire and police civil service shall be made only after certification by the applicable municipal fire and police civil service board under a general system based upon merit, efficiency, fitness, and length of service as provided in Article XIV. Section 15.1 of the Constitution of 1921, subject to change by law enacted by two-thirds of the elected members of each house of the legislature.

Section 18. Prior Provisions

Section 18. Except as inconsistent with this Part, the provisions of Article XIV, Section 15.1 of the Constitution of 1921 are retained and continued in force and effect as statutes. By law enacted by two-thirds of the elected members of each house, the legislature may amend or otherwise modify any of those provisions, but it may not abolish the system of civil service for such firemen and municipal policemen or make the system inapplicable to any municipality having a population exceeding thirteen thousand and according to the latest decennial federal census or to any parish or fire protection district operating a regularly paid fire department. However, in a municipality having a population exceeding four hundred thousand, paid firemen and municipal policemen shall be included if a majority of the electors therein voting at an election held for that purpose approve their inclusion. Such an election shall be called by the governing authority of the affected city within one year after the effective date of this constitution.

Section 19. Exclusion

Section 19. Nothing in Part I of this Article authorizing cities or other political subdivisions to be placed under the

tion of its rules by demotion in or suspension or discharge from position, with attendant loss of pay.

(B) Investigations. Each commission may investigate violations of this Part and the rules, statutes, or ordinances adopted pursuant hereto.

(C) Wages and Hours. Any rule or determination affecting wages or hours shall have the effect of law and become effective only after approval by the governor or the appropriate governing authority.

Section 11. Penalties. Willful violation of any provision of this Part shall be a misdemeanor punishable by a fine of not more than five hundred dollars or by imprisonment for not more than six months, or both.

Section 12. Appeal

Section 12. Each commission shall have the exclusive power and authority to hear and decide all removal and disciplinary cases, with subpoena power and power to administer oaths. It may appoint a referee to take testimony, with subpoena power and power to administer oaths to witnesses. The decision of a commission shall be subject to review on any question of law or fact upon appeal to the court of appeal wherein the commission is located, upon application filed with the commission within thirty calendar days after its decision becomes final.

Section 13. Appropriations

Section 13. (A) State. The legislature shall make adequate annual appropriations to the State Civil Service Commission and to the Department of State Civil Service to enable them to implement this Part efficiently and effectively. The amount so appropriated shall not be subject to veto by the governor.

(B) Cities. Each city subject to this Part shall make adequate annual appropriations to enable its civil service commission and department to implement this Part efficiently and effectively.

Section 14. Acceptance of Act; Other Cities, Parishes, City and Parish Governed Jointly

Section 14. (A) Local Option. Each city having a population exceeding ten thousand but not exceeding four hundred thousand, each parish, and each parish governed jointly with one or more cities under a plan of government, having a population exceeding ten thousand, according to the latest official decennial federal census, may elect to be governed by this Part by a majority vote of its electors voting at an election held for that purpose. The election shall be ordered and held by the city, the parish, or the city-parish, as the case may be upon (a) the adoption of an ordinance by the governing authority calling the election; or (b) the presentation to the governing authority of a petition calling for such an election signed by electors equal in number to five percent of the registered voters of the city, the parish, or the city-parish, as the case may be.

(B) Acceptance. If a majority of the electors vote to adopt this Part its provisions shall apply permanently to the city, the parish, or the city-parish, as the case may be, and shall govern it as if this Part had originally applied to it. In such case, all officers and employees of the city, the parish, or the city-parish, as the case may be, who have acquired civil service status under a civil service system established by legislative act, city charter, or otherwise, shall retain that status and thereafter shall be subject to and be governed by this Part and the rules and regulations adopted under it.

(C) Rejection. If a majority of the electors vote against the adoption of this Part, the question of its adoption shall not be resubmitted to the voters of the political subdivision within one year thereafter.

Section 15. City, Parish Civil Service System; Creation; Prohibition

Section 15. Nothing in this Part shall prevent the establishment by the legislature, or by the respective parish governing authority, of a parish civil service system in one or more parishes, applicable to any or all parish employees, except teaching and professional staffs and administrative officers of schools, or the establishment by the legislature or by the respective municipal governing authority of a municipal civil service system in one or more municipalities having a population of less than four hun-

dred thousand, in any manner now or hereafter provided by law. However, paid firemen and paid municipal policemen in a municipality operating a regularly paid fire and police department and having a population exceeding thirteen thousand, and paid firemen in all parishes and in fire protection districts, are expressly excluded from such a civil service system.

Nothing in this Part shall permit inclusion in the local civil service of officials and employees listed in Section 2 of this Article.

No law enacted after the effective date of this constitution establishing a civil service system applicable to one or more parishes or to one or more municipalities having a population of less than four hundred thousand shall be effective in any parish or in any municipality until approved by ordinance adopted by the governing authority of the parish or municipality.

Read.

On motion of Delegate Tate Amendment No. 28 was adopted.

AMENDMENT No. 29—

Renumber Sections 5, 6, 7, 8, 9, and 10 of Committee Proposal Number 3 as Sections 6, 7, 8, 9, 10, and 11 respectively.

AMENDMENT No. 30—

Make Section 11 of Committee Proposal Number 3, Section 23 in Part III of Article X.

AMENDMENT No. 31—

Make Section 14 of Committee Proposal Number 3, Section 10 of Article XII.

AMENDMENT No. 32—

Make Section 15 of Committee Proposal Number 3, Section 11 of Article XII.

AMENDMENT No. 33—

Renumber Sections 16, 17, 19, 20, 21, and 22 of Committee Proposal Number 3 as Sections 14, 15, 17, 18, 19, and 20 respectively.

AMENDMENT No. 34—

Make Section 23 of Committee Proposal Number 3, Section 12 of Article XII.

AMENDMENT No. 35—

Make Section 24 of Committee Proposal Number 3, Section 24 in Part III of Article X.

AMENDMENT No. 36—

Make Section 25 of Committee Proposal Number 3, Section 25 in Part III of Article X.

AMENDMENT No. 37—

Make Section 26 of Committee Proposal Number 3, Section 26 in Part III of Article X.

AMENDMENT No. 38—

Make Section 27 of Committee Proposal Number 3, Section 5 of Article III.

AMENDMENT No. 39—

Make Section 17 of Committee Proposal Number 4, Section 27 in Part III of Article X.

AMENDMENT No. 40—

Make Section 18 of Committee Proposal Number 4, Section 28 in Part III of Article X.

AMENDMENT No. 41—

Renumber Sections 19, 20, 21, and 22 of Committee Proposal Number 4 as Sections 17, 18, 19, and 20 respectively.

AMENDMENT No. 42—

Make Section 1 of Committee Proposal Number 12, Section 7 of Article XII.

AMENDMENT No. 43—

Make Section 2 of Committee Proposal Number 14, Section 8 of Article XII.

AMENDMENT No. 44—

Place Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17 of Committee Proposal Number 15 in Part I of Article VII.

PAGE 8

122nd Days Proceedings—January 19, 1974

AMENDMENT No. 45—

Make Section 1 of Delegate Proposal Number 16, Section 9 of Article XII.

AMENDMENT No. 46—

Make Section 1 of Delegate Proposal No. 18 Section 7 in Part I

AMENDMENT No. 47—

Make Section 12 of Delegate Proposal Number 17, Section 6 of Article XII.

AMENDMENT No. 48—

Make Section 25 of Committee Proposal Number 17, Section 13 of Article XII.

AMENDMENT No. 49—

Renumber Sections 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 44, and 45 of Committee Proposal Number 17 as Sections 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 43, and 44 respectively.

AMENDMENT No. 50—

Renumber Sections 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, and 33 of Committee Proposal Number 21 as Sections 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, and 34 respectively.

AMENDMENT No. 51—

Make Section 1 of Committee Proposal Number 22, Section 21 in Part III of Article X.

AMENDMENT No. 52—

Make the text of Committee Proposal Number 23, Section 22 in Part III of Article X.

AMENDMENT No. 53—

Place Sections 1, 2, 3, 4, 5, 6, 8, and 9 of Committee Proposal Number 26 in Part II of Article VII and renumber as Sections 18, 19, 20, 21, 22, 23, 24, and 25 respectively.

AMENDMENT No. 54—

Make Section 7 of Committee Proposal Number 26, Section 26 in Part III of Article VII.

AMENDMENT No. 55—

Make Section 7 of Committee Proposal Number 34, Section 10 of Article XIV.

AMENDMENT No. 56—

Make Section 8 of Committee Proposal Number 34, Section 7

AMENDMENT No. 57—

Make Section 9 of Committee Proposal Number 34, Section 8

AMENDMENT No. 58—

Make Section 3 of Article XII of Committee Proposal Number 35, Section 30 in Part III of Article X.

AMENDMENT No. 59—

Renumber Sections 4, 1, 2, 8, and 5 of Article XII of Committee Proposal Number 35 as Sections 1, 2, 3, 4, and 5 of Article XII respectively.

AMENDMENT No. 60—

Make Section 14 of Committee Proposal Number 37, Section 21 of Article IV.

★ **AMENDMENT No. 61—**
Make the text of Delegate Proposal Number 43, Section 19 of Article V.

AMENDMENT No. 62—

Make Section 1 of Committee Proposal No. 31 Section 6 in Part I of Article XIV

Read.

On motion of Delegate Tate Amendment Nos. 29 through 62 were adopted.

Motion

On motion of Delegate Tobias the rules were suspended for the purpose of calling a meeting of the Committee on Style and Drafting without giving the required 24 hours notice.

COMMITTEE NOTICE

Delegate Tate, chairman of the Committee on Style and Drafting, sent up the following notice:

The Committee on Style and Drafting will meet on Saturday, January 19, at 8:00 o'clock A.M. in the Treaty Room and will consider the following agenda:

AGENDA

Committee Proposal No. 38.

Respectfully submitted,

ALBERT TATE, JR.,
Chairman of the Committee on
Style and Drafting.

The above notice was read in open session and publicly posted as provided by the Rules of Procedure of the Convention.

Recess

On motion of Delegate Tobias the Convention recessed until 9:30 o'clock A.M.

After Recess

The Chairman called the Convention to order at 9:30 o'clock A.M.

The roll being called, the following named delegates answered to their names:

PRESENT

Delegates—		
Mr. Chairman	Fulco	Ourso
Abraham	Gauthier	Perez
Aertker	Giarrusso	Perkins
Alario	Ginn	Planchard
Alexander	Graham	Pugh
Anzalone	Gravel	Rachal
Arnette	Grier	Rayburn
Asseff	Guarisco	Reeves
Avant	Hardee	Riecke
Badeaux	Bel	Roemer
Bergeron	Hayes	Roy
Blair	Haynes	Sandoz
Bollinger	Heine	Schmitt
Brien	Hernandez	Segura
Brown	Jack	Shannon
Burns	Jackson, A.	Singletary
Burson	Jackson, J.	Slay
Cannon	Jenkins	Smith
Carmouche	Jones	Soniat
Casey	Juneau	Stagg
Champagne	Kean	Stephenson
Chatelain	Kelly	Stinson
Chehardy	Kilbourne	Stovall
Comar	Kilpatrick	Sutherland
Conino	Lambert	Tapper
Conroy	Landrum	Tate
Corne	Landry, A.	Thistlethwaite
Cowen	Landry, E. J.	Thompson
D'Gerolamo	Lanier	Tobias
De Blieux	LeBleu	Toca
Dennerly	Leigh	Toomy
Dennis	Leithman	Uilo
Derbes	Lowe	Velazquez
Deshotels	McDaniel	Vesich
Drew	Martin	Vick
Dunlap	Maubernet	Warren
Duval	Maybuce	Wattigny
Edwards	Miller	Weiss
Elkins	Mire	Willis
Fayard	Morris	Winchester
Flory	Munson	Wisham
Fontenot	Newton	Womack
Fowler	Nunez	Zervigon
	O'Neill	
	Total—131.	

PAGE 21

122nd Days Proceedings—January 19, 1974

successor to the position shall be selected in accordance with Article, V, Section 24.

PART II

Section 16. Forfeiture; Transition to Statutes

Section 16. All provisions of Articles VI, Sections 16, 16.1, 16.2, 16.3, 16.4, 16.5, 16.6, 17, 19, 29.1, 29.2, 29.3, 29.4, 33.1, 34 and Article XIV, Section 30.2 of the Constitution of 1921 shall become statutes subject to amendment or repeal only as provided in Article VI, Section 44 of this constitution.

Section 18. Public Service Commission

Section 18. At its next extraordinary or regular session, the legislature shall divide the state into five single-member districts as required by Article VIII, Section 14(A) and shall provide for a special election at which the two additional members of the commission shall be elected, the initial term to be served by each, and other matters necessary to effectuate said Section 14(A).

PART III

Section 19. Statewide Elected Officials

Section 19. Officials elected statewide in 1976 under the provisions of this constitution shall take office on the second Monday in May of that year. Thereafter, statewide elected officials shall take office on the second Monday in March as provided in this constitution.

Section 20. Commissioner of Elections

Section 20. The commissioner of elections, as provided by Article IV, first elected under this constitution shall be elected to take office in 1976. The custodian of voting machines in office on the effective date of this constitution shall continue to exercise the functions of that office, without change, until the expiration of his term.

Section 21. Pardon Board

Section 21. Until a pardon board is appointed under the terms of this constitution, the lieutenant governor, attorney general, and presiding judge of the sentencing court shall continue to serve as a board of pardons.

Section 22. Levee Districts; Compensation for Property

Section 22. The provisions of Article XVI, Section 6 of the Constitution of 1921 shall be continued as a statute, subject to change by the legislature, and the amount of compensation therein required to be paid for property used or destroyed for levee or levee drainage purposes shall be paid as provided in Section 6 of Article XVI of the Constitution of 1921 until the legislature enacts a law to effectuate Article VI, Section 43 of this constitution.

Section 23. Suits Against the State; Effective Date

Section 23. The provisions of Article III, Section 14 waiving the immunity of the state, its agencies, or political subdivisions from suit and liability in contract or for injury to person or property only shall apply to a cause of action arising after the effective date of this constitution.

Section 24. Tax Schedule

Section 24. (A) Property Taxes. The provisions of Article X of the Constitution of 1921 relating to ad valorem property taxes shall remain in effect until the provisions on that subject contained in Article XI of this constitution take effect as provided in said Article XI.

(B) The provisions of Article XI of the Constitution of 1921 shall be continued as a statute until the legislature enacts the law required by Article XI, Section 1 (Delegate Proposal No. 16) of this constitution, but the amount of the exemption shall be fifteen thousand dollars in value until otherwise fixed by law.

Section 25. Effective Date

Section 25. This constitution shall become effective at twelve o'clock midnight on December 31, 1974. The secretary of state shall promulgate the results of the election by publication in the official state journal on the thirtieth day prior thereto; however, he shall announce the results of the election within thirty days after the date of the election at which the constitution is submitted to the people.

Part I

Section 27. Board of Supervisors of Southern University
Section 27. At the next session of the legislature following the effective date of this constitution, the governor shall submit to the Senate for its consent the names of his appointees to the Board of Supervisors of Southern University and Ag-

ricultural and Mechanical College in accordance with and to effectuate Article IX, Section 7.

PART I

Section 28. Transition to Board of Regents and State Board of Elementary and Secondary Education

Section 28. (A) If Alternative Proposition... concerning education boards is approved by the electors, and if the proposed constitution is approved by the electors, then this Section shall become Section... of Article XIV of the new constitution and Sections... and... of Article XIV shall be null, void, and of no effect. If Alternative Proposition... is not approved this Section shall be null and void and of no effect.

(B) (1) On the effective date of this constitution, each member of the Louisiana Coordinating Council for Higher Education, whose term has not expired shall become a member of the Board of Regents. The legislature shall provide by law the procedure to effectuate the transition to the board, the secretary of state notified of those elections which must be held, and the governor notified of the appointments which must be made to complete the membership of the board.

The elections and appointments shall be made in accordance with... to effectuate Article IX, Section 5 of Alternative Proposition No. ... adopted as Delegate Proposal No. 98, by Delegates Henry, et al.

(2) On the effective date of this constitution, each member of the State Board of Education whose term has not expired may elect to become a member of either the State Board of Elementary and Secondary Education or the Board of Regents. He shall serve until the expiration of the term for which he was elected. The legislature shall provide by law the procedures by which this right shall be exercised, the secretary of state notified of those elections which must be held, and the governor notified of the appointments which must be made to complete the membership of the boards. The elections and appointments shall be made in accordance with and to effectuate Article IX, Sections 3 and 5 of Alternative Proposition No. ... adopted as Delegate Proposal No. 98, by Delegates Henry, et al.

(3) On the effective date of this constitution the Louisiana Coordinating Council for Higher Education is abolished, and on such date all powers, duties, and functions thereof not inconsistent with this constitution shall be merged and consolidated into the Board of Regents.

(4) On the effective date of this constitution, all functions of the State Board of Education with respect to the governance, supervision, management, administration, and direction of institutions of higher education not inconsistent with this constitution shall be transferred to the Board of Regents, and in all other respects the functions of the State Board of Education not inconsistent with this constitution shall be transferred to and be exercised by the State Board of Elementary and Secondary Education.

(5) Subject to change by law and except as in conflict with this Alternative Proposition and Act 2 of 1972, the provisions of Article XII, Section 7A of the Constitution of 1921 are continued as a statute, but the powers of the board shall be limited to the management of the daily operations of the Louisiana State University System.

Section 29. Effect of Adoption

Section 29. Notwithstanding any contrary provision of any law or the prior constitution, this constitution when approved by the electors of this state shall be the Constitution of the State of Louisiana upon the effective date as provided in Section 25 of this Article.

Section 30. Severability Clause

Section 30. If any provision of this constitution is declared invalid for any reason, that provision shall not affect the validity of the entire constitution or any other provision thereof.

Respectfully submitted,

MOISE W. DENNERY
Secretary.

Suspension of the Rules

On motion of Delegate Tate the rules were suspended in order to take up Reports of Committees at this time.

Reports of Committees

The following reports of committees were received and read:

PAGE 22

122nd Days Proceedings—January 19, 1974

Delegate Tate, chairman on behalf of the Committee on Style and Drafting, submitted the following report:

State of Louisiana
Constitutional Convention
of 1973

January 19, 1974, Baton Rouge, La.

To the Chairman and Delegates of the Constitutional Convention:

I am directed by your Committee on Style and Drafting to submit the following report:

★ COMMITTEE PROPOSAL No. 38—

Introduced by Delegate Zervigon, Chairperson, Committee on Legislative Liaison and Transitional Measures, and Delegates Casey, Comar, D'Geralamo, Drew, Hardee, J. Jackson, Jones, Lanier, Rayburn, Smith, Thompson, Vick and Womack:

A PROPOSAL

Making provisions relative to transitional provisions.

Reported with amendments.

COMMITTEE AMENDMENTS

Amendments proposed by Committee on Style and Drafting to Committee Proposal No. 38 by Delegate Zervigon, et al.

Amend first enrolled proposal as follows:

AMENDMENT No. 1—

In Section 13 of Committee Proposal No. 38, change the reference in Paragraph (D) from "Section 5" to "Section 6"

AMENDMENT No. 2—

In Section 15 of Committee Proposal No. 38, change the references from "Section 24" to "Section 25"

AMENDMENT No. 3—

In Section 16 of Committee Proposal No. 38 change the reference from "Section 44" to "Section 43"

AMENDMENT No. 4—

In Section 18 of Committee Proposal No. 38 change the references from "Article VIII" to "Article IV" and change "Section 14(A)" to "Section 21(A)"

AMENDMENT No. 5—

In Section 22 of Committee Proposal No. 38, change the reference in the text from "Section 43" to "Section 42"

AMENDMENT No. 6—

In Section 23 of Committee Proposal No. 38, change the reference from "Article III, Section 14" to "Article XII, Section 10"

AMENDMENT No. 7—

In Paragraph (A) of Section 24 of Committee Proposal No. 38 change the references from "Article XI" to "Article VII" and in Paragraph (B) change the reference from "Article XI" to "Article XII" and change the reference from "Section 1" to "Section 9" and delete "(Delegate Proposal No. 16)"

AMENDMENT No. 8—

In Section 29 of Committee Proposal No. 38, change the reference from "Section 25" to "Section 35"

AMENDMENT No. 9—

Make subparagraph 15, of Paragraph (A) of Section 9 of Committee Proposal No. 38 subparagraph 1, thereof and renumber the succeeding subparagraphs appropriately.

AMENDMENT No. 10—

Make Section 27 of Committee Proposal No. 38, Section 3 in Part I of Article XIV and change the reference in the text of the Section from "Article IX" to "Article VIII" and renumber appropriately the succeeding sections of Part I

AMENDMENT No. 11—

Renumber Sections 1, 8, 9, 10, 11, 16 and 18 of Committee Proposal No. 38 and place them in Part II of Article XIV as Sections 14, 15, 16, 17, 18, 19 and 20 respectively

AMENDMENT No. 12—

In Committee Proposal No. 38 make Sections 2, 3, 5, 6, 7, 12, 13, 15, 19, 20, 21, 22, 23, 24, 25, 29, and 30, Sections 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, and 37 in Part III of Article XIV respectively.

AMENDMENT No. 13—

On page 1, line 18, at the end of the line, delete the words "the foregoing" and on line 19 after the word "Articles" and before the word "of" insert "I through XIII"

AMENDMENT No. 14—

On page 6, line 32, after the word "effect" insert a period "." and delete the remainder of the line.

AMENDMENT No. 15—

On page 6, delete lines 17 through 35, both inclusive in their entirety and on page 7 delete lines 1 and 2 and all Committee Amendments proposed by the Committee on Style and Drafting hereto and adopted this date and insert in lieu thereof the following:

"Section 34. Exemption from Seizure and Sale

Section 34. The provisions of Article XI of the Constitution of 1921 shall be continued as a statute until the legislature enacts the law required by Article XII, Section 9 of this constitution, but the amount of the exemption shall be fifteen thousand dollars in value until otherwise fixed by law."

Respectfully submitted,

ALBERT TATE, JR.
Chairman.

Suspension of the Rules

On motion of Delegate Tate the rules were suspended in order to take up the Proposal contained in the Committee Report at this time.

Proposals on Calendar for Approval of Final Styling

The following Proposals returned from the Committee on Style and Drafting for approval of final styling were taken up and acted upon as follows:

COMMITTEE PROPOSAL No. 38—

Introduced by Delegate Zervigon, Chairperson, Committee on Legislative Liaison and Transitional Measures, and Delegates Casey, Comar, D'Geralamo, Drew, Hardee, J. Jackson, Jones, Lanier, Rayburn, Smith, Thompson, Vick and Womack:

A PROPOSAL

Making provisions relative to transitional provisions.

Read.

COMMITTEE AMENDMENTS

Amendments proposed by Committee on Style and Drafting to Committee Proposal No. 38 by Delegate Zervigon, et al.

Amend first enrolled proposal as follows:

AMENDMENT No. 1—

In Section 13 of Committee Proposal No. 38, change the reference in Paragraph (D) from "Section 5" to "Section 6"

AMENDMENT No. 2—

In Section 15 of Committee Proposal No. 38, change the references from "Section 24" to "Section 25"

AMENDMENT No. 3—

In Section 16 of Committee Proposal No. 38 change the reference from "Section 44" to "Section 43"

AMENDMENT No. 4—

In Section 18 of Committee Proposal No. 38 change the references from "Article VIII" to "Article IV" and change "Section 14(A)" to "Section 21(A)"

AMENDMENT No. 5—

In Section 22 of Committee Proposal No. 38, change the reference in the text from "Section 43" to "Section 42"

AMENDMENT No. 6—

In Section 23 of Committee Proposal No. 38, change the reference from "Article III, Section 14" to "Article XII, Section 10"

AMENDMENT No. 7—

In Paragraph (A) of Section 24 of Committee Proposal No. 38 change the references from "Article XI" to "Article

PAGE 23

122nd Days Proceedings—January 19, 1974

VII" and in Paragraph (B) change the reference from "Article XI" to "Article XII" and change the reference from "Section 1" to "Section 9" and delete "(Delegate Proposal No. 16)".

AMENDMENT No. 8—

In Section 29 of Committee Proposal No. 38, change the reference from "Section 25" to "Section 35"

AMENDMENT No. 9—

Make subparagraph 15. of Paragraph (A) of Section 9 of Committee Proposal No. 38 subparagraph 1. thereof and renumber the succeeding subparagraphs appropriately.

AMENDMENT No. 10—

Make Section 27 of Committee Proposal No. 38, Section 3 in Part I of Article XIV and change the reference in the text of the Section from "Article IX" to "Article VIII" and renumber appropriately the succeeding sections of Part I

AMENDMENT No. 11—

Renumber Sections 1, 8, 9, 10, 11, 16 and 18 of Committee Proposal No. 38 and place them in Part II of Article XIV as Sections 14, 15, 16, 17, 18, 19 and 20 respectively

AMENDMENT No. 12—

In Committee Proposal No. 38 make Sections 2, 3, 5, 6, 7, 12, 13, 15, 19, 20, 21, 22, 23, 24, 25, 29, and 30, Sections 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, and 37 in Part III of Article XIV respectively.

AMENDMENT No. 13—

On page 1, line 18, at the end of the line, delete the words "the foregoing"; and on line 19 after the word "Articles" and before the word "or" insert "I through XIII"

AMENDMENT No. 14—

On page 6, line 32, after the word "effect" insert a period "." and delete the remainder of the line.

Read.

On motion of Delegate Tate Amendment Nos. 1 through 14 were adopted.

AMENDMENT No. 15—

On page 6, delete lines 17 through 35, both inclusive in their entirety and on page 7 delete lines 1 and 2 and all Committee Amendments proposed by the Committee on Style and Drafting thereto and adopted this date and insert in lieu thereof the following:

Section 34. Exemption from Seizure and Sale

Section 34. The provisions of Article XI of the Constitution of 1921 shall be continued as a statute until the legislature enacts the law required by Article XII, Section 9 of this constitution, but the amount of the exemption shall be fifteen thousand dollars in value until otherwise fixed by law."

Read.

On motion of Delegate Tate Amendment No. 15 was adopted.

Motion

On motion of Delegate Tate, the Convention altered the Order of Business to take up Introduction of Resolutions at this time.

Introduction of Proposals

The following named delegates and committees introduced the following entitled Delegate and Committee Proposals which were read by their titles and placed on the Calendar for their second reading.

DELEGATE RESOLUTION No. 53—

Introduced by Delegate Denny:

A RESOLUTION

Relative to the printing and distribution of copies of the constitution throughout the state.

BE IT RESOLVED by the Constitutional Convention of Louisiana of 1973 that the publication of the constitution in the official journal of the state, prior to the election,

[356]

and the printing and distribution of copies of the constitution throughout the state, prior to the election shall be accomplished and paid for by the convention, and the Executive Committee is directed to do all things necessary and proper to accomplish the same."

Read.

Motion

On motion of Delegate Denny the rules were suspended in order to consider the adoption of the resolution.

On motion of Delegate Denny the Resolution was adopted.

Motion

On motion of Delegate Tate the rules were suspended for the purpose of calling a meeting of the Committee on Style and Drafting without giving the required 24 hours notice.

COMMITTEE NOTICE

Delegate Tate, chairman of the Committee on Style and Drafting, sent up the following notice:

The Committee on Style and Drafting will meet on Saturday, January 19, 1974, at 7:45 o'clock, P. M. in Senate Lounge and will consider the following agenda:

AGENDA

Committee business

Respectfully submitted,

ALBERT TATE,
Chairman of the Committee on
Style and Drafting.

The above notice was read in open session and publicly posted as provided by the Rules of Procedure of the Convention.

Motion

On motion of Delegate Henry the rules were suspended for the purpose of calling a meeting of the Executive Committee without giving the required 24 hours notice.

Delegate Henry, chairman of the Executive Committee, sent up the following notice:

The Executive Committee will meet on Saturday, January 19, 1974, at 7:45 o'clock, P. M. in Committee Room No. 1 and will consider the following agenda:

AGENDA

Committee Business

Respectfully submitted,

E. L. HENRY
Chairman of the Executive Committee

The above notice was read in open session and publicly posted as provided by the Rules of Procedure of the Convention.

Motion

On motion of Delegate Denny the remarks of Delegate Willis, delivered on the floor of the Convention on Saturday, January 19, 1974, were ordered inserted in the Official Journal as follows:

Mr. Chairman, E. L. Henry:

With unanimous consent to my last personal privilege here, I speak with a deep sense of humility on this occasion. With great personal satisfaction and pride and pleasure, I announce that I am fully mandated to voice the grateful sentiments of your colleagues regarding your chairmanship. Real gratitude, like joy, is a feeling that can neither be concealed, nor suppressed! It has to be expressed.

Words cannot be sufficient recompense, because words cannot pay the debt we and our state owe for your gratuitous stewardship, but they are our most honest recompense.

PAGE 63

122nd Days Proceedings—January 19, 1974

Coordinating Council for Higher Education is abolished, and on such date all powers, duties, and functions thereof not inconsistent with this constitution shall be merged and consolidated into the Board of Regents.

(4) On the effective date of this constitution, all functions of the State Board of Education with respect to the governance, supervision, management, administration, and direction of institutions of higher education not inconsistent with this constitution shall be transferred to the Board of Regents, and in all other respects the functions of the State Board of Education not inconsistent with this constitution shall be transferred to and be exercised by the State Board of Elementary and Secondary Education.

(5) Subject to change by law and except as in conflict with this Alternative Proposition and Act 2 of 1972, the provisions of Article XII, Section 7A of the Constitution of 1921 are continued as a statute, but the powers of the board shall be limited to the management of the daily operations of the Louisiana State University System."

Respectfully submitted,

MOISE W. DENNERY
Secretary.

Delegate J. Jackson moved that the above document contained in the report of the Secretary of the Convention be accepted and adopted as the proposed constitution, together with the proposed alternatives, of the Constitutional Convention of 1973 convened under the authority of Act No. 2 of the 1972 Regular Session of the Legislature, as amended.

A record vote was asked for and ordered by the Convention.

ROLL CALL

The roll was called with the following result:

YEAS

Delegates—	Gauthier	O'Neill
Mr. Chairman	Giarrusso	Perez
Abraham	Ginn	Perkins
Aertker	Goldman	Planchard
Alario	Graham	Pugh
Alexander	Gravel	Rachal
Anzalone	Orier	Rayburn
Annette	Guarisco	Reeves
Avant	Hardee	Roemer
Badeaux	Hayes	Roy
Bel	Haynes	Sandoz
Bergeron	Heine	Schmitt
Bair	Hernandez	Segura
Bollinger	Jack	Shannon
Brian	Jackson, A.	Singletary
Brown	Jackson, J.	Slay
Burns	Jenkins	Smith
Burson	Jones	Soniati
Cannon	Joneau	Stagg
Casey	Kean	Stephenson
Champagne	Kelly	Stinson
Chatalein	Kilpatrick	Sutherland
Chehardy	Lambert	Tapper
Comar	Landrum	Taie
Conino	Landry, A.	Thistlethwaite
Conroy	Landry, E. J.	Thompson
Corne	Lanier	Tobias
Cowan	LeBlau	Toca
D'Gerlamo	Leigh	Toomy
De Bileux	Leithman	Ulio
Dennery	Lowe	Velazquez
Dennis	Martin	Vick
Derbes	Maubertret	Warren
Deshotels	Maybuice	Wattigny
Drew	Miller	Weiss
Duval	Mire	Willis
Edwards	Morris	Winchester
Elkins	Munson	Wisham
Fayard	Newton	Wornack
Fowler	Numez	Zervigon
Fulco		
Total—120.		

NAYS

Delegate Asseff
Total—1.

NOT VOTING

Delegates—	Kilbourne	Stovall
Carmouche	McDaniel	Vesich
Dunlap	Ours	Wall
Flory	Riecke	
Fonteno		
Total—11.		

And the above document was finally adopted as the proposed constitution, together with the proposed alternatives, of the Constitutional Convention of 1973 convened under the authority of Act No. 2 of the 1972 Regular Session of the Legislature, as amended.

Delegate Schmitt moved to reconsider the vote by which the final document was passed, and, on his own motion, the motion to reconsider was laid on the table.

Explanation of Vote

January 19, 1974

This is to certify that I was present when the proposed constitution was signed but refused to sign it and voted against final adoption because I do not feel that it is in the best interest of all of the people of Louisiana.

EMMETT ASSEFF
Delegate, District 7

Reasons for Not Voting on Final Passage of the 1974 Constitution:

I was appointed as a delegate to represent organized labor and as such have participated in each day's session and have voted on each issue. In order for my vote not to be misinterpreted, I chose not to cast my vote either for or against the final passage of the 1974 Constitution; but to await the final decision of the group that I was appointed to represent.

GORDON FLORY

Explanation of Vote

Delegate Kendall L. Vick sent up the following explanation of his vote on the proposed Constitution:

"I voted yes on final passage to forward the proposed Constitution to the Governor pursuant to Act 2 of 1972, however, I dissent in part for the following reasons.

The proposed section (Art. IV, Section 8) with regard to the Powers and Duties of the Attorney General has

(1) divested the Attorney General and his assistants of the power "to institute and prosecute or to intervene in criminal proceedings as they may deem necessary for the assertion or protection of the rights and interest of the State."

(2) divested the Attorney General and his assistants of the power to "exercise supervision over the several District Attorneys throughout the State."

The Attorney General requested Francis C. Sullivan, Associate Dean and Professor of Law at LSU Law School to analyze the so-called "compromise section" on the Attorney General and to compare the present powers of the office with those proposed. Dean Sullivan replied to the Attorney General in two letters dated December 14, 1973, copies of which are attached hereto and made a part hereof as though sent out in their entirety.

It should also be noted that the powers the Convention removed from the Attorney General the President's Commission on Law Enforcement and Administration of Justice recommended be included in the office of the Attorney General to strengthen the coordination of local prosecution. The report stated: (1) "In those states where the local prosecutor is independently selected, the Attorney General should retain power to initiate prosecutions when, in his opinion, the interests of the state so require. Experience demonstrates that such authority, when granted, is used only infrequently." (2) In those rare instances where local prosecutors are unable or unwilling to prosecute a case properly, the Attorney General should be able to enter the case and to assist or direct the prosecutor. Where such power presently exists, it is rarely exercised, but it should be available to the Attorney General."



The power of the Attorney General to institute criminal prosecution reflected in Article VII, Section 56 of the present Constitution, has been in the law of Louisiana since 1813. Therefore, I must respectfully dissent as to Section 8 of Article IV, as proposed."

Louisiana State University
Baton Rouge, Louisiana 70803
The Law School

December 14, 1973

Honorable William J. Guste, Jr.

Attorney General
State of Louisiana
P. O. Box 65323
Baton Rouge, La. 70806

Dear Mr. Attorney General:

At your request I have examined the so-called "compromise article" which would apparently be a possible substitute for the present proposed Section 27 of Article V as drafted by the Constitutional Convention. In connection with the grant of power and authority to the Attorney General in criminal cases, I would make the following comments.

Apart from minor changes in language which do not appear to be significant, only one change is made by the compromise article. The change would grant to the Attorney General the power to institute, prosecute or intervene in any criminal action or proceeding where the action is "for cause" and with the authorization of the appropriate court. The propriety of the action of the Attorney General is specifically made subject to judicial review.

It seems apparent that this power is essentially designed to supplement the power of supersession. Primarily this provision would serve to authorize an appropriate district judge to authorize the Attorney General to commence and conduct a prosecution in a situation where if the prosecution had been initiated by the appropriate district attorney the Attorney General would have been authorized by the judge to supersede the district attorney in the prosecution of the case. The problem envisioned is one where the district attorney wrongfully fails or refuses to prosecute a criminal violation.

Once the prosecution has been initiated by a district attorney the appropriate remedy for prosecutorial misconduct of any type would seem to be supersession. The power to intervene without the power to supervise is at best meaningless and at worst productive of complete disruption of the proper prosecution of a case. I would call your attention to my previous comments concerning the inherent deficiencies of the power of supersession.

I would raise for your consideration, without here attempting to answer, the serious problems involved in the grant to district judges of significant control over the initiation and conduct of criminal prosecutions.

Clearly the compromise article would deprive the Attorney General of the two key constitutional powers he now possesses in criminal cases: the independent power to institute, prosecute or intervene in criminal proceedings; and the power to supervise the district attorneys in the exercise of their criminal jurisdiction.

In my opinion the compromise article upon close examination proves to be no compromise at all.

FRANCIS C. SULLIVAN
Associate Dean

Louisiana State University
Baton Rouge, Louisiana 70803
The Law School

December 14, 1973

Honorable William J. Guste, Jr.

Attorney General
State of Louisiana
P. O. Box 67323
Baton Rouge, Louisiana 70806

Dear Mr. Attorney General:

Pursuant to your request for an opinion, I have ex-

amined the Constitution, statutes, jurisprudence and other legal materials of the State of Louisiana to determine the powers and responsibilities of the Attorney General in conducting criminal proceedings both under the existing state of the law and under the proposed revision of the Louisiana Constitution as presently adopted by the Constitutional Convention. Specifically, three areas will be considered below: 1) the original criminal jurisdiction of the Attorney General; 2) the power of supervision of the Attorney General over the district attorneys; and 3) the power of the Attorney General to supersede a district attorney in a specific criminal prosecution.

A.) The Existing State of the Law

1.) Original Criminal Jurisdiction

Section 56 of Article VII of the Constitution provides that the Attorney General "shall attend to, and have charge of all legal matters in which the State has an interest, or to which the State is a party, with power and authority to institute and prosecute or to intervene in any and all suits or other proceedings, civil or criminal, as they may deem necessary for the assertion or protection of the rights and interests of the State." This can only be interpreted as a plain and clear grant of authority to the Attorney General to institute, prosecute and intervene in any criminal prosecution brought in the name of the state in a court of criminal jurisdiction. Article 62 of the Code of Criminal Procedure reinforces this grant in the following language: "The attorney general has authority to institute and prosecute, or to intervene in any proceeding, as he may deem necessary for the assertion or protection of the rights and interests of the state."

Although these provisions would seem to leave no room for doubt that the Attorney General has complete original criminal jurisdiction in any case in which he chooses to exercise it, certain questions have arisen as to whether this power conflicts with the powers of the district attorneys. Such question is raised, for instance, by the language of the Official Revision Comment to Article 62 of the Code of Criminal Procedure: "The relative rights of a district attorney and the attorney general under this constitutional provision (Const. Art. VII §56) are still somewhat hazy. . . ."

This problem, if indeed one really exists, arises from the decision in *Kemp v. Stanley*, 304 La. 110, 150 So.2d 101 (1963). One sitting justice of the Supreme Court of Louisiana has aptly characterized the *Kemp* case as follows: "The opinion, by a bare majority, is replete with dicta. . . ." (Summers, Justice, dissenting in *City of New Orleans v. Harrison*, 257 La. 923, 943, 244 So. 2d 834, 1971.) In *Kemp*, a supersession case, the Supreme Court on rehearing chose to find a constitutional basis for the prosecutorial power of the district attorneys: "While the Constitution does not enumerate the powers and duties of a District Attorney, his right and authority thereunder to institute and prosecute criminal proceedings against persons charged with crime, if not expressly provided for, is clearly and necessarily implied from the . . . Constitution. . . . Briefly, (the district attorneys) are made prosecuting attorneys by the provisions of the Constitution." (15 So.2d 1, 10.) In my opinion the *Kemp* case should be read to mean simply that the district attorneys share on an equal basis with the Attorney General the power to institute and prosecute criminal proceedings. This power of the district attorneys is, however, subject to the authority of the Attorney General to exercise supervision over the district attorneys as provided both by Section 56 of Article VII of the Constitution and Articles 61 and 62 of the Code of Criminal Procedure. The power of supervision will be discussed later in this opinion.

It should be pointed out that this power of the Attorney General is a discretionary one which he may exercise or not, in the Constitutional language, "as (he) may deem necessary for the assertion or protection of the rights and interests of the State." Certain language in *Kemp* would indicate that this discretion may be reviewed by the courts: ". . . Section 56 of Article VII of the Constitution does not confer upon the Attorney General an unreviewable discretion in exercising the powers granted to him thereby. . . ."

15 So.2d 1, 12. However, it is difficult to envision a situation in which the power of the Attorney General to institute and prosecute criminal prosecutions could be found to be an arbitrary and unconstitutional exercise of discretion.

I conclude, therefore, that the Attorney General possesses the complete constitutional and statutory power and au-

thority to institute, prosecute or intervene in any criminal prosecution brought in the name of the state without the request, permission or agreement of the district attorney involved. I further find that the district attorneys of this state possess the same power and authority to institute and prosecute criminal proceedings, subject to the power of supervision of the Attorney General.

2.) Power of Supervision

Section 56 of Article VII of the Constitution specifically empowers the Attorney General to "exercise supervision over the several district attorneys throughout the State." This authority is restated in almost identical language in Article 62 of the Code of Criminal Procedure. From the language of Article 61, C.C.P.: "Subject to the supervision of the attorney general, . . . , the district attorney has entire charge and control of every criminal prosecution instituted or pending in his district, and determines whom, when, and how he shall prosecute," it seems evident that the Legislature has implemented the constitutional provision by making every act of the district attorney in a criminal case from decision to prosecute to the final disposition subject to the supervision of the Attorney General. This is obviously an area of potential difficulty since the term "supervision" is not subject to ready or easy interpretation. It must also be kept in mind that the Supreme Court in **Kemp v. Stanley** stated: "We refrain from attempting to state generally in this opinion the extent of the Attorney-General's powers. . . . Each case must be decided as it arises and is presented to us." (15 So. 2d 1, 16.)

In my opinion both the Constitution and the Code of Criminal Procedure confer upon the Attorney General the final authority over the institution and conduct of all criminal proceedings in this State, and where the Attorney General chooses to invoke his power of supervision in any criminal case, the decision of the Attorney General must be considered as binding upon a district attorney should a dispute as to policy or judgment arise.

3.) Power of Supersession

The power to supersede a district attorney in the prosecution of a specific criminal case is the power to "put him out of the proceedings entirely." (**Kemp v. Stanley**, supra, 15 So. 2d 1, 8.) No such power is conferred upon the Attorney General either by the Constitution or by statute. It should also be noted that a former Attorney General of this State issued an opinion on March 21, 1963 to the effect that an Attorney General "has no legal authority to relieve, supplant or supersede a district attorney, willing to perform his duties." (Report and Opinions of the Attorney General of Louisiana, March 1, 1962 to March 1, 1964, p. 48.)

In view of the broad power of supervision available to the Attorney General, it would seem that the present absence of a power to supersede is a matter of little, if any, concern.

B.) Proposed Constitutional Revision

1.) Original Criminal Jurisdiction

The present proposed revision of the Constitution, as adopted by the Constitutional Convention, establishes the powers and duties of the Attorney General in Section 27 of Article V. A substantial change is made from the provisions of the 1921 Constitution in that the power to institute, prosecute or intervene in criminal proceedings is eliminated. In place of this power the Attorney General is granted the authority only to advise and assist, upon request of a district attorney, in the prosecution of a criminal case." (Art. V, §27(A)(2).) Clearly this reduces the power of the Attorney General in criminal cases, removes entirely the authority to initiate criminal prosecutions, and reduces the possible participation of the Attorney General in the prosecution of criminal cases to that of advising and assisting a district attorney, and this only upon request of the particular district attorney. This represents a very significant change in the policy which has heretofore been a part of the basic law of this State.

It should be noted that the proposed revision does not specify the powers and duties of district attorneys (See Art. V, §28, 29.). This was also the case in the 1921 Constitution. However it must be remembered that the Supreme Court of Louisiana in **Kemp v. Stanley** found that the district

attorneys possess the right and authority under the 1921 Constitution to institute and prosecute criminal cases. This would be authority for the Court to hold in some future case that similar powers are created by the revision, should it be adopted.

Even though Section 27 of the proposed revision provides that the Attorney General "shall have such other powers and perform such other duties as may be . . . provided by statute," it would seem that the Legislature could not enlarge the power of the Attorney General to initiate and prosecute criminal cases in the face of a specific provision limiting such power.

2.) Power of Supervision

The power of the Attorney General to supervise the district attorneys is eliminated completely from the proposed constitutional revision. This again represents a very significant change in the policy which is expressed in the 1921 Constitution. Should the revision become effective the district attorneys would have complete control over all criminal prosecutions and would be completely free of any control or direction by the Attorney General. In my opinion this would also require the repeal of Article 62 of the Code of Criminal Procedure and the elimination of the supervisory power of the Attorney General from Article 61.

3.) Power of Supersession

A new power is granted to the Attorney General to supersede a district attorney in any criminal action by Section 27(A)(3) of the proposed constitutional revision. Apparently in keeping with the implications of **Kemp v. Stanley**, this authority has been limited to those situations where the supersession is "for cause" and is further limited to those cases in which the supersession is authorized by the court of original jurisdiction in which the case is pending. The entire process is specifically made subject to judicial review. The very difficult task of defining "for cause" is left either to the Legislature or the Supreme Court acting on a case by case basis. In view of the limitations created, it is my opinion that any attempted exercise of this power would produce such difficulty and protracted litigation as to make it ineffective in any practical sense. Although outside of the scope of this opinion, it should be noted that any dispute arising over the attempted exercise of this power which would require protracted judicial review might well have an adverse effect on the right to a speedy trial of the defendant in the particular criminal proceeding and thus be in violation of rights guaranteed by the United States Constitution.

FRANCIS C. SULLIVAN
Associate Dean and
Professor of Law

Delegate Denny, Secretary of the Constitutional Convention of 1973, submits the following report:

Constitutional Convention of 1973
State of Louisiana

January 19, 1974, Baton Rouge, La.

To the Chairman and Delegates of the Convention:

I submit the following report:

That the following entitled Delegate Resolutions having been finally adopted by the Convention have been properly enrolled in final form:

DELEGATE RESOLUTION No. 52—

Introduced by Delegate Pugh:

A RESOLUTION

To provide:

(A) For the form and manner for the submission to the electors of the state of a proposed new constitution, together with alternative proposals relating to education, and the delegation of authority relating thereto to the appropriate officers of the convention;

(B) For the use of the facilities and services of boards, commissions, departments and agencies of the state and of the political subdivisions of the state;

(C) With respect to the disbursement of funds appropriated to the convention;

(D) A method of reconvening the convention without per diem for any purpose not prohibited by law; and

(E) For the supremacy of this Resolution over inconsistent actions of the convention.

WHEREAS:

(A) By law this convention has been granted full authority

TABLE OF CONTENTS

(As recommended by Committee
on Style and Drafting)

January 17, 1974

PREAMBLE

ARTICLE I. DECLARATION OF RIGHTS

Section 1. Origin and Purpose of Government [CP 25, Sec. 1]	27
* Section 2. Due Process of Law [CP 25, Sec. 2]	27
* Section 3. Right to Individual Dignity [CP 25, Sec. 3]	27
* Section 4. Right to Property [CP 25, Sec. 4]	27
* Section 5. Right to Privacy [CP 25, Sec. 5]	27
* Section 6. Freedom from Intrusion [CP 25, Sec. 6]	27
* Section 7. Freedom of Expression [CP 25, Sec. 9]	27
Section 8. Freedom of Religion [CP 25, Sec. 10]	27
* Section 9. Right of Assembly and Petition [CP 25, Sec. 11]	27
Section 10. Right to Vote [CP 25, Sec. 19]	28
* Section 11. Right to Keep and Bear Arms [CP 25, Sec. 20]	28
* Section 12. Freedom from Discrimination [CP 25, Sec. 26]	28
* Section 13. Rights of the Accused [CP 25, Sec. 12]	27
* Section 14. Right to Preliminary Examination [CP 25, Sec. 27]	29
* Section 15. Initiation of Prosecution [CP 25, Sec. 13]	28
* Section 16. Right to a Fair Trial [CP 25, Sec. 15]	28
* Section 17. Jury Trial in Criminal Cases [CP 25, Sec. 16]	28
* Section 18. Right to Bail [CP 25, Sec. 17]	28
* Section 19. Right to Judicial Review [CP 25, Sec. 12]	27
* Section 20. Right to Humane Treatment [CP 25, Sec. 18]	28
* Section 21. Writ of Habeas Corpus [CP 25, Sec. 21]	28
* Section 22. Access to Courts [CP 25, Sec. 22]	28
* Section 23. Prohibited Laws [CP 25, Sec. 23]	28
Section 24. Unenumerated Rights [CP 25, Sec. 25]	28

ARTICLE II. DISTRIBUTION OF POWERS

Section 1. Three Branches [CP 35, Sec. 1]	36
Section 2. Limitations on Each Branch [CP 35, Sec. 2]	36

ARTICLE III. LEGISLATIVE BRANCH

Section 1. Legislative Power; Composition; Continuous Body [CP 3, Sec. 1]	1
(A) Legislative Power of State	
(B) Continuous Body	
Section 2. Sessions [CP 3, Sec. 2]	1
(A) Annual Session	
(B) Extraordinary Session	
(C) Emergency Session	
Section 3. Size [CP 3, Sec. 3]	1
Section 4. Qualifications; Residence and Domicile Requirements; Term; Vacancies [CP 3, Sec. 4]	1
(A) Age; Residence; Domicile	
(B) Domicile; Special Provisions	
(C) Term	
(D) Vacancy	
Section 5. Taking Office [CP 3, Sec. 27]	4
(A) Full Term	
(B) Filling Vacancy	
Section 6. Legislative Reapportionment; Reapportionment by Supreme Court; Procedure [CP 3, Sec. 5]	1
(A) Reapportionment by Legislature	
(B) Reapportionment by Supreme Court	
(C) Procedure	
Section 7. Judging Qualifications and Elections; Procedural Rules; Discipline; Expulsion; Subpoenas; Contempt; Officers [CP 3, Sec. 6]	1
(A) Judging Qualifications and Elections;	
(B) Procedural Rules; Discipline; Expulsion	
(C) Subpoena Power; Contempt	
(D) Officers	
Section 8. Privileges and Immunities [CP 3, Sec. 7]	2

Section 9. Conflict of Interest [CP 3, Sec. 8]	2
Section 10. Quorum; Compulsory Attendance; Journal; Adjournment With Consent of Other House [CP 3, Sec. 9]	2
(A) Quorum	
(B) Journal	
(C) Adjournment	
Section 11. Legislative Auditor [CP 3, Sec. 10]	2
* Section 12. Prohibited Local and Special Laws [CP 22, Sec. 12]	44
(A) Prohibitions	
(B) Additional Prohibition	
Section 13. Local or Special Laws; Notice of Intent; Publication [CP 3, Sec. 13]	2
Section 14. Style of Laws; Enacting Clause [CP 3, Sec. 16]	3
Section 15. Passage of Bills [CP 3, Sec. 17]	3
(A) Introduction; Title; Single Object; Public Meetings	
(B) No General Reference	
(C) Germane Amendments	
(D) Three Readings	
(E) Rejected Bills; Reconsideration	
(F) Concurrence in Amendments	
(G) Majority; Record Vote	
Section 16. Appropriations [CP 3, Sec. 18]	3
(A) Specific Appropriation for One Year	
(B) Origin in House of Representatives	
(C) General Appropriation Bill; Limitations	
(D) Specific Purpose and Amount	
(E) Extraordinary Session	
Section 17. Signing of Bills; Delivery to Governor [CP 3, Sec. 19]	3
(A) Signing; Delivery	
(B) Resolutions	
Section 18. Signature of Governor on Bills; Veto [CP 3, Sec. 20]	3
(A) Gubernatorial Action	
(B) Veto	
(C) Veto Session	
Section 19. Effective Date of Laws [CP 3, Sec. 21]	3
Section 20. Suspension of Laws [CP 3, Sec. 22]	3

ARTICLE IV. EXECUTIVE BRANCH

Section 1. Composition; Number of Departments; Reorganization [CP 4, Sec. 1]	4
(A) Composition	
(B) Number of Departments	
(C) Reorganization	
Section 2. Qualifications [CP 4, Sec. 2]	4
Section 3. Election; Term [CP 4, Sec. 3]	4
(A) Election	
(B) Limitation on Governor	
(C) Additional Limitation	
Section 4. Compensation [CP 4, Sec. 4]	4
Section 5. Governor; Powers and Duties [CP 4, Sec. 5]	4
(A) Executive Authority	
(B) Legislative Reports and Recommendations	
(C) Departmental Reports and Information	
(D) Operating and Capital Budget	
* (E) Pardon, Commutation, Reprieve, and Remission; Board of Pardons	
(F) Receipt of Bills from the Legislature	
(G) Item Veto	
(H) Appointments	
(I) Removal Power	
(J) Commander-in-Chief	
(K) Other Powers and Duties	
Section 6. Lieutenant Governor; Powers and Duties [CP 4, Sec. 6]	5
Section 7. Secretary of State; Powers and Duties [CP 4, Sec. 7]	5
* Section 8. Attorney General; Powers and Duties [CP 4, Sec. 8]	5
Section 9. Treasurer; Powers and Duties [CP 4, Sec. 9]	5

Section 10. Commissioner of Agriculture; Powers and Duties [CP 4, Sec. 10]	5
Section 11. Commissioner of Insurance; Powers and Duties [CP 4, Sec. 11]	5
Section 12. Commissioner of Elections; Powers and Duties [CP 4, Sec. 12]	5
Section 13. Elects; Assistant Appointment [CP 4, Original Sec. 10]	5
Section 14. Vacancy in Office of Governor [CP 4, Sec. 11]	5
Section 15. Vacancy in Office of Lieutenant Governor [CP 4, Sec. 12]	5
Section 16. Vacancies in Other Statewide Elective Offices [CP 4, Sec. 13]	6
Section 17. Declaration of Inability by Statewide Elected Officials [CP 4, Sec. 16]	6
Section 18. Determination of Inability of Statewide Elected Official [CP 4, Sec. 17]	6
(A) Declaration and Counter-Declaration	
(B) Determination by the Legislature	
(C) Assumption of Office by Constitutional Successor	
(D) Determination by Supreme Court	
(E) Reconsideration by Supreme Court	
Section 19. Temporary Absences [CP 4, Sec. 18]	6
Section 20. Appointment of Officials; Merger, Consolidation of Offices and Departments [CP 4, Sec. 23]	6
Section 21. Public Service Commission [CP 37, Sec. 14]	6
(A) Composition; Term; Domicile	
(B) Powers and Duties	
(C) Limitation	
(D) Applications; Petitions and Schedules; Protective Bond and Security	
(E) Appeals	

ARTICLE V. JUDICIAL BRANCH

★ Section 1. Judicial Power [CP 21, Sec. 1]	22
★ Section 2. Habeas Corpus, Writs, Orders and Process; Contempt [CP 21, Sec. 2]	22
Section 3. Supreme Court; Composition; Judgments; Terms [CP 21, Sec. 3]	22
Section 4. Supreme Court; Districts [CP 21, Sec. 4]	22
★ Section 5. Supreme Court; Jurisdiction; Rule-Making Power; Assignment of Judges [CP 21, Sec. 5]	22
(A) Supervisory Jurisdiction; Rule-Making Power; Assignment of Judges	
(B) Original Jurisdiction	
(C) Scope of Review	
(D) Appellate Jurisdiction	
(E) Other Criminal Cases; Review	
(F) Appellate Jurisdiction; Civil Cases; Extent	
Section 6. Supreme Court; Chief Justice [CP 21, Sec. 6]	22
Section 7. Supreme Court; Personnel [CP 21, Sec. 7]	22
Section 8. Courts of Appeal; Circuits; Panels; Judgments; Terms [CP 21, Sec. 8]	22
(A) Circuits; Panels	
(B) Judgments	
(C) Terms	
Section 9. Courts of Appeal; Circuits and Districts [CP 21, Sec. 9]	22
★ Section 10. Courts of Appeal; Jurisdiction [CP 21, Sec. 10]	22
(A) Jurisdiction	
(B) Scope of Review	
Section 11. Courts of Appeal; Certification [CP 21, Sec. 11]	22
Section 12. Courts of Appeal; Chief Judge [CP 21, Sec. 12]	22
Section 13. Courts of Appeal; Personnel [CP 21, Sec. 13]	23
Section 14. District Courts; Judicial Districts [CP 21, Sec. 14]	23
★ Section 15. Grants; Retention; Jurisdiction; Judicial District Changes; Terms [CP 21, Sec. 15]	23
★ (A) Court Retention; Trial Courts of Limited Jurisdiction	
(B) Judicial Districts	

(C) Term	
(D) Number of Judges	
★ Section 16. District Courts; Jurisdiction [CP 21, Sec. 16]	23
(A) Original Jurisdiction	
(B) Appellate Jurisdiction	
District Courts; Chief Judge [CP 21, Sec. 17]	23
★ Section 18. Juvenile and Family Courts; Jurisdiction [CP 21, Sec. 18]	23
★ Section 19. Special Juvenile Procedures [DP 43]	47
★ Section 20. Mayors' Courts; Justice of the Peace Courts [CP 21, Sec. 19]	23
(A) Decrease in Terms and Compensation Prohibited [CP 21, Sec. 21]	23
Section 22. Judges; Election; Vacancy [CP 21, Sec. 22]	23
(A) Election	
(B) Vacancy	
(C) End of Term	
Section 23. Judges; Retirement [CP 21, Sec. 23]	23
(A) Retirement System	
(B) Mandatory Retirement	
Section 24. Judges; Qualifications [CP 21, Sec. 24]	24
★ Section 25. Judiciary Commission [CP 21, Sec. 25]	24
(A) Composition	
(B) Term; Vacancy	
(C) Powers	
(D) Other Disciplinary Action	
★ Section 26. District Attorneys [CP 21, Sec. 26]	24
(A) Election; Qualifications; Assistants	
(B) Powers	
(C) Prohibition	
★ Section 27. Sheriffs [CP 21, Sec. 30]	24
Section 28. Clerks of Court [CP 21, Sec. 31]	24
(A) Powers and Duties; Deputies	
(B) Office Hours	
★ Section 29. Coroners [CP 21, Sec. 32]	25
★ Section 30. Vacancies [CP 21, Sec. 33]	25
Section 31. Reduction of Salaries and Benefits Prohibited [CP 21, Sec. 34]	25
★ Section 32. Orleans Parish Courts, Officials [CP 21, Sec. 35]	25
★ Section 33. Jurors [CP 21, Sec. 36]	25
(A) Qualifications	
(B) Exemptions	
★ Section 34. Grand Jury [CP 21, Sec. 37]	25
(A) Grand Jury	
(B) Right to Counsel	

ARTICLE VI. LOCAL GOVERNMENT

PART I. GENERAL PROVISIONS

Section 1. Parishes [CP 17, Sec. 1]	15
(A) Parishes and Boundaries Ratified	
(B) Creation; Dissolution; Merger; Boundaries	
(C) Change of Parish Seat	
(D) Adjustment of Assets and Liabilities	
Section 2. Municipalities [CP 17, Sec. 6]	15
Section 3. Classification [CP 17, Sec. 6]	15
Section 4. Existing Home Rule Charters and Plans of Government [CP 17, Sec. 7]	16
Section 5. Home Rule Charter [CP 17, Sec. 8]	16
(A) Authority to Adopt; Commission	
(B) Petition to Elect Commission	
(C) Adoption; Amendment; Repeal	
(D) Adoption by Two or More Local Governmental Subdivisions	
(E) Structure and Organization; Powers; Functions	
(F) Additional Powers and Functions	
(G) Parish Officials and School Boards Not Affected	
Section 6. Home Rule Charter or Plan of Government; Action by Legislature Prohibited [CP 17, New Sec. 6]	16
Section 7. Powers of Other Local Governmental Subdivisions [CP 17, Sec. 9]	16
(A) Powers and Functions	
(B) Parish Officials and School Boards Not Affected	
Section 8. Home Rule Parish; Incorporation of Cities, Towns, and Villages [CP 17, Sec. 11]	16

* Section 9. Limitations of Local Governmental Subdivisions [CP 17, Sec. 12]	16	(B) Certificates of Indebtedness; Security	
(A) Limitations		(C) Exception	
* Section 10. Police Power Not Abridged		Section 37. Revenue-Producing Property	
Codification of Ordinances		[CP 17, Sec. 43]	20
[CP 17, Sec. 12.1]	16	(A) Authorization	
Section 11. Local Officials [CP 17, Sec. 13]	16	(B) Exception	
Section 12. Local Officials; Compensation		PART III. LEVEE DISTRICTS	
[CP 17, Sec. 14]	16	Section 38. Levee Districts [CP 17, Sec. 44]	20
Section 13. Vacancies [CP 17, Sec. 15]	17	(A) Retention; Reorganization; Consolidation	
(A) Vacancy; Appointment		(B) Obligation of Contract Affirmed	
(B) Exception		Section 39. Levee District Taxes [CP 17, Sec. 45]	20
Section 14. Increasing Financial Burden of Political Subdivision [CP 17, Sec. 16]	17	(A) District Tax; Millage Limit	
Section 15. Local Governmental Subdivisions; Control Over Agencies [CP 17, Sec. 17]	17	(B) Millage Increase	
Section 16. Special Districts and Local Public Agencies [CP 17, Sec. 18]	17	Section 40. Bond Issues [CP 17, Sec. 46]	20
(A) Consolidation		(A) Authorization	
(B) Assumption of Debt		(B) Sale	
Section 17. Land Use; Zoning; Historic Preservation [CP 17, Sec. 19]	17	Section 41. Cooperation with Federal Government [CP 17, Sec. 48]	20
Section 18. Industrial Areas [CP 17, Sec. 21]	17	Section 42. Compensation for Property Used or Destroyed; Tax [CP 17, Sec. 49]	20
(A) Authorization		(A) Compensation	
(B) Access by Public Road; Police Protection		(B) Appropriation	
Section 19. Special Districts; Creation [CP 17, Sec. 22] ..	17	PART IV. PORT COMMISSIONS AND DISTRICTS	
Section 20. Intergovernmental Cooperation [CP 17, Sec. 23]	17	Section 43. Port Commissions and Districts [CP 17, Sec. 50]	21
Section 21. Assistance to Local Industry [CP 17, Sec. 24]	17	PART V. DEFINITIONS	
(A) Authorization		Section 44. Terms Defined [CP 17, Sec. 51]	21
(B) Property Expropriated; Sale to Aliens Prohibited			
(C) Exception		ARTICLE VII. REVENUE AND FINANCE	
Section 22. Procedure for Certain Special Elections [CP 17, Sec. 26]	18	PART I. GENERAL PROVISIONS	
Section 23. Acquisition of Property [CP 17, Sec. 27]	18	Section 1. Power to Tax; Public Purpose [CP 15, Sec. 1]	13
Section 24. Servitudes of Way; Acquisition by Prescription [CP 17, Sec. 28]	18	Section 2. Power to Tax; Limitation [CP 15, Sec. 2]	13
Section 25. Courts Not Affected [CP 17, New Sec. 261] ..	18	Section 3. Collection of Taxes [CP 15, Sec. 3]	13
PART II. FINANCE		Section 4. Income Tax; Severance Tax; Political Subdivisions [CP 15, Sec. 4]	13
Section 26. Parish Ad Valorem Tax [CP 17, Sec. 31]	18	(A) Income Tax	
(A) Parish Tax for General Purposes; Millage Limits; Increase		(B) Severance Tax	
(B) Millage Increase Not for General Purposes		(C) Severance Tax; Political Subdivision	
(C) Parish Tax in Municipality		(D) Severance Tax Allocation	
(D) Withdrawal from Parish Taxing Authority		(E) Royalties Allocation	
Section 27. Municipal Ad Valorem Tax [CP 17, Sec. 32] ..	18	Section 5. Motor Vehicle License Tax [CP 15, Sec. 5]	13
(A) Municipal Tax for General Purposes; Millage Limits; Increase		Section 6. State Debt; Full Faith and Credit Obligations [CP 15, Sec. 7]	13
(B) Millage Increase Not for General Purposes		(A) Authorization	
(C) Exception		(B) Capital Improvements	
Section 28. Local Governmental Subdivisions; Occupational License Tax [CP 17, Sec. 33]	18	(C) Full Faith and Credit	
Section 29. Local Governmental Subdivision and School Boards; Sales Tax [CP 17, Sec. 34]	18	(D) Referendum	
(A) Sales Tax Authorized		(E) Exception	
(B) Additional Sales Tax Authorized		Section 7. State Debt; Interim Emergency Board [CP 15, Sec. 8]	14
(C) Bonds; Security		(A) Composition	
(D) Exemptions; Protection of Bonds		(B) Powers	
Section 30. Political Subdivisions; Taxing Power [CP 17, Sec. 35]	19	(C) Limits	
Section 31. Taxes; Ratification [CP 17, Sec. 36]	19	(D) Allocation	
Section 32. Special Taxes; Authorization [CP 17, New Sec. 33]	19	Section 8. State Bond Commission [CP 15, Sec. 10]	14
Section 33. Political Subdivisions; General Obligation Bonds [CP 17, Sec. 38]	19	(A) Creation	
(A) Authorization		(B) Approval of Bonds	
(B) Full Faith and Credit		(C) Contesting State Bonds	
Section 34. Limitations on Bonded Indebtedness [CP 17, Sec. 40]	19	Section 9. State Funds [CP 15, Sec. 11]	14
Section 35. Contesting Political Subdivision Bonds [CP 17, Sec. 41]	20	(A) Deposit in State Treasury	
(A) Contesting Election; Time Limit		(B) Bond Security and Redemption Fund	
(B) Contesting Ordinance or Resolution; Time Limit		(C) Exception	
Section 36. Local Improvement Assessments [CP 17, Sec. 42]	20	Section 10. Expenditure of State Funds [CP 15, Sec. 12]	14
(A) Authorization		(A) Appropriations	
		(B) Balanced Budget	
		(C) Publication	
		(D) Public Purpose	
		Section 11. Budgets [CP 15, Sec. 13]	14
		(A) Operating Budget	
		(B) Capital Budget	
		Section 12. Reports and Records [CP 15, Sec. 14]	14
		Section 13. Investment of State Funds [CP 15, Sec. 15] ..	14

Section 14. Donation, Loan, or Pledge of Public Credit [CP 15, Sec. 16]	14
(A) Prohibited Uses	
(B) Authorized Uses	
(C) Cooperative Endeavors	
(D) Prior Obligations	
Section 15. Release of Obligations to State, Parish, or Municipality [CP 15, Sec. 17]	14
Section 16. Taxes; Prescription [CP 15, New Sec. 16]	14
Section 17. Legislation to Obtain Federal Aid [CP 15, Sec. 18]	15

PART II. PROPERTY TAXATION

Section 18. Ad Valorem Taxes [CP 26, Sec. 1]	29
(A) Assessments	
(B) Classification	
(C) Use Value	
(D) Valuation	
(E) Review	
(F) Reappraisal	
Section 19. State Property Taxation; Rate Limitation [CP 26, Sec. 2]	29
Section 20. Homestead Exemption [CP 26, Sec. 3]	29
(A) Homeowners	
(B) Residential Lessees	
Section 21. Other Property Exemptions [CP 26, New Sec. 4]	29, 30
Section 22. No Impairment of Existing Taxes or Obligations [CP 26, Sec. 4]	29
Section 23. Adjustment of Ad Valorem Tax Millages [CP 26, Sec. 5]	30
Section 24. Tax Assessors [CP 26, Sec. 8]	30
(A) Election; Term	
(B) Orleans Parish	
(C) Vacancy	
Section 25. Tax Sales [CP 26, Sec. 9]	30
(A) Tax Sale	
(B) Redemption	
(C) Annulment	
(D) Quieting Tax Title	
(E) Movable; Tax Sales	
(F) Postponement of Taxes	

PART III. REVENUE SHARING

Section 26. Revenue Sharing Fund [CP 26, Sec. 6]	30
(A) Creation of Fund	
(B) Annual Allocation	
(C) Distribution Formula	
(D) Distributing Officer	
(E) Bonded Debt	

ARTICLE VIII. EDUCATION**Preamble**

Section 1. Public Educational System [CP 7, Sec. 2] ..	7
Section 2. State Superintendent of Education [CP 7, Sec. 3]	7
Section 3. State Board of Elementary and Secondary Education [CP 7, Sec. 4]	8
(A) Creation; Functions	
(B) Membership; Terms	
(C) Vacancy	
Section 4. Approval of Private Schools [CP 7, Sec. 6]	8
Section 5. Board of Regents [CP 7, Sec. 7]	8
(A) Creation; Functions	
(B) Membership; Terms	
(C) Vacancy	
(D) Powers	
(E) Powers Not Vested	
Section 6. Board of Trustees for State Colleges and Universities [CP 7, Sec. 8]	8
(A) Creation; Functions	
(B) Membership; Terms	
(C) Vacancy	
Section 7. Board of Supervisors of Louisiana State University and Agricultural and Mechanical College; Board of Supervisors of Southern University and Agricultural and Mechanical College [CP 7, Sec. 9]	8
(A) Creation; Powers	

(B) Membership; Terms	
(C) Vacancy	
Section 8. Boards; Membership; Compensation [CP 7, Sec. 11]	8
(A) Dual Membership	
(B) Student Membership	
(C) Compensation	
Section 9. Parish School Boards; Parish Superintendents [CP 7, Sec. 12]	8
(A) Boards	
(B) Superintendents	
Section 10. Existing Boards and Systems Recognized; Consolidation [CP 7, Sec. 13]	8
(A) Recognition	
(B) Ouachita Parish and Monroe City School Systems; Board Membership	
(C) Consolidation	
Section 11. Appropriations; State Bonds [CP 7, Sec. 14]	9
Section 12. Appropriations; Higher Education [CP 7, Sec. 15]	9
Section 13. Funding; Apportionment [CP 7, Sec. 16]	9
(A) Free School Books	
(B) Minimum Foundation Program	
(C) Local Funds	
(D) Municipal School Systems	
Section 14. Tulane University [CP 7, Sec. 17]	9

ARTICLE IX. NATURAL RESOURCES

Section 1. Natural Resources and Environment; Public Policy [CP 34, Sec. 1]	34
Section 2. Natural Gas [CP 34, Sec. 2]	34
(A) Public Policy; Regulation	
(B) Pipelines	
Section 3. Alienation of Water Bottoms [CP 34, Sec. 4]	34
Section 4. Reservation of Mineral Rights; Prescription [CP 34, Sec. 5]	34
(A) Reservation of Mineral Rights	
(B) Prescription	
Section 5. Public Notice; Public Bidding Requirements [CP 34, New Sec. 6.1]	34
Section 6. Tidelands Ownership [CP 34, Sec. 9]	34
Section 7. Wildlife and Fisheries Commission [CP 34, Sec. 12]	35
(A) Members; Terms	
(B) Duties; Compensation	
Section 8. Forestry [CP 34, Sec. 13]	35
(A) Forestry; Acreage Taxes	
(B) Forestry Commission	
(C) State Forester	

ARTICLE X. PUBLIC OFFICIALS AND EMPLOYEES**PART I. STATE AND CITY CIVIL SERVICE**

Section 1. Civil Service Systems [CP 9, Sec. 1]	10
(A) State Civil Service	
(B) City Civil Service	
Section 2. Classified and Unclassified Service [CP 9, Sec. 2]	10
(A) Classified Service	
(B) Unclassified Service	
Section 3. State Civil Service Commission [CP 9, Sec. 3]	10
(A) Composition	
(B) Appointment	
(C) Nominations	
Section 4. City Civil Service Commission [CP 9, Sec. 4]	10
(A) Creation; Membership; Domicile	
(B) New Orleans; Nomination and Appointment	
(C) Other Cities; Nomination and Appointment	
(D) Vacancies	
Section 5. Removal [CP 9, Sec. 5]	10
Section 6. Department of Civil Service; Directors [CP 9, Sec. 6]	10
(A) State Departments	
(B) City Departments	
(C) Directors	

Section 7.	Appointments; Promotions [CP 9, Sec. 7]	10	Section 5.	Forced Heirship and Trusts [CP 35, Sec. 7]	36
Section 8.	Appeals [CP 9, Sec. 8]	10	Section 6.	Lotteries; Gambling [DP 17, Sec. 12]	43
	(A) Disciplinary Actions		* Section 7.	State Penal Institutions; Reimbursement of Parish Expense [CP 12, New Sec. 1]	12
	(B) Discrimination		Section 8.	Welfare; Unemployment Compensation, and Health [CP 14, Sec. 1]	12
Section 9.	Prohibitions Against Political Activities [CP 9, Sec. 9]	10	Section 9.	Exemptions from Seizure and Sale [DP 16, Sec. 1]	43
	(A) Party Memberships; Elections		Section 10.	Suits Against the State [CP 3, Sec. 14]	2
	(B) Contributions			(A) No Immunity in Contract and Tort	
Section 10.	Rules; Investigations; Wages and Hours [CP 9, Sec. 10]	10		(B) Waiver in Other Suits	
	(A) Rules			(C) Procedure; Judgments	
	(1) Powers		Section 11.	Continuity of Government [CP 3, Sec. 15]	3
	(2) Veterans		Section 12.	Corporations; Perpetual or Indefinite Duration; Dissolution; Perpetual Franchises or Privileges [CP 3, Sec. 23]	3
	(3) Layoffs; Preference Employees		Section 13.	Prescription Against State [CP 17, Sec. 29]	18
	(4) Effect		Section 14.	Administrative Agency Codes [CP 35, Sec. 10]	36
	(B) Investigations				
	(C) Wages and Hours				
Section 11.	Penalties [CP 9, Sec. 11]	10			
Section 12.	Appeal [CP 9, Sec. 12]	10			
Section 13.	Appropriations [CP 9, Sec. 13]	10			
	(A) State				
	(B) Cities				
Section 14.	Acceptance of Act; Other Cities, Parishes; City and Parish Governed Jointly [CP 9, Sec. 14]	10			
	(A) Local Option				
	(B) Acceptance				
	(C) Rejection				
Section 15.	City, Parish Civil Service System; Creation; Prohibition [CP 9, Sec. 15]	10			

PART II. FIRE AND POLICE CIVIL SERVICE

Section 16. Establishment [CP 10, Sec. 16]	11
Section 17. Appointments and Promotions [CP 10, Sec. 17]	11
Section 18. Prior Provisions [CP, 10, Sec. 18]	11
Section 19. Exclusion [CP 10, Sec. 19]	11
Section 20. Political Activities [CP 10, Sec. 20]	11

PART III. OTHER PROVISIONS

Section 21.	Code of Ethics [CP 22]	26
Section 22.	Dual Employment and Dual Officeholding [CP 23]	26
Section 23.	Compensation of Elected Officials; Reduction [CP 3, Sec. 11]	2
Section 24.	Impeachment [CP 3, Sec. 24] (A) Persons Liable	3
	(B) Procedure	
Section 25.	Removal by Suit; Official Subject [CP 3, Sec. 26]	4
Section 26.	Recall [CP 3, Sec. 27]	4
Section 27.	Filling of Vacancies [CP 4, Sec. 14] (A) Gubernatorial Appointment; Election (B) Qualification	6
Section 28.	Definition of Vacancy [CP 4, Sec. 15]	6
Section 29.	Retirement and Survivor's Benefits [CP 11, Sec. 1] (A) Public School Employees (B) Other Officials and Employees (C) Retirement Systems; Change; Notice (D) Compensation for Survivors of Law Enforcement Officers and Firemen	11
Section 30.	Oath of Office [CP 35, Sec. 5]	36

ARTICLE XI. ELECTIONS

Section	1. Election Code [CP 33, Sec. 2]	32
Section	2. Secret Ballot; Absentee Voting; Preservation of Ballot [CP 33, Sec. 3]	32
Section	3. Privilege from Arrest [CP 33, Sec. 6]	32
Section	4. Prohibited Use of Public Funds [CP 33, Sec. 4]	32
Section	5. Registrar of Voters [CP 33, Sec. 11]	32

ARTICLE XII. GENERAL PROVISIONS

Section	1. State Capital [CP 35, Sec. 6]	36
Section	2. Civilian-Military Relations [CP 35, Sec. 3]	36
Section	3. Right to Direct Participation [CP 35, Sec. 4]	36
Section	4. Preservation of Linguistic and Cultural Origins [CP 35, Sec. 11]	36

Section 5.	Forced Heirship and Trusts [CP 35, Sec. 71]	36
Section 6.	Lotteries; Gambling [DP 17, Sec. 12]	43
* Section 7.	State Penal Institutions; Reimbursement of Parish Expense [CP 12, New Sec. 1]	40
Section 8.	Welfare, Unemployment Compensation, and Health [CP 14, Sec. 1]	12
Section 9.	Exemptions from Seizure and Sale [DP 16, Sec. 1]	43
Section 10.	Suits Against the State [CP 3, Sec. 14]	2
	(A) No Immunity in Contract and Tort	
	(B) Waiver in Other Suits	
	(C) Procedure; Judgments	
Section 11.	Continuity of Government [CP 3, Sec. 15]	3
Section 12.	Corporations; Perpetual or Indefinite Duration; Dissolution; Perpetual Franchises or Privileges [CP 3, Sec. 23]	3
Section 13.	Prescription Against State [CP 17, Sec. 29]	18
Section 14.	Administrative Agency Codes [CP 35, Sec. 101]	36

ARTICLE XIII. CONSTITUTION REVISION

Section	1. Amendments [CP 36, Sec. 1] -----	37
	(A) Procedure	
	(B) Form of Proposal	
	(C) Ratification	
Section	2. Constitutional Convention [CP 36, Sec. 2] --	37
Section	3. Laws Effectuating Amendments	
	[CP 36, Sec. 4] -----	37

ARTICLE XIV. TRANSITIONAL MEASURES

PART I

Section 1.	Board of Regents [CP 30, Sec. 1] -----	31
Section 2.	Board of Supervisors of Louisiana State University and Agricultural and Mechanical College [CP 30, Sec. 2] -----	31
Section 3.	Board of Supervisors of Southern University [CP 38, Sec. 27] -----	39
Section 4.	State Board of Elementary and Secondary Education; Board of Trustees for State Colleges and Universities [CP 30, Sec. 3] -----	31
Section 5.	Board of New Appointments [CP 30, New Sec. 5] -----	32
Section 6.	Mandatory Reorganization of State Government [CP 31, Sec. 1] -----	32
Section 7.	Legislative Sessions [DP 18, Sec. 1] -----	43
Section 8.	Civil Service Commission; State; Cities [DP 28, Sec. 1] -----	45
	(A) State Commission -----	
	(B) City Commission -----	
Section 9.	Civil Service Officers; Employees; State; Cities [DP 28, Sec. 2] -----	45
Section 10.	Offshore Mineral Revenue; Use of Funds [CP 34, Sec. 10] -----	35
Section 11.	Prescription; Tideland Taxes [CP 15, New Sec. 16] -----	14
Section 12.	Effective Date of 1860 [CP 15, Sec. 17B1] -----	14
Section 13.	Effective Date of Property Tax Provisions [CP 26, Sec. 10] -----	30

PART II

Section 14	Limitation on Transitional Provisions [CP 38, Sec. 1]	38
Section 15	Existing Officials [CP 38, Sec. 8]	38
Section 16	Provisions of 1921 Constitution Made Statutory [CP 38, Sec. 9]	38
Section 17	Provisions of Constitution of 1921 Repealed [CP 38, Sec. 10]	38
*Section 18	Existing Laws [CP 38, Sec. 11]	38
Section 19	Poris; Transition to Statutes Public Service [CP 38, Sec. 16]	38
Section 20	Public Service Commission [CP 38, Sec. 18]	38

PART III

Section 21. References to 1921 Constitution	
[CP 38, Sec. 2]-----	38
Section 22. Effect of Titles [CP 38, Sec. 3]-----	38
*Section 23. Continuation of Actions and Rights	
[CP 38, Sec. 5]-----	38

Section 24. Protection of Existing Taxes [CP 38, Sec. 8]	38
Section 25. Impairment of Debt Obligations Prohibited [CP 38, Sec. 7]	38
★ Section 26. Constitution Not Retroactive [CP 38, Sec. 12]	38
Section 27. Legislative Provisions [CP 38, Sec. 13]	38
Section 28. Judiciary Commission [CP 38, Sec. 15]	39
Section 29. Statewide Elected Officials [CP 38, Sec. 19]	39
Section 30. Commissioner of Elections [CP 38, Sec. 20]	39
★ Section 31. Pardon Board [CP 38, Sec. 21]	39
Section 32. Levee Districts; Compensation for Property [CP 38, Sec. 22]	39
Section 33. Suits Against the State; Effective Date [CP 38, Sec. 23]	39
Section 34. Exemption from Seizure and Sale [CP 38, Sec. 24b]	39
Section 35. Effective Date [CP 38, Sec. 25]	39
Section 36. Effect of Adoption [CP 38, Sec. 29]	39
Section 37. Severability Clause [CP 38, Sec. 30]	40

PART IV

Section 38. Alternative Proposition [DP 98]	54
Section 39. Alternative Article VIII	

Section 1. Public Educational System [DP 98]	54
Section 2. State Superintendent of Education [DP 98]	54
Section 3. State Board of Elementary and Secondary Education [DP 98]	54
Section 4. Approval of Private Schools [DP 98]	54
Section 5. Board of Regents [DP 98]	54
Section 6. Boards; Membership; Compensation [DP 98]	54
Section 7. Parish School Boards; Parish Superintendents [DP 98]	54
Section 8. Existing Boards and Systems Recognized; Consolidated [DP 98]	54
Section 9. Appropriations; State Boards [DP 98]	54
Section 10. Appropriations; Higher Education [DP 98]	54
Section 11. Funding; Apportionment [DP 98]	54
Section 12. Tulane University [DP 98]	54
Section 40. Transition to Board of Regents and State Board of Elementary and Secondary Education [CP 38, Sec. 28]	39

PAGE NUMBERS AT END OF EACH ACTION REFER TO THE DAILY JOURNAL PAGE NUMBER(S) ON THE DATE THAT THE ACTION OCCURRED.

CONSTITUTIONAL CONVENTION CALENDAR

COMMITTEE PROPOSALS

COMMITTEE PROPOSAL No. 1—

Introduced by Delegate Jackson, Chairman, on behalf of the Committee on Bill of Rights and Elections, and Delegates Dunlap, Guarisco, Jenkins, Roy, Soniat, Stinson, Vick, Wall and Weiss:

A PROPOSAL

Providing for general governmental provisions.

July 5—

Read, lies over under the rules. p. 4

July 6—

Read. p. 51

Under the rules.

Referred to the Committee on Bill of Rights and Elections. p. 52

December 17—

Reported by substitute. p. 16

Rules suspended.

Read, Substitute adopted. p. 16

Becomes Committee Proposal No. 35. p. 16



COMMITTEE PROPOSAL No. 2—

Introduced by Delegate Jackson, Chairman, on behalf of the Committee on Bill of Rights and Elections, and Delegates Dunlap, Guarisco, Jenkins, Roy, Soniat, Stinson, Vick, Wall and Weiss:

A PROPOSAL

To provide a preamble and a declaration of rights to the constitution.

July 5—

Read, lies over under the rules. p. 5

July 6—

Read.

Under the rules.

Referred to the Committee on Bill of Rights and Elections. p. 52

August 22—

Reported by substitute. p. 10

Rules suspended. p. 10

Read. p. 10

Substitute adopted. p. 10

Becomes Committee Proposal No. 25. p. 10



COMMITTEE PROPOSAL No. 3—

Introduced by Delegate Blair, Chairman, on behalf of the Committee on Legislative Powers and Functions, and Delegates Casey, Fayard, Fulco, Ginn, Juneau, Kilpatrick, Landrum, LeBreton and O'Neill:

A PROPOSAL

Making provisions for the legislative branch of government, impeachment and removal of officials, and necessary provisions with respect thereto.

July 5—

Read, lies over under the rules. p. 3

July 6—

Read. p. 52

Under the rules.

Referred to the Committee on Legislative Powers and Functions. p. 52

July 12—

Reported with amendments. p. 1

Rules suspended.

Amendments adopted. p. 3

Read and ordered engrossed. p. 3

Rules suspended.

Read, ordered re-engrossed and passed to its third reading. p. 3

July 13—

Read. p. 4

Section 1. Legislative Power of State; Vesting; Continuous Body

[Const. Art. III, Sec. 1]

Title amended.

July 13—

Read. p. 4

Amended. pp. 4, 5

Read, roll called, yeas 103, nays 8, passed. p. 5

November 18—

Style and Drafting Amendments Adopted. p. 6

Section 2. Sessions; Annual, Extraordinary

[Const. Art. III, Sec. 2]

Title amended.

July 13—

Read. p. 6

Amended. p. 6

July 14—

Read. p. 2

Amended. p. 3

July 18—

Read. p. 2

July 19—

Read. p. 2

Amended. pp. 3, 5

Read, roll called, yeas 92, nays 8, passed. p. 5

November 18—

Style and Drafting Amendments Adopted. pp. 6, 7

Section 3. Size

[Const. Art. III, Sec. 3]

July 19—

Read. p. 5

Amended. p. 6

Read, roll called, yeas 102, nays 11, passed. p. 6

November 18—

Style and Drafting Amendments Adopted. p. 7

Section 4. Qualifications; Residence Requirements; Term; Vacancies; Salary

[Const. Art. III, Sec. 4]

Title amended.

July 19—

Read. p. 6

Amended. p. 7

July 20—

Read. p. 3

Amended. pp. 3, 5, 6

Read, roll called, yeas 98, nays 2, passed. pp. 6, 7

November 18—

Reconsidered. p. 12

Read. p. 12

Amended. p. 12

Read, roll called, yeas 78, nays 0, passed. p. 13

Style and Drafting Amendments Adopted. p. 7

Section 5. Legislative Apportionment; Judicial Review; Apportionment by Supreme Court

[Const. Art. III, Sec. 6]

Title amended.

Amended to become Section 6.



July 20—

Read. p. 7

Amended. p. 7

July 25—

Read. p. 2

Amended. pp. 3, 4

Read, roll called, yeas 82, nays 12, passed. p. 4

November 18—

Style and Drafting Amendments Adopted. p. 7

January 19—

Style and Drafting amendments adopted.

Section 6. Judging Qualifications and Election; Procedural Rules; Discipline; Officers
[Const. Art. III, Sec. 7]

Title amended.

Amended to become Section 7.

July 25—

Read. p. 5

Amended. p. 5

Read, roll called, yeas 91, nays 4, passed. p. 6

November 18—

Style and Drafting Amendments Adopted. pp. 7, 8

January 19—

Style and Drafting Amendments Adopted.

Section 7. Privileges and Immunities
[Const. Art. III, Sec. 8]

Amended to become Section 8.

July 25—

Read, roll called, yeas 67, nays 26, passed. p. 6

November 18—

Style and Drafting Amendments Adopted. p. 8

January 19—

Style and Drafting amendments adopted.

Section 8. Conflict of Interest
[Const. Art. III, Sec. 9]

Amended to become Section 9.

July 25—

Read, roll called, yeas 92, nays 4, passed. p. 6

November 18—

Style and Drafting Amendments Adopted. p. 8

January 19—

Style and Drafting amendments adopted.

Section 9. Quorum; Compulsory Attendance; Journal; Adjournment; Consent of Other House
[Const. Art. III, Sec. 10]

Title amended.

Amended to become Section 10.

July 25—

Read. p. 7

Amended. p. 7

Read, roll called, yeas 96, nays 1, passed. p. 7

November 18—

Style and Drafting Amendments Adopted. p. 8

January 19—

Style and Drafting amendments adopted.

Section 10. Legislative Auditor
[Const. Art. III, Sec. 11]

Amended to become Section 11.

July 25—

Read. p. 8

Amended. p. 8

Read, roll called, yeas 103, nays 1, passed. pp. 8, 9

November 18—

Style and Drafting Amendments Adopted. p. 8

January 19—

Style and Drafting amendments adopted.

Section 11. Salaries of Public Officers; Change
[Const. Art. X, Part III, Sec. 23]

Title amended.

Amended to become Section 23.

July 25—

Read. p. 9

Amended. p. 10

July 26—

Read. p. 3

Amended. p. 4

Read, roll called, yeas 76, nays 23, passed. p. 4

November 18—

Style and Drafting Amendments Adopted. p. 8

January 19—

Style and Drafting Amendments Adopted.

Section 12. Local or Special Laws

July 26—

Read, action deferred. p. 4

July 28—

Read. p. 8

Action deferred. p. 8

August 1—

Read. p. 1

Amended. pp. 2, 3

Read, roll called, yeas 88, nays 15, the section was deleted. p. 3

Section 13. Local or Special Laws; Notice of Intention; Publication
[Const. Art. III, Sec. 13]

July 26—

Read. p. 4

Amended. p. 4

Read, roll called, yeas 103, nays 0, passed. p. 4

November 18—

Style and Drafting Amendments Adopted. p. 8

January 19—

Style and Drafting amendments adopted.

Section 14. Suits Against the State
[Const. Art. XII, Sec. 10]

July 26—

Read. p. 5

Amended. p. 7

July 27—

Read. p. 2

Amended. pp. 3, 5

Read, roll called, yeas 76, nays 35, passed. p. 6

November 18—

Style and Drafting Amendments Adopted. p. 14

Reconsidered. p. 13

Read. p. 13

Amended. p. 13

Read, roll called, yeas 79, nays 0, passed. pp. 13, 14

January 19—

Style and Drafting Amendments Adopted.

Section 25. Removal on Address by Legislature

July 28—

Read. p. 5

Amended. p. 5

Read, roll called, yeas 75, nays 0. The section was deleted. p. 5

Section 26. Removal by Suit; Officers Subject; Commencement of Suit

[Const. Art. X, Part III, Sec. 25]

Amended to become Section 25.

July 28—

Read. p. 5

Amended. p. 6

Read, roll called, yeas 78, nays 0, passed. p. 6

November 18—

Style and Drafting Amendments Adopted. p. 12

January 19—

Style and Drafting Amendments Adopted.

Section 27. Recall

[Const. Art. X, Part III, Sec. 26]

Amended to become Section 26.

July 28—

Read. p. 6

Read, roll called, yeas 83, nays 0, passed. p. 6

November 18—

Style and Drafting Amendments Adopted. p. 12

January 19—

Style and Drafting Amendments Adopted.

Section 27. Taking Office

[Const. Art. III, Sec. 5]

Added by floor amendment.

August 1—

Read, roll called, yeas 78, nays 26, passed. p. 4

January 19—

Style and Drafting Amendments Adopted.

August 1—

Read, roll called on final passage, yeas 102, nays 7, finally passed. p. 5

August 2—

Enrolled referred to the Committee on Styling and Drafting. p. 10

November 8—

Reported with amendments. pp. 12, 13, 14, 15, 16

November 18—

Read. p. 6

Amendments adopted. pp. 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17

November 19—

Finally enrolled, read and signed by the Chairman of the Convention and attested by the Secretary of the Convention. pp. 11, 12, 13

★ COMMITTEE PROPOSAL No. 4—

Introduced by Delegate Stagg, Chairman, on behalf of the Committee on Executive Department, and Delegates Abraham, Alexander, Arnette, Brien, Dennery, Duval, Gravel, Stovall and Tapper:

A PROPOSAL

Providing for the executive branch of government, for the filling of vacancies in certain public offices, and with respect to dual office-holding, a code of ethics, and impeachment.

July 5—

Read, lies over under the rules. p. 5

July 6—

Read. p. 52

Under the rules.

Referred to the Committee on Executive Department. p. 52

July 11—

Reported with amendments. p. 1

Rules suspended. p. 1

Recommitted to the Committee on Executive Department. p. 2

July 12—

Reported with amendments. p. 3

July 13—

Amendments adopted. p. 4

Read, and ordered engrossed. p. 4

Referred to the Committee on Style and Drafting. p. 4

July 20—

Reported without amendments. p. 2

Rules suspended. p. 2

Read, ordered re-engrossed and passed to its third reading. p. 2

August 1—

Read. p. 7

Section 1. Composition

[Const. Art. IV, Sec. 1]

Title amended.

August 1—

Read. p. 7

August 2—

Read. p. 2

Amended. pp. 3, 5, 7, 9

Read, roll called, yeas 95, nays 3, passed. p. 9

January 10—

Style and Drafting Amendments Adopted.

January 15—

Rules suspended, Reconsidered, Read, Amended.

Read, roll called, yeas 106, nays 0, passed. p. 18

Section 2. Qualifications

[Const. Art. IV, Sec. 2]

August 3—

Read. p. 2

Amended. p. 3

Read, roll called, yeas 96, nays 5, passed. p. 4

January 10—

Style and Drafting Amendments Adopted.

Section 3. Elections and Terms

[Const. Art. IV, Sec. II]

Title amended.

August 3—

Read. p. 4

Amended. pp. 4, 5, 7

Read, roll called, yeas 107, nays 0, passed. p. 8

January 10—

Style and Drafting Amendments Adopted.

Section 4. Compensation

[Const. Art. IV, Sec. 4]

August 3—

Read. p. 8

Amended. p. 8

Read, roll called, yeas 91, nays 5, passed. p. 9

January 10—

Style and Drafting Amendments Adopted.

Section 5. Powers and Duties of Governor

[Const. Art. IV, Sec. 5]

Title amended.

August 3—

Read. p. 10
Amended. p. 11

August 4—

Read. p. 1
Amended. pp. 2, 4, 5
Read, roll called, yeas 104, nays 0, passed. p. 5

January 10—

Style and Drafting Amendments Adopted.

January 16—

Rules suspended.
Reconsidered. p. 21
Amended. pp. 21, 22
Read, roll called, yeas 100, nays 0, passed. p. 22

Section 6. Powers and Duties of the Lieutenant Governor

[Const. Art. IV, Sec. 6]

Title amended.

August 4—

Read, roll called, yeas 93, nays 10, passed. p. 6

January 10—

Style and Drafting Amendments Adopted.

Section 7. Powers and Duties of the Secretary of State
[Const. Art. IV, Sec. 7]

Title amended.

August 4—

Read. p. 6

The convention resolved itself into a committee of the whole p. 6

The committee of the whole rose. p. 7

August 8—

Read. p. 1

The convention resolved itself into a committee of the whole. p. 2

The committee rose. p. 2

Amended. p. 3

Read, roll called, yeas 88, nays 22, passed. p. 3

January 10—

Style and Drafting Amendments Adopted.

Section 8. Powers and Duties of the Attorney General
[Const. Art. IV, Sec. 8]

Title amended.

August 8—

Read. p. 4

Amended. p. 4

Read, roll called, yeas 106, nays 4, passed. p. 4

January 10—

Style and Drafting Amendments Adopted.

January 15—

Rules suspended, Reconsidered. p. 18

Amended. p. 19

Read, roll called, yeas 102, nays 7, passed. p. 19

Section 9. Powers and Duties of the Treasurer
[Const. Art. IV, Sec. 9]

Title amended.

August 8—

Read. p. 4

August 9—

Read. p. 1

Amended. pp. 2, 3

Read, roll called, yeas 102, nays 0, passed. p. 3

January 10—

Style and Drafting Amendments Adopted.

Section 10. Powers and Duties of the Commissioner of Agriculture
[Const. Art. IV, Sec. 10]

Title amended.

August 9—

Added by floor amendment

By a vote of 82 yeas, 33 nays. p. 4

Read, roll called, yeas 86, nays 26, passed. p. 8

January 10—

Style and Drafting Amendments Adopted.

Section 11. Powers and Duties of the Commissioner of Insurance
[Const. Art. IV, Sec. 11]

Title amended.

August 9—

Added by floor amendment

By a vote of 87 yeas, 48 nays. p. 6

Read, roll called, yeas 60, nays 55. Failed to pass. p. 7

Reconsidered. p. 7

Read, roll called, yeas 78, nays 36, passed. p. 8

January 10—

Style and Drafting Amendments Adopted.

Section 12. Department of Elections and Registration
[Const. Art. IV, Sec. 12]

Title amended.

August 10—

Added by floor amendment.

By a vote of 86 yeas, 23 nays. p. 2

Read, roll called, yeas 91, nays 19, passed. p. 2

January 10—

Style and Drafting Amendments Adopted.

Original Section 10. First Assistants
[Const. Art. IV, Sec. 13]

Title amended.

Amended to become Section 13.

August 10—

Read. p. 3

Amended. p. 4

Read, roll called, yeas 75, nays 38, passed. p. 5

January 10—

Style and Drafting Amendments Adopted.

Original Section 11. Vacancy in Office of Governor
[Const. Art. IV, Sec. 14]

Amended to become Section 14.

August 10—

Read. p. 6

Amended. p. 6

Read, roll called, yeas 105, nays 9, passed. p. 6

January 10—

Style and Drafting Amendments Adopted.

Original Section 12. Vacancy in Office of Lieutenant Governor
[Const. Art. IV, Sec. 15]

Amended to become Section 15.

August 10—

Read. p. 6

Amended. p. 7

Read, roll called, yeas 104, nays 9, passed. p. 8

January 10—

Style and Drafting Amendments Adopted.

Called from the Calendar. p. 25
Read. p. 25
Recommitted to the Committee on Style and Drafting.

January 16—
Reported with amendments. pp. 1, 2
Rules suspended.
Amendments adopted. p. 3
Finally enrolled, read and signed by the Chairman of the Convention and attested by the Secretary of the Convention. pp. 13, 14, 15, 16
Rules suspended.
Discharged from the Committee on Styling and Drafting. p. 21
Reconsidered. p. 21
Read, roll called on final passage, yeas 100, nays 0, finally passed. p. 22
Recommitted to the Committee on Style and Drafting.

January 17—
Reported with amendments. p. 1
Rules suspended.
Amendments adopted. p. 2
Finally re-enrolled, read and signed by the Chairman of the Convention and attested by the Secretary of the Convention. pp. 8, 9, 10
Finally, re-re-enrolled, read and signed by the Chairman of the Convention and attested by the Secretary of the Convention. pp. 12, 13, 14
Finally re-re-enrolled, read and signed by the Chairman of the Convention and attested by the Secretary of the Convention.

COMMITTEE PROPOSAL No. 5—
Introduced by Delegate Stagg, Chairman, on behalf of the Committee on Executive Department:
A PROPOSAL
Making provisions for the Public Service Commission and necessary provisions with respect thereto.

July 5—
Read, lies over under the rules. p. 5
July 6—
Read.
Under the rules.
Referred to the Committee on Executive Department. p. 52
September 14—
Reported with amendments. p. 7
Rules suspended.
Amendments adopted. p. 7
Ordered engrossed and passed to its third reading. p. 7

Section 1. Public Service Commission

January 8—
Withdrawn from the files of the Convention. p. 2

★ **COMMITTEE PROPOSAL No. 6—**
Introduced by Delegate Dennis, Chairman, on behalf of the Committee on the Judiciary and Delegates Avant, Bel, Bergeron, Burns, Deshotels, Drew, Gauthier, Kelly, Kilbourne, Landry, Martin, Ourso, Sandoz, Tate, Tobias and Vesich:

A PROPOSAL
Making provisions for the judiciary branch of government and necessary provisions with respect thereto.

July 5—
Read, lies over under the rules. p. 5
July 6—
Read.
Under the rules.
Referred to the Committee on Judiciary. p. 52
August 10—
Reported by substitute. p. 11
Rules suspended. p. 11
Read. p. 11
Substitute adopted. p. 11
Becomes CP 21. p. 11

COMMITTEE PROPOSAL No. 7—
Introduced by Delegate Aertker, Chairman, on behalf of the Committee on Education and Welfare and Delegates Armentor, Carmouche, Corne, Cowen, Flory, Grier, Haynes, Hernandez, Landry, Leithman, Lennox, Rachal, Riecke, Robinson, Segura, Silverberg, Sutherland, Thistlethwaite, Toca and Wisham:

A PROPOSAL
Making provisions for education and necessary provisions with respect thereto.

July 5—
Read, lies over under the rules. p. 5
July 6—
Read.
Under the rules.
Referred to the Committee on Education and Welfare. p. 52

August 31—
Reported with amendments. p. 1

September 5—
Amendments adopted. p. 3
Read, ordered engrossed and passed to its third reading. p. 3

November 9—
Read. p. 1

Section 1. Educational Goals [Const. Art. VIII, Preamble]

Amended to become Preamble. p. 1

November 9—
Read. p. 1
Amended. p. 2
Read, roll called, yeas 94, nays 9, passed. p. 2, 3

January 11—
Style and Drafting Amendments Adopted.

Section 2. Public Educational System [Const. Art. VIII, Sec. 1]

Amended to become Section 1.

November 9—
Read. p. 3
Amended. p. 3
Read, roll called, yeas 93, nays 1, passed. p. 3, 4

January 11—
Style and Drafting Amendments Adopted.

Section 3. State Superintendent of Public Elementary and Secondary Education [Const. Art. VII, Sec. 2]

Title amended.
Amended to become Section 2.

November 9—
Read. p. 4
Action deferred. p. 4

November 10—
Read. p. 4
Amended. pp. 4, 5, 6
Read, roll called, yeas 77, nays 17, passed. p. 7

January 11—
Style and Drafting Amendments Adopted.

January 16—
Rules suspended.
Reconsidered. p. 11
Read. p. 11
Amended. p. 11
Read, roll called, yeas 107, nays 1, passed. pp. 11, 12

January 19—
Style and Drafting Amendments Adopted.

January 15—
Style and Drafting Amendments Adopted.

January 14—
Reported with amendments. p. 36

January 15—
Amendments adopted. pp. 6, 7
Finally enrolled, read and signed by the Chairman of the Convention and attested by the Secretary of the Convention. pp. 31, 32
Divided into the following Sections by styling and drafting amendments adopted January 15, 1974.

January 19—
Style and Drafting Amendments Adopted.

Article VII. Human Resources becomes:

Article X. Public Officials and Employees
Part II. Fire and Police Civil Service

Section 16. Establishment of System
[Const. Art. X, Part II, Sec. 16]

Section 17. Appointments and Promotions
[Const. Art. X, Part II, Sec. 17]

Section 18. Prior Provisions
[Const. Art. X, Part II, Sec. 18]

Section 19. Exclusion
[Const. Art. X, Part II, Sec. 19]

Section 20. Political Activities
[Const. Art. X, Part II, Sec. 20]

COMMITTEE PROPOSAL No. 11—

Introduced by Delegate Aertker, Chairman, on behalf of the Committee on Education and Welfare, and Delegates Armentor, Carmouche, Corne, Cowen, Flory, Grier, Haynes, Hernandez, Landry, Leithman, Lennox, Rachal, Riecke, Robinson, Segura, Silverberg, Sutherland, Thistlethwaite, Toca and Wisham:

A PROPOSAL

Making provisions for human resources by providing for retirement and survivors' benefits.

July 5—
Read, lies over under the rules. p. 5

July 6—
Read.
Under the rules.
Referred to the Committee on Education and Welfare. p. 52

November 7—
Reported with Amendments. p. 11

November 8—
Amendments adopted. p. 2
Read, ordered reengrossed and passed to its third reading. p. 2

December 5—
Read. p. 4

Section I. Retirement and Survivors' Benefits

December 5—
Rules suspended. p. 4

(A) Retirement System: Public School Employees. The legislature shall provide for the retirement of
[Const. Art. X, Part III, Sec. 29]

Title amended.
Read. p. 4
Amended. pp. 4, 5
Read, roll called, yeas 87, nays 14, passed. p. 6

January 11—
Reconsidered, p. 11
Read. p. 11
Amended. pp. 11, 12
Read, roll called, yeas 100, nays 0, passed. p. 12
Style and Drafting Amendments Adopted.

(B) Retirement System: State Officers and Employees.
[Const. Art. X, Part III, Sec. 29]

Title amended.

December 5—
Read. p. 6
Amended. pp. 6, 7
Read, roll called, yeas 90, nays 11, passed. p. 7

January 11—
Style and Drafting Amendments Adopted.

(C) Financial Security for Surviving Spouses and Children of Law Enforcement Officers in Certain Cases.
[Const. Art. X, Part III, Sec. 29]

Title amended.

Amended to become (d)

December 5—
Read. pp. 7, 8
Amended. pp. 8, 9
Read, roll called, yeas 103, nays 3, passed. pp. 9, 10

January 11—
Style and Drafting Amendments Adopted.

(D) Retirement Systems: Notice of Intention to Propose Amendments or Change; Publication.
[Const. Art. X, Part III, Sec. 29]

Title amended.

Amended to become (C)

December 5—
Read, roll called, yeas 98, nays 3, passed. p. 10
Read, roll called on passage of Section, yeas 91, nays 14, passed. pp. 10, 11

January 11—
Style and Drafting Amendments Adopted.

Article VII. Human Resources

Section I. Retirement and Survivors Benefits Becomes:

Article X

Part III. Other Provisions

Section 29. Retirement and Survivors Benefits
[Const. Art. X, Part III, Sec. 29]

December 5—
Read, roll called on final passage, yeas 92, nays 15, finally passed. p. 11

December 6—
Enrolled, referred to the Committee on Style and Drafting. p. 11

January 11—
Reported with amendments. p. 6
Rules suspended.

Amendments adopted. pp. 10, 11
Finally enrolled, read and signed by the Chairman of the Convention and attested by the Secretary of the Convention. p. 27

January 19—
Style and Drafting Amendments Adopted. p. 2

COMMITTEE PROPOSAL No. 12—

Introduced by Delegate Aertker, Chairman, on behalf of



★ the Committee on Education and Welfare, and Delegates Armentor, Carmouche, Corne, Cowen, Flory, Grier, Haynes, Hernandez, Landry, Leithman, Lennox, Rachal, Riecke, Robinson, Segura, Silverberg, Sutherland, Thistlethwaite, Toca and Wisham:

A PROPOSAL

Making provisions for human resources by prohibiting the leasing of convicts and the employment of convicts in competition with private enterprise and by providing for reimbursement to parishes for expenses incurred resulting from crimes committed in penal institutions.

July 5—
Read, lies over under the rules. p. 5

July 6—
Read. p. 52
Under the rules.
Referred to the Committee on Education and Welfare. p. 53

July 25—
Reported favorably. p. 2

July 26—
Read, ordered engrossed and passed to its third reading p. 2

Section 1. Penal Institutions and Convict Labor

November 19—
Read. p. 4
Deleted by floor amendments. pp. 4, 5

New Section 1. Penal Institutions
[Const. Art. XII, Sec. 7]

Title amended.

November 19—
Added by floor amendment.
By a vote of 79 yeas, 12 nays. pp. 6, 7
Read, roll called, yeas 87, nays 10, passed. p. 7

November 19—
Read, roll called on final passage, yeas 86, nays 10, finally passed. pp. 7, 8
Read.
Enrolled, Referred to the Committee on Style and Drafting. pp. 10, 11

January 10—
Reported with amendments. p. 10
Rules suspended.
Amendments adopted. p. 11
Finally enrolled, read and signed by the Chairman of the Convention and attested by the Secretary of the Convention. p. 30

January 19—
Style and Drafting Amendments Adopted.

COMMITTEE PROPOSAL No. 13—
Introduced by Delegate Aertker, Chairman, on behalf of the Committee on Education and Welfare, and Delegates Armentor, Carmouche, Corne, Cowen, Flory, Grier, Haynes, Hernandez, Landry, Leithman, Lennox, Rachal, Riecke, Robinson, Segura, Silverberg, Sutherland, Thistlethwaite, Toca and Wisham:

Making provisions for human resources by providing for the settlement of disagreements through arbitration.

July 5—
Read, lies over under the rules. p. 5

July 6—
Read.
Under the rules.
Referred to the Committee on Education and Welfare. p. 53

July 25—
Reported by substitute. p. 2

July 26—
Read, substitute adopted. p. 2
Becomes CP 18. p. 2

COMMITTEE PROPOSAL No. 14—

Introduced by Delegate Aertker, Chairman, on behalf of the Committee on Education and Welfare, and Delegates Armentor, Carmouche, Corne, Cowen, Flory, Grier, Haynes, Hernandez, Landry, Leithman, Lennox, Rachal, Riecke, Robinson, Segura, Silverberg, Sutherland, Thistlethwaite, Toca and Wisham:

A PROPOSAL

Making provisions for human resources through a system of economic security, social welfare, unemployment compensation, and public health.

July 5—
Read, lies over under the rules. p. 6

July 6—
Read.
Under the rules.
Referred to the Committee on Education and Welfare. p. 53

July 25—
Reported favorably. p. 2

July 26—
Read, ordered engrossed and passed to its third reading. p. 2

Section 1. Economic Security, Social Welfare, Unemployment Compensation, and Public Health
[Const. Art. XII, Sec. 8]

Title amended.

Amended to become Section 2.

November 17—
Read. p. 4
Amended. pp. 5, 6, 7, 8
Read, roll called, yeas 44, nays 40. Failed to pass, motion to reconsider pending. pp. 9, 10
Returned to the Calendar subject to call. p. 10

November 19—
Called from the Calendar. p. 8
Read, roll called on final passage, yeas 82, nays 10, finally passed. p. 10
Reconsidered. p. 8
Read. p. 8
Amended. pp. 8, 9
Read, roll called, yeas 71, nays 21, passed. p. 10

January 19—
Style and Drafting Amendments Adopted.

November 20—
Enrolled, Referred to Committee on Style and Drafting. p. 7

January 10—
Reported with amendments. p. 10
Rules suspended.
Amendments adopted. p. 11
Finally enrolled, read and signed by the Chairman of the Convention and attested by the Secretary of the Convention. p. 30

COMMITTEE PROPOSAL No. 15—

Introduced by Delegate Rayburn, Chairman, on behalf of the Committee on Revenue, Finance and Taxation, and Delegates Alario, Badeaux, Brown, Champagne, Chehardy, Conroy, De Blieux, Edwards, Fontenot, Lowe, McDaniel, Maubret, Mire, Newton, Nunez, Planchard, Roemer, Schmitt, Slay, Smith, Triche and Winchester:

A PROPOSAL

Relative to the tax structure of the state and to public finance.

July 5—
Read, lies over under the rules. p. 6

COMMITTEE PROPOSALS

December 17—

Read, p. 10
Amended, pp. 10, 11
Read, roll called yeas 85, nays 9, passed. pp. 11, 12

January 14—

Style and Drafting Amendments Adopted.

January 19—

Style and Drafting Amendments Adopted.

Section 18. Legislation to Enable Compliance with Federal Laws and Regulations to Secure Federal Aid in Capital Improvement Projects

[Const. Art. VII, Sec. 17]

Title amended.

Amended to become Section 17.

December 17—

Read, roll called, yeas 84, nays 4, passed. p. 12

January 14—

Style and Drafting Amendments Adopted.

January 19—

Style and Drafting Amendments Adopted.

January 15—

Read, roll called on final passage, yeas 109, nays 0, finally passed. p. 15
Recommitted to the Committee on Style and Drafting. p. 15
Finally re-enrolled, read and signed by the chairman of the Convention and attested by the Secretary of the Convention. pp. 26, 27, 28

January 16—

Reported with amendments. p. 2
Rules suspended.
Amendments adopted. p. 3

January 18—

Finally re-re-enrolled, read and signed by the chairman of the Convention and attested by the Secretary of the Convention. pp. 24-32

COMMITTEE PROPOSAL No. 16—

Introduced by Delegate Lambert, Chairman, on behalf of the Committee on Natural Resources and Environment, and Delegates Bollinger, Derbes, Elkins, Guidry, Hardee, Jack, LeBleu, Leigh, Miller, Munson, Perkins, Singletary, Thompson, Velazquez, Warren and Womack:

A PROPOSAL

Making provisions relating to natural resources and environment.

July 6—

Read, lies over under the rules. p. 55

July 11—

Read.
Under the rules.
Referred to the Committee on Natural Resources and Environment. p. 3

December 5—

Reported by substitute. p. 11

★ COMMITTEE PROPOSAL No. 17—

Introduced by Delegate Perez, Chairman, on behalf of the Committee on Local and Parochial Government, and Delegates Burson, Cannon, Chatelain, Conino, D'Gerolamo, Fowler, Giarrusso, Hayes, Heine, J. Jackson, Kean, Lanier, Reeves, Shannon, Stephenson, Taylor, Toomy, Uilo and Zervigon:

A PROPOSAL

Making general provisions for local and parochial government, levee districts, and ports, the financing thereof, and necessary provisions with respect thereto.

July 20—

Read, lies over under the rules. p. 8

July 25—

Read.

Under the rules.

Referred to the Committee on Local and Parochial Government. p. 2

September 8—

Reported with amendments. p. 9
Rules suspended. p. 9
Amendments adopted. pp. 9, 10, 11
Read, ordered engrossed and passed to its third reading. p. 11

September 19—

Read. p. 1

Section 1. Parishes: Ratification of Boundaries, Creation, Consolidation, and Dissolution

[Const. Art. VI, Sec. 1]

Title Amended.

September 19—

Read. p. 2
Amended. p. 2
Read, roll called, yeas 105, nays 1, passed. p. 3

January 14—

Style and Drafting Amendments Adopted.

January 19—

Style and Drafting Amendments Adopted.

Section 2. Change of Parish Lines; Election

September 19—

Read. p. 3
Deleted by floor amendment. p. 4

Section 3. New or Enlarged Parishes; Adjustment of Assets and Liabilities

[Const. Art. VI, Sec. 1 D]

Amended to become Section 1 (d).

September 19—

Read, roll called, yeas 93, nays 17, passed. pp. 4, 5

January 14—

Style and Drafting Amendments Adopted.

January 19—

Style and Drafting Amendments Adopted.

Section 4. Change of Location of Parish Seat

Title amended.

September 19—

Read. p. 5
Deleted by floor amendment. p. 5

Section 5. Municipalities; Incorporation, Consolidation, Merger, and Government

[Const. Art. VI, Sec. 2]

Title amended.

Amended to become Section 2.

September 19—

Read, roll called, yeas 109, nays 1, passed. p. 5

January 14—

Style and Drafting Amendments Adopted.

January 19—

Style and Drafting Amendments Adopted.

Section 6. Classification

[Const. Art. VI, Sec. 3]

Amended to become Section 3.

September 19—

Read. p. 6
Amended. p. 6
Read, roll called, yeas 111, nays 3, passed. p. 6

January 14—
Style and Drafting Amendments Adopted.

January 19—
Style and Drafting Amendments Adopted.

Section 7. Existing Home Rule Charters and Plans of Government of Parishes and Municipalities Ratified [Const. Art. VI, Sec. 4]

Title amended.

Amended to become Section 4.

September 19—
Read. p. 7

September 20—
Read. p. 2
Amended. pp. 3, 4
Read, roll called, yeas 113, nays 3, passed. p. 4

January 14—
Style and Drafting Amendments Adopted.

January 19—
Style and Drafting Amendments Adopted.

Section 8. Home Rule Charter [Const. Art. VI, Sec. 5]

Amended to become Section 5.

September 20—
Read. p. 4

September 21—
Read. p. 3
Amended. pp. 4, 5, 6

September 22—
Read. p. 1
Amended. pp. 2, 3
Read, roll called, yeas 69, nays 37, passed. pp. 3, 4

January 14—
Style and Drafting Amendments Adopted.

January 19—
Style and Drafting Amendments Adopted.

New Section 6. Home Rule Charter or Plan of Government, Action by Legislature Prohibited [Const. Art. VI, Sec. 6]

January 14—
Read. p. 9
Added by Style and Drafting Committee Amendments by a vote of 96 yeas and 0 nays. pp. 9, 10

Section 9. Powers of Other Local Governmental Subdivisions [Const. Art. VI, Sec. 7]

Title amended.

Amended to become Section 7.

September 25—
Read. p. 1
Amended. pp. 2, 4
Read, roll called, yeas 58, nays 43. Failed to pass, motion to reconsider pending. p. 4

September 26—
Read.
Reconsidered. p. 1
Amended. pp. 2, 3
Read, roll called, yeas 110, nays 7, passed. p. 3

January 14—
Style and Drafting Amendments Adopted.

January 19—
Style and Drafting Amendments Adopted.

Section 10. Powers of Local Governmental Subdivisions; Liberal Construction

September 25—
Read. p. 4
Deleted by floor amendment. p. 4

Section 11. Home Rule Parish; Incorporation of Cities, Towns and Villages [Const. Art. VI, Sec. 8]

Amended to become Section 8.

September 25—
Read. p. 4
Amended. pp. 4, 5, 6

September 26—
Read. p. 2
Action deferred. p. 2
Read. p. 3
Amended. p. 5
Read, roll called, yeas 74, nays 36, passed. p. 5

January 14—
Style and Drafting Amendments Adopted.

January 19—
Style and Drafting Amendments Adopted.

Section 12. Limitations of Local Governmental Subdivisions [Const. Art. VI, Sec. 9]

Amended to become Section 9.

September 26—
Read. p. 6
Amended. pp. 6, 7

September 27—
Read. p. 1
Amended. p. 2
Read, roll called, yeas 114, nays 7, passed. pp. 3, 4

January 14—
Style and Drafting Amendments Adopted.

Section 12.1 Codification of Ordinances [Const. Art. VI, Sec. 10]

Amended to become Section 10

September 27—
Added by floor amendment.
By a vote of 109 yeas, 8 nays. p. 4
Read, roll called, yeas 108, nays 5, passed. pp. 4, 5

January 14—
Style and Drafting Amendments Adopted.

Section 13. Local Officials [Const. Art. VI, Sec. 11]

Amended to become Section 11.

September 27—
Read. p. 5
Amended. p. 5
Action deferred. p. 6
Read, amended, roll called, yeas 107, nays 0, passed. p. 7

January 14—
Style and Drafting Amendments Adopted.

Section 14. Local Officials; Compensation [Const. Art. VI, Sec. 12]

Amended to become Section 12.

September 27—
Read, roll called, yeas 100, nays 5, passed. pp. 6, 7

January 14—
Style and Drafting Amendment Adopted.

- ★ **COMMITTEE PROPOSAL No. 21—**
Introduced by Delegate Dennis, Chairman, on behalf of the Committee on the Judiciary, and Delegates Avant, Bel, Bergeron, Burns, Deshotels, Drew, Gauthier, Kelly, Kilbourne, Landry, Martin, Ourso, Sandoz, Tate and Vesich (A Substitute for Committee Proposal No. 6):

A PROPOSAL

Making provisions for the judiciary branch of government and necessary provisions with respect thereto.

A substitute for CP 6.

August 10—
Read. p. 11
Rules suspended. p. 11
Ordered engrossed and passed to its third reading. p. 11

August 15—
Read. p. 2
Amended Title. p. 2

★ **Section 1. Judicial Power**
[Const. Art. V, Sec. 1]

August 15—
Read, roll called, yeas 105, nays 2, passed. pp. 1, 2

January 9—
Style and Drafting Amendment Adopted.

★ **Section 2. Habeas Corpus, Needful Writs, Orders and Process**
[Const. Art. V, Sec. 2]

Title amended.

August 15—
Read, roll called, yeas 111, nays 0, passed. p. 3

January 9—
Style and Drafting Amendments Adopted.

Section 3. Supreme Court; Composition; Judgments; Terms
[Const. Art. V, Sec. 3]

August 15—
Read. p. 3
Amended. p. 3
Read, roll called, yeas 77, nays 32, passed. p. 4

January 9—
Style and Drafting Amendments Adopted.

Section 4. Supreme Court; Districts
[Const. Art. V, Sec. 4]

August 15—
Read. p. 4
Read, roll called, yeas 103, nays 9, passed. p. 6

January 9—
Style and Drafting Amendments Adopted.

★ **Section 5. Supreme Court; Supervisory, Original, and Appellate Jurisdiction; Rule-Making Power; Assignment of Judges**
[Const. Art. V, Sec. 5]

Title amended.

August 15—
Read. p. 6
Amended. p. 9
Read, roll called, yeas 112, nays 0, passed. pp. 9, 10

January 9—
Style and Drafting Amendments Adopted.

Section 6. Supreme Court; the Chief Justice
[Const. Art. V, Sec. 6]

Title amended.

August 16—
Read. p. 2
Amended. p. 2
Read, roll called, yeas 101, nays 15, passed. p. 3

January 9—
Style and Drafting Amendments Adopted.

Section 7. Supreme Court; Judicial Administrator, Clerks and Staff
[Const. Art. V, Sec. 7]

Title amended.

August 16—
Read. p. 3
Amended. p. 3
Read, roll called, yeas 114, nays 1, passed. p. 3

January 9—
Style and Drafting Amendments Adopted.

Section 8. Courts of Appeal; Panels; Number Necessary to Decision; Terms
[Const. Art. V, Sec. 8]

Title amended.

August 16—
Read. p. 4
Amended. p. 4
Read, roll called, yeas 97, nays 21, passed. p. 5

January 9—
Style and Drafting Amendments Adopted.

Section 9. Courts of Appeal; Circuits and Districts
[Const. Art. V, Sec. 9]

August 16—
Read. p. 5
Amended. p. 6
Read, roll called, yeas 101, nays 8, passed. p. 6

January 9—
Style and Drafting Amendments Adopted.

Section 10. Courts of Appeal; Appellate and Supervisory Jurisdiction ★
[Const. Art. V, Sec. 10]

Title amended.

August 16—
Read, roll called, yeas 113, nays 1, passed. p. 7

January 9—
Style and Drafting Amendments Adopted.

Section 11. Courts of Appeal; Certification to Supreme Court; Determination
[Const. Art. V, Sec. 11]

Title amended.

August 16—
Read, roll called, yeas 116, nays 0, passed. p. 8

January 9—
Style and Drafting Amendments Adopted.

Section 12. Courts of Appeal; Chief Judge; Duties
[Const. Art. V, Sec. 12]

Title amended.

August 16—
Read. p. 8
Amended. p. 8
Read, roll called, yeas 112, nays 0, passed. pp. 8, 9

January 9—
Style and Drafting Amendments Adopted.

Section 13. Courts of Appeal; Clerks and Staff
[Const. Art. V, Sec. 13]

Title amended.

August 16—

Read, p. 9

Amended, p. 9

Read, roll called, yeas 113, nays 0, passed. p. 9

January 9—

Style and Drafting Amendments Adopted.

Section 14. District Courts; Judicial Districts
[Const. Art. V, Sec. 14]

August 16—

Read, roll called, yeas 110, nays 4, passed. p. 10

January 9—

Style and Drafting Amendments Adopted.

★ **Section 15. Courts; Continued; Jurisdiction; Judicial Districts; Changes; Terms**
[Const. Art. V, Sec. 15]

Title amended.

August 17—

Read, p. 1

Amended, pp. 1, 2, 3, 4, 5, 6

Read, roll called, yeas 115, nays 1, passed. p. 6

January 9—

Style and Drafting Amendments adopted.

January 19—

Style and Drafting Amendments Adopted.

Section 15.1 City Court Judges; Terms

Added by floor amendment.

August 28—

By a vote of 85 yeas, 22 nays. p. 4

Read, roll called, yeas 96, nays 13, passed. p. 5

January 9—

Style and Drafting Amendments Adopted.

★ **Section 16. District Courts; Original Jurisdiction**
[Const. Art. V, Sec. 16]

Title amended.

August 17—

Read, p. 6

Amended, p. 6

Read, roll called, yeas 109, nays 0, passed. p. 7

January 9—

Style and Drafting Amendments Adopted.

Section 17. District Courts; Chief Judge
[Const. Art. V, Sec. 17]

August 17—

Read, p. 7

Read, roll called, yeas 95, nays 15, passed. p. 8

January 9—

Style and Drafting Amendments Adopted.

★ **Section 18. Juvenile Courts; Jurisdiction**
[Const. Art. V, Sec. 18]

Title amended.

August 17—

Read, action deferred. p. 8

August 28—

Read, p. 2

Amended, p. 3

Read, roll called, yeas 101, nays 9, passed. p. 4

January 9—

Style and Drafting Amendment Adopted.

January 19—

Style and Drafting Amendments Adopted.

Section 19. Mayors' Courts; Justices of the Peace; Continued
[Const. Art. V, Sec. 20]

Title amended.

Amended to become Section 20

August 17—

Read, p. 8

Roll called, yeas 106, nays 3, passed. p. 9

January 9—

Style and Drafting Amendments Adopted.

January 19—

Style and Drafting Amendments Adopted.

Section 20. Preservation of Evidence

August 17—

Read, roll called, yeas 37, nays 67. Failed to pass, motion to reconsider tabled. p. 9

Section 21. Judges: Term of Office or Compensation May Not Be Decreased
[Const. Art. V, Sec. 21]

Title amended.

Amended to become Section 21.

Amended to become Section 20.

August 17—

Read, roll called, yeas 105, nays 0, passed. p. 10

January 9—

Style and Drafting Amendment Adopted.

January 19—

Style and Drafting Amendments Adopted.

Section 22. Judges; Election; Vacancy in Office
[Const. Art. V, Sec. 22]

Title amended.

Amended to become Section 22.

Amended to become Section 21.

August 18—

Read, p. 2

Amended, pp. 3, 4, 5, 6, 7

Read, roll called, yeas 107, nays 3, passed. p. 7

January 9—

Style and Drafting Amendments adopted.

January 19—

Style and Drafting Amendments Adopted.

Section 23. Retirement of Judges
[Const. Art. V, Sec. 23]

Title amended.

Amended to become Section 23.

Amended to become Section 22.

August 18—

Read, pp. 7, 8

Amended, p. 8, 9

August 22—

Read, p. 2

Amended, pp. 2, 3, 4

Read, roll called, yeas 104, nays 10, passed. p. 4

January 9—
Style and Drafting Amendments Adopted.

January 19—
Style and Drafting Amendments Adopted.

Section 24. Judges; Qualifications; Practice of Law Prohibited
[Const. Art. V, Sec. 24]

Title amended.

Amended to become Section 24.

Amended to become Section 23.

August 22—
Read. p. 4
Amended. p. 4
Action deferred. p. 5
Read, roll called yeas 113, nays 5, passed. p. 8
The Committee Resolved Itself into the Committee of the Whole. p. 8
The Committee Rose. p. 9

January 9—
Style and Drafting Amendments Adopted.

January 19—
Style and Drafting Amendments Adopted.

Section 25. Judiciary Commission; Composition; Terms; Vacancy; Grounds for Removal; Powers

Amended to become Section 24.

Amended to become Section 25.

Title amended.

August 22—
Read. p. 5
Amended. pp. 6, 7
Read, roll called, yeas 108, nays 6, passed. p. 7.

August 24—
Called from the table. p. 13
Reconsidered. p. 13
Amended. p. 13
Read, roll called, yeas 96, nays 0, passed. p. 14

January 9—
Style and Drafting Amendments Adopted.

January 15—
Rules suspended. p. 20
Reconsidered. p. 20
Read. p. 20
Deleted by floor amendment by a vote of 102 yeas, and 2 nays. p. 20

Section 26. Department of Justice, Composition; Attorney General; Election and Assistants.
[Const. Art. IV, Sec. 8]

Amended to become Section 25.

Amended to become Section 26.

August 22—
Read. p. 9
Amended. p. 9
Read, roll called, yeas 116, nays 7, passed. p. 10

January 9—
Style and Drafting Amendments Adopted.

January 15—
Rules suspended. p. 20
Reconsidered. p. 20
Read. p. 20
Deleted by floor amendment by a vote of 105 yeas and 2 nays. p. 21

Section 27. Attorney General; Powers and Duties; Vacancy
[Const. Art. IV, Sec. 8]

Title amended.

Amended to become Section 26B.

Amended to become Section 27.

August 23—
Read. p. 6
Amended. p. 8
Read, roll called, yeas 111, nays 4, passed. p. 8

January 9—
Style and Drafting Amendments Adopted.

January 19—
Style and Drafting Amendments Adopted.

Section 28. District Attorney; Election; Qualifications; Assistants
[Const. Art. V, Sec. 26]

Amended to become Section 27 (A).

Amended to become Section 28.

August 23—
Read. p. 9
Amended. p. 9
Read, roll called, yeas 110, nays 3, passed. p. 11

January 9—
Style and Drafting Amendments Adopted.

January 19—
Style and Drafting Amendments Adopted.

Section 29. Defense of Criminal Prosecution; Removal
[Const. Art. V, Sec. 26C]

Title amended.

Amended to become Section 27 (C).

Amended to become Section 28.

Amended to become Section 26C.

August 24—
Read. p. 2
Read, roll called, yeas 115, nays 4, passed. p. 3

January 9—
Style and Drafting Amendments Adopted.

January 19—
Style and Drafting Amendments Adopted.

Section 30. Sheriff; Duties; Tax Collector
[Const. Art. V, Sec. 27]

Title amended.

Amended to become Section 28.

Amended to become Section 28.

Amended to become Section 27.

August 24—
Read. p. 3
Amended. p. 3
Read, roll called, yeas 120, nays 1, passed. p. 4

January 9—
Style and Drafting Amendments Adopted.

January 19—
Style and Drafting Amendments Adopted.

Section 31. Clerks; Election; Powers and Duties; Depa-
ties; Office Hours
[Const. Art. V, Sec. 28]

Title amended.

Amended to become Section 29.

Amended to become Section 27.

Amended to become Section 28.

August 24—

Read. p. 4

Read, roll called, yeas 119, nays 0, passed. p. 5

January 9—

Style and Drafting Amendments Adopted.

★ **Section 32. Coroner; Election; Term; Qualifications; Duties**

[Const. Art. V, Sec. 29]

Title amended.

Amended to become Section 30.

Amended to become Section 28.

Amended to become Section 29.

August 24—

Read. p. 5

Amended. p. 5

Read, roll called, yeas 112, nays 0, passed. p. 5

January 9—

Style and Drafting Amendments Adopted.

January 19—

Style and Drafting Amendments Adopted.

★ **Section 33. Vacancies**

[Const. Art. V, Sec. 30]

Amended to become Section 31.

Amended to become Section 29.

Amended to become Section 30.

August 24—

Read, roll called, yeas 109, nays 3, passed. pp. 6, 7

January 9—

Style and Drafting Amendments Adopted.

January 19—

Style and Drafting Amendments Adopted.

★ **Section 34. Reduction of Salaries and Benefits Prohibited**

[Const. Art. V, Sec. 31]

Amended to become Section 32.

Amended to become Section 30.

Amended to become Section 31.

August 24—

Read. p. 7

Amended. p. 7

Read, roll called, yeas 102, nays 12, passed. p. 7

January 9—

Style and Drafting Amendments Adopted.

January 19—

Style and Drafting Amendments Adopted.

★ **Section 35. Orleans Parish Courts, Officials; Continued**

[Const. Art. V, Sec. 32]

Title amended.

Amended to become Section 33.

Amended to become Section 31.

Amended to become Section 32.

August 24—

Read. p. 7

Amended. pp. 7, 8

Read, roll called, yeas 113, nays 3, passed. p. 8

January 9—

Style and Drafting Amendments Adopted.

January 11—

Reconsidered. p. 17

Read. p. 17

Amended. p. 18

Read, roll called, yeas 101 nays 3, passed. p. 18

January 19—

Style and Drafting Amendments Adopted.

Section 36. Jurors; Qualifications; Exemptions ★
[Const. Art. V, Sec. 33]

Title amended.

Amended to become Section 34.

Amended to become Section 32.

Amended to become Section 33.

August 24—

Read. p. 9

Amended. p. 9

Read, roll called, yeas 111, nays 2, passed. p. 9

January 9—

Style and Drafting Amendments Adopted.

January 19—

Style and Drafting Amendments Adopted.

Section 37. Grand Jury

[Const. Art. V, Sec. 34]

Amended to become Section 35.

Amended to become Section 33.

Amended to become Section 34.

August 24—

Read. p. 10

Amended. pp. 10, 11, 12

Read, roll called, yeas 99, nays 3, passed. p. 12

January 9—

Style and Drafting Amendments Adopted.

January 19—

Style and Drafting Amendments Adopted.

Section 38. Fees; Orleans Parish

August 24—

Read. p. 13

Roll called, yeas 4, nays 97, failed to pass, motion to reconsider tabled. p. 13

August 28—

Read, roll called on final passage, yeas 99, nays 16, finally passed. p. 5

August 29—

Enrolled, Referred to Committee on Styling and Drafting. pp. 6, 7, 8

January 8—

Reported with amendments. pp. 11, 12, 13, 14

January 9—

Read.

Amendments adopted. pp. 7, 8, 9, 10, 11

January 10—

Finally enrolled, read and signed by the Chairman of

the Convention and attested by the Secretary of the Convention. pp. 27, 28, 29, 30

January 11—

Rules suspended.
Discharged from Style and Drafting. p. 17
Reconsidered. p. 17
Read, roll called on final passage, yeas 104, nays 2, finally passed. pp. 18, 19

January 12—

Recommitted to the Committee on Style and Drafting.
Finally re-enrolled, read and signed by the Chairman of the Convention and attested by the Secretary of the Convention. pp. 10, 11

January 15—

Rules suspended.
Discharged from the Committee on Style and Drafting. p. 20
Reconsidered. p. 20
Read, roll called on final passage, yeas 105, nays 2, finally passed. p. 21

January 16—

Finally re-re-enrolled, read and signed by the Chairman of the Convention and attested by the Secretary of the Convention. p. 16

COMMITTEE PROPOSAL No. 22—

Introduced by Delegate Stagg, Chairman, on behalf of the Committee on Executive Department, and Delegates Abraham, Alexander, Anzalone, Arnette, Brien, Dennery, Duval, Gravel, Stovall, and Tapper:

A PROPOSAL

Making provisions for a code of ethics and the Louisiana Board of Ethics.

August 15—

Read, lies over under the rules. p. 10

August 16—

Read.
Under the rules.
Referred to the Committee on Executive Department. p. 1

August 23—

Reported favorably. p. 1

August 24—

Read, ordered engrossed and passed to its third reading. p. 2

Section —. Code of Ethics; Board of Ethics
[Const. Art. X, Part III, Sec. 21]

Title amended.

September 15—

Read, roll called, yeas 101, nays 14, passed. p. 4

September 15—

Read. p. 1
Amended. pp. 3, 4
Read, roll called on final passage, yeas 83, nays 27, finally passed. p. 5, 6

September 19—

Enrolled. Referred to the Committee on Style and Drafting. p. 7

January 10—

Style and Drafting Amendments Adopted.

January 10—

Reported with amendments. p. 10
Rules suspended.
Amendments adopted. p. 11
Finally enrolled, read and signed by the Chairman of the Convention and attested by the Secretary of the Convention. p. 30

COMMITTEE PROPOSAL No. 23—

Introduced by Delegate Stagg, Chairman, on behalf of the

Committee on Executive Department, and Delegates Abraham, Arnette, Brien, Dennery, Gravel, Stovall and Tapper:

A PROPOSAL

Prohibiting dual employment and dual officeholding in state and local government.

August 15—

Read, lies over under the rules. p. 10

August 16—

Read.
Under the rules.
Referred to the Committee on Executive Department. p. 1

August 23—

Reported favorably. p. 1

August 24—

Read, ordered engrossed and passed to its third reading. p. 2

Article —. Section —. Dual Employment and Dual Officeholding
[Const. Art. X, Part III, Sec. 22]

October 11—

Read. p. 1
Amended. p. 2
Read, roll called, yeas 103, nays 11, passed. pp. 2, 3

October 11—

Read, roll called on final passage, yeas 105, nays 10, finally passed. p. 3

October 17—

Enrolled and referred to the Committee on Style and Drafting. p. 6

January 10—

Style and Drafting Amendments Adopted.

January 10—

Reported with amendments. p. 10
Rules suspended.
Amendments adopted. p. 11
Finally enrolled, read and signed by the Chairman of the Convention and attested by the Secretary of the Convention. p. 30

January 19—

Style and Drafting Amendments Adopted.

COMMITTEE PROPOSAL No. 24—

Introduced by Delegate A. Jackson, Chairman, on behalf of the Committee on Bill of Rights and Elections and Delegates Dunlap, Guarisco, Jenkins, Roy, Soniat, Stinson, Vick, Wall and Weiss:

A PROPOSAL

Relative to constitutional revision.

August 18—

Read, lies over under the rules. p. 1

August 22—

Read. p. 2
Under the rules.
Referred to the Committee on Bill of Rights and Elections. p. 2

December 18—

Reported by substitute. p. 12
Rules suspended.
Read, substitute adopted. p. 12
Becomes C. P. 36

COMMITTEE PROPOSAL No. 25—

Introduced by Delegate Jackson, Chairman, Committee on Bill of Rights and Elections (Substitute for Committee Proposal No. 2, by Delegate Jackson, Chairman, on behalf of the Committee on Bill of Rights and Elections, and Delegates

★ Dunlap, Guarisco, Jenkins, Roy, Soniat, Stinson, Vick, Wall and Weiss):

A PROPOSAL

To provide a preamble and a declaration of rights to the constitution.

A substitute for Committee Proposal No. 2.

August 22—

Read. p. 10

Rules suspended. p. 10

Ordered engrossed and passed to its third reading. p. 10

August 28—

Read. p. 6

A PREAMBLE

August 28—

Read. p. 6

Roll called, yeas 87, nays 13, passed. p. 8

January 10—

Style and Drafting Amendments Adopted.

Section 1. Origin and Purpose of Government

[Const. Art. I, Sec. 1]

August 29—

Read. p. 1

Amended. p. 1

Action deferred. p. 2

Amended. p. 4

Read, roll called, yeas 119, nays 0, passed. p. 4

January 10—

Style and Drafting Amendments Adopted.

★ Section 2. Due Process of Law

[Const. Art. I, Sec. 2]

August 29—

Read. p. 2

Amended. p. 3

Read, roll called, yeas 109, nays 1, passed. p. 3

January 10—

Style and Drafting Amendments Adopted.

★ Section 3. Right to Individual Dignity

[Const. Art. I, Sec. 3]

August 29—

Read. p. 4

August 30—

Read. p. 1

Amended. p. 1

Read, roll called, yeas 104, nays 3, passed. p. 2

January 10—

Style and Drafting Amendments Adopted.

Section 4. Right to Property

[Const. Art. I, Sec. 4]

August 30—

Read. p. 2

Amended. pp. 3, 8, 9

Read, roll called, yeas 68, nays 45, passed. p. 12

September 12—

Reconsidered. p. 6

Amended. p. 7

Read, roll called, yeas 85, nays 22, passed. pp. 7, 8

January 10—

Style and Drafting Amendments Adopted.

★ Section 5. Right to Privacy

[Const. Art. I, Sec. 5]

August 31—

Read. p. 3

Roll called, yeas 96, nays 13, passed. p. 4

January 10—

Style and Drafting Amendments Adopted.

Section 6. Freedom from Intrusion

[Const. Art. I, Sec. 6]

August 31—

Read, roll called, yeas 107, nays 1, passed. pp. 4, 5

January 10—

Style and Drafting Amendments Adopted.

Section 7. Freedom from Discrimination

August 31—

Read. p. 5

Amended. pp. 5, 6

September 5—

Read. p. 4

By a vote of 101 yeas, 9 nays, the section was deleted. p. 4

Section 8. Trial by Jury in Civil Cases

September 5—

Read. p. 4

Amended. pp. 4, 5

Read, roll called, yeas 17, nays 98. Failed to pass motion to reconsider tabled. p. 6

Section 9. Freedom of Expression

[Const. Art. I, Sec. 7]

Amended to become Section 7.

September 5—

Read. p. 6

September 6—

Read. p. 4

Amended. p. 4

Read, roll called, yeas 108, nays 2, passed. p. 6

January 10—

Style and Drafting Amendments Adopted.

Section 10. Freedom of Religion

[Const. Art. I, Sec. 8]

Amended to become Section 8

September 6—

Read, roll called, yeas 105, nays 0, passed. pp. 6, 7

January 10—

Style and Drafting Amendments Adopted.

Section 11. Freedom of Assembly and Movement

[Const. Art. I, Sec. 9]

Title amended.

Amended to become Section 9.

September 6—

Read. p. 7

Amended. pp. 7, 8

Read, roll called, yeas 113, nays 0, passed. p. 8

January 10—

Style and Drafting Amendments Adopted.

Section 12. Rights of the Accused

[Const. Art. I, Sec. 13]

[Const. Art. I, Sec. 19]

Amended to become Section 31.

September 6—

Read. p. 8

Amended. pp. 8, 9

September 7—

Read. p. 2
Amended. pp. 2, 3, 4
Read, roll called, yeas 98, nays 13, passed. pp. 4, 5

January 10—

Style and Drafting Amendments Adopted.

Section 13. Initiation of Prosecution
[Const. Art. I, Sec. 15]

Amended to become Section 15.

September 7—

Read. p. 5
Amended. pp. 5, 6
Read, roll called, yeas 100, nays 14, passed. pp. 6, 7

January 10—

Style and Drafting Amendments Adopted.

Section 14. Grand Jury Proceedings

September 7—

Read, roll called, yeas 62, nays 49, the section was deleted. p. 7

Section 15. Fair Trial
[Const. Art. I, Sec. 16]

Title amended.

Amended to become Section 16.

September 7—

Read. p. 8
Amended. p. 8
Read, roll called, yeas 108, nays 2, passed. p. 8

January 10—

Style and Drafting Amendments Adopted.

Section 16. Trial by Jury in Criminal Cases
[Const. Art. I, Sec. 17]

Title amended.

Amended to become Section 17.

September 8—

Read. p. 1
Action deferred.
Amended. p. 3
Read, roll called, yeas 104, nays 3, passed. p. 3

January 10—

Style and Drafting Amendments Adopted.

Section 17. Right to Bail
[Const. Art. I, Sec. 18]

Amended to become Section 18.

September 8—

Read. p. 1
Amended. p. 2
Read, roll called, yeas 104, nays 0, passed. p. 2

January 10—

Style and Drafting Amendments adopted.

Section 18. Right to Humane Treatment
[Const. Art. I, Sec. 20]

Amended to become Section 20.

September 8—

Read. p. 4
Amended. pp. 4, 5, 6
Read, roll called, yeas 88, nays 16, passed. p. 7

January 10—

Style and Drafting Amendments Adopted.

Section 19. Right to Vote

[Const. Art. I, Sec. 10]

Amended to become Section 10.

September 8—

Read. p. 7
Amended. pp. 7, 8
Read, roll called, yeas 81, nays 21, passed. p. 9

January 10—

Style and Drafting Amendments Adopted.

Section 20. Right to Keep and Bear Arms
[Const. Art. I, Sec. 11]

Amended to become Section 11.

September 12—

Read. p. 1
Amended. pp. 1, 2
Read, roll called, yeas 100, nays 3, passed. pp. 2, 3

January 10—

Style and Drafting Amendments Adopted.

Section 21. Writ of Habeas Corpus
[Const. Art. I, Sec. 21]

September 12—

Read, roll called, yeas 106, nays 0, passed. p. 3

Section 22. Access to Courts
[Const. Art. I, Sec. 22]

September 12—

Read. p. 3
Amended. pp. 3, 4
Read, roll called, yeas 105, nays 0, passed. p. 4

January 10—

Style and Drafting Amendments Adopted.

Section 23. Prohibited Laws
[Const. Art. I, Sec. 23]

September 13—

Read, roll called, yeas 113, nays 0, passed. pp. 2, 3

Section 24. Freedom of Commerce

September 13—

Read.
Deleted by floor amendment by a vote of 100 yeas, 15 nays. p. 3

Section 25. Unenumerated Rights
[Const. Art. I, Sec. 24]

Amended to become Section 24.

September 13—

Read. p. 3
Roll called, yeas 103, nays 14, passed. p. 4

January 10—

Style and Drafting Amendments Adopted.

Section 26. Freedom from Discrimination
[Const. Art. I, Sec. 12]

Amended to become Section 12.

September 13—

Added by floor amendment.
By a vote of 79 yeas, 16 nays. p. 8
Read, roll called, yeas 88, nays 15, passed. p. 9

January 10—

Style and Drafting Amendments Adopted.

- ★ **Section 27. Right to Preliminary Hearing**
[Const. Art. I, Sec. 14]
Title amended.
Amended to become Section 14.
- September 14—**
Added by floor amendment.
By a vote of 96 yeas, 18 nays. pp. 3, 4
Read, roll called, yeas 100, nays 10, passed. pp. 4, 5
- January 10—**
Style and Drafting Amendments Adopted.

- ★ **September 14—**
Read, roll called on final passage, yeas 89, nays 28, finally passed. p. 6
- September 15—**
Enrolled, referred to the Committee on Style and Drafting. pp. 7, 8
- January 8—**
Reported with amendments. pp. 14, 15, 16
- January 10—**
Amendments adopted, pp. 1, 2, 3
Finally enrolled, read and signed by the Chairman of the Convention and attested by the Secretary of the Convention. pp. 26, 27

COMMITTEE PROPOSAL No. 26—

Introduced by Delegate Rayburn, Chairman, on behalf of the Committee on Revenue, Finance and Taxation, and Delegates Alario, Brown, Chehardy, Edwards, Goldman, Maubertret, Mire, Nunez, Planchard, Slay and Winchester;

A PROPOSAL

Making provisions for property taxation.

- August 23—**
Read.
Lies over under the rules. p. 12
- August 24—**
Read. p. 2
Under the rules.
Referred to the Committee on Revenue, Finance and Taxation. p. 2
- October 5—**
Reported with amendments. p. 9
Rules suspended. p. 9
Amendments adopted. pp. 9, 10, 11, 12
Rules suspended.
Read.
Ordered engrossed and passed to its third reading. p. 12
- October 17—**
Read. p. 1

Section 1. Assessment of Property; Classification; Assessors; Right of Taxpayer [Const. Art. VII, Part II, Sec. 18]

Title amended.

- October 17—**
Read. p. 1
Amended. pp. 1, 2
- October 18—**
Read. p. 3
- October 18—**
Read.
The Convention resolved itself into a Committee of the Whole. p. 3
The Committee rose. p. 3
- October 19—**
Read. p. 1
Rules suspended. p. 2, 3
Amended. pp. 3, 4

- October 20—**
Read. p. 1
Amended. pp. 2, 5
- October 23—**
Read. p. 1
Amended. pp. 3, 4, 5, 6
- October 24—**
Read. p. 1
Amended. pp. 1, 2, 3
Read, roll called, yeas 97, nays 23, passed. p. 6

- January 12—**
Style and Drafting Amendments Adopted.
- January 19—**
Style and Drafting Amendments Adopted.

Section 1. Ad Valorem Taxes

- January 12—**
Rules suspended.
Reconsidered. p. 6
Amended. p. 7
Read, roll called, yeas 91, nays 0, passed. p. 7

Section 2. Rate of State Property Taxation; Limitation [Const. Art. VII, Part II, Sec. 19]

Title amended.

- October 24—**
Read, roll called, yeas 101, nays 19, passed. pp. 6, 7
- January 12—**
Style and Drafting Amendments Adopted.
- January 19—**
Style and Drafting Amendments Adopted.

Section 3. Homestead Exemptions; Other Property Exemptions [Const. Art. VII, Part II, Sec. 20] [Const. Art. VII, Part II, Sec. 21]

Title amended.

Amended to become Section 4.
Amended to become Section 20.

- October 24—**
Read. pp. 7, 8
Amended. p. 8
- October 25—**
Read. pp. 1, 2
Amended. pp. 2, 3, 4, 5, 6, 7
- October 26—**
Read. pp. 1, 2
Amended. pp. 5, 6, 7, 8, 9, 10, 11, 12, 13
- October 27—**
Read. pp. 1, 2
Action deferred. p. 2
- October 31—**
Read. pp. 2, 3
Amended. pp. 3, 4
- November 1—**
Read. pp. 1, 2
Amended. pp. 2, 5
Read, roll called, yeas 96, nays 19, passed. p. 5
- January 12—**
Style and Drafting Amendments Adopted.

Section 4. No Impairment of Existing Taxes or Obligations [Const. Art. VII, Part II, Sec. 22]

Amended to become Section 5.
Amended to become Section 22.

COMMITTEE PROPOSALS

January 5—

Enrolled, Referred to the Committee on Style and Drafting. pp. 2, 3

January 11—

Rules suspended.
Discharged from Style and Drafting. p. 19
Reconsidered. p. 19
Read, roll called on final passage, yeas 92, nays 16, finally passed. pp. 20, 21
Reported with amendments. p. 21

January 12—

Amendments adopted. pp. 1, 2
Re-enrolled, referred to the Committee on Style and Drafting. p. 9
Finally re-enrolled, read and signed by the Chairman of the Convention and attested by the Secretary of the Convention. p. 10

COMMITTEE PROPOSAL No. 36—

Introduced by Delegate A. Jackson, Chairman, on behalf of the Committee on Bill of Rights and Elections (Substitute for Committee Proposal No. 24, by Delegate Jackson, Chairman, on behalf of the Committee on Bill of Rights and Elections, and Delegates Dunlap, Guarisco, Jenkins, Roy, Soniat, Stinson, Vick, Wall, and Weiss):

A PROPOSAL

Relative to constitutional revision.

A substitute for CP 24.

December 18—

Rules suspended.
Read, ordered engrossed and passed to its third reading. p. 12

January 5—

Read. p. 1

Section 1. Amendments [Const. Art. XIII, Sec. 1]

January 5—

Read. p. 1
Amended. p. 2

January 6—

Read. p. 1
Amended. pp. 2, 4, 5

January 7—

Read. pp. 1, 2
Amended. p. 2
Read, roll called, yeas 87, nays 12, passed. p. 2

January 15—

Style and Drafting Amendments Adopted.

January 19—

Style and Drafting Amendments Adopted.

Section 2. Convention Called by Legislature [Const. Art. XIII, Sec. 2]

Title amended.

January 7—

Read. p. 3
Amended. p. 3
Read, roll called, yeas 90, nays 6, passed. p. 4

January 15—

Style and Drafting Amendments Adopted.

January 19—

Style and Drafting Amendments Adopted.

Section 3. Convention Called by People

January 7—

Read. p. 4
Deleted by floor amendment. p. 4
By a vote of 54 yeas, 43 nays. p. 4

Section 4. Laws Effectuating Amendments [Const. Art. XIII, Sec. 3]

Amended to become Section 3.

January 7—

Read, roll called, yeas 99, nays 0, passed. pp. 5, 6

January 15—

Style and Drafting Amendments adopted.

January 19—

Style and Drafting Amendments Adopted.

January 7—

Read, roll called on final passage, yeas 74, nays 24, finally passed. p. 6

January 8—

Enrolled, referred to the Committee on Style and Drafting. p. 18

January 15—

Reported with amendments. pp. 2, 3,
Rules suspended.
Amendments adopted. pp. 9, 10
Finally enrolled, read and signed by the Chairman of the Convention and attested by the Secretary of the Convention. p. 33

COMMITTEE PROPOSAL No. 37—

Introduced by Delegate Lambert, Chairman, on behalf of the Committee on Natural Resources and Environment:
A PROPOSAL
Making provisions relating to the Public Service Commission.

December 21—

Rules suspended. p. 4
Read, ordered engrossed and passed to its third reading. pp. 4, 5

January 3—

Read.

Section 14. Public Service Commission [Const. Art. IV, Sec. 21]

January 3—

Read. p. 2
Amended. pp. 4, 5, 6
Read, roll called, yeas 67, nays 47, passed. p. 6, 7
Read, roll called on final passage, yeas 67, nays 47, finally passed. p. 7
Enrolled, Referred to the Committee on Style and Drafting pp. 16, 17

January 14—

Style and Drafting Amendments Adopted.
Rules suspended.
Reconsidered. p. 23
Read. p. 23
Amended. p. 23
Read, roll called, yeas 109, nays 0, passed. p. 24
Rules suspended.
Reconsidered. p. 24
Amended. pp. 24, 25
Read, roll called, yeas 87, nays 22, passed. p. 25

January 19—

Style and Drafting Amendments Adopted.

January 14—

Reported with amendments. pp. 20, 21
Rules suspended.
Amendments adopted. pp. 21, 22, 23

January 15—

Finally enrolled, read and signed by the Chairman of the Convention and attested by the Secretary of the Convention. p. 40

COMMITTEE PROPOSAL No. 38—

Introduced by Delegate Zervigon, Chairperson, Committee on Legislative Liaison and Transitional Measures, and Del-



★ egates Casey, Comar, D'Geralamo, Drew, Hardee, J. Jackson, Jones, Lanier, Rayburn, Smith, Thompson, Vick and Womack:

A PROPOSAL

Making provisions relative to transitional provisions.

January 15—

Read, lies over under the rules. p. 26

January 16—

Read. p. 3

Rules suspended. p. 3

Read, ordered engrossed and passed to its third reading. p. 3

January 18—

Read. p. 1

Amended. pp. 3, 6, 7

Section 1. Limitation on Transitional Provisions
[Const. Art. XIV, Part II, Sec. 14]

Amended to become Section 14.

January 18—

Read. p. 1

Amended. pp. 1, 2

Read, roll called, yeas 96, nays 6, passed. p. 2

January 19—

Style and Drafting Amendments Adopted.

Section 2. References to 1921 Constitution
[Const. Art. XIV, Part III, Sec. 21]

Amended to become Section 21.

January 18—

Read, roll called, yeas 103 nays 0, passed. p. 3

January 19—

Style and Drafting Amendments Adopted.

Section 3. Effect of Titles

[Const. Art. XIV, Part III, Sec. 22]

Amended to become Section 22.

January 18—

Read, roll called, yeas 102, nays 0, passed. pp. 3, 4

January 19—

Style and Drafting Amendments Adopted.

Section 4. Inherent Power of Legislature

January 18—

Read. p. 4

Deleted by floor amendment. p. 4

★ Section 5. Continuation of Actions and Rights
[Const. Art. XIV, Part III, Sec. 23]

Amended to become Section 23.

January 18—

Read. p. 4

Amended. p. 4

Read, roll called, yeas 106, nays 3, passed. pp. 4, 5

January 19—

Style and Drafting Amendments Adopted.

Section 6. Protection of Existing Taxes
[Const. Art. XIV, Part III, Sec. 24]

Amended to become Section 24.

January 18—

Read. p. 5

Amended. p. 5

Read, roll called, yeas 111, nays 0, passed. p. 5

January 19—

Style and Drafting Amendments Adopted.

Section 7. Impairment of Debt Obligations Prohibited
[Const. Art. XIV, Part III, Sec. 25]

Amended to become Section 25.

January 18—

Read, roll called, yeas 111, nays 0, passed. pp. 5, 6

January 19—

Style and Drafting Amendments Adopted.

Section 8. Existing Officials

[Const. Art. XIV, Part II, Sec. 15]

Amended to become Section 15.

January 18—

Read, roll called, yeas 112, nays 0, passed. p. 12

January 19—

Style and Drafting Amendments Adopted.

Section 9. Provisions of 1921 Constitution Made Statutory
[Const. Art. XIV, Part II, Sec. 16]

Amended to become Section 16.

January 18—

Read. p. 12

Amended. pp. 12, 13, 14

Read, roll called, yeas 107, nays 1, passed. p. 14

January 19—

Style and Drafting Amendments Adopted.

Section 10. Provisions of Constitution of 1921 Repealed
[Const. Art. XIV, Part II, Sec. 17]

Amended to become Section 17.

January 18—

Read. p. 14

Amended. pp. 14, 15

Read, roll called, yeas 91, nays 1, passed. p. 15

January 19—

Style and Drafting Amendments Adopted.

Section 11. Existing Laws

[Const. Art. XIV, Part II, Sec. 18]

Amended to become Section 18

January 18—

Read. p. 15

Amended. pp. 15, 16

Read, roll called, yeas 95, nays 1, passed. p. 16

January 19—

Style and Drafting Amendments Adopted.

Section 12. Constitution Not Retroactive
[Const. Art. XIV, Part III, Sec. 26]

Amended to become Section 26.

January 18—

Read, roll called, yeas 112, nays 0, passed. p. 6

January 19—

Style and Drafting Amendments Adopted.

Section 13. Legislative Provisions

[Const. Art. XIV, Part III, Sec. 27]

Amended to become Section 27.

January 18—

Read. p. 6

Amended. p. 7

Read, roll called, yeas 111, nays 0, passed. p. 7

January 19—

Style and Drafting Amendments Adopted.

Section 14. Deletion of Obsolete Schedule Items

January 18—

Read, p. 7
Deleted by floor amendment. p. 7

Section 15. Judiciary Commission
[Const. Art. XIV, Part III, Sec. 28]

Amended to become Section 28.

January 18—

Read, roll called yeas 109, nays 0, passed. pp. 7, 8

January 19—

Style and Drafting Amendments Adopted.

Section 16. Ports; Transition to Statutes
[Const. Art. XIV, Part II, Sec. 19]

Amended to become Section 19.

January 18—

Read, amended. p. 16
Read, roll called, yeas 99, nays 0, passed. pp. 16, 17

January 19—

Style and Drafting Amendments Adopted.

Section 17. Home Rule Charters; Authorization

January 18—

Read, p. 17
Deleted by floor amendment. p. 17

Section 18. Public Service Commission
[Const. Art. XIV, Part II, Sec. 20]

Amended to become Section 20.

January 18—

Read, amended. p. 17
Read, roll called, yeas 98, nays 0, passed. p. 17

January 19—

Style and Drafting Amendments Adopted.

Section 19. Statewide Elected Officials
[Const. Art. XIV, Part III, Sec. 29]

Amended to become Section 29.

January 18—

Read, p. 8
Amended, p. 8
Read, roll called, yeas 113, nays 0, passed. p. 8

January 19—

Style and Drafting Amendments Adopted.

Section 20. Commissioner of Elections
[Const. Art. XIV, Part III, Sec. 30]

Amended to become Section 30.

January 18—

Read, roll called, yeas 112, nays 1, passed. p. 10

January 19—

Style and Drafting Amendments Adopted.

Section 21. Pardon Board
[Const. Art. XIV, Part III, Sec. 31]

Amended to become Section 31.

January 18—

Read, roll called, yeas 109, nays 0, passed. p. 9

January 19—

Style and Drafting Amendments Adopted.

Section 22. Levee Districts, Compensation for Property
[Const. Art. XIV, Part III, Sec. 32]

Amended to become Section 32.

January 18—

Read, roll called, yeas 116, nays 0, passed. p. 9

January 19—

Style and Drafting Amendments Adopted.

Section 23. Suits Against the State; Effective Date
[Const. Art. XIV, Part III, Sec. 33]

Amended to become Section 33.

January 18—

Read, roll called, yeas 96, nays 0, passed. pp. 17, 18

January 19—

Style and Drafting Amendments Adopted.

Section 24. Tax Schedule
[Const. Art. XIV, Part III, Sec. 24]

Title amended.

January 18—

Read, roll called, yeas 110, nays 1, passed. p. 10

January 19—

Style and Drafting Amendments Adopted.

Section 25. Effective Date
[Const. Art. XIV, Part III, Sec. 35]

Amended to become Section 35.

January 18—

Read, p. 11
Amended, p. 11
Read, roll called, yeas 113, nays 0, passed. p. 11

January 19—

Style and Drafting Amendments Adopted.

Section 26. Extraordinary Legislative Session
January 18—

Read, p. 11
Deleted by floor amendment. p. 11

Section 27. Board of Supervisors of Southern University
[Const. Art. XIV, Part I, Sec. 3]

January 18—

Read, p. 18
Added by floor amendment. p. 18
By a vote of 89 yeas, 2 nays. p. 18
Read, roll called, yeas 91, nays 1, passed. pp. 18, 19

January 19—

Style and Drafting Amendments Adopted.

Section 28. Transition to Board of Regents and State Board of Elementary and Secondary Education
[Const. Art. XIV, Part IV, Sec. 40]

Amended to become Section 40.

January 18—

Read, p. 21
Added by floor amendment.
By a vote of 84 yeas, 24 nays. pp. 20, 21
Read, roll called, yeas 93, nays 16, passed. p. 21

January 19—

Style and Drafting Amendments Adopted.

Section 29. Effect of Adoption
[Const. Art. XIV, Part III, Sec. 36]

Amended to become Section 36.

January 18—

Read.
Added by floor amendment.
By a vote of 90 yeas, 2 nays. p. 22
Read, roll called, yeas 95, nays 2, passed. p. 23

CONSTITUTIONAL CONVENTION CALENDAR

January 19—

Style and Drafting Amendments Adopted.

Section 30. Severability Clause

[Const. Art. XIV, Part III, Sec. 37]

Amended to become Section 37.

January 18—

Read. p. 23

Added by floor amendment.

By a vote of 91 yeas, 2 nays. p. 23

Read, roll called, yeas 92, nays 1, passed. p. 24

January 19—

Style and Drafting Amendments Adopted.

January 18—

Read, roll called on final passage, yeas 93, nays 4, finally passed. p. 24 ★

January 19—

Enrolled, referred to the Committee on Style and Drafting.

Rules suspended. p. 21

Reported with amendments. p. 22

Rules suspended. p. 22

Amendments adopted. pp. 22, 23

Supplemental report from Style and Drafting reported with amendments. pp. 31, 32

Rules suspended.

Amendments adopted. pp. 32, 33

CONSTITUTIONAL CONVENTION CALENDAR

DELEGATE PROPOSALS

DELEGATE PROPOSAL No. 1—

Introduced by Delegate Asseff:

A PROPOSAL

For supplemental pay increases for state policemen.

July 5—

Read, lies over under the rules. p. 6

July 6—

Read.

Under the rules.

Referred to the Committee on Local and Parochial Government. p. 53

August 2—

Reported without action. p. 2

August 3—

Read.

Recommitted to the Committee on Education and Welfare. p. 1

September 20—

Reported unfavorably. p. 1

September 21—

Withdrawn from the files of the Convention. p. 2

DELEGATE PROPOSAL No. 2—

Introduced by Delegate Asseff:

A PROPOSAL

To protect the sources of information of news reporters.

July 5—

Read, lies over under the rules. p. 6

July 6—

Read.

Under the rules.

Referred to the Committee on Bill of Rights and Elections. p. 53

January 11—

Reported unfavorably. p. 1

Rules suspended.

Withdrawn from the files of the Convention. p. 2

DELEGATE PROPOSAL No. 3—

Introduced by Delegate Asseff:

A PROPOSAL

Relative to legislation increasing financial burdens of school boards.

July 6—

Read, lies over under the rules. p. 51

July 11—

Read.

Under the rules.

Referred to the Committee on Education and Welfare. p. 3

January 3—

Reported without action. p. 1

January 4—

Withdrawn from the files of the Convention. p. 1

DELEGATE PROPOSAL No. 4—

Introduced by Delegates Asseff, Lennox and Womack:

A PROPOSAL

Relative to the management of the State Highway System.

July 6—

Read, lies over under the rules. p. 51

July 11—

Read.

Under the rules.

Referred to the Committee on Executive Department. p. 3

October 4—

Reported unfavorably. p. 7

October 5—

Withdrawn from the files of the Convention. p. 1

DELEGATE PROPOSAL No. 5—

Introduced by Delegate Weiss:

A PROPOSAL

To provide a guarantee of the right to life and to provide exceptions thereto.

July 6—

Read, lies over under the rules. p. 51

July 11—

Read.

Under the rules.

Referred to the Committee on Bill of Rights and Elections. p. 3

January 11—

Reported unfavorably. p. 1

Rules suspended.

Withdrawn from the files of the Convention. p. 2

DELEGATE PROPOSAL No. 6—

Introduced by Delegate Weiss:

A PROPOSAL

Making general provisions for elections.

July 11—

Read, lies over under the rules. p. 2

July 12—

Read.

Under the rules.

Referred to the Committee on Bill of Rights and Elections. p. 3

October 17—

Reported without action. p. 6

October 18—

Withdrawn from the files of the Convention. pp. 1, 2

DELEGATE PROPOSAL No. 7—

Introduced by Delegate Burns:

A PROPOSAL

Making provisions for gambling, futures of agricultural products, and lotteries and necessary provisions with respect thereto.

July 12—

Read, lies over under the rules. p. 3

July 13—

Read.

Under the rules.

Referred to the Committee on Legislative Powers and Functions. p. 2

DELEGATE PROPOSAL No. 8—

Introduced by Delegate Leihman:

A PROPOSAL

Making provisions for education and necessary provisions with respect thereto.

July 12—

Read, lies over under the rules. p. 3

July 13—

Read.

Under the rules.

Referred to the Committee on Education and Welfare. p. 2

August 31—
Reported unfavorably. p. 1

September 5—
Withdrawn from the files of the Convention. p. 3

DELEGATE PROPOSAL No. 9—
Introduced by Delegate Leithman:
A PROPOSAL

Making provisions for education and necessary provisions with respect thereto.

July 12—
Read, lies over under the rules. p. 3

July 13—
Read.
Under the rules.
Referred to the Committee on Education and Welfare. p. 2

August 31—
Reported unfavorably. p. 1

September 5—
Withdrawn from the files of the Convention. p. 3

DELEGATE PROPOSAL No. 10—
Introduced by Delegate Juneau:
A PROPOSAL

Making provisions for education and necessary provisions with respect thereto.

July 12—
Read, lies over under the rules. p. 3

July 13—
Read.
Under the rules.
Referred to the Committee on Education and Welfare. p. 2

August 31—
Reported unfavorably. p. 1

September 5—
Withdrawn from the files of the Convention. p. 3

DELEGATE PROPOSAL No. 11—
Introduced by Delegate Duval:
A PROPOSAL

For prohibition against dual officeholding.

July 12—
Read, lies over under the rules. p. 3

July 13—
Read.
Under the rules.
Referred to the Committee on Executive Department. p. 2

October 4—
Reported unfavorably. p. 7

October 5—
Withdrawn from the files of the Convention. p. 1

DELEGATE PROPOSAL No. 12—
Introduced by Delegate Denney:
A PROPOSAL

To provide for uniform compensation to members of all state boards, commissions, and authorities.

July 18—
Read, lies over under the rules. p. 1

July 19—
Read.
Under the rules.
Referred to the Committee on Executive Department. p. 2

October 5—
Reported with amendments. p. 9

October 6—
Read.
Amendments adopted. p. 1
Read, ordered engrossed and passed to its third reading. p. 1

Title amended to read
"Article IV. Executive Branch
Section—. Compensation
Section —."

Article IV, Section 1. Compensation

November 19—
Read. p. 2
Amended. p. 3
Deleted by floor amendment.
By a vote of 61 yeas, 51 nays. p. 3

November 19—
Read, roll called on final passage, yeas 2, nays 77. Failed to pass, motion to reconsider tabled. p. 3

DELEGATE PROPOSAL No. 13—

Introduced by Delegate Burson:
A PROPOSAL
Making provisions for the selection of jurors and necessary provisions with respect thereto.

July 19—
Read, lies over under the rules. p. 2

July 20—
Read.
Under the rules.
Referred to the Committee on Judiciary. p. 2

DELEGATE PROPOSAL No. 14—
Introduced by Delegate Bergeron:
A PROPOSAL
Relative to amending the constitution.

July 19—
Read, lies over under the rules. p. 2

July 20—
Read.
Under the rules.
Referred to the Committee on Bill of Rights and Elections. p. 2

August 9—
Reported unfavorably. p. 9

August 10—
Withdrawn from the files of the Convention. p. 1

DELEGATE PROPOSAL No. 15—

Introduced by Delegate Avant:
A PROPOSAL
To provide for making appeals from the Public Service Commission.

July 20—
Read, lies over under the rules. p. 8

July 25—
Read.
Under the rules.
Referred to the Committee on Executive Department. p. 2

September 14—
Reported unfavorably. p. 7
Rules suspended. p. 7
Withdrawn from the files of the Convention. p. 8

DELEGATE PROPOSAL No. 16—

Introduced by Delegates Alario, Chehardy, Edwards, Mire,

January 8—

Enrolled, referred to the Committee in Style and Drafting.
p. 17

January 14—

Reported without amendments. p. 2
Finally enrolled, read and signed by the Chairman of the
Convention and attested by the Secretary of the Convention.
pp. 38, 39

January 19—

Style and Drafting Amendments Adopted.

DELEGATE PROPOSAL No. 19—

Introduced by Delegate Velazquez:
A PROPOSAL

To provide for the Public Service Commission and necessary
provisions.

July 27—

Read, lies over under the rules. p. 13

July 28—

Read.
Under the rules.
Referred to the Committee on Executive Department. p. 1

September 14—

Reported unfavorably. p. 7
Rules suspended. p. 7
Withdrawn from the files of the Convention. p. 8

DELEGATE PROPOSAL No. 20—

Introduced by Delegate Jack:
A PROPOSAL

Limiting the number of proposed constitutional amendments
that may be submitted to the voters at any one election.

August 1—

Read, lies over rules the rules. p. 8

August 2—

Read.
Under the rules.
Referred to the Committee Bill of Rights and Elections.
p. 2

December 14—

Reported unfavorably. p. 21

December 15—

Read, ordered engrossed and passed to it's third reading.
p. 1

January 8—

Withdrawn from the files of the Convention. p. 3

DELEGATE PROPOSAL No. 21—

Introduced by Delegate Jack:
A PROPOSAL

Making provisions for a deduction in state income taxes
for federal income tax payments made during the same
period.

August 1—

Read, lies over under rules. p. 8

August 2—

Read.
Under the rules.
Referred to the Committee on Revenue, Finance and
Taxation. p. 2

December 14—

Reported favorably. p. 21

December 15—

Read, ordered engrossed and passed to it's third reading.
p. 1

January 8—

Withdrawn from the files of the Convention. p. 3

DELEGATE PROPOSAL No. 22—

Introduced by Delegates Conroy and Newton:
A PROPOSAL

To provide for the prohibition of certain enumerated local
and special laws.

August 1—

Read, lies over under the rules. p. 8

August 2—

Read.
Under the rules.
Referred to the Committee on Legislative Powers and
Functions. p. 2

November 20—

Reported favorably. p. 1

December 5—

Read, ordered engrossed and passed to it's third reading.
p. 3

January 8—

Returned to the calendar subject to call. p. 2
Called from the calendar. p. 3
Read. p. 3

**Section 12. Local and Special Laws; Prohibition
Against Enactment.**

[Const. Art. III, Sec. 12]

Title amended.

January 8—

Read. p. 3
Amended. pp. 3, 4
Rules suspended.
Read, roll called, yeas 74, nays 20, passed. pp. 4, 5

January 8—

Read, roll called on final passage, yeas 74, nays 20, finally
passed. pp. 4, 5
Enrolled, referred to the Committee on Style and Drafting.
p. 17

January 14—

Reported with amendments. p. 33

January 15—

Amendments adopted. p. 3
Finally enrolled, read and signed by the Chairman of the
Convention and attested by the Secretary of the Convention.
pp. 33, 34

DELEGATE PROPOSAL No. 23—

Introduced by Delegate Abraham:
A PROPOSAL

Relative to appropriations by the legislature for the state
budget.

August 2—

Read, lies over under the rules. p. 2

August 3—

Read.
Under the rules.
Referred to the Committee on Executive Department. p. 1

October 4—

Reported favorably. p. 7

October 5—

Read.
Ordered engrossed and passed to its third reading. p. 1

Article III, Section 18. Appropriations

November 19—

Read. p. 1
Amended. p. 1
Deleted by floor amendment.
By a vote of 71 yeas, 9 nays. p. 2

September 14—
Reported by substitute. p. 7
Rules suspended. p. 7
Read. p. 8
Substitute adopted. p. 8
Becomes Committee Proposal No. 32. p. 8

DELEGATE PROPOSAL No. 30—
Introduced by Delegate Edward N. Lennox:
A PROPOSAL
Relative to levee districts

August 22—
Read, lies over under the rules. p. 1

August 23—
Read. p. 1
Under the rules.
Referred to the Committee on Local and Parochial Government. p. 1

November 20—
Reported unfavorably. p. 7

December 5—
Read. p. 3
Withdrawn from the files of the Convention. p. 3

DELEGATE PROPOSAL No. 31—
Introduced by Delegate Denny:
A PROPOSAL
Providing for trust; forced heirship.

August 29—
Read, lies over under the rules. p. 6

August 30—
Read.
Under the rules.
Referred to the Committee on Bill of Rights and Elections. p. 1

January 11—
Reported Unfavorably. p. 1
Rules suspended.
Withdrawn from the files of the Convention. p. 2

★ DELEGATE PROPOSAL No. 32—
By Delegate Drew:
A PROPOSAL
To provide with respect to the court of appeal circuits and districts.

August 30—
Read, lies over under the rules. p. 13

August 31—
Read.
Under the rules.
Referred to the Committee on Judiciary. p. 2

November 15—
Reported without action. p. 1

November 16—
Read, ordered engrossed and passed to its third reading.
pp. 1, 2

November 16—
"Article V Section 9. Courts of Appeal; Circuits and Districts."
Amended to become

Section 9. Courts of Appeal; Circuits and Districts
[Const. Art. V, Sec. 9]

November 20—
Read. p. 5
Amended. p. 5
Read, roll called, yeas 105, nays 2, passed. p. 6

November 20—
Read, roll called on final passage, yeas 107, nays 1, finally passed. p. 6

December 5—
Enrolled, referred to the Committee on Style and Drafting.
p. 12

January 14—
Reported with amendments. p. 37

January 15—
Amendment adopted. p. 10

DELEGATE PROPOSAL No. 33—
Introduced by Delegate Dennis:
A PROPOSAL
Providing for the financing of the judicial system.

August 30—
Read, lies over under the rules. p. 13

August 31—
Read.
Under the rules.
Referred to the Committee on Revenue, Finance and Taxation. p. 2

December 14—
Reported without action. p. 21

December 15—
Read.
Withdrawn from the files of the Convention. p. 1

DELEGATE PROPOSAL No. 34—
Introduced by Delegate Dennis:
A PROPOSAL
Providing for the financing of the state judicial system.

August 30—
Read, lies over under the rules. p. 13

August 31—
Read.
Under the rules.
Referred to the Committee on Revenue, Finance and Taxation. p. 2

January 7—
Reported without action. p. 9

January 8—
Withdrawn from the files of the convention. p. 1

DELEGATE PROPOSAL No. 35—
Introduced by Delegate Miller:
A PROPOSAL
Providing for supreme court districts.

August 30—
Read, lies over under the rules. p. 13

August 31—
Read.
Under the rules.
Referred to the Committee on Judiciary. p. 2

DELEGATE PROPOSAL No. 36—
Introduced by Delegate Gravel:
A PROPOSAL
To provide with respect to retirement systems and plans for public officials and employees and judges.

August 30—
Read, lies over under the rules. p. 13

August 31—
Read.
Under the rules.
Referred to the Committee on Judiciary. p. 2

DELEGATE PROPOSAL No. 37—
Introduced by Delegates Bel, Bergeron, Casey, Lennox,

DELEGATE PROPOSALS

Mauberrert, Tapper, Vesich, Vick, Alexander, Landrum, J. Jackson, Warren Riecke:

A PROPOSAL
Relative to Orleans Parish courts and officials.

August 30—
Read, lies over under the rules. p. 13

August 31—
Read.
Under the rules.
Referred to the Committee on Judiciary. p. 3

DELEGATE PROPOSAL No. 35—

Introduced by Delegate Casey:
A PROPOSAL
To provide for the prohibition of local and special laws where general laws can be made applicable.

August 30—
Read, lies over under the rules. p. 13

August 31—
Read.
Under the rules.
Referred to the Committee on Legislative Powers and Functions. p. 3

DELEGATE PROPOSAL No. 39—

Introduced by Delegate Casey:
A PROPOSAL
To provide for a date for taking office of members of the legislature at the beginning of each term, or to fill the remainder of an unexpired term.

August 30—
Read, lies over under the rules. p. 13

August 31—
Read.
Under the rules.
Referred to the Committee on Legislative Powers and Functions. p. 3

DELEGATE PROPOSAL No. 40—

Introduced by Delegates Bel and Vesich:
A PROPOSAL
To provide with respect to the terms of district court judges.

August 30—
Read, lies over under the rules. p. 13

August 31—
Read.
Under the rules.
Referred to the Committee on Judiciary. p. 3

DELEGATE PROPOSAL No. 41—

Introduced by Delegates Bel and Vesich:
A PROPOSAL
To provide with respect to the terms of appellate judges.

August 30—
Read, lies over under the rules. p. 13

August 31—
Read.
Under the rules.
Referred to the Committee on Judiciary. p. 3

DELEGATE PROPOSAL No. 42—

Introduced by Delegates Denny and Stovall:
A PROPOSAL
Providing for the lieutenant governor as ombudsman.

August 30—
Read, lies over under the rules. p. 13

August 31—
Read.
Under the rules.
Referred to the Committee on Executive Department. p. 3

November 20—
Reported favorably. p. 1

December 5—
Read, ordered engrossed and passed to it's third reading. p. 3

January 8—
Returned to the calendar subject to call. p. 2
Called from he calendar. p. 5
Read. p. 5

Section—. Powers and Duties of the Lieutenant Governor

January 8—
Read. p. 5
Amended. p. 5
Read roll called, yeas 37, nays 58. Failed to pass, motion to reconsider tabled. p. 6

January 8—
Withdrawn from the files of the Convention. p. 6

DELEGATE PROPOSAL No. 43—

Introduced by Delegates J. Jackson, A. Jackson, Warren, Ray, Gravel, Stovall, Pugh, and Gauthier:

A PROPOSAL
Providing for juvenile courts having exclusive original jurisdiction with the exception for offenses of murder, aggravated kidnapping, armed robbery, or aggravated rape.

August 30—
Read, lies over under the rules. p. 13

August 31—
Read.
Under the rules.
Referred to the Committee on Judiciary. p. 3

November 15—
Reported without action. p. 1

November 16—
Read, ordered engrossed and passed to it's third reading. p. 2

January 8—
Returned to the calendar subject to call. p. 2
Called from he calendar. p. 7
Read. p. 7

Section—. Juvenile Courts; Jurisdiction

January 8—
Read. p. 7
Deleted by floor amendment. p. 9
By a vote of 53 yeas and 39 nays. p. 9

January 8—
Returned to the calendar subject to call. p. 9

January 15—
Called from the Calendar. p. 16

Article V, Section 19. Special Juvenile Procedures. [Const. Art. V, Sec. 19]

January 15—
Read. p. 16
Added by floor amendment by a vote of 78 yeas and 35 nays. pp. 16, 17
Read, roll called, yeas 80, nays 29, passed. p. 17

January 15—
Read, roll called on final passage, yeas 98, nays 13, finally passed. p. 17
Enrolled, referred to the Committee on Style and Drafting. pp. 28, 29

January 16—
Style and Drafting Amendments Adopted.

January 16—
Reported with amendments. p. 2
Rules suspended.
Amendments adopted. pp. 2, 3
Finally enrolled, read and signed by the Chairman of the Convention and attested by the Secretary of the Convention. p. 13

January 19—
Style and Drafting Amendments Adopted.

★ **DELEGATE PROPOSAL No. 44—**

Introduced by Delegate Vick:

A PROPOSAL

Making provision for the powers, duties, and qualifications for the state attorney general.

August 31—
Read, lies over under the rules. p. 2

September 5—
Read.
Under the rules.
Referred to the Committee on Judiciary. p. 2

DELEGATE PROPOSAL No. 45—

Introduced by Delegate Gauthier:

A PROPOSAL

To provide a retirement system for judges.

August 31—
Read, lies over under the rules. p. 7

September 5—
Read.
Under the rules.
Referred to the Committee on Judiciary. p. 2

★ **DELEGATE PROPOSAL No. 46—**

Introduced by Delegate Tobias:

A PROPOSAL

Providing for the continuance of Orleans Parish courts and officials.

August 31—
Read, lies over under the rules. p. 7

September 5—
Read.
Under the rules.
Referred to the Committee on Judiciary. p. 2

DELEGATE PROPOSAL No. 47—

Introduced by Delegates Singletary and Singletary:

A PROPOSAL

Providing with respect to the expropriation of private property for public purposes.

August 31—
Read, lies over under the rules. p. 7

September 5—
Read.
Under the rules.
Referred to the Committee on Bill of Rights and Elections. p. 2

January 11—
Reported unfavorably. p. 1
Rules suspended.
Withdrawn from the files of the Convention. p. 2

DELEGATE PROPOSAL No. 48—

Introduced by Delegates Singletary and Drew:

A PROPOSAL

Making provisions for equal protection of the laws, prohibiting discrimination, slavery and involuntary servitude.

August 31—
Read, lies over under the rules. p. 7

September 5—

Read.
Under the rules.
Referred to the Committee on Bill of Rights and Elections. p. 2

January 11—

Reported unfavorably. p. 1
Rules suspended.
Withdrawn from the files of the Convention. p. 2

DELEGATE PROPOSAL No. 49—

Introduced by Delegate Brien:

A PROPOSAL

Providing with respect to consumer education and information councils.

August 31—
Read, lies over under the rules. p. 7

September 5—
Read.
Under the rules.
Referred to the Committee on Executive Department. p. 2

November 20—

Reported with amendments. p. 1

December 5—

Amendments adopted. pp. 3, 4
Read, ordered engrossed and passed to its third reading. pp. 3, 4

January 8—

Returned to the Calendar subject to call. p. 3
Called from the Calendar. p. 6
Read. p. 6

Section 1. Consumer Education and Information Councils

January 8—

Read. p. 6
Amended. p. 6
Read roll called, yeas 49, nays 44. Failed to pass, motion to reconsider tabled. pp. 6, 7

January 8—

Withdrawn from the files of the Convention. p. 7

DELEGATE PROPOSAL No. 50—

Introduced by Delegate Thistlethwaite:

A PROPOSAL

To provide a preamble and a declaration of rights to the constitution.

August 31—
Read, lies over under the rules. p. 8

September 5—

Read.
Under the rules.
Referred to the Committee on Bill of Rights and Elections. p. 2

January 11—

Reported unfavorably. p. 1
Rules suspended.
Withdrawn from the files of the Convention. p. 2

DELEGATE PROPOSAL No. 51—

Introduced by Delegate Asseff:

A PROPOSAL

Providing for appointment of officials; merger, and consolidation.

September 5—
Read, lies over under the rules. p. 1

September 6—
Read.
Under the rules.

DELEGATE PROPOSAL No. 60—

Introduced by Delegate Jenkins:

A PROPOSAL

Making provision to control future growth of state tax revenues.

September 5—

Read, lies over under the rules. p. 6

September 6—

Read.

Under the rules.

Referred to the Committee on Revenue, Finance and Taxation. p. 2

January 7—

Reported without action. p. 9

January 8—

Withdrawn from the files of the Convention. p. 1

DELEGATE PROPOSAL No. 61—

Introduced by Delegates Bel and Vesich:

A PROPOSAL

To provide with respect to judicial districts.

September 5—

Read, lies over under the rules. p. 6

September 6—

Read.

Under the rules.

Referred to the Committee on Judiciary. p. 2



DELEGATE PROPOSAL No. 62—

Introduced by Delegate Burson:

A PROPOSAL

Making provisions for the grand jury.

September 5—

Read, lies over under the rules. p. 6

September 6—

Read.

Under the rules.

Referred to the Committee on Judiciary. p. 2

DELEGATE PROPOSAL No. 63—

Introduced by Delegate Burson:

A PROPOSAL

Making provisions for legislative limitation on executive power of communication.

September 5—

Read, lies over under the rules. p. 6

September 6—

Read.

Under the rules.

Referred to the Committee on Executive Department. p. 2

DELEGATE PROPOSAL No. 64—

Introduced by Delegate Toca:

A PROPOSAL

Making provision for a board of commissioners of the Louisiana State Library.

September 5—

Read, lies over under the rules. p. 6

September 6—

Read.

Under the rules.

Referred to the Committee on Executive Department. p. 2

October 4—

Reported unfavorably. p. 7

October 5—

Withdrawn from the files of the Convention. p. 2

DELEGATE PROPOSAL No. 65—

Introduced by Delegate Roy:

A PROPOSAL

Making provisions regarding civil service employment.

September 5—

Read, lies over under the rules. p. 7

September 6—

Read.

Under the rules.

Referred to the Committee on Education and Welfare. p. 2

September 20—

Reported with amendments. p. 2

September 21—

Read.

Amendments adopted. p. 3

Read, ordered engrossed and passed to its third reading. p. 3

January 8—

Returned to the Calendar subject to call. p. 2

Called from the Calendar. p. 5

Withdrawn from the files of the Convention. p. 5

DELEGATE PROPOSAL No. 66—

Introduced by Delegate Robinson:

A PROPOSAL

Making provisions to prohibit the appropriation of public funds for private or sectarian schools.

September 5—

Read, lies over under the rules. p. 7

September 6—

Read.

Under the rules.

Referred to the Committee on Education and Welfare. p. 2

November 7—

Reported without action. p. 11

November 8—

Withdrawn from the files of the Convention. p. 2

DELEGATE PROPOSAL No. 67—

Introduced by Delegate Abraham:

A PROPOSAL

Making provisions for the inclusion of the attorney general in the Executive Branch of government.

September 5—

Read.

Lies over under the rules. p. 7

September 6—

Read.

Under the rules.

Referred to the Committee on Executive Department. p. 2

October 4—

Reported favorably. p. 7

October 5—

Read, ordered engrossed and passed to its third reading. p. 2

January 8—

Returned to the Calendar subject to call. p. 2

Section 1. Composition

January 15—

Called from the Calendar. p. 40

Read. p. 40

Withdrawn from the files of the Convention. p. 41

Referred to the Committee on Bill of Rights and Elections. p. 3

September 13—
Reported unfavorably. p. 10

September 14—
Withdrawn from the files of the Convention. p. 1

★ **DELEGATE PROPOSAL No. 75—**
Introduced by Delegate Burson:
A PROPOSAL

Providing with respect to trial by jury in criminal cases.

September 5—
Read.
Lies over under the rules. p. 7

September 6—
Read.
Under the rules.
Referred to the Committee on Bill of Rights and Elections. p. 3

January 11—
Reported unfavorably. p. 2
Rules suspended.
Withdrawn from the files of the Convention. p. 2

★ **DELEGATE PROPOSAL No. 76—**
Introduced by Delegate Burson:
A PROPOSAL

For initiation of the prosecution of felonies.

September 5—
Read.
Lies over under the rules. p. 7

September 6—
Read.
Under the rules.
Referred to the Committee on Bill of Rights and Elections. p. 3

January 11—
Reported unfavorably. p. 2
Rules suspended.
Withdrawn from the files of the Convention. pp. 2, 3

DELEGATE PROPOSAL No. 77—
Introduced by Delegate Robinson:
A PROPOSAL

To provide for the financing of the office of sheriff.

September 5—
Read.
Lies over under the rules. p. 7

September 6—
Read.
Under the rules.
Referred to the Committee on Revenue, Finance and Taxation. p. 3

December 14—
Reported without action. p. 21

December 15—
Read.
Withdrawn from the files of the Convention. p. 2

DELEGATE PROPOSAL No. 78—
Introduced by Delegate Robinson:
A PROPOSAL

Making provisions to prohibit religious discrimination and to prohibit the direct or indirect appropriation of money from the public treasury for sectarian, private, charitable or benevolent purposes, except for designated state charities.

September 5—
Read.
Lies over under the rules. p. 7

September 6—
Read.
Under the rules.
Referred to the Committee on Bill of Rights and Elections. p. 3

January 11—
Reported unfavorably. p. 2
Rules suspended.
Withdrawn from the files of the Convention. p. 3

DELEGATE PROPOSAL No. 79—
Introduced by Delegate Deshotel:
A PROPOSAL

Providing for a right to privacy.

September 5—
Read.
Lies over under the rules. p. 7

September 6—
Read.
Under the rules.
Referred to the Committee on Bill of Rights and Elections. p. 3

January 11—
Reported unfavorably. p. 2
Rules suspended.
Withdrawn from the files of the Convention. p. 3

DELEGATE PROPOSAL No. 80—
Introduced by Delegate Abraham:
A PROPOSAL

Making provisions for the registration of voters.

September 5—
Read.
Lies over under the rules. p. 7

September 6—
Read.
Withdrawn from the files of the Convention. p. 3

DELEGATE PROPOSAL No. 81—
Introduced by Delegate Abraham:
A PROPOSAL

Making provision for open primary elections.

September 5—
Read.
Lies over under the rules. p. 7

September 6—
Read.
Under the rules.
Referred to the Committee on Bill of Rights and Elections. p. 3

October 17—
Reported without action. p. 6

October 18—
Withdrawn from the files of the Convention. p. 2

DELEGATE PROPOSAL No. 82—
Introduced by Delegate Abraham:
A PROPOSAL

Making provisions for the right to property.

September 5—
Read.
Lies over under the rules. p. 7

September 6—
Read.
Withdrawn from the files of the Convention. p. 3

DELEGATE PROPOSAL No. 83—
Introduced by Delegate Abraham:
A PROPOSAL

Making provisions for the inclusion of the attorney general in the Executive Branch of government.

CONSTITUTIONAL CONVENTION CALENDAR

September 6—

Read.
Under the rules.
Referred to the Committee on Education and Welfare.
p. 4

November 7—

Reported without action. p. 11

November 8—

Withdrawn from the files of the Convention. p. 2



DELEGATE PROPOSAL No. 93—

Introduced by Delegate Burson:
A PROPOSAL
Providing with respect to grand jury proceedings.

September 5—

Read.
Lies over under the rules. p. 8

September 6—

Read.
Under the rules.
Referred to the Committee on Bill of Rights and Elections. p. 4

January 11—

Reported unfavorably. p. 2
Rules suspended.
Withdrawn from the files of the Convention. p. 3

DELEGATE PROPOSAL No. 94—

Introduced by Delegate Pugh:
A PROPOSAL
Prohibiting the purchase or subscription by the state or its political subdivisions of stock of any corporation or association or for any private enterprise and providing exceptions.

September 5—

Read.
Lies over under the rules. p. 8

September 6—

Read.
Under the rules.
Referred to the Committee on Education and Welfare.
p. 4

January 3—

Reported without action. p. 2

January 4—

Withdrawn from the files of the Convention. p. 2

DELEGATE PROPOSAL No. 95—

Introduced by Delegate Bel:
A PROPOSAL
Making provisions for property taxation.

September 5—

Read.
Lies over under the rules. p. 8

September 6—

Read.
Under the rules.
Referred to the Committee on Revenue, Finance and Taxation. p. 4

January 7—

Reported without action. p. 9

January 8—

Withdrawn from the files of the Convention. p. 2



DELEGATE PROPOSAL No. 96—

Introduced by Delegates Vick, Abraham, Bel, Berry, Casey, Denney, Goldman, Guarisco, Haynes, A. Jackson, J. Jackson, LeBreton, Lennox, Miller, Pugh, Rachal, Riecke, Soniat, Stovall, Sutherland, Velazquez, and Weiss:

A PROPOSAL

Providing for the powers and duties of the attorney general.

September 5—

Read.
Lies over under the rules. p. 8

September 6—

Read.
Under the rules.
Referred to the Committee on Executive Department.
p. 4

October 4—

Reported without action. p. 7

October 5—

Withdrawn from the files of the Convention. p. 3

DELEGATE PROPOSAL No. 97—

Introduced by Delegates Asselt, Anzalone, Miller, Bergeron, O'Neill, Kelly, Velazquez, Aertker, Burson, Guarisco, Jones, Stinson, McDaniel, Wisham, Grier, Warren, Stephenson, Jack, Smith, Schmitt, Drew, Bel, Ourso, Edwards, Winchester, Perkins, Casey, Elkins, A. Landry, Ullo, Bollinger, Alario, Stinson, Heine, Roemer, Abraham, Kilbourne, Fulco, Cannon, Gauthier, Willis, Singletary, Planchard, Cowen, Weiss, Toomy, Leigh, Maybuce, Hernandez, Flory and Avant:

A PROPOSAL

To provide with respect to an alternative provision relative to the Executive Branch.

January 14—

Read.
Lies over under the rules. p. 42

January 16—

Read. p. 4
Read, roll called on final passage, yeas 53, nays 52.
Failed to pass, motion to reconsider pending. pp. 4, 5

January 17—

Read. p. 3
Reconsidered. p. 2
Returned to the Calendar under the rules. p. 3

DELEGATE PROPOSAL No. 98—

Introduced by Delegates Henry, Gravel, Graham, Pugh, A. Jackson, Juneau, Kelly, Leithman, Corne, Shannon, Deshotels, Fowler, Zervigon, Riecke, Wattigny, Alario, Kilpatrick, Roemer, LeBleu, Conino, Warren, Guarisco, Arnette, Abraham, Badeaux, Anzalone, Fayard, Derbes, Gauthier, Bollinger, Willis, Newton, A. Landry, Goldman, Ginn, Ullo, Toomy, Sutherland, Stovall, Schmitt, Bergeron, Chatelain, Vick, Cnroy, Miller, Casey, Denney, Tobias, O'Neill and Weiss:

A PROPOSAL

To provide with respect to an alternative provision relative to education.

January 15—

Read, lies over under the rules. p. 25

January 16—

Read. p. 5
Amended. pp. 7, 8
Read, roll called on final passage, yeas 80, nays 35, finally passed. p. 10
Enrolled, referred to the Committee on Style and Drafting.

January 17—

Reported with amendments. p. 2
Rules suspended.
Amendments adopted. p. 2
Finally enrolled, read and signed by the Chairman of the Convention and attested by the Secretary of the Convention. pp. 16, 17

January 19—

Reported with amendments. p. 30
Supplemental report from Style and Drafting. p. 31
Rules suspended.
Amendments adopted. p. 32

[Const. Art. XIV, Part IV, Sec. 38]

DELEGATE PROPOSAL No. 99—

Introduced by Delegates Vick, Abraham, Aertker, Alexan-



DELEGATE PROPOSALS

★ der, Arnette, Asseff, Avant, Badeaux, Bel, Bergeron, Bollinger, Brown, Carmouche, Casey, DeBlieux, Dennery, Dennis, Derbes, Duval, Elkins, Flory, Fulco, Giarrusso, Goldman, Grier, Guarisco, Hardee, Haynes, A. Jackson, J. Jackson, Jones, Juneau, Landrum, A. Landry, E. J. Landry, Leithman, McDaniel, Maybuce, Miller, Riecke, Roemer, Roy, Sandoz, Schmitt, Shannon, Singletary, Soniat, Stagg, Stovall, Sutherland, Tapper, Thistlethwaite, Tobias, Velazquez, Warren, Wisham and Zervigon:

A PROPOSAL

To provide with respect to an alternative provision relative to the Judicial Branch.

January 15—

Read, lies over under the rules. p. 25

January 16—

Read. p. 3

Withdrawn from the files of the Convention. p. 3

DELEGATE PROPOSAL No. 100—

Introduced by Delegates McDaniel, Elkins, Goldman, O'Neill, Asseff, Cowen, Gauthier, Champagne, Avant, Bel, Grier, Drew, Shannon, Ulio, Leigh, Bollinger, Sutherland, Sandoz, A. Landry, Aertker, Hardee, Brown, Perkins, Hernandez, Smith, Alario, Fontenot, Winchester, Miller, Jones, Zervigon, Roemer, Fulco, Henry, Planchard, E. J. Landry, Arnette, Velazquez, Schmitt, Cannon, Leithman, LeBlau and Singletary:

A PROPOSAL

To provide with respect to an alternative provision relative to the Executive Branch prohibiting a person elected as governor from being his own immediate successor.

January 15—

Read, lies over under the rules. p. 26

Section 1.

Section 2.

January 17—

Read. p. 3

Amended. p. 3

Read, roll called on final passage, yeas 45, nays 49.

Failed to pass, motion to reconsider tabled. p. 3

DELEGATE PROPOSAL No. 101—

Introduced by Delegates Stagg, Roemer, Smith, Sutherland, Asseff, Casey, Abraham, Zervigon, Alexander, Kean, Fulco, Bollinger, Bel, Dennery, Duval, Thistlethwaite, De Blieux, Sandoz, Velazquez, Jones, Conroy, J. Jackson, Drew, Hardee, Grier, Elkins, Dennis, Champagne, A. Landry, Miller, Kil-

bourne, Warren, Vick, Jack, A. Jackson, Newton, Derbes, Schmitt, Lanier and Shannon:

A PROPOSAL

To provide with respect to an alternative provision relative to Revenue and Finance.

January 15—

Read, lies over under the rules. p. 26

January 17—

Read. pp. 3, 4

Amended. p. 5

Read, roll called on final passage, yeas 31, nays 83.

Failed to pass, motion to reconsider tabled. pp. 5, 6

DELEGATE PROPOSAL No. 102—

Introduced by Delegates Vick, Abraham, Aertker, Alexander, Arnette, Asseff, Avant, Badeaux, Bel, Bergeron, Bollinger, Brown, Carmouche, Casey, De Blieux, Dennery, Dennis, Derbes, Duval, Elkins, Flory, Fulco, Giarrusso, Goldman, Grier, Guarisco, Hardee, Haynes, A. Jackson, J. Jackson, Jones, Juneau, Landrum, A. Landry, E. J. Landry, Leithman, McDaniel, Maybuce, Miller, Riecke, Roemer, Roy, Sandoz, Schmitt, Shannon, Singletary, Soniat, Stagg, Stovall, Sutherland, Tapper, Thistlethwaite, Tobias, Velazquez, Warren, Wisham and Zervigon:

A PROPOSAL

To provide with respect to an alternative provision relative to the Judicial Branch.

January 15—

Read, lies over under the rules. p. 26

January 17—

Read. p. 6

Amended. p. 6

Read, roll called on final passage, yeas 36, nays 67.

Failed to pass, motion to reconsider tabled. p. 7

DELEGATE PROPOSAL No. 103—

Introduced by Delegates Elkins, Grier, Toca, Flory, Asseff, Weiss, Cowen, Vick, Jones, E. J. Landry, Carmouche, Hardee, Winchester, Pugh, Dennis, Planchard, Conroy, Wisham, Anzalone, Morris, Goldman, Smith, Conino, Willis, Heine, Tobias, Segura, Ulio, Guarisco, Cannon, Deshotel and Kilbourne:

A PROPOSAL

To provide with respect to an alternative provision relative to the Legislative Branch.

January 15—

Read, lies over under the rules. p. 26

January 17—

Read. p. 7

Withdrawn from the files of the Convention. p. 7

Chapter IV

Transcripts of Proceedings Relative to Criminal Justice Sections

Friday, August 8, 1973

Vol. 2, p. 3

PRAYER

Mr. Abraham: Direct us, O Lord in these our doings, with us in our actions. Keep us mindful of the needs of the people, and may all our efforts be in Thy name. Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

RESOLUTIONS ON SECOND READING AND REFERRAL

PROPOSALS ON SECOND READING AND REFERRAL

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Poynter: Committee Proposal No. 4, introduced by Delegate Stagg, Chairman on behalf of the Committee on the Executive Department, and Delegates Abraham, Alexander, Arnette, Brien, Dennergy, Duval, Gravel, Howell and Tappin.

A proposal providing for the executive branch of government, for the filling of vacancies in certain public offices, and with respect to dual officeholding, a code of ethics, and impeachment.

* * *

Amendment

Mr. Poynter: Amendment No. 1 [by Mr. Poynter], page 2, line 2, after the words "general shall" and before the words "has been," insert the following: "be the state's chief legal officer, head the Department of Justice, and shall".

Explanation

Mr. Gravel: Mr. Chairman, ladies and gentlemen of the convention, on yesterday this convention voted in effect that the functions and qualifications, that is the functions, duties, powers and responsibilities of the attorney general's office, should be considered at the time that the judiciary article is going to be considered in order that such functions, powers, duties and responsibilities could be interrelated with the powers and duties and responsibilities of the sheriff, district attorney, etc. I think most of the delegates agree that the office of attorney general really properly belongs in the executive branch of state government. There are a number of provisions in the article dealing with the executive branch that relate to the attorney general. Such as, the succession article, the article that deals with statewide elections of some of the public officials. We have had several discussions with those who felt very strongly that the functions and duties should be considered by the judiciary department and I think that most agree that the actual office itself should be retained in the Executive Article. Now the purpose of this amendment is to see that that is done. Section 8, then would be the vehicle by which ultimately Style and Drafting could very frankly replace the attorney general into Section 1 A. Now let me make this point very clear. The Committee on the Executive Department unanimously agrees and commits to this convention that it will support a motion to delete from consideration by the convention Section 8 of this article at the time that this article is being considered and further agrees that it will commit itself to a consideration of that article at the time that the convention considers the article on the judiciary, so that later on and not while we are considering the Executive Department we will go into the question of the functions and the powers,

duties and responsibilities of the attorney general.

[Amendment rejected: 36-62. Motion to reconsider tabled. Previous Question ordered on the Section. 36-62. Motion to reconsider tabled.]

Amendment

Mr. Poynter: Amendment No. 1 [by Mr. Poynter], page 2, line 3, immediately after the words "lease the" and before the word "years" delete the word "five" and insert the word "four".

Explanation

Mr. Dennergy: The purpose of this amendment is that to be eligible for a statewide elective office according to Section 2 A, a person must have attained the age of twenty-five years. Now, if I say the attorney general must have been admitted to the practice of law for at least five years immediately preceding his election. However, an attorney is not admitted to practice under the present setup until he is at least twenty-one years of age. Therefore, he would be required to be twenty-six years old at the time of his qualification for office. It was my feeling although the balance of the Executive Committee did not agree with me, I mean the balance of the Committee on the Executive Branch did not agree with me, that there was no reason to have the attorney general twenty-one years old at the date of his qualification and have other statewide offices only twenty-five years old. That is the purpose of the amendment.

Questions

Mr. Stinson: The present constitution I believe it says 'will have practiced law five years'. I believe the way it is written there, it is "admitted to the bar for five", why was the change?

Mr. Dennergy: The change was made in view of the language that was originally suggested in the draft of the Judiciary Committee which has used this language for the determination of eligibility for judicial office.

Mr. Stinson: But wasn't the intention for putting that requirement was experience and not the fact that he was a member of the bar and never practiced. Aren't you defeating the purpose of the experience requirement?

Mr. Dennergy: Well you have this problem, Delegate Stinson, and that is suppose the judge, an elected judge, decides to run for attorney general. He will not have practiced law for at least four or five years immediately preceding his election because he would have been a member of the judiciary.

Mr. Stinson: Well you could have taken care of that or said served in the judiciary five years, couldn't you, instead of throwing the entire experience out of the window?

Mr. Dennergy: Well you are quite correct in one sense; on the other sense, suppose a man has served as a clerk for one or more of the courts in this state for a couple of years immediately preceding his election. It was the opinion at the time that this language was drafted that admission to practice was the best test.

[Amendment rejected: 36-62. Motion to reconsider tabled. Previous Question ordered on the Section. 36-62. Motion to reconsider tabled.]

* * *

the legislature. If we don't bind the legislature it's no need of passing a constitution, and I am in favor of binding the legislature on certain issues and letting it be flexible on others. One of the things which I don't want the flexibility is the right to increase elected officials' salary during the term for which they are elected. I just don't think that's right. I don't think that the public approves of it.

Mr. Nunez Senator De Blieux, you're very consistent; you've always maintained the position that elected officials should not be increased for the term for which he was elected. I take that it's a little narrow-minded for you to take this opinion but you're consistent in taking it. You don't believe that the economic conditions can change enough that it's justified in giving an elected official a raise in the 4 or 6 or 8 or 10 year period that he's elected for, even though conditions would justify that he get a raise.

Mr. De Blieux Senator Nunez, I've just wanted to keep the salaries the same for a four year period. I don't say for more than that, but only for a four year period. I just feel like that that's a short enough period to allow for the increasing of salaries.

[Previous question ordered. Record vote taken. 82-12. Motion to reconsider tabled.]

Amendments

Mr. Poynter Amendment No. 1 [De Blieux]. Delete Amendments No. 1 and No. 2, proposed by Delegate O'Neill and adopted by the convention on August 3, 1973. And we'd need to add to that to delete the Gravel amendment, now Senator. Amendment No. 2, page 2, delete lines 29 through 32 both inclusive in their entirety and insert in lieu thereof the following: "Section 4. Compensation.

Section 4. The compensation of each elected state official within the executive branch shall be fixed by the legislature and shall not be increased nor decreased for the term for which the official is elected."

Explanation

Mr. De Blieux Mr. Chairman and ladies and gentlemen of the convention, the previous amendment as I stated that was adopted actually means nothing because the legislature already has that authority. Now, the real crux of this particular amendment is, and it pertains only to your state officials, it does not pertain to any other elected office, pertains only to elected officials, that their salary shall not be increased or decreased during the term for which they are elected. It does not apply to judges. It does not apply to legislators. It does not apply to assessors, sheriffs, or anybody like that. Only those people named in that particular section, I tell you that. Only those named in that particular section and I think it's a fair amendment and Mr. Chairman, I ask for a record vote.

Questions

Mr. Roy Senator De Blieux, when we were discussing the legislative provisions, didn't you bring up that exact same idea that you couldn't increase salaries in the terms of office of the representatives and we voted that down then?

Mr. De Blieux That pertained to legislators as well as to this. This amendment only pertains to the statewide elected officials contained in this section, Mr. Roy.

Mr. Roy Oh, I see. Then, it's OK for us to have enjoined or prohibited legislators from raising their salaries in their terms of office, but you're going to by this provision stop us or the legislature from increasing the salaries of statewide elected officers. Is that true?

Mr. Roy It was not a matter of right or wrong. It has been with you, but not with me.

Mr. Roy But that's the result isn't it?

Mr. De Blieux Yes, if I can't get what I want, I'll take what I can get.

Mr. Roy Why? Why?

Mr. De Blieux Because, I don't have all the votes. If I could control this convention I would not want I wanted.

Mr. Roy Oh, in other words, you can accept the discriminatory practice against one group by a chance on vote but not against the other.

Mr. De Blieux Mr. Roy, this convention has been discriminating in a lot of sections, and I realize that. I wish it would not, and I wish we could get the provision which would apply equally every place, everywhere, to all the people at all the times. But unfortunately, this convention doesn't vote that way all the time.

[Previous question ordered. Record vote taken. 82-12. Motion to reconsider tabled.]

Reading of the Section

Mr. Hardin [Assistant Clerk] Section 5. Powers and Duties of the Governor.

Section 5A. Executive Authority
The governor shall be the chief executive officer of the state and shall faithfully support the constitution and laws of the state.

Section B. Legislative Reports and Recommendations

The governor shall at the beginning of each regular session of the legislature and may at other times make reports and recommendations and give information to the legislature concerning the affairs of the state including its complete financial condition.

C. Reports and Information

Any department head shall provide the governor with reports and information in writing or otherwise when requested by him on any subject relating to such department excepting matters relating to investigations of the governor's office.

D. Operating Budget

The governor shall prepare the state's annual operating budget and shall transmit copies thereof to the legislature at least two weeks prior to the first day of each annual session. Upon adoption of the operating budget by the legislature it shall become the official state budget and shall be executed and administered by the governor. Total appropriations for the year shall not exceed anticipated annual revenues, as projected by the governor in the operating budget.

E. Capital Budget

The governor shall prepare annually a five year capital program and shall submit to each regular session of the legislature a proposed capital budget as provided by statutes implementing the first year of the program. All capital projects approved by the legislature shall be made a part of the capital budget and the operating budget of each year shall provide for amortization of the costs of each such capital project.

F. Pardon, Commutation, Reprieve, Remission.

Except in cases of conviction upon impeachment, the governor may reprieve, may grant commutation of sentence, and may pardon those convicted of offenses against the state and may remit fines and forfeitures imposed for such offenses. In addition, the legislature may provide additional methods for the foregoing and other postconviction remedies.

G. Signature of Bills, Veto.

The date and time when each bill passed by the legislature is delivered to the governor shall be

entirely themselves. He shall then have 30 calendar days within which to act on it. If he approves, he shall sign it. If he disapproves, he shall veto it giving his reason therefor, and if the legislature is in session he shall return it to the house in which it originated within 24 hours. If he fails to veto such time provision by this constitution it shall become law.

H. Appropriation Bills.

1. The governor may veto any line item in any appropriation bill, for the items vetoed shall be void unless the veto is overridden as prescribed for the passage of any other bill over a veto.

2. The governor shall either veto line items or use other means provided in the bill in order that total appropriations for the year shall not exceed anticipated revenues for the year.

I. Appointment/Removal.

1. The governor shall appoint, subject to confirmation by the Senate, the heads of all departments in the executive branch whose election or appointment is not provided for by this constitution and all members of boards and commissions in the executive branch whose election or appointment is not otherwise provided for by this constitution or by statute.

2. Should the legislature be in session the governor shall submit for confirmation by the Senate, the names of those appointed within 48 hours after the appointment is made. Failure of the Senate to confirm prior to the end of the session shall constitute rejection of the appointment.

3. Should the legislature not be in session the governor may make interim appointments which shall expire at the end of the next session of the legislature unless submitted and confirmed by the Senate during such session.

4. A person not confirmed by the Senate shall not be appointed to the same office during any recess of the legislature.

J. Removal.

The governor may remove from office those whom he appoints except those appointed for a term fixed by this constitution or as may be fixed by statute.

K. Commander-in-Chief.

The governor shall be commander-in-chief of the armed forces of the state, except when they are called into the service of the federal government. He may call out the armed forces of the state to preserve law and order, to suppress insurrection, to repel invasion or in other times of emergency.

L. Extraordinary Session.

1. The governor may convene the legislature into extraordinary session by issuance of a proclamation to the legislature at least five days prior to the convening of the session. The proclamation shall state the specific subjects to be considered, the date and time the legislature is to convene and the number of days for which the legislature is convened. The subject matter of the session may be amended by proclamation to the legislature until 48 hours prior to the hour at which the legislature convenes. The power to legislate under the penalty of nullity shall be limited to the subjects especially enumerated in the latest proclamation convening such extraordinary session. The session shall be limited to the time name therein and shall not exceed 30 days.

2. The governor may convene the legislature in extraordinary session without prior notice or proclamation on occasions of public emergency caused by epidemics, attacks by the enemy, or public catastrophe.

Explanation

Mr. Duval Mr. Chairman, fellow delegates, because this is such a short section, I'll be very brief. The Executive Department Committee is going to attempt to do this in tandem, in that it does have quite a few provisions and I'm going to attempt now to explain A, B, and C, and we'll have other members of the committee come up and explain the other sections.

"A" merely deals with the executive authority and provides that the governor is the chief executive officer of the state, and shall faithfully

support the constitution and laws of the state. The present constitution provides that the governor is the supreme executive power. We deleted that language and put chief executive officer which, I think, more accurately states what the governor really is...the chief executive officer. It requires him to faithfully support the laws of the constitution, to support the constitution and the laws rather than execute...execute was in the other constitution and we felt it might be some problem when you require the governor to execute the laws, because in some instances he could not possibly execute a law. He would have to go through the normal processes of government to do that. Section B merely requires the governor at the beginning of each regular session of the legislature to make reports and recommendations and to give the legislature a full financial picture of the state. The present constitution requires the governor to make periodic reports to the legislature concerning affairs of the state and to recommend measures for its consideration. This, I think, more clearly requires the governor to give a full report at each legislative session and of course, at any other time can make reports and other recommendations and give information to the legislature. Section C coincides with our reorganization concept and merely gives the governor the right to secure information written or otherwise from his department heads. The department heads to be a part of the reorganization plan, and, of course, it excepts matters related to investigations of the governor's office, because we felt that this protection should be built in. The present constitution now provides that the governor can require written information and financial reports from all statutory and constitutional offices and agencies. So, this really doesn't vary from the present constitution, with the exception that it conforms to our department head language. If there are any questions, I'd be delighted to yield.

Questions

Mr. Tobias Could you tell me why you left out in Section A, the phrase "and of the United States"? In other words, why are you just making him faithfully support the constitution of this state and not of the United States?

Mr. Duval I don't remember any conscious deliberation on our part. I may stand corrected, some of the committee members may correct me, but I don't recall any specific reason except that the governor of Louisiana would have a primary obligation to Louisiana.

Mr. Singletary Mr. Duval, on line 19 under Reports and Information "excepting matters relating to investigations of the governor's office," would you explain that a little, please?

Mr. Duval Yes sir. With the governor's right to require written reports from all department heads, let's say the attorney general's office was conducting an investigation of the governor's office, the governor could secure the investigation material and I think it would be prejudicial to the investigation. So we thought that this type of thing should be protected in the constitution.

Mr. Burns Mr. Duval, how does the length of this section in this proposed draft compare to the present section in the constitution? Lengthwise?

Mr. Duval It's 87 words less. No. The present Constitution has different sections on these matters, Mr. Burns, and this merely puts them all together in one section because they all relate to the powers and duties of the governor. It is actually no longer and perhaps it's probably shorter, actually. If you take all the sections and put them together.

Mr. Burns The reason I asked, it just seemed like to me that there is so much of this that is descriptive. You know it goes into detail.

25th Days Proceedings—August 3, 1933

Mr. J. Jackson Mr. Duval, you mentioned in your presentation that the committee thought about utilizing the word "execute" but there would possibly be instances where the governor, someone might be confused about whether the governor really had the capacity to execute certain laws. It would seem to me, that in your statement you also said "executive" and it seems to me the word "executive" is a derivative of some part of the word "execute". But could you give me some examples of situations where the governor could not be, or could not really execute?

Mr. Duval In the event someone in the executive ... some state official violated a criminal law, the governor could not execute that criminal law. It would have to be executed via the ordinary criminal process.

Mr. Alario Mr. Duval, on Section E you refer to a capitol budget here, and it says that...

Mr. Duval In the interest of the committee, I'm just explaining "A", "B" and "C".

Mr. Alario All right, then I'll just wait till someone else comes up for that.

Mr. Denney Mr. Duval, isn't it correct that in the present constitution there is no provision requiring the governor to faithfully carry out the constitution and laws of the United States and isn't that why we didn't place it in here because it has never actually been in the constitution?

Mr. Duval Yes. That's correct, the present constitution merely requires that the governor take care that the laws be faithfully executed. It doesn't say what laws.

Mr. Denney And this committee did not specifically reject such a provision.

Mr. Duval That is correct.

Amendment

Mr. Poynter Sent up now by Delegate Stovall.

Amendment No. 1. On page 3, line 9, after the word "shall" delete the word "faithfully" and delete line 10 in its entirety and insert in lieu thereof the following: "cause the constitution and laws of the state to be faithfully executed and enforced."

Explanation

Mr. Stovall My dear Mr. Chairman and ladies and gentlemen of the convention, this is a very simple amendment which is a clarification. I think that it's something in which we will all want to concur. Mr. Duval, in explaining this section, said the governor shall be the chief executive officer and then he made the statement that the governor cannot execute some of the laws. Now, if you notice that my amendment says the governor shall cause the constitution and laws of the state to be faithfully executed and enforced. At this point is valid that the chief executive officer cannot carry out all of the laws, but the purpose of this amendment is simply to say that it is his responsibility to cause it to be done through whatever administrative channels he finds necessary. I choose the word "execute and enforce" rather than the word "support" because the word "support" is somewhat vague and general. However, the words "execute and enforce" are more definite and I think would be more acceptable in a constitution.

Further Discussion

Mr. Triche Mr. Speaker and ladies and gentlemen of the convention, I don't rise necessarily in favor or in opposition to this amendment. I'd just like to hear some more discussion about it. The only thing I heard from Reverend Stovall was that the language "faithfully executed and enforced" sounded a little better than "faithfully support the constitution and laws." I'm not sure that I understand

what our main object was for the purpose of putting him with the responsibility to faithfully execute and enforce laws. I'd like to hear some discussion on it. The present constitution says something like the governor shall cause the laws to be executed and I searched around for some understanding and definition of that, and I'm not sure that it's ever been defined or explained and I'm not sure I understand what we mean here. Do we say when the governor shall enforce the laws, does that mean that we give the governor the authority, just by way of illustration, to send the State Police into the various municipalities and parishes of the state to enforce criminal laws that may not be enforced at the local level by the local sheriff? Or do we call upon the governor to do other acts in connection with enforcement that he's not doing now? I'm not suggesting that it's good or bad, but I'd like to hear some more explanation of it.

Questions

Ms. Zervigon Mr. Triche, do you suppose that this could be interpreted to hold the governor responsible for everybody way down the line in his office so that if somebody did something wrong way down the line, the governor would be thrown in jail because he hasn't caused the laws to be faithfully executed? Is that your reservation about this?

Mr. Triche No, that's not my reservation about it. I'm just concerned here and I'd like to have more explanation of what we mean by "executed and enforced." In answer to you, Mrs. Zervigon, I'm not concerned with the governor's responsibility. He seeks the office and gets elected, he should meet up to his responsibility and should be answerable for the people under his jurisdiction.

Mr. Roy Mr. Triche, I feel somewhat like, and I'm wondering if this is interpreted, if the governor could be mandamus to enforce and execute laws that we're not sure of in our interpretation of them. That is it may be that he would feel that there is no law there to execute and somebody would be filing mandamus suits on him trying to get him to do it.

Mr. Triche I'm concerned just for the opposite. For example, I recall a case where the legislature provided for the appointment of certain health officers by the state health officer and that was not done by the officer. In a suit to mandamus the health officer to appoint the local health officers, the court said that the power to execute the laws is vested in the governor and it could not mandamus any executive official, that that was the governor's prerogative and the governor's responsibility. Now when you say the governor is not only charged with the responsibility to execute but also enforce, I'm wondering if we are not now taking away some judicial authority from some other offices, probably, maybe the attorney general, maybe the Supreme Court to see that laws, to order that laws are enforced. They may be met with the argument that the constitution says this is the responsibility of the governor to enforce the laws and we can't interfere. I'm just not sure, I have a number of reservations and I just would like to hear from the author of the proposal where the language came from, what's the meaning of the language.

Further Discussion

Mr. Denney Mr. Chairman, fellow delegates, I rise in opposition to Reverend Stovall's amendment. The language as shown in the Executive Department's Proposal says that the governor shall faithfully support the constitution and laws of the state. The amendment says that the governor shall cause the constitution and laws of the state to be faithfully executed and enforced. There are other provisions in the executive section which require certain other elected officials to execute and enforce certain laws of the state of Louisiana. I think we are putting a burden on the governor which will be impossible for him to fulfill and could conceiv-

ably give cause to an impeachment when the man, who ever was governor at the time, or lady, would not have the power to cause the execution and enforcement of the laws by another elected official. We deliberated this section in the Executive Department Committee at length and we concluded that we should support the governor in the government to execute the laws, but merely to faithfully support the constitution and laws of the state and make him the chief executive officer of the state. It seems to me that this amendment could very well create an impossible position, or situation rather, and would be difficult of enforcement and might lead to bad results. I therefore request that you defeat the amendment.

QUESTIONS

Mr. J. Jackson. Moise, I can understand some of the reservations that you may have about it, but maybe one of the reservations I have about the committee amendment is that you, based on your presentation just now, could you maybe go into some clarity of the word "support". I mean what does it mean for a governor to support the laws. Does that mean that he is void of having, in some cases, to have to execute, or see that certain laws are caused to be executed or be, in effect, adhered to? So could you maybe give us a little more deliberation or clarification as to what the committee meant by "support".

Mr. Denny. Well Mr. Jackson, I think we started off by saying that he is the chief executive officer of the state. That implies that any executive function that can be carried out by him must be carried out by him. There are some executive functions which are deliberately given to other officers. The attorney general has certain duties. The superintendent of education is going to have certain duties. The commissioner of agriculture, the commissioner of insurance, the commissioner of elections all have certain responsibilities to execute the laws. Now I don't see how we can make the chief executive responsible for improper execution, if you will of the laws, by another elected official. I think he should support those laws and in any instance where he has the power of execution, and obviously, he will have to execute the laws. But to give him the duty, to burden him with the duty of causing the constitution and laws of the state to be faithfully executed and enforced, I think, creates an impossible situation. Does that answer your question, sir?

Vice Chairman Alexander in the Chair

Mr. Shannon. Delegate Denny, do you not think that this amendment would make more sense to add...Do you have a copy of the amendment in front of you?

Mr. Denny. Yes sir.

Mr. Shannon. To add "support and", to the beginning of his amendment, "support and cause the constitution and laws of the state to be faithfully executed." Leaving out "and enforced."

Mr. Denny. Well, I think it would be better than the way it's worded, Delegate Shannon, but I still think you might create an impossible situation when you give him the burden and duty of causing a law to be executed when he may not even have the power to execute it.

Mr. Shannon. But granted that he does have the power, why, then this would be true.

Mr. Denny. Well if he has the power as the chief executive officer he's not fulfilling his duty if he doesn't carry it out.

Mr. Tobias. Mr. Denny, are you aware that the present 1921 constitution, the Constitutional Oath, Article XIX, Section 1, provides only that the governor would have to support the constitution and laws of the United States and the constitution and

laws of this state? Could this be the reason that your committee just used the word "support"?

Mr. Denny. I beg your pardon. I didn't quite understand you.

Mr. Tobias. Well, the present Constitutional Oath simply provides...

Mr. Denny. Oh, the oath. Yes, yes I'm aware of that. I misunderstood you, yes, the oath does say that.

Mr. Tobias. This is probably the reason that you used the word "support" in your...

Mr. Denny. Probably. I wouldn't guarantee that, but I think it may be true.

Mr. Avant. Mr. Denny, in the proposal, Committee Proposal No. 6 of the Committee on the Judiciary, the section dealing with the sheriff. It says, "In each parish a sheriff shall be elected for a term of four years. He shall be the chief law enforcement officer in the parish except as otherwise provided by this constitution." Now I think, I don't want to be speaking for everybody, but that was intended to cover duty, to execute the duly constituted chiefs of police in municipalities where you had a municipal police department, perhaps. But can't you see that under this amendment, "cause the constitution and laws of the state to be faithfully executed and enforced," that the governor could move into a parish and displace the duly elected sheriff and take over the law enforcement duties in that parish, and in that fashion, cause the laws of the state to be enforced.

Mr. Denny. That's very true, Mr. Avant. In addition to that, if he fails to do that it is conceivable that he has given the legislature grounds to impeach him.

Mr. Derbes. Mr. Denny, isn't it important to distinguish, for purposes of this particular amendment, between an oath, which is essentially, a vow of office, and a delegation of responsibility which we are really addressing ourselves to here?

Mr. Denny. Well, I think there is some distinction, Delegate Derbes, but I don't know that that answers the problems I have with the language.

Mr. Derbes. So what we're really trying to do here, we're trying to be clear in the delegation of responsibility to the governor and empowering the governor to perform certain functions. We don't wish to delegate to him more responsibility than we feel he should have for actions of others. Isn't that essentially the criticism of the amendment? Thank you.

Mr. Denny. Yes, that's my criticism. Correct.

Mr. J. Jackson. Mr. Denny, just awhile ago Max mentioned that in an oath, that it's possible that the committee got the language that is presently being proposed as that language being support from the oath. But as I look into the book on page 53 where it talks, Subsection 14, under Governor, Execution of Laws, Extraordinary Sessions of Legislature, Restrictions on the Powers to Legislate, Limitation on Issue and Proclamation and Notice, it says, "he shall take care that the laws be faithfully executed and make etc., etc." So that the word "execute", it has been used and is used in the 1921 constitution.

Mr. Denny. Oh yes, unquestionably. But it says take care to, and I think that is meaningless.

[Previous question, answer.]

Closing

with the regular session was recommending current distribution of the revenues for that year. Accordingly, we recommend that the, or at least I recommend, speaking for myself and I think for most of the members of the Executive Department Committee, the adoption of the amendments submitted by Senator Rayburn, et al which regards the operating budget. I do not have before me the amendments submitted with regards to the capital budget.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Rayburn], on page 3, delete lines 21 through 29 both inclusive in their entirety and insert in lieu thereof the following: "D. The governor shall submit to the legislature at a time fixed by law a proposed state budget for the next fiscal year setting forth all proposed state expenditures and anticipated state revenues."

Explanation

Mr. Rayburn Mr. Chairman and fellow delegates, this amendment was adopted by the Committee on Revenue, Taxation and Finance and after talking to some of the other committee members, I think we have reached an agreement. The language is very brief and is self-explanatory. It says, "the governor shall submit to the legislature at a time fixed by law; the original bill says within two weeks. We felt like the legislature might want to fix three weeks or a longer period so we did leave out the two weeks and say by a time fixed by law which means that would be a time fixed by the legislature. A proposed, not necessarily a state budget as the original language provides but a proposed state budget for the next fiscal year setting forth all proposed state expenditures and anticipated state revenues, period, and we think that's brief and to the point and I would ask the adoption of the amendment."

Mr. Chairman, just...when they prepared this amendment they left out at the beginning operating budget and we did write it in pencil and it is in the original. It is not in this one, I just wanted to call this to your attention.

Questions

Mr. Jenkins Senator Rayburn, in the committee's proposal it says "total appropriations for the year shall not exceed anticipated annual revenues as projected by the governor and the operating budget." Will you have some language to that effect in your Article on Revenue and Taxation?

Mr. Rayburn Yes, sir. We have it in our recommendations. I'll read it, Mr. Jenkins. It says total appropriations made by the legislature for any fiscal year shall not be greater than anticipated revenue of the state. We have that covered in another section. We felt like it would be more applicable to another section than it would this section and I move the adoption of the amendments.

[Amendment adopted without objection.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Rayburn, et al], on page 3, delete lines 30 through 32 both inclusive in their entirety and insert in lieu thereof the following: "E. And you need to insert on your copy capital budget. The governor shall submit to each regular session of the legislature a proposed five year capital outlay program with a request for implementation of the first year of the five year program." Page 4, delete lines 1 through 5 both inclusive in their entirety.

Explanation

Mr. Rayburn Mr. Chairman and fellow delegates, in the original bill that you have before you, the language provided that the governor shall submit at each regular session of the legislature a proposed

capital budget as provided by law implementing the first year of the program. The language in the amendment says the governor shall submit to each regular session of the legislature a proposed five year capital outlay program with a request for implementation of the first of the five year program which means that the governor can request the implementation of the first year if revenues are available, but it does not bind us to have to abide by his capital outlay program and that's why we added the word "request" in place of just a five year capital outlay program. And if there are no questions I move the adoption of the amendments.

[Amendment adopted without objection.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Sandoz], on page 4, line 10, after the word and punctuation "offences." and before the words "in addition" add the following: "All these powers, except the governor's power to grant reprieve of a death sentence may be restricted or limited by law."

Explanation

Mr. Sandoz Mr. Chairman, fellow delegates, the purpose of this amendment is to permit the legislature in proper cases to be able to restrict the governor's right of commutation and also, to permit in certain cases, for example, at the present time our problem is just as brief as this. Sometimes the man that's convicted beats the deputies back home and we're trying to grant to the legislature, which I believe is the responsible body today, and apparently improving in that category all along, the right to limit in certain specific cases by statute the powers of the governor except in the case of a reprieve to grant commutation and pardon and this is recommended and sponsored also by our district attorney and I think he has discussed this with a number of the district attorneys throughout the state. We are trying to, in cases where the juries that try these cases recommend a certain sentence without benefit of pardon or parole that the person sentenced under those circumstances by a jury that heard the evidence that that person would serve the sentence as recommended and I'll be glad to answer any questions that any delegate may have.

Questions

Mr. Roy Mr. Sandoz, what juries are deciding what penalties will be imposed on people? I'm not aware of that.

Mr. Sandoz I didn't understand your question.

Mr. Roy What juries are deciding the punishments that will be imposed on people? I thought the judge did that.

Mr. Sandoz Well, I'm saying the sentence...in the event of a jury recommending life sentence without benefit of pardon or parole, if there would be such a statute passed in this state, meaning for life imprisonment, let's say Mr. Roy, you had a third offender convicted three times for aggravated rape, and this was his third offense and the jury that heard him recommended life imprisonment without benefit of parole or pardon and a legislative act was enacted to support that, then the governor, in those circumstances could not commute that sentence or grant parole under those circumstances.

Mr. Roy Well, then what you're saying is that a legislature from session to session may just arbitrarily decide commutation or no commutation, well then how are you going to stop that?

Mr. Sandoz I'm saying by general law Mr. Roy. It's not designed to apply to any particular case. But let's say armed robbery for example, in armed robbery if the legislature, and there's such a statute, provides that there shall be ninety-nine

25th Days Proceedings—August 3, 1973

years or whatever term it specified and if the legislature in that particular type crime would specify that that sentence would be without benefit of commutation of sentence or parole then under those circumstances the governor's power would be limited.

Mr. Roy I understand what you're saying but you're not addressing yourself to my question. My question is couldn't a subsequent legislature say that that particular crime will be subject to commutation of sentence?

Mr. Sandoz Oh yes, it could be changed.

Mr. Roy Well, that's what I'm saying, so that there is no stability in the law. You're taking away under your amendment the thing that we the people have given to the governor historically, you're going to remove it from session to session of a legislature.

Mr. Sandoz No, my point is this, Mr. Roy, that we would place in the discretion of the legislature the right under proper circumstances and conditions to place some limitation on the now unlimited power of the governor to grant these pardons and commutations. In other words, I believe that under certain sets of facts that it would be more responsible to have the legislature set certain types of crimes and conditions that would restrict the right of the governor to pardon and commute sentences.

Mr. Roy But that right would still be an arbitrary determination every four years or every year. Every regular session the legislature could change what had been done prior thereto.

Mr. Sandoz That's true of every legislative act.

Mr. Roy But we're dealing with the notion of commutation and reprieves and a constitutional document that was inherent in the right of the governor. Are we not?

Mr. Sandoz Well, that's true and I'm submitting Mr. Roy, that that power has been abused in the past and I would like to put some restriction on that power through the legislature.

Mr. Roy Well then why don't we just take out the idea of commutation and reprieves and pardons all together and just let it be governed by the legislature from session to session?

Mr. Sandoz No, I'm basically in favor of the governor exercising these powers. However, I think that in the past we have been subject to an abuse of these powers in certain instances and I'm recommending that the legislature be in a position to place certain restraints in certain specific crimes.

Mr. Roy Well, I don't take it, or do I take it that you have any statistical data to support what you're talking about other than what your district attorney may feel is necessary?

Mr. Sandoz I think that there are other district attorneys here that may back up the statistics I'm referring to.

Mr. Roy I hadn't heard any...

Mr. Avant Mr. Sandoz, the thing that troubles me and I'd like to have an answer to is this. The legislature has passed a law, a penalty provision regarding armed robbery. Now I'm not defending armed robbers, don't indulge in that assumption, it's a very heinous crime but I can envision a situation where a young man say, 18 or 19 years old convicted of armed robbery and was sentenced to ninety-nine years. He may serve twenty-five years and at that time he may well be the proper recipient of some type of clemency or parole or something like that, on the other hand he may not be but it could be that he would be. Would this prohibit then, if the law at the time he was sentenced, that there would be no parole or pardon or commutation of sentence?

Would this prohibit any relief for that man if he was truly entitled to it at that time?

Mr. Sandoz Mr. Avant, we are leaving the details of the types of crimes and terms and conditions up to the legislature. The legislature may fix these terms and conditions as it deems fit. We are only attempting because of experience which we've had, to provide that in certain cases, in the wisdom of the legislature if it deems necessary it would have that right to pass such a statute.

Mr. Avant Now, question number two. There are many crimes that are today don't carry that limitation. Armed robbery I think is the only one that does. I may be wrong but let's take simple theft, could under this provision the legislature enact laws applying to people who had already been convicted and sentenced of the crime of theft and were presently serving their sentence and eliminate their right to executive clemency?

Mr. Sandoz I don't think that... I don't think that would be constructive.

Mr. Avant Well, I'm not at all sure that these things disturb me.

Mr. Champagne Mr. Roy pointed out that it was discretion of the legislature. Isn't it not discretionary now to the governor? In other words would it not limit it to more people than simply one or two or three?

Mr. Sandoz That's true, Mr. Champagne. We're trying to put this power to some extent in the hands of the majority of the elected legislature rather than in one man's hand.

Further Discussion

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, I urge you to reject this amendment. The Committee on the Executive Department would long and hard in the preparation of this provision dealing with pardons, commutations, reprieves and feels that we have come up with a plan that probably should satisfy most people who are concerned with this most important area of activity in the executive branch of state government. Essentially what has been done here in the proposal by the committee is to make sure that the ultimate and final right to make a determination as to whether a pardon, commutation or reprieve shall be granted will rest with the chief executive officer of the state of Louisiana. The governor retains the ultimate right under this proposal. Now many people thought that in addition to the governor having that right that some other provision should be authorized whereby the legislature by supplementary provisions could also provide other methods and other means by which a pardon, commutation or reprieve could be granted. The upshot of it all is probably going to be that the legislature will devise and will develop a plan which in practically every instance will be utilized for the purpose of granting this kind of relief but I don't think there's any question but that because of the position that he occupies in state government that in the very last analysis that the governor's authority to act in these instances should be retained, so what I think that we should do and hope that we do do, is to stay with the committee proposal which gives the ultimate authority to the governor but also authorizes the legislature to provide supplemental methods whereby post conviction relief can be granted to persons charged with offenses and I strongly urge that you reject this amendment.

Questions

Mr. Lanier Mr. Gravel, would you tell me if I'm correct in understanding this. This gives an individual the right to the governor in any case to grant a commutation or reprieve?

Mr. Gravel It does, sir.

Mr. Lanier Is this any change from the present law?

Mr. Gravel It is to the extent that the pardon board under present law consists of the lieutenant governor, attorney general and the presiding judge and this would substitute the lieutenant and final pardoning power in the office of governor for that particular kind of pardon board. That is correct sir.

Mr. Lanier Then would it be theoretically possible say, for the governor to pardon or reprieve all the prisoners in Angola, if that was his wish?

Mr. Gravel Under this provision, yes he could. It would be possible.

Mr. Derbes Mr. Gravel, there is nothing in the original committee proposal as submitted which would preclude the legislature from adopting a law providing for automatic pardon...that is restoration of citizenship for first offenders without the necessity of gubernatorial intervention.

Mr. Gravel That's correct, Mr. Derbes. As a matter of fact the legislature can and should and I suggest will provide some model method by which this kind of release can be considered and will be granted but it would be supplementary or corollary to the same right that the governor as the chief executive officer of the state would have under this proposal.

Mr. Derbes I think that's good. Thank you.

Further Discussion

Mr. Burson Ladies and gentlemen of the convention, I want to lay the issue squarely on the line. Do you believe that we ought to have a meaningful sentence of life imprisonment under our criminal law because that's what the gut issue is in this whole topic? We all know that for all practical purposes the death sentence is a dead letter. I submit to you that the legislature in its last session enacted Act No. 111 to provide for other things that in second degree murder whoever commits the crime of second degree murder shall be imprisoned at hard labor for life and shall not be eligible for parole, probation or suspension of sentence for a period of twenty years and that is what the legislature passed at the last session. Under the committee proposal, the legislative Act 111, and I advise all of you legislators to take a look at that committee proposal and see if this is not true. Your legislative act would be unconstitutional because this constitutional provision would give to the governor the absolute right to grant a pardon or parole and you could pass legislative acts regarding life imprisonment for murder until you were blue in the face and they would be flatly unconstitutional because you could not limit a constitutional power which is unlimited under the committee proposal and that is the purpose of this amendment to permit the legislature in the proper case to limit it. Now it's been said the legislature would act arbitrarily, what is more arbitrary than one man making the total decision in the case of a member under the present law the pardon and parole boards...the pardon cannot be granted unless two out of three of the lieutenant governor, the attorney general and the presiding judge in the case who knows the facts of the case make a recommendation to the governor. Now, when you vote on this and I'm going to ask for a record vote, I want you to be ready, however you vote to go back home and explain to your people, how it is that you voted for a provision which would take the presiding judge, who is the only one who knows the facts of the case, off the pardon board and turn around and grant an unlimited grant of authority to the governor without any ability of the legislature to limit it and I submit to you that Mr. Gravel is flatly incorrect when he says that the committee proposal permits the legislature to limit the power of all it says is that the legislature may provide additional methods for the foregoing. Well, the additional me-

thods to simply additional methods for exercising the power but it cannot limit that power unless you adopt this amendment and I submit to you that in order to preserve the integrity of legislation that has been enacted as late as the last session of the Louisiana legislature and I noticed that sons of the cosponsors on Act No. 111 Senator Rayburn among them, Representative Ullo. I urge you to think in this case of the people that you're representing. Now I have a great deal of sympathy for people who are in prison but I also have a great deal of sympathy for the helpless victims of brutal crimes and we've seen cases as recently as this year in my parish where a man who was sentenced to twenty-five years in the penitentiary for a brutal crime of manslaughter was back on the street in six months. Now if that's what you want to continue, you go ahead and vote for the committee proposal and let the governor have the unlimited power of pardon but if you think that your elected representatives in the state legislature ought to be able to pass statutes such as Act No. 111 which would say that if a man was sentenced to life imprisonment for second degree murder that he had to serve at least twenty years then you vote for our amendment. It's as simple as that.

Questions

Mr. Gravel Just to get the record straight, are you under the impression that I said that the legislature could eliminate the power of the governor under this section?

Mr. Burson Mr. Gravel, I wasn't quite sure what you said but I thought that impression might have been left and I wanted to dispel it if it had.

Mr. Gravel Let me dispel the impression because I don't think I said that, if I did I certainly didn't intend to. I wanted to make it clear I thought, that the governor did have total and complete power and that the power of the legislature would be supplementary and corollary to that power and I don't think I said that I certainly don't want to leave that impression with you or with the convention.

Mr. Burson Well, I'm glad we agree on that point because I think that makes the issue clear on the vote on this amendment.

Further Discussion

Mr. Triche Mr. Speaker and ladies and gentlemen of the Convention, I'm not going to have any difficulty at all going back to Assumption Parish and telling the people whom I live with that I voted against this amendment. It's not going to be difficult for me to explain. It reminds me of a song; you don't have to hear and you don't have to see, you can tell it in the air. I can tell it in the air, dead skunk in the middle of the road, it's stinking to high heaven. That's what I'm going to tell my folks why I voted against this amendment. The power to pardon has been traditionally an executive function. It's got nothing to do with the legislature. The legislature cannot make those kind of decisions. I repeat again and again and again the legislature makes political decisions and I submit to you that the authority to pardon is not one of those decisions; the legislature is competent to make nor should it be called on to make because it will not do it responsibly. I guarantee you that, Mr. Burson. What is this amendment about? I'll tell you what it's about. The acts passed in the last session of the legislature limiting sentence, said that the sentence shall be for twenty years without the benefit of parole, probation or suspension of sentence. That's a directive to the district court that renders the sentence. It says nothing about prohibitions against pardon, reprieve or commutation of sentence and the reason for that is pardon, reprieve and commutations of sentence are the prerogative of the chief executive in the constitution of 1921 and we propose that it be granted again in this constitution. Probation, parole and suspension of

sentence are sentences meted out by the district judge after the defendant has been found guilty and all the legislature has ever said and all it can ever say is that the defendant after found guilty shall be sentenced to X years without benefit of parole, probation and suspension of sentence. That's entirely different from pardon. Parole is after a man has served some time in the penal institution and has been rehabilitated and upon the advice and with the consent and consultation with the board of parole he is granted some relief. That's after he has served a portion of the sentence. Probation and suspension of sentence is usually granted at the time of sentence by the district judge because the circumstances warrant some additional mercy in the case and the district judge will say two years probation, ten years sentence suspended in good behavior. Those are the types of things that the laws in the past and the legislature have sought to prohibit the courts from doing. Prescribing a sentence without benefit of parole, probation or suspension of sentence but never the legislature provided that sentence shall be without pardon. If you pass this amendment, you will allow the legislature to say certain crimes shall be subject to sentence without benefit of pardon. Now let me tell you about that. Once a sentence is imposed and begins to be served it cannot be changed. I repeat, it cannot be changed and parole doesn't change the sentence. It puts him on the street under certain conditions but the sentence of ten years imprisonment still goes on. The sentence cannot be changed. If a man is convicted of a crime that calls for a penalty, if a man is convicted of a crime that calls for a penalty without benefit of pardon and he's sentenced to fifty years in a penitentiary without benefit of pardon and we later find out five or ten years later, somebody makes a confession, we find out that in spite of the process of law, in spite of the sworn testimony of witnesses and the jury of an impartial verdict of an impartial jury, we've convicted the wrong man and there's nothing we can do about it.

There's nothing we can do about it. There are no post conviction remedies that apply to that circumstance and that situation except the remedy of pardon. I've exceeded my time gentlemen and ladies. This is a very serious matter and I urge you please to vote against this.

Further Discussion

Mr. Burns Mr. Speaker and fellow delegates, it is true what Mr. Triche has just said about the power of the governor to pardon and the authority and the legal rights of the legislature only to deal with paroles and things of that matter. That is exactly the purpose of this amendment in this new constitution. We're not talking about the constitution of 1921. If we fail to adopt the amendment it will go back to what now the existing law. The thing that impresses me, ladies and gentlemen, is almost everything that has been said not only in connection with this particular amendment, but with reference to the criminal, its reference to the law violator, its reference to those who have been guilty of the atrocious and the mass killings that we experience today, and which, unfortunately, are growing worse and worse all the time. I think in drawing up this new constitution that we should stop a minute and think about those people who have been the victims of these heinous crimes of these murders, and kidnappings, and rapes and give them a little consideration, or at least their families and their loved ones and not devote all our time for the protection of the criminal. I think that the public, at this time, is more aroused and more aware about that, particularly since the United States Supreme Court has seen fit to declare the death penalty unconstitutional. The only thing that we have to offer the people of our state now, if that when a man is convicted of cold blooded murder, or particularly of these heinous crimes, then when he's sentenced to the penitentiary for life, it means that. I don't mean that he goes up for a year or two years, and under this article that the governor would see fit to pardon him. And what I'm saying,

I want it definitely understood, has no reference to the present governor. We keep on saying which is properly so that we are adopting this constitution to serve for the next 50 years. So what we're saying applies to all governors in the future. I am not necessarily sold on this particular amendment, but what I'm saying is that we're going to have to put some restrictions on the pardoning and the reprieve powers of the governor. If you don't, the penalties that the trial judges inflict, and I'm talking now about these real extreme cases, the ones that get people aroused and disturbed and they are disturbed. I know each and everyone of you know it, as to what we're going to do to stop this, you're not going to do it by always catering to the criminal element. Now Mr. Roy asked Mr. Sandoz a question, did he know of any instances where this authority of the privilege of right of the governor had been abused. Well I've served as District Attorney for 24 years, and luckily I got out before all the present type of crime pattern was being. But during those 24 years I could name you instances after instance after instance where this power was politically abused. I'll just give you one instance I convicted a man for cattle stealing in St Tammany Parish and had good contacts with the local political and political white. He had contacts down in the Supreme Court when the case was taken up there. When the conviction was upheld by the Supreme Court and the time came for him to be taken to Angola, the people were waiting at the gates of the penitentiary with a reprieve, and that man never went through the admission office at Angola. Now that's just one instance of what I'm talking about. But what I'm trying to say to you, ladies and gentlemen...

Further Discussion

Mr. Jenkins Mr. Chairman, delegates to the convention, I must admit dissatisfaction with both the amendment before us and the provision written by the Executive Committee. I think the alternative is that in the present constitution in which the pardon power is unlimited, but it must go through the Pardon Board made up of the lieutenant governor, the attorney general and the presiding judge. That, to me, seems the protection for the public that we need, but also the flexibility that is sometimes necessary in particular cases. I really feel if we adopt this amendment that pardons will no longer exist in many instances because I think the legislature will be quick to take it away in certain extreme cases, because of our emotions, because of our high feeling about the particular case involved. Suppose we have a mandatory life imprisonment with no benefit of parole, probation, commutation or pardon for a certain crime. We may feel very strongly right now that that should be imposed for the year 1973. But there may be someone in his teens or his twenties and in the year 2020, all the principles may be dead. It may be long forgotten, except for that individual who has been in jail. Just as now, we have in some cases people in jail who have been there since the 1920's and the 1930's and everyone involved is long gone. It's a crime which has been forgotten. It's a crime where a penalty, a severe penalty has been paid. There is no way to right the wrong at this point, but the person is in a harmless, helpless condition and there is no justification for keeping him in prison at this late date. Now if we want to talk about justice, I think we've got to believe in the death penalty and I do. I support it when uniformly applied for certain heinous crimes. But if we can't impose that penalty, we've got to do the best justice we can. And in some cases somewhere along the way there has to be the alternative for one man sitting over there in the governor's mansion to review his conscience and the circumstances of the case and make a decision, usually long after the governor has passed away. I think between this amendment and the provision by the Executive Committee, we've got to go with their provision in the Executive Department Committee. But I think the real alternative is to retain the present law. Make it go through the Pardon Board. But keep that institution inviolate—the right to pardon. So I urge you to reject this amendment.

Further Discussion

Mr. Conroy In the ultimate, in the important part of this, Mr. Jenkins and I are in complete agreement. That is that the correct solution here is to go back to what is presently in the constitution. I understand from Delegate Jack that he has such an amendment proposed and I will certainly support that amendment when it comes up. At the present time, which I hope is virtually irrelevant, I would support the proposed amendment because I think that some restriction is necessary on the governor's authority to grant pardons. I think the better solution to that is the Jack proposal which will come up in just a few minutes, I hope, but in the meanwhile I think it's so important that it's better to adopt the present amendment than to retain the present proposal by the Executive Powers Branch.

Vice Chairman Roy in the Chair

Further Discussion

Mr. Jack Mr. Chairman and members, I'm looking at this watch because with 5 minutes... Now this is a very complicated field. I've dealt in my law practice since 1940, with Pardon Boards and Parole Boards practice among my other practices. Now, I prepared an amendment to hold in emergency which is filed to retain the present, word for word in the constitution, anticipating from reading the material in this proposition No. 4, that a runaway legislature could call it. Now, it's been properly stated by Mr. Triche and there, in my opinion, that the power of pardon, commutation of sentences, reprieves, those are things that belong in the constitution. Not within the power of the legislature that's going to meet every year to be changing them back and forth. The power of parole, rightly, is not in the constitution. That is in of course, the power of the legislature, and parole comes after serving certain time. Now let me tell you this, this amendment of Mr. Burson's here, can completely undo everything the first part of the proposition No. 4, that subsection provides for and leave up everything to the legislature. In other words, it'd take everything out of the constitution, his amendment can have that effect, the legislature could take everything out except that the governor would still have the right to grant a reprieve of a death sentence. So it would take everything out since it looks like you may not even have death sentences. But a reprieve, I don't know whether you know some of these technical things, a reprieve is different from a commutation. A reprieve simply means if it's to a 10 year sentence, it means you don't start that sentence within the time of your reprieve. If it's a reprieve from a death sentence, it means you cannot have the death sentence enforced during the time of the reprieve. Now here is a situation as to regarding the present law. Governors do not like that part of it, saying to them on Pardon Board recommendations. Your Pardon Board is made up of the trial judge, attorney general and the lieutenant governor. They can only make recommendations to the governor. It takes two out of three, and it's no good unless the governor signs it. Now let me tell you, I sat there for four years, and I can talk about like it's easy to get them. There are Pardon Board recommendations sitting over in the governor's office as far back as ten years ago that have not been acted on. I represent a man where it's been over there for four years, and it's thoroughly gone into. You can always find some injustice, but we'll get to that in a minute. But if you pass this amendment, you can have a legislature pass the law saying there is no reprieve from a life sentence, ever. No parole, no commutation, no pardon. That man could sit there 50 years, and if he was innocent and could be proved, as the day he was born, there is no post legal trial machinery that assures that he'd ever get out. Now, of course, the legislature would, in effect, have to change the law and say everybody under that same situation is subject to parole. Now, if I had my druthers on a serious subject like this, I would think that, and I'm going to do it at the proper time, if a part

of a section can be referred back to a committee, this thing ought to be referred back and that committee with people, knowing they can consider it, I would like to appear before it and others. I think we ought to, for that committee, if we're not going to keep the present law as to how the Pardon Board is made up, the attorney general, trial judge and lieutenant governor, we ought to decide on it in the constitution when the new Pardon Board will be made up. It's an unpleasant task for those people to serve on it. But we are the ones ought to pass in this constitution what's going to constitute a new Pardon Board if we don't leave the present law. The procedure, I say, let's kill this amendment and then I'd like to, after that, ask the Speaker if a motion is in order, to refer back to this committee a subsection. Or if I can ask now, I'd like to know. What about it, Mr. Chairman?

Mr. Roy You are out of order, Mr. Jack, at this time.

Mr. Jack Okay, I say let's now defeat this amendment.

Further Discussion

Mr. Hayes Mr. Chairman, ladies and gentlemen of the convention, I would like to say that if we are going to give the governor certain powers in this state that we should not try to stay here today to try to take away all of the powers that we're going to give the governor or whoever that is. I think the right to pardon should be left somewhere. Someone made a pretty good suggestion a few minutes ago that we put it back where it is. I'm for either putting it back where it is or leaving it with the governor. Now, the argument seemed to rest around the fact that someone is going to misuse this authority. Okay, Mr. Burns said somebody had met him at the gate at Angola and they took somebody away. Well whoever did the good deed, that's the person they should have put in Angola who did that, if this was wrong. And when the governor pardons someone...

But whenever the governor pardons people, if he's going to pardon people and he's going to do this just to be doing it, then the governor is wrong. That what you need to do and every four years we can change the governor, or every eight years automatically. So I would encourage everyone to defeat this proposal.

[*Applauding voices of delegates present and a quorum.*]

Further Discussion

Mr. Stinson Mr. Chairman, fellow delegates, most of the points that I wanted to cover have already been covered by the prior speakers. But I would like to point out that I'm certainly in favor of the present provision concerning this matter. I don't believe it's better to have that I like to point out in the present time the Pardon Board, for those of you that don't know, meets in New Orleans. If you have a case that has to be presented, it's advertised in the papers where the crime was committed and the person was tried and sentenced. Those people are in favor or in favor of the application have the right to appear before the Pardon Board and be heard. The three gentlemen that preside on that have already been named. It is a fair hearing, it's open to the public. Under this provision of the committee, there is no hearing, no public hearing, left up to one man. The human flesh is weak. One governor, and I've been accused when I was in favor of retaining the sovereignty of the state, that I believed in a king. Well if there ever is a king maker, this is. The old saying, "the king is off with your heads" or "your pardon" or whatever it is, that's putting the governor in the position of a king. He doesn't have to have any hearings, he doesn't have to have recommendations from anyone. No one knows when he is going to grant that and I think that it's too much power to put in the hands

of any one human being. Only favorites will be pardoned and not maybe those that should be. Now if there was a requirement saying that the governor would and shall review every case and pass on it, it would be all right. But the only case that is going to get to the governor, he's not going and go through and look for them, are those that someone in jail or the penitentiary that has political pull. Politics will come into this more than anything. It's a chance for graft and payoffs. You're sentenced for 80 or 90 years in the penitentiary. It sure is a big temptation to try to buy the governor and get out instead of staying there that long. I'd like to urge that this amendment, as some others have said, is at least better than what the provision is here. Let's adopt this and then if Mr. Jack's amendment comes up placing it back in that context, let's vote for that at that time. At the present time, you noticed on your digest on your table, the governor can only pardon after it has been recommended to him by the present board. The person entitled to be there with his lawyer and whatever may be to have a fair hearing. There is nothing under this committee report. In fairness, let's adopt this resolution leaving it up to the wisdom of the legislature...

Questions

Mr. Burns Do you realize, or do you know that the vast majority of the more serious crimes such as armed robbery, rape, murder are being committed by convicts that are out on parole or reprieve?

Mr. Stinson Yes sir. And not only that, I was on the Drug Committee under the last administration and we had hearings there and we had people that are pardoned so fast that they get caught the day they get out and go right back to the commission. I missed other crimes when they got out. We've got to...under this, a person from that parish wouldn't even know a man had been pardoned because there is no advertisement, there is no nothing, knowing when this case has even come up. So, ladies and gentlemen, I'd like to urge you to let's adopt this amendment and then when Mr. Jack's comes up or his co-authors come, put it back like it is at the present time. I haven't heard any criticism of the present situation. In fact, if anything, it's too lenient. But under this, the gate is going to be open wide up and politics are going to play the part. I don't care who the governor is...

Mr. Jack Maybe I misunderstood you, I think you said...Mr. Stinson, I think you inadvertently said to please adopt that amendment. You mean please defeat it.

Mr. Stinson No, you misunderstood me. Yours might not pass. As safety, I want to adopt this one and then adopt yours when it comes up. I believe in two shots instead of one, Mr. Jack.

Further Discussion

Mr. Guarisco Ladies and gentlemen of the convention, I know we have a short House right now, but I believe, and I think a lot of people will agree with me, that this is probably the most serious substantial issue we've taken up thus far in the convention. We are speaking about civil liberties, although that was probably not the intent of the Executive Department, we are here now. For an example, a person could be convicted of a crime that was heinous at the time, heinous by legislative standards, but as time passes, those crimes will be reduced and the sentences will be reduced and the person who went to jail for that crime will have to stay there. I have the Code of Civil Procedure of the state of Louisiana and the Code of Civil Procedure of the state of Louisiana, I have the section on habeas corpus. Habeas corpus is the method by which a person who is in jail may possibly be released and other than by a conviction of sentence. Would you believe that nowhere in this book, in the law, can an innocent man who is convicted properly who

is later found to be innocent by a jury, the confession of the guilty party, under the amendment, able to get out of jail. There is no way. There is no new trial for him because the only way he can have a new trial under this statute, under the habeas corpus article, is if there was an error in his trial. We're also talking about the issue of separations of power. What's to stop an emotional legislature from invoking serious, very serious penalties for even minor crimes. Persons going to jail under these sentences and then have no recourse to any other authority. I think we have to have a court of last resort and the executive has to be that person. Well, you say you're going to allow, let a lot of guilty people out. Well at least the governor can't do you in. The legislature can do you in.

Questions

Mr. Singletary Mr. Guarisco, did I understand you to say that under the law there is no right to habeas corpus under this amendment?

Mr. Guarisco There is no right to habeas corpus in the Code of Civil Procedure of the state of Louisiana at this time. If you adopt the amendment, then there is no recourse whatsoever to get out of jail if you are convicted properly, even though you are innocent.

Mr. Singletary How so, sir?

Mr. Guarisco What?

Mr. Singletary How? How do you draw that conclusion from the amendment?

Mr. Guarisco I'll have to answer your question with a question. How would Mr. get out?

Mr. Singletary This amendment doesn't provide that the man has got to stay in jail after he's found to be innocent.

Mr. Guarisco But you took away the powers of commutation from the governor. Now who is going to commute if the governor doesn't commute?

Mr. Stinson Mr. Guarisco, have you read the case of the State of Louisiana vs. *Ex parte* [name] from Bossier Parish in which a writ of habeas corpus was filed in the federal court now because of the fact that he said he didn't have a fair trial and he's going to have another trial all over? The federal court ordered that and if they don't do it within 60 days, he's going to be released from the penitentiary.

Mr. Guarisco Mr. Stinson, you're probably talking about a federal case.

Mr. Stinson State of Louisiana vs. *Ex parte* [name] would be a Louisiana case. It was tried in Bossier Parish and the writ of habeas corpus went to the federal court and he's going to get another trial.

Mr. Guarisco That's exactly what I'm saying, Mr. Stinson. We have no rights under our state law. I want to find these federal rights in our state law and so far the legislature, in its wisdom, hasn't passed it. So we've got to look in the federal courts for these rights. No, I don't agree with that.

Mr. Stinson In other words, you don't think a person should seek his release in the courts. You think one man without any facts or anything should just go ahead and let anybody out he wants to and not be responsible in any way for whom he releases?

Mr. Guarisco Mr. Stinson, if we had these remedies in our state courts I would agree with you, but we do not have them. I'm reading the laws right here.

Mr. Avant Mr. Guarisco, is what you're trying to tell us simply this. That if this amendment passed

and the legislature passed a statute that said the penalty for the crime of murder will be life imprisonment without benefit of pardon, or commutation of sentence or parole, and John Doe was convicted of killing William Roe and 15 years later William Roe showed up and it was found out that he had been lollygagging around in South America all that time, that there is no legal procedure under our law for John Doe to get out of the penitentiary. Isn't that right?

Mr. Guarisco Absolutely right.

Further Discussion

Mr. Warren Mr. Chairman and fellow delegates, I think now is the time we should be having our prayer instead of this morning. I would like to say to say to all of the delegates and especially to the first speakers, I'm not for crime, I'm not for rape, I'm not for murder, I'm not for it in any form whether it's legal or illegal. I'm thinking now of a statement that was made some time ago, that it's not the man that steals that goes to prison, it's the man that kills that goes to prison, it's the man that gets caught. I'm also reminded of a question that I asked one of our judges in the city of New Orleans when we were discussing this same matter. We were talking about justice, and you know what disturbed me mostly was his answer. That it was nowhere in the law where a man had spent his life in jail for a crime that he did not do and was proven innocent, that he could get any kind of consideration or any reward for the time that he had spent there. I think we should defeat this amendment, I think we should spend a little more time on it. I'm not saying that I think the governor or one man should have all that authority, but I do think we should have a Pardon Board. I want everybody tonight, and I'm not Reverend Stovall and his minister, but I want everybody to go home tonight and pray, because if God gave us a new just dues, I wonder where all of us would be today. At this time, all of you bow your heads and pray.

Further Discussion

Mr. Kilbourne Mr. Speaker, fellow delegates, I come here as one who I believe has been closer to this problem, probably at the moment, than anyone here. For 18 years I served as district attorney of the Felicianas. In my district, I had the Louisiana State Penitentiary. I just completed my last term last December. Now let me make this clear. I didn't get kicked out, I didn't seek reelection. Not to say that I might not have gotten beat, but anyway, that wasn't the reason I didn't run. I just got sick and tired of new rights. New rights all the time for the criminals, for the rights for the majority, law abiding majority of our population. As fast as we could put them in there, they would come in with some federal ruling that gives the criminals new rights and by which they could get out for. All this stuff about not having any rights, and be put there forever is the most ridiculous thing I ever heard of in my life. When I was district attorney I had the experience a number of times of convicting criminals, murderers at Angola, who committed brutal crimes against their fellow inmates. In several instances I got the death penalty against them. It was never enforced. If the governor didn't stop it, the federal court did. Somebody always stopped it. All the governor had to do after he issued the death warrant was to stay it, to stop it. All the federal judge or any judge had to do, issue a stay order and you're out. And I've had the experience of people that were sentenced to life in prison for murder of other inmates, and 10 years later, federal courts come up with a new rule—he didn't have certain rights which they said, via this Miranda case, for instance. And so they would file a writ of habeas corpus. Now let me tell you the way they do that. They got the jailhouse lawyers. They've got a staff of lawyers up there, jailhouse lawyers at Angola. They've got a law library at Angola. In fact, they just

had a case down here where the convicts were suing the warden up there cause they said he didn't keep the law library open at the right time. And they file one writ right after another. Every now and then they'll get a good one where the federal courts have made a new rule and I've had the experience of the federal judge ordering me to retry that man. Maybe he was convicted 10 years ago, and he said you've got to retry them within 60 days or let him go. Well can you imagine, no you can't, cause you've never had the experience of trying to go back and dig up witnesses in a murder case that happened 10 years ago. When the Supreme Court threw out the death penalty I think we lost a great deterrent. Even though we couldn't enforce it, there was a possibility we might be able to. Now the legislature has come along and said, in some cases, that you can't grant pardons, paroles, reprieves in certain kinds of very bad crimes, heinous crimes. I say this, under the present constitution...

Mr. Roy Will you yield to a question from Delegate...

Mr. Kilbourne No, I won't yield. Under the present constitution, I don't think those laws are constitutional because the present constitution says that it will have the right to parole, to pardon by the Pardon Board. So those laws, in my estimate, are ineffective. Now in a desperate attempt to protect our people from these murderers, these rapists...

Mr. Roy Wind it up, Mr. Kilbourne. you've got about 30 seconds left.

Mr. Kilbourne Well, I can't say much in 30 seconds, but all I want to say right here and now, you just let the folks know whose side you are on, the criminals or the law abiding majority of our society. I know which side I'm on.

[Previous question stated.]

Closing

Mr. Burson I agree with all the speakers that say this is the most serious matter that you've considered thus far. You know, it's amazing to me that the same speakers who've been up here for a month telling us how responsible the legislature is going to be under this governmental system are the same speakers that are up here today telling us that the legislature is going to pass laws and take away all of the rights of the people. Now, I don't believe that people like Mr. Triche, for whom I have great respect, would vote for laws like that, do you? If you'll read this amendment it says the legislature shall provide by law. The legislature can provide by law for all of these horror stories that we've heard up here including the innocent man who's found out after somebody went to South America. The legislature can provide by law and don't you believe that the legislature will provide by law the question of pardon. I remind you when we're talking about pardon, commutation of sentence and reprieve we're talking about remedies that are applicable after a grand jury has found an indictment, after there has been a conviction by a jury of twelve men and after a judge has exercised his discretionary power in the sentencing. I would also remind you that this committee proposal radically changes the present system wherein the trial court judge who knows more about the case than anybody else would be part of the body that would rule on this question of pardon. I submit to you, don't care what you do after, if you want to go ahead and adopt Mr. Jack's amendment, that might be all right, but I think somewhere in here we should maintain for the legislature the discretion to limit or restrict the power of pardon and parole, I don't care who exercises it, because that is the only way through the elected representatives of the people, that the will of the overwhelming majority of the people in this country who are fed up and sick and tired of permissiveness will be heard. You can be-

I believe that because it's proven every day. Now, you know, I can understand the concern of certain delegates to this convention about law enforcement procedures in general and about justice because history has shown that they have not been fairly treated, but I ask you to remember two things here. First of all, one of the greatest injustices that has been done to minorities in my view, in the United States, is a failure to prosecute people and convict people for crimes committed against individual members of minority groups. That's one of the greatest injustices that's been done, and I submit to you that individuals who are members of minorities are probably percentagewise the victims of serious crime in this country more than anybody else. I would like to make a second point in that regard. I wonder how much some of you here as delegates today would like to depend on being on your freedom the whim and the will of a single man, the governor. Now, y'all are all thinking about Governor Edwards, but let your mind drift back if you will and think about some other governors we've had and consider whether or not you want to give a future governor, because you don't know what he's going to be like, all of this power to decide as one man without any hearing as required under the present law whether a pardon, parole or commutation of sentence will be granted. I point out to you, Mr. Triche made a distinction between parole and commutation of sentence, the practical effect of granting a man a parole after serving five years and commuting his sentence to five years is the same. He's out on the street. If he's an armed robber and he's committed ten before, he'll go back for number 11. I think that we're all grown men and women and we know that the issue in society today is "have we gone so far in our regard for individual rights" which I am for. I'm for the Miranda decision on confessions. I think it's good law, but you reach point in time where you have to think about the overwhelming majority of law abiding citizens, and I submit to you that their will; the instrument of their will under our system, is the legislature. I submit to you that I have confidence in the legislature in the passage of criminal laws just as I have confidence in the jury of 12 men of your peers to decide whether you're innocent or guilty. That's our system and that's all I'm asking to be employed in this case.

Chairman Henry in the Chair

Question

Mr. Roy Mr. Burson, I noticed that everyone who talked was a D.A. or an assistant D.A. in favor of this absurd result, but in any event is it your statement to this body of delegates that it takes a grand jury indictment for any crime other than murder or capital crime? Cannot the D.A. or his assistant bill for armed robbery and require a 99 year sentence in certain cases?

Mr. Burson Yes, sir. But I understand under the proposal coming out of your Bill of Rights Committee we'd do away with that and have to have a grand jury indictment for every burglary we would have.

[Amendment of Article, Amendment
24-50-1, 45-50, Motion to
Reconsider tabled.]

Personal Privilege

Mr. Stinson It will be very short. Mr. Chairman and delegates, I resent Mr. Roy deliberately accusing all of us being district attorneys. I'm a defense counsel and the rest of those were. There was no...as far as I know...a district attorney or assistant that spoke in behalf of that amendment. I resent...

[Motion to take up other orders of
the day adopted without objection.]

[Journal 262-263]

Personal Privilege

Mr. De Blieux Mr. Chairman and ladies and gentlemen of the convention, I'm getting somewhat concerned about our committee meetings. I don't know when we're going to be able to finish if we have any more committee work to be done, but as I see this thing, if we're not going to have some time to cover the work in these committees, we're going to be in a worse jam than ever. I just wondered if we can't find some way or some schedule to where we can have an orderly meeting of the committees rather than trying to do it after adjournment and on days other than when the convention is in session. I just ask that in hopes that maybe the Executive Committee in its meeting Thursday can work that out.

Mr. Henry Senator De Blieux, let me assure you that you can feel free for your committees to meet on Mondays and Tuesdays or Saturday afternoons or Sundays, but we have some business in this full convention to take care of, too.

[Adjournment to 9:00 o'clock a.m.,
Saturday, August 4, 1973.]

Saturday, August 4, 1973

ROLL CALL

[The following members were present: Mr. Stovall, Mr. Hardin, Mr. Jack, Mr. De Blieux, Mr. Pulletin, Mr. G. J. ...]

PRAYER

Mr. Stovall: Let us pray. Eternal God, Father of us all, the One who in the beginning said, "Let there be light," and there was light, the One who led the people in bondage to a promised land, we celebrate Your presence with us here today as the One who continues to give light in our darkness, and as the One who offers to us a new future and a new possibility. Make Yourself known to us here assembled that we might be opened to Your guidance, that we might enable a new day for our State. We're grateful, Oh Lord, for the faithfulness, the commitment, the deep concern of each of these assembled here. Bless us in our deliberations today that all that we do and say might be in keeping with Your Holy Will for we offer our prayer in your name as the One who was and is and ever shall be. Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Amendment

Mr. Hardin [Assistant Clerk]. At the time of adjournment yesterday, the convention was discussing Section 5F [of the Amendment to the Constitution, No. 3]. We have amendments pending, Mr. Chairman.

The first set of amendments is sent up by Delegates Jack, Gravel, Avant, Triche and Stovall. Amendment No. 1, on page 4 delete lines 6 through 12 both inclusive in their entirety and insert in lieu thereof the following:

F. Pardon, Commutation, Reprieve and Remission. Board of Pardons.

1. The governor shall have the power to grant reprieves to those convicted of offenses against the state and upon recommendation of the Board of Pardons may grant commutation of sentence, may pardon those convicted of offenses against the state and may remit fines and forfeitures imposed for such offenses, providing however, that each first offender, who has never previously been convicted of a felony shall be eligible for pardon automatically upon completion of his sentence without the aforementioned recommendation.

2. The Board of Pardons shall consist of five electors appointed by the governor subject to confirmation by the Senate. Members of such board shall serve a term concurrent with that of the governor appointing them.

Explanation

Mr. Jack: Mr. Chairman, ladies and gentlemen, this is to replace the amendment that I've held in reserve that would put back instead of this material on the yellow pages in case it was amended or wasn't amended. Because I did not like the committee's proposal Number 4. It's replacing the entire power of pardon, commutation, etc. in the governor even though it also stated that the legislature would have a concurrence right. Now, the inherent right of pardon and commutation is, as I said before, it's an executive matter. Now, this amendment we're talking on now is in line exactly with what I stated yesterday over the microphone. Bear in mind this, since 1940 when I became familiar with pardons and paroles and those things and all that kind of clemency, I am yet to see a lieutenant governor or an attorney general that really wanted to serve on the pardon board. Now, this is a different board than the parole board. Most all judges I've talked to have stated that it is an executive power and they shouldn't be on the pardon board. They don't want

to be on it. They do not attend it except with few exceptions. The judges in Orleans Parish do attend, but the rest of the state, some of them do from Caddo. The rules seem to provide that in the rest of the state they can vote by...right at the bottom of the petition. Here is what this amendment now does. It looks about like everybody that wanted to be interested in it as far as submitting it, instead of having the lieutenant governor, the attorney general and the trial judge acting as a pardon board, this provides that the Board of Pardons shall consist of 5 electors appointed by the governor subject to confirmation by the Senate and the members of that board shall serve a term concurrent with that of the governor who appointed them. ...You will have five people appointed by the governor and they will be from whatever walks of life the governor chooses...I will try to answer any questions that any of you may have.

Questions

Mr. De Blieux: Mr. Jack, at the present time I believe we have a Court of Parole. Do you know exactly how the Court of Parole is appointed?

Mr. Jack: Yes, sir. It's appointed by the governor.

Mr. De Blieux: Now, why couldn't the Board of Parole and the Board of Pardons perform the same functions insofar as recommending commutation of sentence and so forth.

Mr. Jack: Well, I'm glad you asked that because to be able to answer it...day before yesterday I went over and I talked to Mr. William Barnett who is a new member of the Board of Pardons and I talked to Miss Sybil Pulletin, who is the Chairman. I talked to one of the other members, I forget his name right now. I checked into this matter over a long period of time. The functions of the two boards are entirely different. On top of it they should be full time boards. Just like, you can't always put everything on one court, they don't have enough time, but one of the main differences is that they perform a different duty. A Parole Board deals with people who have served a part of their sentence. They do not deal with pardons. They do not deal with commutations. Now, if you're going to give one board this same duty, I thought of that years ago, and went into it, but if you have one board doing the same thing they're going to, from the beginning get a wrong, unfair slant. We're trying to require the Parole Board to release people when they reach their peak. Now, suppose a kind of like the judge, he shouldn't hear evidence on the outside. He ought to hear it from the witness chairs, and not be biased, and they think better to start out with it that way, and they've got their hands full. They have to handle these cases all over the state. You have two different boards. Now, we're doing everything we can under these laws to release people that we do at a proper time. It may be that for instance I personally think a lot of people, and I'm a strong believer in capital punishment, but I don't have my way on everything; a lot of people think they ought to drown everybody in the penitentiary, and let me tell you, you might be drowning your cousin or your nephew or...

Mr. De Blieux: You still haven't answered my question.

My question is, why can't the same board, since they are dealing with inmates in our penal institutions, perform both these functions? I know they are different, but I just want to know why.

Mr. Jack: All right, that's one of the things. They're different functions. Just like the district attorney can't handle...be the judge...lots of functions...they kind of conflict.

Mr. De Blieux: What would be the conflict between the Parole Board and the Parole Board?

Mr. Jack: Well, you're dealing with different

things. You're dealing with...you're always dealing with guilty people when you're dealing with the Parole Board. Now, if you want to save some money, Mr. De Blieux, you could just let the governor handle all pardons, paroles,....and delegate the authority to wherever he wants. Now, it's just been shown that it's better to have separate boards...that you get better justice. Now, it would take me an awfully long time to tell you how much investigation goes on. Now, people are concerned about a slip up and release the person too soon. Now, where you've got two boards, you're not eligible to the Parole Board until you reach a certain plateau. Now, if you leave it to that one board, you're liable to turn loose a person that you wouldn't have turned loose if you had two boards.

Mr. De Blieux Mr. Jack, as I understand and have been informed that the Parole Board has to review the records of all the inmates at certain intervals. Now, since they would have knowledge of all this, wouldn't they be in a better position to recommend a commutation or a pardon than an outsider who doesn't know anything about those records?

Mr. Jack No, because the Pardon Board has access to everything itself. The Department of Corrections is over it all. It can furnish it to all of them.

Mr. Chatelain Delegate Jack, I understand your amendment deals only with pardons. Is that correct, sir?

Mr. Jack It deals with pardons, commutations of sentences, remission of fines and forfeitures, just like the present law.

Mr. Chatelain I'd like to ask another question, sir. I'm having a little difficulty in understanding about the middle of your amendment here, you have "may pardon those convicted of offenses against the state..."

Mr. Jack Wait just a minute. There's so much noise, I can't hear the question, Mr. Chairman.

Mr. Chatelain "...may pardon those convicted of offenses against the state and may remit fines..." will you tell me just a little bit more about that, sir?

Mr. Jack About what?

Mr. Chatelain "Remit fines and forfeitures imposed".

Mr. Jack Well, I've never seen a fine remitted. I never have. That's in the present constitution. They could remit a fine. I don't know the forfeiture, what it would be. One is, when you get convicted of a felony, you forfeit your citizenship, I don't know whether it's talk about it or not; that's just tracking the line on that word "forfeiture".

Mr. Chatelain I'm having a little problem in correlating the two. On the one subject you're talking about recommendation of pardon and the other time you're talking about remitting fines. You see, that's what I'm having...

Mr. Jack It's all under the Pardon Board, under the same law for the governor to do it. He's got to have the recommendation of the trial judge, the attorney general and lieutenant governor or any two of them. Under this amendment, we track the same language; the only difference is instead of those three people being the Pardon Board, we're having a five member Pardon Board appointed by the Judge. We're not changing the law at all as it presently is.

Mr. Chatelain Thank you, sir.

Mr. Lanier Delegate Jack, in order to carry up on some of these points brought up by Mr. Chatelain,

your provision provides that the power of the governor to grant a reprieve is unlimited so is the present law, is that not correct?

Mr. Jack That's correct. It's exactly the same. It's always been the governor's right. The reprieve, so everybody will understand, a reprieve doesn't turn you loose. It just holds up the starting of whatever sentence. Usually when a person has the death penalty and all his court procedure was exhausted, the governor would hold up with a reprieve until the Pardon Board passed on it.

Mr. Lanier Now, Mr. Jack, with reference to the granting of a pardon or a commutation of a sentence of a fine, is it not correct that it is your intention that this may only be done by the governor with the positive recommendation of the Board.

Mr. Jack That is absolutely correct. The only thing that the governor can do by himself under this amendment we're talking on is exactly what the present law in the constitution provides. The only thing in the constitution the governor can do by himself is grant a reprieve and where a person has served his sentence, that's the amendment in the last eight years. The governor can grant a pardon, to use the word "automatically", without the recommendation of the Pardon Board. You've got...I saw one last week, where a man was convicted in 1950 when he was a boy, no, you see that he had to hire a lawyer...that's really one of the purposes...but those things are checked out thoroughly by the Department of Corrections. They just don't automatically sign them, I assure you of that. They get the...

Further Discussion

Mr. Burns Mr. Chairman and fellow delegates, I certainly don't intend to take up much of your time on this amendment because I think it was thoroughly discussed and debated last night and everyone pretty much made up their mind when they voted on that amendment. However, this is an entirely different matter, and I spoke to many delegates and many delegates spoke to me last night after adjournment and all agreed on this one thing...that the thought that there should be some machinery set up to, not so much as to put a restriction on the governor...his unlimited power in granting commutations of sentences and reprieves and paroles and pardons and so forth, but to have a system in addition to his power whereby there would be some checks and balances on it, just as we've always had. Now, I think this amendment that we're discussing now together with an amendment that Mr. Burson is going to introduce in a few minutes will no just about as far, together with the proposals that the committee has introduced, to take care of this situation which we have to be confronted with, because after all ladies and gentlemen, we are responsible to the public. I think that they would be a lot more receptive and a lot more satisfied if we have the proposal of the committee...this Pardon Board set up under this new proposal or amendment...together with the amendment that Mr. Burson is going to introduce which I don't think you're going to find objectionable. If we pass these two, I think we've done just about all we can under the circumstances. I ask your earnest consideration. I want to say while I'm up here that just because I was district attorney for 24 years, one of the speakers inferred it was only the district attorneys who were in favor of this blood-curdling remedy and I assure I have no prejudice in this matter. I have no further political aspirations and my only desire up here, as I know it is yours, is to do the best we can to give the people a good constitution. That's all I'm interested in. I would ask very sincerely that you give your earnest consideration to these two amendments as they come up.

Question

Mr. LeBlau Mr. Burns, in reference to Paragraph

2 on this amendment, do you think this Board would really be effective since the governor appoints the Board and the Board's terms run concurrent with that of the governor? Do you think the Board would really be effective?

Mr. Burns: Actually, I couldn't give a definite answer in that, Mr. LeBlau, because in all these matters, all such things depend entirely on each individual. If you get a good governor in office, we're not going to have any trouble, and I'm not saying that we don't have a good governor in office now, by any means. But, if you get a bad governor, we'll say, and he'll circumvent this some kind of way, and you don't have to worry. He'll appoint a bad Board to begin with. It's just one of those things we have to live with and we have to do the best we can in setting up this machine.

Further Discussion

Mr. Dennis: Mr. Chairman, fellow delegates, I rise in support of this measure. I think it is of tremendous improvement over the present Pardon Board. As you have heard several times, the present Pardon Board is made up of the sentencing judge, the governor and the lieutenant governor. In my opinion, the sentencing judge is probably in the worst position possible to evaluate a prisoner as to whether or not he should receive a pardon after he has been incarcerated. 85 to 90% of the people who are incarcerated in our prisons got there by pleading guilty. Only about 10 or 15% went through a trial, so usually all the sentencing judge knows about a man he sentences is what he reads in a four or five page pre-sentence report which is written up by the Department of Corrections. Certainly, he knows nothing about the behavior or the record of a man after he goes into prison. So, in most cases, the judge is faced with the prospect of reading and making a decision with a very skimpy report about what the man's been doing in prison. He's sitting up in Monroe, or somewhere far away from the prison, far away from the Pardon Board, and he's asked to vote. I feel like it's a vote in the dark. I feel like the judge in doing this is not really even performing a judicial function. Although we say in our constitution judges shall only perform judicial functions, I feel this is really an executive function that has been tagged on to the office of judge. What happens in most of these cases is that the friends and the legislators or other political allies of the families of these people will go to the governor and the lieutenant governor and they will be told, "well it's up to the judge. If you can get the judge to go along with it, we will too." So, everybody then comes upon the judge sitting in his office far away from any real information about this person and says "Judge, you're the only one holding this whole thing up." I just don't think that the judge is in a good position to evaluate these cases after the fact. I think it would be to believe it's a judicial function in the first place. I think this amendment does what we have needed for many, many years and that is give us the chance of having a real professional non-political Pardon Board. So, I ask you to support this amendment.

[Previous Question ordered. Quorum call:
102 delegates present and a quorum.
Record vote ordered. Amendment adopted:
102-1. Motion to reconsider tabled.]

Amendment

Mr. Hardin: The next set is by Mr. Burson. Amendment No. 1, on page 4, line 12, immediately after the period add the following: "the legislature may restrict or limit by law the exercise of the powers of governor to reprieve, grant commutation of sentence, or pardon in establishing penalties for any crime punishable by life imprisonment". A technical amendment is also necessary.

Explanation

Mr. Burson: Fellow delegates, the amendment that I offer today is considerably less broad than the one I offered yesterday. The amendment that I offered yesterday would have permitted the legislature to restrict the governor's power of reprieve, commutation or pardon in any crime. The amendment I offer today narrows the issue down to one single issue. That is whether or not you are going to permit the elected representatives of the people of the state of Louisiana to pass laws which will provide for a life imprisonment sentence that means more than whenever the Pardon Board or the governor thinks it should be. Act 111 of 1973 set forth that for the crime of second degree murder that a life imprisonment sentence would mean at least 20 years. Now, if you think that a life imprisonment sentence should mean what it means now which is that the person is eligible for parole in 10 years and 6 months, then go ahead and vote against my amendment. We know that the death penalty is a dead letter, and I submit to you that the law-abiding citizens of this state are entitled to know that somewhere in a life imprisonment sentence that means more than 10 years to 6 months. I heard a lot of horror stories yesterday about what might happen. I'd like to challenge the people that come up here with these horror stories, to give some names and dates and places, can sit here and imagine all sorts of possibilities, but I want to point out to you that under this amendment you're not affecting any judicial process and that anyone at anyone can go into federal court, a writ of habeas corpus, and ask for the release of any matter in a criminal case. No judicial process is affected by this now, we're grown men and women here. What am I talking about? In the history of this state, it's no secret that pardons and paroles have been bought and sold. There used to be at one time a schedule which set the cost of a certain price depending on the gravity of the offense. I'm not saying that's going to happen now, but people are people. Human nature doesn't change. I submit to you that you have voted today for a five member Pardon Board appointed by the governor. Now, what is the governor going to appoint to that Pardon Board? I don't know but I think it might be like the Parole Board. I only know one member of the present Parole Board. He's a fine man. He used to be a state senator and he got defeated for reelection. Now, did he all of a sudden by getting dis-presidence and wisdom, whereas if he was still in the legislature he would have been a politician. That doesn't make sense. Is the governor a politician? I ask you that. Is he more or less of a politician than the members of the legislature? The members of the legislature have the right and the duty to define the criminal laws of this state and the only thing that we're asking you to do under this amendment is to permit them to do as they did in Act 111 of 1973 to provide for a life imprisonment sentence that means more than 10 years. Do you know that under the law of this state at the present time if you're convicted for armed robbery you can receive up to 99 years whereas if you're convicted of murder and you receive a life imprisonment sentence you're eligible for parole in 10 years and 6 months. Now, does that make sense? It sounds rational to you? Do you believe in the final analysis that a life imprisonment sentence...the length of a life imprisonment sentence should depend on how much political influence a man has, because don't kid yourself...as long as you've got an open season on pardon, parole and commutation, that is exactly what you're talking about and I challenge anyone to get up here and deny it. In the final analysis you've got to decide whether you're going to be more concerned, and I don't question the motives of those who are very concerned about the individual whose rights may be abused. That is certainly valid. I would like to point out that those people yesterday who were talking about the fact that district attorneys were speaking for this, I think were injecting into the debate an element that doesn't belong there. You wouldn't get up here and tell you that all of the people who speak against

this are attorneys who have dealt in pardon and parole before, but I'm sure there may be a few who speak against it. District attorneys, after all, represent the people of the state of Louisiana in criminal prosecution and while you're feeling sympathetic I urge you to open your heart to some cases that I've seen. Like last year, in our parish where a man was convicted by a jury after grand jury indictment of murder at a church fair and was back on the street within six months. I can get you the record and show it to you. As long as you don't permit the legislature to place some limits on this power of commutation, pardon and relieve those things are going to continue to happen if someone has sufficient political influence. As I say, I don't question the motives of those that oppose me on this, but I want the issue to be clear-cut this morning. You know, you go to a cocktail party, or you talk with people in the barber shop and somebody's always saying, "Oh, something ought to be done about this law and order situation." Well, I'm giving you a chance this morning to do something about it. If you don't do something about it then don't go to your legislators in the future and blame them. Don't blame the judges; don't blame the district attorneys; blame the members of the Constitutional Convention of 1973, because unless we put in the constitution the proviso that the legislature can restrict or limit this power, they can pass laws until they're blue in the face, and those laws will be flatly unconstitutional on their face, because you have given this power this morning in a manner that is unrestricted by any ordinary law of the state and cannot be restricted by any ordinary law or the state. I urge, in the strongest possible terms, your support of this amendment.

Question

Mrs. Warren Mr. Burson, I notice you mentioned the Legislature having the power to curtail the power of the governor and that had any objection to that. This is what I would really like to know. I'm going to give you an example. If a child went to the penitentiary at the age of sixteen and he lived to be ninety years old would he or she have to stay in there the rest of his natural life or would there be a twenty or thirty or forty year sentence? Just an example.

Mr. Burson Mrs. Warren, I can't predict the future of what the legislature would do but I can tell you what the situation is under the present law. Under the present law, the life imprisonment sentence is for second degree murder. Not for manslaughter, not for any other crime, but for second degree murder. And, Act III of 1973 provided that anyone sentenced to life imprisonment for second degree murder would not be eligible for pardon, parole, suspension of sentence, until twenty years, not for the rest of his natural life. But you see, under the armed robbery statute today, that same boy under the armed robbery could receive a ninety-nine year sentence and would be eligible for parole until thirty years, but if he is sentenced to life imprisonment for murder he is eligible for parole in ten years and six months. Now, somewhere along the line that doesn't add up to me. It is not a rational system of law.

Mrs. Warren To me either.

Further Discussion

Mr. Avant Mr. Chairman and convention delegates. I rise to oppose this amendment and I am going to try to be factual, not emotional. I want to clarify one thing. For the benefit of anybody who might have any notions to the contrary, I am one hundred per cent in favor of the sentence of ninety-nine years for the crime of armed robbery. I've got another crime that I would like to see the legislature add to that. It should also carry a ninety-nine year sentence. And that is for the burglary of a residence while armed. I say that for this reason. I equate both of those crimes as to their heinousness with the crime of murder. I believe any person who would arm himself with a dangerous weapon

and rob you or any person who would arm himself with a dangerous weapon and enter into a residence will kill you if the circumstances arise where he thinks that is what he ought to do. Now we could get into a big long discussion on the administration of the criminal laws. I have my own ideas. I think that the greatest thing we could do to stop crime in this country would be to expedite and make more efficient our judicial processes so that the list arm and crime list and tried and sentenced and put in the penitentiary without a lot of monkey business and delay and once he is in the penitentiary and has been legally convicted that he is not let out on some technicality. But, this has got absolutely nothing to do with that. This is what we went through for some two hours I believe yesterday. This amendment, if it is adopted, contains within it all of the objections and all of the fallacies that were contained in the amendment yesterday, that we voted down. I am not going to waste a lot of your time but I just want to point out to you that there is no restriction on the legislature as to what crimes it can provide will be punishable by life imprisonment. They can add to that list armed robbery, they can add to that list burglary, they can add to that list armed and crime they want to. So this amendment puts us right back where we were yesterday and while I feel as I do towards crime and while I feel as I do toward certain most heinous offenses, I recognize and I think any reasonable man must recognize, that whenever you establish a system that is administered by human beings that you leave room for human error, and people make mistakes. Judges make mistakes, juries make mistakes, we all make mistakes. The only thing I am asking you is to recognize that fact and to provide a check on us for the mistakes that may and will and undoubtedly are going to be made. Don't lock the door and throw away the key, because sometimes a mistake is made and if you leave this to the legislature there is no check on what will be done. The power of executive clemency is traditionally vested in the executive under our system of government.

Further Discussion

Mr. A. Jackson Mr. Chairman, I will rise against this amendment and I believe we are writing a constitution for the people of this state that I hope will last for some time. I do not believe that it is in the interest of the people of this state for us to put this sort of restrictive language in the constitution that will throw us back in what I consider the dark days of being able to reform our system of justice and our penal system in this state. Now I think that we need to address ourselves to the simple question. The question is how we are going to effectuate penal reform. We are going to change the system of justice in this state. I do not believe that we need to put this kind of language in the constitution that would have the result of preventing us from making some of the changes that are so sorely needed. I think the past amendment that we have just adopted, the Jackson Amendment, is a step in the right direction because it establishes for the first time what I believe will be a board constituted of individuals who have some expertise, some knowledge in the whole area of penal reform, that will look at the sociological and environmental problems connected with the crimes committed and will make recommendations based on individuals growing out of their expertise and growing out of their knowledge and studies. I do believe that this will throw us in the dark days as it relates to penal reform. I have heard a lot of references being made to Act III. Mr. Triche was right when he said that the legislature is a political body. I tell you delegates to this convention that all of the death penalty bills that are now acts in this state were political decisions. All of them were political decisions that will be made by the legislature next year and the year after and ten years from today that relate to emotional issues growing out of the environmental conditions and the emotional conditions of that day will be political decisions. We are doing this. We are doing this. We are presuming that the human life is precious,

that we ought to believe in the ability of men to be rehabilitated. I do not believe that this is in the interest of penal reform. I do not believe that this allows for the fact that men have their weaknesses, that men will make errors. Just last week, I talked to a man who served forty-five years in a Texas prison for a crime he never committed and nobody has ever given him any consideration. They admit that they made a mistake. I call upon you ladies and gentlemen, the delegates of this convention, not to restrict this constitution, not to throw us back in the dark days, but to recognize when we talk about serious crimes, when we talk about the heinous crimes of today that we need to look not only at the individual committing this crime but we need to look at all of the social and economic factors leading up to what is happening in this country today. We ought to be concerned about reforming the whole system of justice and the whole penal institution rather than place this kind of restrictive language in the constitution so I urge you to vote against this amendment because we have made a giant step forward by way of the Jack Amendment.

Further Discussion

Mr. Triche Mr. Speaker and ladies and gentlemen of the convention, I rise in opposition to this amendment. It is essentially the same amendment as offered by Mr. Burson yesterday which this convention rejected and it seems to me that we would be a lot better off if these snakes would stay dead once we killed them, but they seem to have a way of coming back. This amendment provides that the legislature may restrict and limit by law the power of the governor to grant pardons for crimes punishable by life imprisonment. Now gentlemen for serious crimes we are in effect limiting the executive power to grant pardons by allowing the legislature to restrict the power to pardon. Of course we give the legislature—it has the inherent right to define crimes and prescribe penalties. I would suspect that if this passes and if the legislature acts in the future as it has done in the past out of extreme emotion and reaction to immediate problems that arise at the time, we are going to have great deal of crimes described by the legislature, prescribing penalties of life imprisonment without benefit of pardon and I don't think that is what we want to do. I don't think that's what we want to do because you must first remember and I ask you to please consider that the right to pardon is an executive function, it has been historically and traditionally, it is founded on clemency. Pardon is clemency granted by the chief executive and it should not be embroiled in the legislative process and it should not be embroiled in the lawmaking process. The legislature ladies and gentlemen, yes, acts responsibly. Yes, it acts politically. I have no problem with that. The legislature also acts emotionally and reacts as people often do to circumstances of the present day. We just need to go back a few months ago when the legislature was in session only this summer, in the fiscal session, to consider only fiscal matters. As a result of one or two heinous crimes committed in the city of New Orleans we spent most of the thirty-day fiscal session trying to revamp our juvenile laws. I don't think until the legislature got home and the governor was able to consider these matters seriously and with due deliberation that he decided to...

Mr. Henry Wait just a minute, Mr. Triche, let me get you a little attention. Proceed, Mr. Triche.

Mr. Triche And if you recall, the main bill in that package to revamp our juvenile laws had to be vetoed by the governor because it was contrary to our constitution and because it infringed upon the jurisdiction of our court system. The only point I want to make here is that the legislature responds to emotion and responds to immediate circumstances as they exist and I don't think that is what we want to have the power of executive clemency subjected to. Executive clemency should always be

available to prevent miscarriages of justice and also to allow for clemency and mercy. Mr. Burson has suggested to us that nobody can recall circumstances and instances where miscarriages of justice have taken place and the benefit of pardon has relieved the miscarriage of justice. I would suspect that many, many lawyers sitting in the audience who have practiced criminal law have had experiences and I know I did. I recall when I was a young man just beginning to practice law, a family came to see me about a young black boy who was in prison in the state penitentiary for a sentence of twelve years. He was innocent. Do you know how he got to the penitentiary? After he had been incarcerated in the parish jail for about two months awaiting trial because he couldn't post bond, somebody in that jailhouse had talked him into pleading guilty to a crime he did not commit, because he was going to get a thirty-day suspended sentence. Oh, just go into court and plead guilty. All we want to do is clean up our books and clean our docket, and the judge will give you a thirty-day suspended sentence and you will go home, young fellow. And your family won't have to be troubled and you won't have to trouble the folks, and it will be all over and that is the easiest and quickest way to handle it. Four or five years later, his parents came to see me crying to get that boy out of the penitentiary. We were able to convince everybody involved that he had not committed the crime and we were able to get clemency for him and pardon that young man and put him on the street. Now that is one of the several instances that I am aware of and I know that all of you gentlemen who have had experience in the criminal courts are aware of similar circumstances. Gentlemen, innocent people do get convicted. Innocent people do plead guilty. Innocent people do end up in the penitentiary. In addition to that, gentlemen, people who do commit crimes and who are justly sentenced after a fair and impartial trial, do re-act, are rehabilitated, and are entitled to executive clemency and mercy. All of us believe that, and we ought not to deny it. I suggest to you that the danger of this amendment is that in the heat of passion in response to some heinous crime that has taken place and all the emotions that are going to pass law after law after law providing life imprisonment without benefit of pardon and we ought not to do that.

Further Discussion

Mr. Burns Mr. Chairman, fellow delegates, I always enjoy Mr. Triche's speeches and I enjoyed this one except that last dramatic incident that he so eloquently told you about but it just happens that that would be affected by this amendment. This amendment only refers to the life imprisonment. I think it is very necessary in connection with the amendment that we just passed. Now bear this in mind ladies and gentlemen, we no longer have the death penalty in the state of Louisiana, so what we are talking about are the life imprisonment sentences almost has to take the place of the death sentence. Now when you stop to consider, if you read the papers, you don't have to take my word for it, when you read of all these murders and rapes and robberies and all these murders and all of the extreme crimes, I would say the vast majority of them are committed by ex-convicts, by convicts out on parole, by convicts out on reprieve. They are the ones on the street because of the system we have and if we don't adopt this along with the one we just adopted it is going to be not only a continuation of it but it is going to be a growth and expansion of it, and I say that for this reason. It is accepted and has been accepted in criminal circles ever since I can remember that a criminal or potential criminal operates on three theories: one, he is smarter than the other criminals, he has devised a way by where he can commit this aggravated robbery and he is not going to be caught, detected and picked up by the law. Two, if he is caught and apprehended, he has figured out a way where he is going to get the best lawyer, he is going to beat the case in court by the employment of a good lawyer, by

working up some good witnesses. Three, and this is where this amendment comes into the picture, if he is caught and if he is convicted and if he is sentenced, that he has good connections and he has every reason to believe that he is only going to stay in there for a few months no matter how serious the commission of the crime or how serious the penalty. Now, all this does ladies and gentlemen is if a person is convicted, he ordinarily in some cases would have received the death penalty, of course in Louisiana he would never have been executed according to past records, but he could have received the death penalty. Well he can't do that any more so he receives the most serious penalty he can get under our present laws, life imprisonment. All this does is to give the legislature the right and the authority that in that one instance they can pass a law providing when a man has been sentenced for life that they can provide by act of the legislature that he has to serve twenty years, we will say. I just said twenty years they can't get out. As one of the previous speakers told you under our present law he could get out in ten. Well, I thought he could get out in seven. All in the world this does is empower the legislature in that one case, not all these other cases such as the one my good friend, Mr. Triche, just told you about, is in that one case that they can pass an act of the legislature putting some teeth into it where the public, the aggrieved ones, the families of the one who has been murdered and the families of the daughter who has been raped, they will have the satisfaction of knowing that when that guilty person goes to the pen for life that he is going to have to stay there for at least twenty years and not be walking the streets within six months raping other people's daughters, breaking into other people's houses armed with pistols and other things. I think it's not only right and proper to put some teeth into the law where it means something, but I think that you are going to find that the people are the ones who are either going to demand something like that or are going to be mighty, mighty unhappy if we don't provide it.

Further Discussion

Mrs. Warren Mr. Chairman and fellow delegates, When Mr. Burson was speaking I said, "Oh well, this might do." I was kind of caught between two opinions and then I began to think. Then I got a little more enlightened on what it was all about. Mr. Burson mentioned that he wished someone would give some facts. I think that Mr. Burson said, or one speaker said—I don't want to accuse anybody of anything they didn't say—that the newspaper gave accounts of what was going on. About two years ago there was an article appeared in the Times Picayune concerning a man who had been sent to prison for life and who had served fifteen years. When the attorney, an elderly man, told him he had to die, he could not live with his conscience so he called his son and another attorney who had worked along on this case and called in the proper authorities and said "We railroaded this man to jail and I've got to get you before I die." If he had lived fifteen years or thirty years longer, just imagine how long this man would have stayed in jail. There was an account in the Times Picayune concerning a judge's son who had run into difficulty with the law and he said he had sentenced many but he had come to face the same situation. I have seen reports of juvenile delinquency crime since 1964. I could bring to this auditorium a stack of reports about this high and if you would like for me to bring along with me a copy from the National Council on Juvenile Crime and Delinquency, the October issue of 1964, I would like to bring it along and read it to you. It is too long for me to tell you about it. But the second the legislature could have this power to limit or take away the power that you have already given him it is like saying you are going to give me a chance to live and then you are going to take it right out of my hands again. I want you to think about it and I want you to pray about it because there is nothing that is hidden that is not coming to light and God is sitting up high and he is looking down low. I

would like to say to you I have not been in government, but I am not ashamed to say that I am a politician. I know where I came from and I know who sent me. I am going to say to you today many years ago we had cities which were destroyed because the government had become so rotten—destroyed. Today we are facing all sorts of famines, the flood waters, pollution and things like that. Let us not sink our state and our nation because we do not want to forgive others as God so forgives us each day. Thank you. I urge you to defeat this amendment.

Further Discussion

Mr. Jack I rise to oppose this amendment. We have discussed it backwards and forwards. Now, you have got to have trust in your machinery that you set up in your government. Different people say certain things can't happen but they can. The assumption under the Burson Amendment is that the legislature would pass the law where you were serving a life sentence you could never get out of the penitentiary. Now, if the legislature passed such a law and the Burson Amendment passed, then that is correct. It could be a seventeen year old boy or girl with a life sentence would stay down there eternally as far as the pardon board ever trying to give them any relief. It would be cutoff. That is correct and anybody says otherwise I wish they would talk to me before they make that statement. The next thing, I do not see how the Supreme Court of the State of Louisiana could bring under their jurisdiction, they would uphold such a law. You would not have uniformity of the law. Just like in the death sentence. Now I repeat again I believe in the death sentence in the proper case but the Supreme Court held that unconstitutional because of it not being uniformly applied. If the legislature passed a law that resulted in the life sentence not being uniformly applied that would be held unconstitutional by the Supreme Court of the United States. Now listen to this "if". If you had the Burson Amendment passed and the legislature passed under the Burson Amendment here saying that when a person had a life sentence the jury, or the judge even, could say that person can not get out in fifty years or ever get out. Then you would have the Supreme Court of the United States say that is unconstitutional for this reason; we looked at that and we find that if the person was allowed to plead guilty to life imprisonment by the consent of the district attorney with the stipulation that there would not be anything tacked on to that life sentence, like never subject to commutation or that it meant his natural life or it meant fifty years, then that would be discrimination from what a jury might say if that person took their day in court. The Supreme Court of the United States would say a person has their right to their day in court, and that person who took his right say showed up with a verdict of the jury, life without ever any commutation served until they are dead, dead, dead. Then the Supreme Court will have evidence in other cases where people pled guilty with the consent of the district attorney that the judge didn't tack on anything like that. They would say that the law is not uniformly being applied. Historically, executive clemency has been like this and that is the only way you can do it properly. I say that if we pass this amendment we are just doing it emotionally. I want people punished as much as anybody when they are guilty but I don't want under the stress of emotion things being done that later would be regretted. Now here is a thing I talked to one of them about—you could do, you could increase the penalty for manslaughter. Just like we have a penalty up to ninety-nine years for armed robbery, and I voted for that in the legislature and I voted that it wouldn't be subject to parole, but it is subject to commutation and in the proper case you can take a person convicted of armed robbery or attempted armed robbery which are not subject to parole and have them put in the penitentiary. You've got to always have some escape hatch from a horrible wrongdoing and have a method of undoing it. I am not being for turning people loose

here and there. I'm a citizen. I want to live. I don't want to be shot. I don't want to be robbed, but we are not going to take people out to Angola like they are rats and drown them, whether you think it is a good idea or not, we are restricted in things. So let's try to have laws that we think out and not emotional and that work. I have studied this thing for years. I have always been interested in criminal law and I think the amendment we just passed that is authored by five people who are familiar with this field covers this subject. The other amendments, and I have read them, I am going to be against them.

Further Discussion

Mr. Roy. Mr. Chairman and ladies and gentlemen of the convention, I am going to move the previous question but in view of the fact that someone else will speak, I have something to say. In the book, *Love Story*, Erich Segal asks "Who do you say about a twenty-five year old girl who died?" I ask what do you say about a national paranoia of law and order to a group of honest, dedicated, well-meaning whites who may be headed in the wrong direction? I say whites because the blacks among us, long the recipients of this law and order paranoia, need not be reminded of its consequences. Do I repeat that Pappy Triche was eminently correct when he said that you are confusing parole and probation, a legitimate legislative function, with commutation and pardon, a legitimate executive function that only the governor is equipped to handle because of those cases where it is needed? Could I call your attention to the fact that the common denominator of all the arguments supporting the Burson Amendment is some individual case history or some specific event resulting from some probably parolee's conduct rather than a pardoned person's conduct? And I remind you that it was a crowd or the jury who erroneously said that Barabbas be freed and that Christ be crucified. Need I try to trace the history of parole reform by quoting Carl Menninger et al. and ask is it Dante's Inferno that we wish or enlightened penal reform. Need I remind you Mr. Burson, whom I admire, that only twenty years ago an enlightened legislature of this state passed discriminatory laws with respect to certain groups because of emotional needs and the emotions that the people had about the matters. Let's you older gentlemen forget, was it not the Reichstag in World War II and III Germany that allowed a madman to execute six million innocent men, women and children in the name of scapegoats. I must remind you, for we are now discussing that issue, namely, will the traditional constitutional concept of commutation and pardons be subverted to statutory status to be abused at the whim of a capricious legislature. I agree with Mr. Burson when he said that is the issue. And it is the issue. Are we going to take a legitimate constitutional provision, traditionally in every constitution in the world, and remove it and make it nothing more than a statutory piece of legislation? You may choose to say so. So long as I am a delegate I will speak against such paranoia. I will oppose all attempts to make this state constitution nothing more than a bill of indictment or information to satiate the desires of some well-meaning but misguided advocates of law and order. Further, I want to remind you that if you talk with any attorney here or you check any records you will find that most murders are committed between and among people who either love or once loved each other. Most murders are not premeditated. We are not taking away the right of the governor to never give pardon or commutation to a premeditated murderer, but we may allow him for those people, who in the heat of passion kill their loved ones because of some conduct, i.e. being caught with someone else, the right to commute a sentence. I heartily oppose the amendment.

Further Discussion

Mr. Champagne. Fellow delegates, I am going to be very brief, and direct to the point. I have very

few statements to make as a non-attorney. Those statements are that capital punishment is a thing of the past and perhaps, emotionally you are just making it a thing of the past, perhaps emotion and wisdom should direct us to a realistic life imprisonment. I feel that Mr. Burson's Amendment is not designed as a reprisal or a method of seeking revenge. I see it merely as one of the very small means of providing that you and I, and our families can again walk the streets and the byways of this state without fear of the criminal. I thank you.

Further Discussion

Mr. Weiss. Fellow delegates, before moving the previous question and before moving the motion, I would like to attempt to summarize this very eloquent discussion in that we have met this matter headlong in the Bill of Rights Committee and have spent many hours discussing this. I would like to compare this discussion to the three blind men and the elephant who each describe the tail, the trunk and the legs. I think each person up here is very sincere in what they had to say. Each one--the district attorneys have related a very important phase of their undertaking. Others who feel very strongly as a citizen on the street, insecure in their own person as they walk down the street day and night, in expressing the belief that criminals should be removed from the scene, either by life imprisonment or otherwise. I can vouch very definitely--pronouncing people dead who have been murdered by criminals in our community, the very famous [...] case. I had the misfortune of pronouncing this woman dead who was allegedly murdered by this individual. These are serious problems. Now we have had great minds tell us what they think and I think of great minds are still in doubt and somewhat confused and of course those of lesser caliber are even more confused about these issues. It's been said I believe by other great men that when in doubt, serious doubt, you should act emotionally but where possible act by reason. I think there is no question in the particular floor amendment that reason should predominate. The predominant factor here I feel only is one thing and that is executive clemency. I believe as we argued sovereign immunity, the issue here is executive clemency. If you are in favor of executive clemency, you will vote against this. If you do not believe that is the case and want the legislature to act along with the governor on these matters, of course you will vote for it. I think that the issue is a highly significant one and I at this time feel that executive clemency is the issue here and that we should allow our governor to make these decisions. The people have elected him to this responsible position, we desire to give him more authority, and sometimes in the most serious of cases and with a parole board to advise him, I think that a governor will be responsible in such serious situations. Therefore, by reason, I must vote against this amendment.

[Previous Question ordered.]

Closing

Mr. Burson. Ladies and gentlemen, I absolutely deny the proposition the law and order is a white paranoia. We have heard some cases about injustices against blacks, let me tell you about an injustice against a black in a case I prosecuted this spring where a black girl who on psychological examination had a lower I.Q. than a retarded person was a victim of a gang rape by ten men. Her poor father and mother who would barely speak English were standing out in the courtroom waiting to appear as witnesses and being harassed by some of the codefendants in the hall. Those codefendants firmly believed that they could not be brought to justice under the law and they continued to harass the witnesses in the hall until after the trial. A jury composed of nine whites and three blacks found a verdict of guilty as charged. Do you think it is fun to see the husbands, the wives, the mothers and fathers

of criminal defendants crying after a jury finds them guilty? There is nothing funny about that, but somebody has got to do it because if nobody does it, we won't have any more law. We will have anarchy and you know what happens in the state of anarchy? The strong prevail and the weak die. Now Thomas Hobbs said in the sixteenth century that without law the life of man is solitary, poor, brutish and short and that is just as true today as it was in the sixteenth century so don't come up here and make this a black versus white issue. I believe we have as many or more law-abiding black citizens in this state as we do whites. That is not the issue. The issue is what is the sanctity that you accor the process of law. Because don't kid yourself, without a meaningful life sentence and without the penalty of death, you are increasing beyond the point of human tolerance the temptation on the part of individuals to take the law into their own hands and to resort to selfhelp. They are going to start pulling those pistols out that we've got too many people walking around carrying and they are going to start taking personal satisfaction in retribution for murder and aggravated rape and that is the only thing that is involved in this amendment because under the present law of this state there are only two capital crimes, aggravated rape and premeditated murder or murder committed in connection with the commission of a felony. They got up here and talked about hot-blooded murders, catching somebody with your wife, that is manslaughter. That is a textbook definition of manslaughter. That is not affected by this amendment. This amendment is about premeditated murder and rape. Mr. Triche said that we ought to kill these snakes and once they are dead they shouldn't rise. Well, I can tell you one thing, the victims [victims] of the premeditated murderers are dead. They can't rise either, and I think that their survivors are entitled to a little bit of justice. Entitled to more justice than a political proceeding which is going to be a bonanza for some lawyers. Going to be a bonanza because I'm telling you that is what it has been in the past and that's what it will be in the future. I'm not asking you in one sense of the word to infringe upon the judicial process or the process of the jury in criminal law because I believe deeply in it and if a jury says a man is not guilty and I am the prosecutor, I am the first one to go up and shake his hand because I believe in the jury system. But I do not believe in a political system of pardon and parole and don't kid yourself, that's what you are going to have. I don't care what kind of pardon board you put there because the governor makes the appointments. I am not talking about the present governor. I am talking about any governor. You talk about emotion in the legislature. What kind of emotion do you think goes on at the present time in the lieutenant governor's office when the husbands or wives or the mothers and fathers of the people in the penitentiary come in with all the family and they may be good political supporters of that man? And he knows nothing at all about the facts of the case. In closing, do you think that it is more important to keep the gates of political influence open on the criminal system or are you going to rely on the jury system, the courts and the legislature to do justice?

[Record vote ordered. Amendment re-rejected. Amend. No. 4 is substituted tabled.]

Amendment

Mr. Hardin Amendments proposed by Delegate Juneau to Committee Proposal No. 4 by Delegate Staggs et al.

Amendment No. 1, on page 4 line 6, in Delegate Floor Amendment No. 1 proposed by Delegate Jack et al, delete lines 12 and 13 and insert in lieu thereof the following: "... There shall be a Board of Pardons which shall consist of five persons one of which shall be the lieutenant governor and four electors appointed by the governor who shall be subject to confirmation by the".

Explanation

Mr. Juneau Mr. Chairman, fellow delegates, this is just a technical amendment I'll make on the second line, "which" should be "whom", "one of whom". Now gentlemen what this is, it's consistent and I think the amendment adopted by Mr. Jack is appropriate. I think that it lends for more experience in the field of pardons and considerations but I think one significant thing has been left out, for this reason. In the previous system that we now have on the Board of Pardons, you do have an elected official or more than one elected official on the Board of Pardons which to me gives a degree of independence, and what I am trying to do in this amendment is mesh those two concepts together. More specifically, you have four appointees under my amendment. The fifth person on the board would be the lieutenant governor, and I feel very strongly to this extent about the Board of Pardons. If you don't have an elected statewide official who is accountable to the people who can voice objection and speak out if he thinks that something is wrong, you would then be left with five appointees of the governor. I think what this does would preclude the possibility of having sometime in the future a stacked deck. I have not changed the concept of four appointees to give experience, and the only argument which I think can be logically placed against this is to say, "well, you know the past lieutenant governors didn't want to serve on a pardon board". I don't accept that as being a legitimate reason. Additionally, I submit to you that this is a logical, appropriate function for a statewide elected official to serve and secondly, if you don't assign in this constitution specific duties to this lieutenant governor, which I think this is a legitimate function he can perform then I ask you to justify to yourself where this constitution have you specifically provided for the lieutenant governor to do anything. I would move for its adoption. Mr. Chairman.

Further Discussion

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, I rise in opposition to the proposed amendment by Mr. Juneau although I concede that the motives behind his proposal are excellent motives. The present lieutenant governor, ladies and gentlemen, appeared before the Committee on the Executive Department and in addition to stating that he did not feel that the lieutenant governor should not serve on the Board of Pardons, said that it was absolutely impossible for him to effectively do so. He recommended in substance as did almost everyone else who came before our committee, that any board of pardons should be a full-time operation. I don't know if any one of you have ever seen a pardon board docket or schedule. The Pardon Board is going to meet on Monday, Tuesday and Wednesday this coming week in New Orleans. There are several hundred cases that are going to be considered over a span of three days. Just as an illustration, one judge in New Orleans may be involved in some twenty-five cases and the pardon board consisting of the lieutenant governor, the attorney general and that particular judge is allocated fifteen minutes within which to consider those twenty or twenty-five cases. The point I wish to make is that no public official who has substantial duties and responsibilities, and we have accorded to the lieutenant governor such duties and responsibilities in our article, no such official should serve on the board because he's not going to have the time or inclination to do the massive amount of work that is going to be necessary to consider fully the cases that are going to be before him. Now for that reason I would urge that you reject this amendment because all in my opinion, you will be doing is putting as one of the five members on the Board of Pardons someone who is either unwilling or unable to act effectively on the board. Thank you very much.

Further Discussion

Mr. Jack: Mr. Chairman, ladies and gentlemen, since 1940 no lieutenant governor has wanted to serve on this board, no attorney general, no trial judge I ever talked to. They don't have the time as I've said. Mr. Gravel showed well there's high as three hundred on the docket. They do not have the time to consider them. The time would not be there, the same thing applies. This belongs to a five man, full time board that won't have a docket with two hundred, three hundred. It will be a year round, day in, day out thing just like courts operate. Just like the parole board operates. Let's go along with the present amendment of a five man board. Thank you and let's vote this down.

[Amendment proposed by Mr. Jack.]

Closing

Mr. Juneau: Just a point, the statement was made that the lieutenant governor at the time that he appeared before the committee said that he doesn't have time to perform this function. I might mention to you that at the time that statement was made, he was the presiding officer of the Senate. I indicate to you that the issue in here is whether you want to assert an independent voice on a statewide level in this board. I think it would be appropriate and I would ask your favorable consideration. Thank you.

[Amendment proposed by Mr. Juneau.]

Amendment

Mr. Hardin: Amendment No. 1 [by Mr. De Blieux and Mr. Fayard], on page 1, line 6, in Delegate Floor Amendment No. 1 proposed by Delegate Jack, et al., delete lines 12 through 15 both inclusive in their entirety and insert in lieu thereof the following: "2. There shall be a Board of Pardons as provided by law."

Explanation

Mr. De Blieux: Mr. Chairman, ladies and gentlemen of the convention, at the present provision that you have that you've adopted in the Jack amendment says, "there will be a pardon board composed of five electors appointed by the governor." It does not say anything about who they shall be or anything of that sort. The only thought that occurred in my mind is the fact that I think the pardon board and the Board of Parole should be one and the same group, if possible. My amendment does not say that they have to be but at least it will allow the legislature to look at it and see whether or not those two bodies could perform the same functions as a united body. I just would not like to see, you might say, a full paid pardon board and full paid parole board reviewing and doing, you might say, practically the same thing when one body could do the same job. I feel like since the parole board is obligated to review all of the various inmates' records they would be in a better position to make recommendations to the governor for a commutation of sentence than any other group you would have rather than have a second board covering the same identical territory and it's for that particular reason that I ask you to adopt this and allow the legislature to take a good look at it and see whether or not we could have a united, you might say, board of pardons and parole. This will not do violence to the amendment which you previously adopted by Mr. Jack, et al. It will not change that. It only changes the methods by which the Board of Pardons will be set up and I ask your concurrence in the amendment.

Further Discussion

Mr. Gravel: Mr. Chairman, ladies and gentlemen of the convention, I ask that you reject this amendment. The idea of a Board of Pardons constituted and created, as this convention almost unanimously

suggested that it should be done, is in order to permit the governor to get from appointments he will make, the most competent advice and assistance that he can in order to determine whether or not he is going to exercise a power and authority that is inherent in his office as the chief executive of the state. He is the man who has to ultimately make the determination and I say he should be given the authority in this constitution to set up a competent board of pardons. Now ladies and gentlemen of the convention, let us recognize that this is a necessity that we have needed for a long, long time in the state of Louisiana. I think the governor should have the flexibility to appoint people on the board who can make the right kind of determination so that he can act wisely and competently in all these matters. If we leave this concept of the Board of Pardons with the legislature, we are still committed to be attended by many of the problems that come up when emotional issues are being considered by the legislature, and I just suggest that this is an area that should be confined within the department of the executives and within the office of the chief executive, and I urge you to reject the amendments.

Questions

Mr. Fayard: Mr. Gravel, under the proposed amendment would it not be possible for the legislature to provide that this board would be appointed by the governor and that this board would possess certain qualifications?

Mr. Gravel: I don't know if I quite understand you, you mean under the proposal that we have adopted?

Mr. Fayard: No, under the proposal that is before debate right now.

Mr. Gravel: Under the proposal that we're debating right now, the legislature would determine what kind of board would be created, the size of the board...

Mr. Fayard: But could it not delegate this responsibility to the governor is so chose.

Mr. Gravel: It could possibly do so but I don't think that's a good concept Mr. Fayard.

Mr. Lanier: Mr. Gravel, would you not agree that if the present proposal is not amended as provided by Senator De Blieux and as previously suggested by Representative Casey, that if we had a governor who was politically oriented he could appoint a board of people that would just merely be his alter ego and that they would not necessarily have to be a professional board. Is that not correct?

Mr. Gravel: I don't think there's any question in mind but that the governor under this authority will be given a vehicle whereby he can act responsibly and will get the kind of board that is going to be helpful to him. There is no question but that I think every governor who has ever been elected to office has been politically oriented to some extent.

Further Discussion

Mr. Jack: I'm against this amendment and I ask you to go along with the five man board. Thank you.

Further Discussion

Mr. Lanier: Mr. Chairman, fellow delegates, I strongly support this amendment and I really think it's an answer to our problems. Under the present proposal, if it's not amended, the governor has an absolute right to appoint whomever he wishes on the board of pardons. Now I believe if you will review our past history in Louisiana, we must consider the fact that we have had governors elected in this state, and there is a possibility that in the future we could have governors elected who are politically oriented and who would appoint to such

a board not necessarily people who would be professionally trained and inclined to do this type of work but people to satisfy political debts, who would be politically oriented as the governor and who would do his bidding. Now, I would suggest that this could create a very bad situation, because if someone came before the board and they are not politically right, then perhaps they would not be treated the same as someone who was. I believe that the amendment submitted by Senator De Blieux authorizes the legislature to create a board. Certainly the legislature can create a board, a professional board, that would not necessarily be responsive directly to the governor to review these matters. I believe that this amendment would be an equalizing thing. It would bring balance to the system to create a system, a balanced system, to provide for clemency and pardons in appropriate cases. I think this is an excellent amendment and I would strongly urge that you support it.

[Unintelligible comment.]

Closing

Mr. De Blieux Mr. Chairman, ladies and gentlemen, I'd like to say again that this amendment will not take any of the powers away from the governor. The only difference is that if you use Mr. Gravel's arguments, then you don't need any Board of Parole or Board of Pardons. You don't need anybody but the governor. The legislature might do exactly what's provided in the present amendment. They might allow the governor to name just five people. I'll let him do that. I'm not saying that it will not do that. The only thing is that I just want to see that we can have a professional Board of Pardons with a Board of Parole, is we so desire. That's all in the world this amendment does. It's not going to take a thing away from the governor in his right to commutations of sentence or reprieves or anything of that sort. It just gives the legislature the right to determine whether or not this Board of Pardons can function the same as the Board of Parole, as to whether or not we can have professional people on it.

Questions

Mr. Gravel Senator De Blieux, I believe you made the point that the legislature, of course, should have some jurisdiction and authority over these appointments. That's the issue of your amendment. But isn't it a fact that under the proposal that we have adopted that the appointments that the governor makes would be subject to confirmation by the Senate?

Mr. De Blieux That's true. The legislature might adopt the same provision, but at least you will have a chance to look at the Board of Pardons and the Board of Parole at the same time.

Mr. Gravel But the Senate is going to look at whatever appointments that the governor makes and either reject or confirm. That would include you. Would it not?

Mr. De Blieux I feel quite certain...well, I might not be in the Senate when this...

Mr. Gravel Oh, that's right. I forgot about that possibility.

[Revised vote agreed. Amendment rejected.
Adjourn. Motion to reconsider failed.]

* * *

* * *

Reading of the Section

Mr. Poynter "Section 8. There shall be a department of justice headed by the attorney general who shall be the state's chief legal officer. As may be necessary for the assertion or protection of the rights and interests of the state, the attorney general shall have the authority to 1) institute and prosecute or intervene in any legal action or other proceeding, civil or criminal; 2) Exercise supervision over the several district attorneys throughout the state, and 3) for cause, supercede any attorney representing the state in any civil or criminal proceeding. He shall have such other powers and perform such other duties as may be authorized by this constitution or provided by statute."

Explanation

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, consistent with the position previously taken with regard to this section and as authorized by the Committee on the Executive Department, we are going to propose, at least I'm going to propose, in lieu of Section 8 a short provision, that I think the clerk has at this time, that in effect will leave out of the consideration of the office of attorney general at this time, and until we get to the Article on the Judiciary Department, the powers, functions and duties of the attorney general. But the proposed amendment will of course simply create the department of justice and designate the attorney general as chief legal officer of that department and authorize that this constitution elsewhere or the statute may provide other functions and duties for him. I don't know if there are any other amendments, but I did want to make it clear to the convention that this is the position that is going to be adopted with respect to Section 8 and the recommendation of the Committee on the Executive Department.

Amendment

Mr. Poynter First amendment sent up by Delegate Gravel, Amendment No. 1, on page 7, delete lines 1 through 14, both inclusive in their entirety and insert in lieu thereof the following: "Section 8. There shall be a department of justice, headed by the attorney general who shall be the state's chief legal officer." and Mr. Gravel has changed the amendment so as to delete that whole next sentence. The last sentence, the second sentence of the two, is deleted so simply the amendment would insert Section 8 and the first sentence contained in the language.

Explanation

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, all that this does is to create the department of justice within the executive department and to constitutionally declare that the attorney general shall be the head of that department and the state's chief legal officer. All of the matters relating to the functions, powers and duties of the department and of the office of attorney general will be relegated to future consideration when we consider the judiciary article. Mr. Chairman, I move the adoption of the amendment.

Questions

Mr. Tobias I'm reading Section 2 B of our draft as amended and as it reads now it says "the attorney general shall be the state's chief legal officer," head the department of justice and shall have been admitted to the practice of law in this state for at least five years immediately preceding his election." In view of this, do you really think your amendment is necessary?

Mr. Gravel No, but I think...I think it's necessary but I do think we have caused a style and drafting problem that we'll have to consider later on.

Mr. Lanier Mr. Gravel, I don't believe your amendment does anything to that portion of this Section on page 6 and I believe we probably would have to change the title here because as it presently reads it says powers and duties of the attorney general.

Mr. Gravel I think that too would have to be changed by style and drafting. I agree.

Mr. Conroy Did you say the purpose of this was to provide that there would be a department of justice within the executive branch?

Mr. Gravel Yes sir.

Mr. Conroy But didn't we delete the attorney general from the executive branch in Section 1A when we finished amending that?

Mr. Gravel That's right. He was not included in 1A but subsequently there was a consideration by the convention of language in another section that I think does substantially put him in 1A. It was just read by Mr. Tobias and I don't think there is much question but as I've indicated we do have a style and drafting problem in relation to this office.

Mr. Dennery Mr. Gravel, I don't understand the purpose of your deleting the second sentence as it was originally proposed.

Mr. Gravel Sir?

Mr. Dennery Can you explain why you deleted the second sentence in the original amendment as you proposed it?

Mr. Gravel Yes. When we were in the Henry huddle a moment ago, some of the proponents of other amendments felt that there might be a broadening of the authority being granted to the legislature with respect to the powers, functions and duties of the attorney general that they did not want to permit by this language at this time.

Mr. Dennery Now wouldn't that be true of all of the other offices in the executive branch?

Mr. Gravel Mr. Dennery, I believe we are going to come to that issue with respect to other offices but this is one office that we know is going to be specifically and fully considered in another article that will be coming up in the very near future. But the point that you make, I think will be valid and should be considered in connection with the office of commissioner of agriculture, and commissioner of insurance and superintendent of education because they...well, except for superintendent of education, those other two will not be considered I don't think in any other article and I think we may very well have some discussion at that time about this precise problem.

Mr. Munson Camille, my question is more or less the same as Mr. Dennery's only it specifically refers to the commissioner of agriculture because in the amendment that the Committee on the Executive Department has, they do have that last sentence. Would you agree that that the Committee on Agriculture should come up with a proposal as to the duties and functions of the commissioner of agriculture?

Mr. Gravel Well, we'll discuss that when we come to it. I don't think that the same deletion should be made with the respect to the commissioner of agriculture, Mr. Munson. I don't think that's before us.

Mr. Munson Why? It's a separate section, a separate committee. You have a committee on the Judiciary, you have a Committee on Agriculture.

Mr. Gravel What I'm saying is that the committee...well, that may be true. You're correct. I think that Natural Resources is giving consideration at

that...

Mr. Munson It's Natural Resources and Agriculture.

Mr. Gravel You may be correct about that, yes sir. That's not before us now, though.

Mr. Guarisco Mr. Gravel, I don't know if Mr. Denery asked the question. I understand that we did remove the attorney general from the executive branch in 1A as a constitutional office under the executive department. Isn't that correct?

Mr. Gravel I think we may have removed him, but we put him back at least by implication in the language that was read by Mr. Tobias.

Mr. Guarisco My question is, Mr. Gravel, if we're going to remove him from the executive branch as a constitutional office in 1A, and I assume he's going to Judiciary. Is that right?

Mr. Gravel No sir. I think that most of us agree that the attorney general should be in the executive branch of government. In the previous discussion on that Mr. Guarisco, I believe the desire of this convention was to consider the functions of the attorney general's office under the judiciary article but generally with an understanding that probably those functions would then be placed back in the executive article where we will have created, if this amendment passes, the department of justice within the executive branch.

[Previous question ordered. Amendment adopted: 98-12. Motion to reconsider tabled. Previous question ordered on the Section. Section adopted: 102-4. Motion to reconsider tabled.]

*

*

*

* * *

Mr. Dennis: I think, perhaps there should be a general provision, perhaps, granting some type of qualified immunity to public officials while performing the functions of their office in a proper manner, but I don't know that it should be placed in the Judiciary article.

Mr. Roy: Judge Dennis, in response to Mr. Anzalone's question, are you familiar that in the Bill of Rights there is a provision that no one is immune from suit, no private person is immune from suit, thereby implying that public officials administering their duties are? That may be what you are talking about.

Mr. Dennis: I knew you had considered it. I'm happy to hear you have it in your proposal.

Amendment

Mr. Poynter: This amendment is sent up by Delegate Dennis. Amendment No. 1, on page 1, line 13, delete the words "JUDICIARY DEPARTMENT" inserting in lieu thereof "JUDICIAL BRANCH".

Point of Information

Mr. Kean: Mr. Chairman, before we begin the detailed discussion of this article, I have a point of information of the Chair.

We have voted to reconsider, as I understand it, Committee Proposal No. 4 and it's apparently somewhere out in the wings out here. My question is, what is the status of Committee Proposal No. 4 as it now stands and what will it take to bring it back on the floor of the convention?

Mr. Henry: Committee Proposal No. 4 will be tomorrow on matters subject to call on Regular Order of Business No. 4, Proposals on Third Reading and Final Passage. At such time as someone feels called upon to do so, that matter can be called from the calendar.

Mr. Kean: That can be called from the calendar by any delegate?

Mr. Henry: Yes, sir.

Mr. Kean: All right. Thank you.

Mr. Henry: We have traditionally, well we have a rule against it in the House, we haven't had much tradition in this convention. We haven't been here long enough.

Mr. Kean: There is no rule which says that the author or the owner of a proponent has the right. It would probably be frowned on, I would assume, by a majority of the members of the convention, I don't know, to pull somebody else's proposition from the calendar.

Normally, when someone has a bill or resolution or what have you on the calendar, it is sort of an unwritten rule that you don't call another man's legislation from the calendar. But it would be up to this body to decide because we have no rule to prohibit it.

Mr. Kean: Well, I couldn't find any rule with respect to a calendar and that's the reason I asked the question.

Mr. Henry: Well, insofar as orders of business, order of business calendar, it's six of one and half a dozen of the other, sir.

Explanation

Mr. Dennis: Ladies and gentlemen, this simply changes the name of this article from Judiciary Department to Judiciary Branch. Delegate Walter Lanier pointed out to me just before we started this morning that the Executive Article is called the Executive Branch and in that article it provides for the, some twenty departments of state

government.

So in order to distinguish this, which is a main branch of state government from a department, I think that we should change the name to Judiciary Branch and so I am offering that amendment.

[Amendment adopted w. almost no objections.]

Reading of the Section

Mr. Poynter: First section is Section 1. Judiciary Department, Section 1.

"The judicial powers shall be vested in a supreme court, courts of appeal, district courts and other courts authorized by this constitution."

Explanation

Mr. Dennis: Fellow delegates, this represents no real change from the present constitution. It simply vests the judicial power in the Supreme Court, Courts of Appeal, District Courts and other courts authorized by this constitution. You will see in the following sections that we have retained the present court system that there are other courts authorized but the main judicial power is established and vested in the first three levels of the judiciary system. I ask for your favorable consideration.

Questions

Mr. Abraham: Judge Dennis, you mentioned a while ago in your talk that there were provisions in here for the legislature to authorize courts, mergers or what have you. I assume that that is covered so that where you say your "other courts authorized by this constitution" still leaves the legislature free to do as you had stated a while ago.

Mr. Dennis: Yes, free subject only to some qualifications in Section 15 which I mentioned earlier providing that future courts below the district level must be parishwide and have uniform jurisdiction throughout the state.

Mr. Abraham: Well, I just wanted to be sure that these words "as authorized by this constitution" were not restricted to where it would restrict what you were trying to do elsewhere in the article.

Mr. Dennis: No, sir.

[Previous question raised on the Section. Section passed: 104-2. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter: Section 2. Habeas Corpus, Needful Writs, Orders and Processes.

Section 2: A judge may issue writs of habeas corpus and all other needful writs, orders and process in the aid of the jurisdiction of his court. Exercise of this authority by a judge of the Supreme Court or Court of Appeal is subject to review by the whole court. The power to punish for contempt of court shall be limited by law.

Explanation

Mr. Dennis: Fellow delegates, this represents no essential change from the present constitutional provisions which are contained in Section 2 and Section 17 of Article VII, of the 1921 Constitution. We have simplified the language somewhat but have not changed the substance of the law.

Questions

Mr. Denney: Judge Dennis, in the last word... "may be limited by law", do you refer that to statute law or would that include a rule of court or something of that sort?

Mr. Dennis: It relates primarily to statute law.

30th Days Proceedings—August 15, 1973

We have proceeded upon the traditional theory that the power to punish is, for contempt of court, is inherent in the court but that the reasonable limitations may be placed upon it by legislative act.

Mr. Fayard Judge Dennis, reading the present section of the constitution, referring to the issuance of habeas corpus, I noticed that it enumerates and lists the judges of the various courts which have this power. In your article, Section 2 says, merely, a judge may issue writs of habeas corpus. Now, my question is, is it contemplated that judges of city courts or justices of the peace would also have this power? Would they be classified as judges under Section 2 or not?

Mr. Dennis Judges of city courts would and you will notice the second sentence continues the qualifications that a judge of the Supreme Court or court of appeal that he may act, but that his act in this regard is subject to review by the whole court.

Mr. Fayard But a city court judge would then have the authority to issue a writ of habeas corpus then, is that correct?

Mr. Dennis I may have missed part of your question but I believe the answer is in the J.P.'s and Mayors are not classified as judges anywhere in this article so this would refer only to judges of city courts, special courts, district and on up.

Mr. Fayard I see, thank you.

[Previous question offered on the Section 3 section passed: 111-0. Motion to reconsider refused.]

Reading of the Section

Mr. Poynter Section 3. Supreme Court Composition, Judgments, Terms

Section 3. The Supreme Court shall be composed of one chief justice and two associate justices. Four or more may concur to render judgment. The term of a judge of a Supreme Court shall be fourteen years.

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, this continues the present provisions in substance, there has been some simplification of the language but there has been no essential change from the present constitution.

Questions

Mr. Abraham Judge Dennis, I noticed there is no mention in here as to when the term of office begins, should there be a provision as to when this term of office begins or how is that handled?

Mr. Dennis We didn't think it was necessary since these terms are presently staggered they will remain so under this provision and there would be no need to provide specifically when they begin or end. They will continue to be staggered as they are at present.

Mr. Abraham Are the terms fixed by statute now or what?

Mr. Dennis They are fixed by the constitution at the present time.

Miss Wisham Judge Dennis, I am sure you gave the greatest consideration to each of these sections, but don't you think that fourteen years is too long for a judge to serve in the Supreme Court?

Mr. Dennis No, ma'am, we did not. We considered the lengths of judges terms at length. And we considered many arguments pro and con and I would only attempt at this point to express to you the central theme of this entire Judiciary Article is

to provide for a neutral, detached and independent judiciary. Not subject to political pressure. To rule upon whether or not other government officials and private citizens are proceeding or have proceeded according to law. And if judges are subject to political pressure than they cannot perform this essential function in the American tradition that we have established our government upon.

Mr. Roemer Judge, did you consider whether the appointment of judges would be made by the people could work as a team?

Mr. Dennis We considered the general idea of merit selection of judges. And although I would not say this is totally without support in our state we found little real sentiment for it. On our committee that most of the delegates believe that the people of this state want their judges to come back before them for election at regular intervals. And so that is why we continued the elected judiciary.

Mr. Kean Judge Dennis, there may be another provision in the article or proposal, but in the present constitution in dealing with the composition of the Supreme Court, it provides that except when judges of other courts are called in this is the composition of the Supreme Court, is that taken care of in other provisions?

Mr. Dennis We have provided in Section 5A that the Supreme Court may assign a sitting or retired judge to any court. Since it has this broad power we felt it unnecessary to state here that district judges could be called in.

Mr. Abraham Why did the committee leave out any mention of the qualifications for a justice? The present constitution of the past does have some qualifications but I noticed you had left it out.

Mr. Dennis Section 24 sets forth the qualifications for all judges. They are all the same and we attempted by this manner to simplify and condense the article.

Further Discussion

Mr. Womack Mr. Chairman, and members of the convention, I would hope that those individuals who are preparing amendments would take serious heed to the statements I am going to make. I have heard that one amendment was being prepared that would limit the judiciary in certain categories to nine years. I think you should take a second look at that even though the judicial retirement that is proposed here, while I cannot accept many of the provisions of it, I can accept the twenty year basis for retirement. A nine year term would require a judge to be elected for two years of another term before he would be eligible to reach that retirement benefit. I think there should be some consistency in the relationship with his term of office and their retirement. Not necessarily what you have in the legislature, but we have it in other elected officials which ties into the term of their elected office. The retirement provision of this article is certainly going to be up for a good bit of grabs and I know that the judiciary as such is expecting those of us that dealt with retirement systems over a number of years to come up with what we think that the public can buy, what we think that the other hundred or hundred and twenty-five thousand people we have in retirement systems of this state can accept, at least reasonably gracefully. And I would hope that while we are considering amendments that we would consider these amendments that would keep it, the term of office in keeping or in some degree of recognition of the standard retirement procedures that we have for other elected officials. Thank you.

* * *

Amendment

Mr. Poynter Amendments offered up by Lanier,

to reapportion it in the future. So, I ask on that basis only that you vote against the amendment.

Questions

Mr. Kilbourne Judge Dennis, wouldn't this have the effect of allowing a change by the legislature by a simple majority as to the first district but all the other districts would have to have a two-thirds majority under the present committee proposal?

Mr. Dennis Mr. Kilbourne, I don't know whether it changes all of the votes to a simple majority or just this one vote. It does at least make a change there and the committee felt that a two-thirds vote should be required to change these districts.

Mr. Gravel Judge Dennis, do you have a copy of Delegate Gauthier's proposed amendment before you?

Mr. Dennis I believe so.

Mr. Gravel Isn't it a fact that that proposed amendment mandates the legislature to act and to vote by a majority vote that this particular district will be divided? Isn't this amendment mandating the legislature not only to vote, but telling them how they must vote?

Mr. Dennis Yes, it tells them that they shall divide the first Supreme Court district.

Mr. Gravel And by a majority vote.

Mr. Dennis You are correct.

Mr. Gravel What would happen, Judge Dennis, if you didn't have a majority vote? What worries me about this amendment is it tells the legislature, as I read it correctly, that you have got to by a majority vote do this, and there is no way that I know of that this constitution or any other force can compel the legislature to vote by a majority vote.

Mr. Dennis I believe you are correct, Mr. Gravel. I guess the only relief would be to try to amend the constitution if that should happen.

[Interim Question ordered.]

Closing

Mr. Gauthier Mr. Chairman and members of the delegation, I want to reemphasize the fact that presently we elect seven justices. We have six districts. All this amendment does is divide district one into two districts after January 1, 1975, and it goes back to the original concept that this convention established of single member districts. I urge your support of this amendment. Thank you.

[Record vote ordered. Amendment rejected: 50-63. Motion to reconsider tabled. Previous Question ordered on the Section. Section passed: 103-9. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter Section 5. Supreme Court; Supervisory, original and appellate jurisdiction, Rule-making power, Assignment of judges

Section 5. (A) The Supreme Court has general supervisory jurisdiction over all other courts. It may establish procedural and administrative rules not in conflict with law. It may assign a sitting or retired judge to any court.

(B) The Supreme Court has exclusive original jurisdiction of disciplinary proceedings against members of the bar.

(C) Except as otherwise provided in this constitution, the Supreme Court has appellate jurisdiction in civil cases extends to both the law and the facts. In criminal matters, its appellate jurisdiction ex-

tends only to questions of law.

(D) In addition to the jurisdiction provided for elsewhere in this constitution the following cases shall be appealable to the Supreme Court:

(1) A case in which a law or ordinance has been declared unconstitutional.

(2) A criminal case in which the death penalty or imprisonment at hard labor may be imposed or in which a fine exceeding five hundred dollars or imprisonment exceeding six months has been actually imposed. In other criminal cases an accused shall have a right of appeal or review as provided by law or by rule of the Supreme Court not inconsistent therewith.

(E) Subject to the provisions of Subsection C, the Supreme Court has appellate jurisdiction over all issues involving any civil action properly before it.

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, this section sets forth the powers and duties of the Supreme Court. This section represents no great change from the present constitutional provisions. Subparagraph (A) grants the Supreme Court general supervisory jurisdiction over all courts. This is no change in substance from the present law. It also grants the court the power to establish procedural and administrative rules not in conflict with law. This means that the Supreme Court may establish procedural or administrative rules but that they might be changed by the legislature if the legislature so desires. This is a clarification of the Supreme Court's jurisdiction over its powers. It also specifically states that the legislature, by enacting a law in conflict with a rule adopted by the Supreme Court, could change it. The third sentence allowing the Supreme Court to assign a sitting or retired judge to any court is also a change in the law. Under this power is granted the Supreme Court in the present constitution. Subparagraph (B) continues without change in substance the Supreme Court's exclusive original jurisdiction of disciplinary proceedings against members of the bar in the traditional manner of our state and in almost all other states that the Supreme Court is the forum in which disbarment proceedings must be decided. Subparagraph (C) provides that the Supreme Court, except as otherwise provided in the constitution, in civil cases has jurisdiction to review both the law and the facts. This is a continuation of our present law which is based on the French civilian tradition of appellate review of the facts. In criminal matters however the appellate jurisdiction is restricted to questions of law. This also is the present law in our constitution and is continued without substance. Subparagraph (D) provides for cases which are appealable of right to the Supreme Court. The Supreme Court by virtue of its supervisory jurisdiction can hear any case that it chooses that arises in the lower courts. Subparagraph (D) says that it must hear these kind of cases. It has no discretion. It must grant the appeal and hear the case described in Subparagraph (D) and that is two kinds of cases. First is a case in which a law or ordinance has been declared unconstitutional by a lower court. The second kind of case is a criminal case in which the death penalty or imprisonment at hard labor, which means the state penitentiary, may be imposed or a less serious criminal case in which a fine of five hundred dollars or imprisonment of six months has actually been imposed. In other criminal cases where the fine is under five hundred dollars or the sentence is under six months the article directs the Supreme Court to establish rules for review, either to the Supreme Court or to some other court in the court system, but also provides here again that the legislature may change those rules or make rules on its own for the appeal of these cases. These are largely misdemeanor cases we are talking about here. Paragraph (E) provides that the Supreme Court has appellate jurisdiction over all issues involved in any civil action properly before it. This simply means that once the

30th Days Proceedings—August 15, 1973

Supreme Court grants a writ and agrees to review a case or once a case is appealed to it, that it may review all of the issues in that case. It may look at the case as a whole and review all of the issues, subject to the exception in Paragraph (C) where in criminal cases it can only review questions of law.

Questions

Mr. Derbes Judge Dennis, just a technical question. On page 3, line 2, the term "civil action" seems foreign to our jurisdiction. It seems to me to be a matter of federal court.

Mr. Dennis I am sorry. I'm not with you.

Mr. Derbes I say on page 3, line 2, from where does the term "civil action" derive?

Mr. Dennis It was only intended to relate to non-criminal cases. It is synonymous with civil cases that we used earlier. It was not intended to create a new kind of action in Louisiana if that is what you are concerned about, Mr. Derbes. We simply used the word "action" instead of "cases".

Mr. Duval Judge Dennis, I notice in your proposal you deleted reference to direct appeal to the Supreme Court from public service commission type rulings, election contests and I think under the present law, some civil service commission rulings are directly appealable from the district court to the Supreme Court. My question is, was it the intention of the committee that these appeals do not lie to the Supreme Court or should they be provided for elsewhere in the constitution.

Mr. Dennis It was our intention that they should be provided for elsewhere. We understood that the executive department was debating whether to put the entire public service commission machinery in the constitution or not and if they did they would probably provide for judicial review in the same section. That is why in beginning Paragraph (D) we said in addition to appeals provided for elsewhere in this constitution. We don't intend to limit the mandatory appeals to these two types of cases.

Mr. Duval Thank you.

Mr. Abraham Judge Dennis, in the present constitution it provides that the jurisdiction applies for suits for removal from office of the judges of courts of record and you have left that out in this particular section. I realize that over on page 10 the judiciary commission recommends to the Supreme Court this type of thing but leaving out the language here. Is the situation going to be covered by not specifying that the Supreme Court has jurisdiction over suits for removal from office of judges?

Mr. Dennis Yes sir, we felt that it was adequately covered in Section 25 which establishes again the judiciary commission.

Mr. Abraham Is there any other means by which judges, other than the judiciary commission, that a suit might be brought to remove a judge from office?

Mr. Dennis No sir. Judges could be impeached under the provisions of the legislative article that we have already adopted, but you will recall that suits against judges was not thought to be a proper vehicle, an adequate vehicle, in the legislative article and so it was left out there. We have two routes for removing judges though. We have the impeachment and the judiciary commission.

Mr. Anzalone Judge Dennis, in line 12, "it may assign a sitting or retired judge to any court." I know that this does not represent a change in the law. My question to you, sir, is that in the debate by your committee, was any other possibility

14-15-16-17-18-19-20-21-22-23-24-25-26-27-28-29-30-31-32-33-34-35-36-37-38-39-40-41-42-43-44-45-46-47-48-49-50-51-52-53-54-55-56-57-58-59-60-61-62-63-64-65-66-67-68-69-70-71-72-73-74-75-76-77-78-79-80-81-82-83-84-85-86-87-88-89-90-91-92-93-94-95-96-97-98-99-100-101-102-103-104-105-106-107-108-109-110-111-112-113-114-115-116-117-118-119-120-121-122-123-124-125-126-127-128-129-130-131-132-133-134-135-136-137-138-139-140-141-142-143-144-145-146-147-148-149-150-151-152-153-154-155-156-157-158-159-160-161-162-163-164-165-166-167-168-169-170-171-172-173-174-175-176-177-178-179-180-181-182-183-184-185-186-187-188-189-190-191-192-193-194-195-196-197-198-199-200-201-202-203-204-205-206-207-208-209-210-211-212-213-214-215-216-217-218-219-220-221-222-223-224-225-226-227-228-229-230-231-232-233-234-235-236-237-238-239-240-241-242-243-244-245-246-247-248-249-250-251-252-253-254-255-256-257-258-259-260-261-262-263-264-265-266-267-268-269-270-271-272-273-274-275-276-277-278-279-280-281-282-283-284-285-286-287-288-289-290-291-292-293-294-295-296-297-298-299-300-301-302-303-304-305-306-307-308-309-310-311-312-313-314-315-316-317-318-319-320-321-322-323-324-325-326-327-328-329-330-331-332-333-334-335-336-337-338-339-340-341-342-343-344-345-346-347-348-349-350-351-352-353-354-355-356-357-358-359-360-361-362-363-364-365-366-367-368-369-370-371-372-373-374-375-376-377-378-379-380-381-382-383-384-385-386-387-388-389-390-391-392-393-394-395-396-397-398-399-400-401-402-403-404-405-406-407-408-409-410-411-412-413-414-415-416-417-418-419-420-421-422-423-424-425-426-427-428-429-430-431-432-433-434-435-436-437-438-439-440-441-442-443-444-445-446-447-448-449-450-451-452-453-454-455-456-457-458-459-460-461-462-463-464-465-466-467-468-469-470-471-472-473-474-475-476-477-478-479-480-481-482-483-484-485-486-487-488-489-490-491-492-493-494-495-496-497-498-499-500-501-502-503-504-505-506-507-508-509-510-511-512-513-514-515-516-517-518-519-520-521-522-523-524-525-526-527-528-529-530-531-532-533-534-535-536-537-538-539-540-541-542-543-544-545-546-547-548-549-550-551-552-553-554-555-556-557-558-559-560-561-562-563-564-565-566-567-568-569-570-571-572-573-574-575-576-577-578-579-580-581-582-583-584-585-586-587-588-589-590-591-592-593-594-595-596-597-598-599-600-601-602-603-604-605-606-607-608-609-610-611-612-613-614-615-616-617-618-619-620-621-622-623-624-625-626-627-628-629-630-631-632-633-634-635-636-637-638-639-640-641-642-643-644-645-646-647-648-649-650-651-652-653-654-655-656-657-658-659-660-661-662-663-664-665-666-667-668-669-670-671-672-673-674-675-676-677-678-679-680-681-682-683-684-685-686-687-688-689-690-691-692-693-694-695-696-697-698-699-700-701-702-703-704-705-706-707-708-709-710-711-712-713-714-715-716-717-718-719-720-721-722-723-724-725-726-727-728-729-730-731-732-733-734-735-736-737-738-739-740-741-742-743-744-745-746-747-748-749-750-751-752-753-754-755-756-757-758-759-760-761-762-763-764-765-766-767-768-769-770-771-772-773-774-775-776-777-778-779-780-781-782-783-784-785-786-787-788-789-790-791-792-793-794-795-796-797-798-799-800-801-802-803-804-805-806-807-808-809-810-811-812-813-814-815-816-817-818-819-820-821-822-823-824-825-826-827-828-829-830-831-832-833-834-835-836-837-838-839-840-841-842-843-844-845-846-847-848-849-850-851-852-853-854-855-856-857-858-859-860-861-862-863-864-865-866-867-868-869-870-871-872-873-874-875-876-877-878-879-880-881-882-883-884-885-886-887-888-889-890-891-892-893-894-895-896-897-898-899-900-901-902-903-904-905-906-907-908-909-910-911-912-913-914-915-916-917-918-919-920-921-922-923-924-925-926-927-928-929-930-931-932-933-934-935-936-937-938-939-940-941-942-943-944-945-946-947-948-949-950-951-952-953-954-955-956-957-958-959-960-961-962-963-964-965-966-967-968-969-970-971-972-973-974-975-976-977-978-979-980-981-982-983-984-985-986-987-988-989-990-991-992-993-994-995-996-997-998-999-1000

Mr. Dennis Would you clarify your question? Do you mean for what purpose, in order to equalize the work load or....

Mr. Anzalone Judge, a little bit more specific, what I am talking about is that when we've got a sitting judge back home it is hard enough to get orders signed, but when the Supreme Court decides that they are going to take him away from us and give him to somebody else for six or seven months at a time, and then it makes it a little bit harder to get orders signed, that there are some people who just disagree with this policy. My question to you is did your committee consider the possibility of seeking interim appointments from other than sitting judges?

Mr. Dennis We did consider the fact that it would be nice to have a pool of supernumerary judges. Some states have this. I don't know whether that's the proper word for it, but they have extra judges, so to speak, in a pool that can be drawn upon in cases of death, heart attacks, illness and so forth, but we didn't feel that our article would actually prevent the legislature from doing that if it thought it had enough money to do it. Just to answer your question, we did consider it briefly but felt like it was so embroiled in fiscal matters that we would leave this up to the legislature, that until the legislature acted we would continue to let the Supreme Court fill in the gap with assigning sitting or retired judges.

Mr. Anzalone I know that you are chairman of this committee. Would you consider supporting an amendment which would remove sitting judges from your provision?

Mr. Dennis Well, I would like to and I would if we had some extra judges, but we don't and I think we are going to have to rely upon our sitting judges to help one another out in their district....

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Conino] on page 2, line 11, after the period, delete the remainder of the line and delete lines 12 and 13 in their entirety and insert in lieu thereof the following: "It may assign a sitting or retired judge to any court with his consent and with the consent of a majority of the members of the court in which the judge is assigned."

Explanation

Mr. Conino Mr. Chairman, ladies and gentlemen of the delegation, fellow delegates, my amendment basically takes care of the administrative procedures which the local courts and the Supreme Court must abide by. Basically in the state of Louisiana the procedure for criminal and civil are set out in our statutes called the Code of Civil Procedure and the Code of Criminal Procedure. These are the state laws which our courts must abide by. If you will notice in the committee proposal it states supervisory jurisdiction. We feel that the supervisory jurisdiction given the Supreme Court is adequate enough and we can delete from that the second sentence which reads, "it may establish procedural and administrative rules not in conflict with law." Then we will tackle the other sentence a little later on. We feel that the local courts deserve the flexibility that they must have to administer their own problems that come within their jurisdiction. Presently existing rules of the Supreme Court give the Supreme Court adequate supervisory jurisdiction. Each district court, juvenile court, parish court, city court has different problems depending upon the area which it is in. It has finance problems, personnel problems and what have you. These are all local problems which should be dealt with at a local level. We do not feel that the Supreme Court should

administer to the local courts and should tell the court how to operate the administrative part of its court. The committee proposal gives absolute and total power to the Supreme Court. The judicial administrator of the Supreme Court could become a Tsar and go down and snoop in the records of the local courts and thereby create problems on a local level. This Tsar could possibly supercede in many respects some of the local courts. We wish to give independence to the local courts to handle their administrative duties. They were elected on a local level, their obligations are statewide. However in many instances it belongs to the local people and their obligation is to the local people. So each district and local court presently establishes its own administrative duties. Each court has its own set of rules. If you practice in one district court and you go over to another district court, you can learn what those rules are in the other court. So recently a meeting of the district and court of appeals and several of the Supreme Court justices stated that they do not want this additional administrative duty. They prefer to leave this to the local courts and this is what we are doing in this amendment. The other part we are dealing with in this amendment is the transfer of a judge. In the committee proposal there is a mandatory transfer of the judge from one district, or one court, to the other. Our committee says that the sitting judge or retired judge may assign, and the court, with the consent of that particular judge. It says the consent of the judge being transferred and also the consent of the district court where the judge is being transferred also would have to have his consent. You might have a local judge in the parish of Orleans or Jefferson who is compelled to serve in the northern part of the state. He does not wish to be transferred up there and that is what this particular amendment does. I urge your adoption of this amendment.

Questions

Mr. Tobias Mr. Conino, are you well aware of the fact that your proposal or your amendment would strike out the local courts' ability to establish procedural and administrative rules not in conflict with law?"

Mr. Conino That is correct.

Mr. Tobias In other words, you are gutting the right of the ability of the Louisiana Supreme Court to be the general supervisor of the entire judiciary system in the state.

Mr. Conino No, Mr. Tobias, if you will refer to the first sentence, it says "general supervisory jurisdiction," and we are leaving it there as it presently is. The only thing that we are removing is the day-to-day administrative details which ought to be left to the local and district courts, the juvenile courts and what have you.

Mr. Tobias I would suggest to you that by striking that sentence that this particular phrase "general supervisory jurisdiction" would be without any meaning whatsoever. Do you not agree?

Mr. Conino No, I don't agree.

Mr. Chatelain Mr. Conino, I would like a little information please on how old is he usually when a judge retires? How old is the judge usually?

Mr. Conino How old is he? I think one of the proposals here says seventy years of age.

Mr. Chatelain Is this just a courtesy or a normal procedure...how often does the retired judge come back into play, to be reassigned?

Mr. Conino To be reassigned, a retired judge? Normally, as they are needed. He is transferred from one district to another.

Mr. Chatelain Is that procedure followed pretty

much? Is it pretty often done?

Mr. Conino Yes, it is used quite frequently.

Mr. Chatelain You think that it's necessary to put that in the constitution?

Mr. Conino Not necessarily, no, but since....

Mrs. Brien Mr. Conino, would your amendment take away the extra power given to the Supreme Court in the original proposal?

Mr. Conino Do you mean the administrative powers?

Mrs. Brien Yes, by writing out that one sentence, doesn't it reduce the power again to the Supreme Court and put it back like it was?

Mr. Conino That's right. It would reduce the Supreme Court's powers as far as the administration of the local courts.

Further Discussion

Mr. Tate Mr. Chairman and fellow delegates, I rise in opposition to the amendment and in favor of the committee report. One word in explanation of the second sentence which was deleted, which says, "it may establish procedural and administrative rules not in conflict with law." This was added at the suggestion of Chief Justice Sanders. In the view of myself, him and almost anybody who has studied the matter, it adds nothing and detracts from nothing from our present powers. It clarifies the fact that our procedural and administrative rules are subject to the legislature. I don't think really, if anybody thinks about it, that is controversial. I rise particularly in opposition to the amendment that we may assign sitting judges, only with the consent of that judge and of the court itself. The responsibility of the Supreme Court to help administer an efficient statewide system extends to the possibility that there may be no judge in a given district and it is necessary to ask a sitting judge to serve there. As a matter of fact no judge has been asked to serve unless he consented to it, as a matter of fact. However, if, for instance, you had an ugly case up in East and West Feliciana where Judge Bill Bennett is (he was back there a minute ago) and nobody wanted to go, I think certainly the interests of the people of the state demand that a judge in a district which is not busy should accept the assignment and go and serve the people of the state because otherwise the system as a whole...there is no way to get a judge to decide a case in a district where somebody is recused, sick or something else. Now, we have to look at the administration of the state judicial system as an entity. The Supreme Court has never and would never in my opinion, and you have got to trust somebody, would never take a judge from an overbusy district and send him somewhere else. The power is when there is a judge whose docket is more than under control, possibly because some districts have a very, very low case load, that there should be that available man to go to serve over in another district. Now for instance, the judges in the district over there have to consent to the assignment. Now in many cases there is no more than one judge, one sick judge. I personally don't think that the mechanics should require, for example, if in Orleans one of the ten judges in the civil district court, or one of the ten or eleven judges of the criminal district court, needed temporary help, I personally don't think that it is feasible, wise administration or anything else, to require the Supreme Court both to find a judge willing to serve, although they always do, then submit him to a meeting over there where they vote on whether or not to accept him. It is cumbersome enough as it is to find judges to go serve. We are short of judges over the state. Thank goodness we have a few retired judges, good health, two or three, who have been able to plug in when we needed them.

30th Days Proceedings—August 15, 1973

We have one, my good friend from Jefferson who sponsored this amendment, Judge Bel. I haven't heard any complaint from a very fine Judge. I'm sure you all would have accepted him. Incidentally you have a very good judicial system in Jefferson. Your judges are up on their work and there is no problem there. But there are problems in other places where the judges are falling behind, where you need people to come in to help. For instance, in Orleans Parish in 1954 the criminal district court was way behind. The Supreme Court was able to send in Judge Fruge and I believe Judge Holcomb to help there and they sat with those judges as extra divisions and helped them clean up the docket. That is the sort of thing that you just have to be able to do, when the people demand the statewide system operate efficiently for all of the people. As a judge, I am a servant of all of the people, not just in my district. A judge who is elected from a given district, his primary responsibility is to the law, his secondary responsibility might be to the people of the district, but certainly he also has a responsibility to the people of the entire state and to help the judicial system serve the people of the state. Mr. Chairman, that's all. I yield to any questions.

Questions

Mr. Flory: Judge Tate, along the lines of assigning judges, isn't it possible under the proposed section that the Supreme Court could assign a judge that had been defeated, a judge that had chosen not to run because he couldn't be elected, or a judge that had retired at twelve years? Now, if that is possible, isn't this subverting the will of the people in creating new judgeships to take care of workloads where they are peaked and it can be justified, which in that case the people would have the right to choose their own judge?

Mr. Tate: Mr. Flory, the assignment power is used in temporary situations. Now it is true, and I suspect this opposition in Jefferson comes from the fact that when a certain criminal district judge in Orleans had been defeated (who many people think despite the fact that he was one of the finest minds in criminal law the judiciary produced) he was assigned to help Jefferson and Jefferson didn't like it, and the Supreme Court has the policy now that it will not assign a defeated judge to a place even on a temporary basis without being sure it is acceptable. However, I don't think you should tie the hands of the court or the people to permit temporary assignment without the expense of creating a permanent new position, when it is only a temporary situation needing temporary help, or a sick judge for instance.

Mr. Flory: I am not familiar thoroughly with the Jefferson situation but you have got a lot of judges who have been assigned that have been retired for years and are still sitting and there is no way you can rid of them.

Mr. Tate: If you are talking about a situation in Baton Rouge, there is a judge over seventy-five who at the unanimous request of the judges of Baton Rouge and the consent of the Baton Rouge Bar was asked to come to Baton Rouge as motion judge to handle confirmation of defaults and noncontroversial matters to free the full-time judges from that detail so they could try more cases. The Baton Rouge district, incidentally, is one of the most efficient....

Further Discussion

Mr. Schmitt: I am in favor of this amendment and I would like to give you my main reasons for being in favor of it. I had the unpleasant experience of being an attorney in a court of law in Orleans Parish when we had one of these retired judges sitting. This was an elderly man and I didn't hold that against him but apparently he was from a different part of the state and he had a different philosophy than we had in Orleans Parish. In his

part of the state apparently the police told me when he made his decision from the stand and he stated it from the stand, that he would believe the policeman's word. He gave them greater credibility than any other judge in our court system would have given them. In Orleans Parish generally the police feel that the district attorney's office is going to be involved in plea-bargaining in different types of cases. Therefore what they do is they charge the man with the highest possible offense. As an example if you get involved with a fight with someone the police might charge you with attempted murder, knowing the district attorney's office is going to reduce this to aggravated battery or simple battery or some other related offense. But when these same cases were brought before this judge and he saw that the district attorney's office brought these charges forward, he felt in his heart that these people must have been guilty. As a result of that many people were found guilty. I don't know whether or not they had committed the crimes, but his philosophy differed to such an extent that probably a lot of innocent people were found guilty in that district. In concept of a person being guilty and not guilty was different from any other one I had heard in the state of Louisiana. I actually saw him go off the record, which is also unheard of. He said, "I do not want this made part of the record", the court reporter stopped making it a part of the record, then he proceeded to tell this black man why he was not guilty. After doing this he said "are you ready," and the man went up and talked to the judge and talked to the district attorney so he pled guilty. I'm sorry, he never pled guilty, but he was ready for his sentencing. The judge turned around and found him guilty. The attorney went to object, saying, "but you just said that this man couldn't be found guilty." He almost held the man in contempt of court. Going on and off the record is something which to me is unheard of because of the fact that when you go up on appeal the only thing that the judges on appeal will see will be this written record. They are not going to see this other action which took place in the courtroom and was not made part of the record. When objections, in criminal matters, which are known as exceptions, were raised in these proceedings, this judge considered it as a personal insult and he often threatened attorneys to put them in contempt of court because they objected to his rulings. He cursed me out personally and he did many other things from the bench which horrified me as being a representative of defendants. Now who was the victim under the present system that we have right now. Were the criminals the victims? I dare say that if any one of those people who were found guilty under that judge had filed with a habeas corpus and had that brought before a court of appeals or the Supreme Court, they would have been let loose because of this judge's antics and tactics on the bench. The people are the victims, you and I, the innocent people. Many guilty people could possibly have gone free if the judge also had another philosophy. He believed that prostitution was a wonderful way of life and that it was o.k. because of the fact that it kept people off the welfare roles. These are just some of the instances of things that just shocked me because I just didn't think people existed in the twentieth century which had the concepts that this man had. I went and complained to some of the justices and they had felt the same way and they had stated that some of the judges from Orleans had complained about this man and many attorneys had complained about him, yet that judge still sat on that bench. I favor this amendment because I feel that it will help prevent such abuses of the civil process and the criminal process in the future.

Further Discussion

Mr. Derbes: Ladies and gentlemen, if I can get your attention for a couple of minutes, I would like to tell you why I am opposed to the amendment. Mr. Schmitt is an example of the old legal maxim that "a judge is a good judge when he agrees with

you and a bad judge when he disagrees with you". Unfortunately, the example here is, in my opinion, not the real question at hand. The real question at hand is whether or not we are to have some centralized authority to supervise our judicial system or will our judicial system be fragmented into a series of minor fiefdoms where one judge perhaps is not one to accede to certain demands or necessities in another section of court. What I am referring to is the old rule of judicial abstention. I am using the term loosely to refer to what I regard as the basic policy on the part of most judges not to take cases when other sections of court have matters pending in them, not to get involved in anything that is not ordinarily allotted to them. The principle operates unfortunately to the detriment of a policy of centralized management. That is, if the demands of one particular court require that additional personnel be assigned to that court then in order to better serve the interests of justice and the public, that assignment in my view should occur. The question is, do you leave that assignment solely to the discretion of the individual judge and to the individual...various members of the bench to which the assignment will occur. I believe that if you leave that final decision to them alone and provide no alternate authority in any supervisory body that you may unfortunately encounter the instance where in my opinion the most efficient allocation of judicial resources will not occur. So, I briefly urge you to defeat the amendment and to preserve in the Louisiana Supreme Court the ultimate authority for adoptions of standards and rules of procedure and for ultimately the final say-so in what additional judicial personnel should be assigned where needed to any given court. Thank you.

Further Discussion

Mr. Dennis Well then, Mr. Chairman and fellow delegates, I must oppose the entire amendment because this amendment does two things. First of all, it takes out the sentence which grants the Supreme Court the ability to establish procedural and administrative rules not in conflict with law of the Legislature.

And the second part of it deals with assigning sitting judges. I think that both sentences, both parts of the amendment, will detract from the Supreme Court's ability to administer the system. But the first sentence is fatal because if it is taken out, this would mean that every district judge like myself can establish his own little fiefdom and run his court the way he wants to, take as much time to decide his cases as he wants to. And I don't believe this is what our people want. Our people want, I believe, speedy justice, fair justice and they want it consistent throughout the state. And the only way we are going to get that is to give the Supreme Court the authority to establish some reasonable rules about how long a judge can take to decide a case and about a judge helping other judges decide what they get in trouble. So, ladies and gentlemen, I must ask you to defeat the entire amendment.

Questions

Mr. Lanier Judge Dennis, this language that it may establish procedural and administrative rules not in conflict with law, is this intended to mean that the Supreme Court could make the local court rules of each judicial district?

Mr. Dennis No, sir, it's not. The way this language came about in the committee, the present Constitution says that the Supreme Court has control of and general supervisory jurisdiction over all courts. So it took the members of the committee objected to the words "control of," and they were taken out. Now just to be sure that that didn't completely take away the Supreme Court's right to make reasonable rules as to the administration of justice in the state about things such as how long you can take to decide a case and reporting to the Supreme Court about case loads and things

of this nature which are essential to efficient management of the entire court system. Just to make sure those were not done away with by deleting the words, "control of," we put in the second sentence which clearly states that the Supreme Court can make procedural, administrative rules.

Mr. Lanier So, what we have here, this does not authorize the Supreme Court to tell each judicial district how to make its local court rules. It merely is to give the court authority to control the general administration of justice throughout the whole system.

Mr. Dennis That's correct, Mr. Lanier, and I believe that under this even if something like that should be attempted, the Legislature could, by its authority in this sentence, come in and write another rule and say we can make local court rules. But it is not the intention of the... to grant the Supreme Court that much pervasive power.

Mr. Roy Judge Dennis, what this provision would do, the second sentence of Section 5, is to mandate district judges to decide their cases in a sense. And if a district judge decides he is not going to decide his cases, the Supreme Court would have the authority to make him to do. Isn't that correct? It would prevent judges from sitting on cases for two and three years and not deciding them. Isn't that what it allows the Supreme Court to do?

Mr. Dennis Yes, sir. That's the kind of power that I think is legitimate and good and directed for...to bring about justice throughout the state. I think that's needed.

Mr. Roy I agree. And if we adopt this amendment, it takes away that particular power, doesn't it?

Mr. Dennis You're right, Mr. Roy.

Mr. Roy So that you could have some district judges sitting on his haunches for six or seven years even and not deciding a case, couldn't he.

Mr. Dennis I think it might, as I said, set up little fiefdoms. Each judge would run his court the way he wanted to.

Mr. Roy And wasn't that a problem in the past until the Supreme Court started getting the judicial administrator to get on some of these judges. And isn't it still a problem with some district judges.

Mr. Dennis As I said earlier, I think this is one of the biggest complaints that the public has about the court system throughout the country.

Mr. Stinson Judge Dennis, if they want to get action instead of letting a man sit...someone take care and to his work and don't do it... why didn't you provide they would hold up his salary, I'll bet you'd get some action, wouldn't you?

What are you going to do, give the judge a vacation and send a man in to do his work and pay him a paid vacation?

Mr. Dennis Well I believe that could be provided for by a rule, too, possibly. I believe we have a statute to that effect now but it's rarely used because it requires that an attorney must initiate, and attorneys are reluctant to initiate these things against judges. That's why the authority should be in the Supreme Court, not...you shouldn't leave it up to individual attorneys to have the courage to attack a judge to get something done.

[Previous Question ordered. Record vote ordered. Amendment rejected: 21-93. Motion to reconsider tabled.]

Amendment

30th Days Proceedings—August 15, 1973

Mr. Poynter: The amendment [x, y, z] as drafted reads: on page 2, line 17, after the word, 'civil', delete the remainder of the line and on line 18, delete 'both the law and the facts' and insert in lieu thereof, 'and criminal cases extend only to questions of law'.

That would make the paragraph read, "except as otherwise provided in this constitution, the Supreme Court's jurisdiction in civil and criminal cases extends only to questions of law", but leaves the last sentence, "in criminal matters its appellate jurisdiction extends to only questions of law".

You didn't want that redundancy...make a slight change, then, Mr. Roy, page 2, line 17 after the word "civil" delete the remainder of the line and delete lines 18 and 19 in their entirety and insert in lieu thereof the following: "and criminal cases extend only to question of law".

Explanation

Mr. Roy: Mr. Chairman, ladies and gentlemen of the convention, there are some other co-sponsors on here. Senator De Blieux asked to be a co-sponsor and Delegate Guarisco and a few others.

Let me tell you what I'm doing here and what we are trying to do and to meet the issue head-on. Presently, the law of this state is that the Supreme Court may review only errors of law in cases going before it of a criminal nature. However, in civil type cases, that is those that don't deal with anybody going to jail or being fined, the Supreme Court may review questions of fact. Now what does this mean for the ordinary layman?

It means that if you are convicted of a crime and they question a fact as to whether there was enough evidence to convict you or not, the Supreme Court may not review that conviction. Less there was a technical error of law committed in the trial of the case. And if so, then he may grant you a leave.

But if the Supreme Court, even if it was satisfied, a majority of the Court, that there was not enough evidence to convict you, they could not reverse the conviction because the Supreme Court may only review errors of law in criminal cases. Mind you, we are talking about a man's life or liberty....not being able to be reviewed by the Supreme Court on fact matters.

However, if, after a trial on the merits a district judge or jury finds as a matter of fact in a case that you are entitled to so much money for the loss of an arm and that your particular case you should get so much money, since that is a civil case, when it gets up to the Supreme Court, it may review the questions of fact and if the majority of the Supreme Court decides that your arm is not worth what the jury or judge thought it was worth, it may reduce it or it may, in certain cases reverse the whole award to you.

Now I don't understand the logic there. I have never understood the logic of an appellate court being able to review questions of fact but not... in civil cases but not in criminal cases. In fact, I don't think it belongs at all in either case. The 5th Constitution by the seventh amendment provides that the appellate courts may not review findings of fact by the district, or judges or juries and there is a good reason for it. You hear or see me talking right now. You make an opinion or a judgment about the way I am conducting myself. I may make a facetious comment about something that you may interpret it as just that, a facetious comment.

But if you read the newspaper tomorrow and you haven't been here today and somebody has then got to determine what manner of speech I used in making the comment, he may get confused. And that's exactly what happens in a lot of cases on appeal. Because you know on appeal the only thing that goes up is a record. And the judges in the court of appeal read this record and they try to decide and second guess the district judge or jury as to how the witnesses presented themselves; were they telling the truth or not? Was their demeanor good? These are only things that the person at the district court level can appreciate whether he be

judge or jury. What I am trying to do is, in questions of fact, the Supreme Court may not tamper with the local judges' ruling or the local juries' ruling.

Now it may, on a question of law, always review. And it may reverse. But when it comes to a fact matter, it is not allowed to do so. I think it's a good amendment. I think we need to meet that issue head on.

Louisiana, incidentally, is one of the few states in the union that allow the appellate courts to review questions of fact. The Federal System in this state does not allow the review of fact questions. That's why I said earlier that a Louisiana has to try to put on a federal cap a lot of times to get what he thinks should be the best justice.

If he can put on a federal cap and get in the federal court and a decision is rendered in his favor on a question of fact, the Fifth Circuit will not touch it.

But even if, after a trial on the merits, a jury of twelve men comes back and says, "We believe Mr. Roy's client," or, "We don't believe Mr. Roy's client," when it goes up on appeal, some judge reading a court record can say, "Well, five witnesses said the light was red, four said it was green, so we can reverse what the people who heard the witnesses say believe." I don't think it's right. And that's all this amendment does, it restricts the appellate review of the Supreme Court to questions of law alone.

Questions

Mr. Lanier: Mr. Roy, do you believe that juries are able to make mistakes on questions of facts?

Mr. Roy: Yes, but I believe that appellate court reading a court record make a lot more mistakes than juries do.

Mr. Lanier: Do you believe that a trial judge in a district court can make an error on facts?

Mr. Roy: Yes, I believe that, too, but I believe that an appellate judge reading a cold record, not having heard or seen the witnesses, not having seen the testimony presented makes a lot more mistakes than that judge does.

Mr. Lanier: Do you believe that justice is done when an error on facts is perpetuated in an appellate record?

Mr. Roy: No, I don't believe that. But I believe that more miscarriages of justice occur when appellate judges take into their own hands their own interpretation of facts when they've not heard or seen the witnesses and reverse juries and judges who have rendered correct judgments.

Mr. Derbes: Mr. Roy, it would seem appropriate to me to try to indicate to this convention what effect this will have on the ordinary civil docket in the courts throughout the state.

Isn't it correct that so long as the Supreme Court has no ultimate power to review facts, that there would of consequence be a substantial increase in the number of jury trials?

Mr. Roy: No, I don't believe that and I'll tell you another thing I don't believe. I think that if the appellate courts cannot review facts, you'd have fewer appeals and cases would be decided by the district court or jury and finalized at that level instead of the defendant or the aggrieved party or somebody not liking the verdict trying to get two bites at the apple.

Mr. Derbes: So you answer my basic question in the negative?

Mr. Roy: That's correct. Louisiana has had jury trials now for years and there's just not a great influx. That is a false issue...the notion of an

increase in the number of cases litigated.

Mr. Derbes It's not a matter of the increase in the number of cases litigated, Mr. Roy, it's an increase in the number of jury trials.

Mr. Roy That doesn't necessarily follow because the judge... the court of appeal or Supreme Court cannot review the judge's opinion as well as the jury's. So that doesn't bother that jury trial issue.

In fact, let me just point out in other states, in the common law states where you have jury trials that are prevalent, the defendant asked for jury trials in most of the cases. You try filing a suit in another state and ask the judge to decide it. Most of the times the defendants come in and ask for a jury trial himself.

But that's not the issue. The issue is not whether we can increase....

Do you have a question Mr. Sandoz? I'll stop.

Mr. Sandoz Mr. Roy, don't you agree that in other states that permits no review of fact by the appellate court, that there is a substantial backlog in their cases where in some states three, four and five years in getting a case to trial?

Mr. Roy I don't think that that's the reason for that, Mr. Sandoz. In your Northeastern states where there has been an influx of cases it has just been that way for many years because they don't provide for an adequate judiciary.

We have a great judicial system here. We've got enough judges, they don't provide enough.

Mr. Sandoz But, don't you think, Mr. Roy, that the reason we have a great judicial system is the fact that we have this review of facts?

Mr. Roy No, in fact it works just the opposite. The fact that an appellate court in this state may take a second bite at the apple causes more appeals to be taken because either party who's aggrieved or figures he's lost decides to appeal. So it just continues the case on up through the appellate structure when it need not be appealed.

Mr. Sandoz Mr. Roy, what about the cost of the parish government by encouraging jury trials in every little case. We don't have the system in the federal courts where we've got a minimum of ten thousand dollars on a case. In other words, you can ask for jury trials on five hundred dollar and thousand dollar cases which would cost [.....], which would cost your parish governments untold thousands of dollars.

Mr. Roy There's nothing in this Section that deals with jury trials at all, and you all are making a false issue of them. As a matter of fact to ask for a jury trial in Louisiana under present Louisiana law you have to have a minimum of a thousand dollars. So that's a... just don't be misled by all this jury trial conversation, ladies and gentlemen. It's not the issue.

The issue is simply whether you believe an appellate judge, reading a cold record, is in a better position to determine the veracity of a witness and his demeanor and his conscientiousness as the judge or jury who saw that person testify.

Mr. Stinson Mr. Roy, don't you think that if a district judge knows that he can do no error, no one's going to review him, that it's likely to make him play politics more in his decision than if he realizes that his decision would be reviewed by the higher court?

Mr. Roy No, I don't believe that. Maybe some would do it, but the fact of the matter is, that you are still trying to argue the substitute, some person's reading of a cold record for that of a district judge. And let's talk about the cases where the district judge is correct....

Further Discussion

Mr. Burson Mr. Chairman, ladies and gentlemen of the convention, I rise in opposition to this amendment. Now this amendment is a favorite project of an association of which I am a member, The Trial Lawyers Association. And as most of the members of that association in my legal career, I have primarily represented injured persons, whether in workmen's compensation cases or personal injury cases.

However, I disagree with the position taken by my fellow members of the association who seem to assume that denying appellate review of facts would redound always to the benefit of the injured party or the workmen's compensation claimant.

I have not found this to be the case in my experience as a trial lawyer in eight years of practice. I have rather found that on many occasions I was very happy to have recourse to appellate review of facts and I have participated in cases where I am convinced that the power of the appellate court to review facts in a personal injury or a compensation case has prevented, has prevented, rather, great injustice.

Now our courts have used this power of appellate review of facts with discretion. We have what is called the manifest error rule which simply stated means that an appellate court will not reverse a trial court on a question of fact unless there is what is called manifest error, or error apparent on the face of the record. In my experience, it is very seldom that you will find an appellate court in the State of Louisiana reversing a trial court on a question of fact. They will say time and time again that the finding of the trial court on the question of fact is entitled to great weight.

My position on this issue would be that this system has worked well in what a judicial system is after all supposed to do, which is to review all the parties, and that includes both the parties I represent and those I don't represent because the object of the judicial system is certainly not to favor those classes of persons that I happen, as a lawyer, to represent.

Now if it has been pointed out that in federal court that the courts, there, of appeal do not have the power to review facts. I have found this to be a disadvantage in appellate review in federal court. To give you one easy example, I had a jury case, recently, where the personal injury award was not in relation to the injuries involved. But I was not able to obtain appellate review of the findings with regard to injuries because it was a factual finding.

Only in a limited case where no damages at all were found for pain and suffering was I able to get a review. I am convinced that this same case in state court, I could have got justice for the parties involved.

I would agree, definitely with the tenor of the question by Mr. Sandoz that taking away the power of appellate courts to review facts will increase your backlog many fold. You have only to look at the examples of the States of Illinois, New York, California and so on where they do not have appellate review of facts, and they have backlogs of four or five years because everybody wants a jury trial.

I submit to you that our system has worked well and that my own personal experience would indicate to me that the greatest protection for an individual against a hometown decision or any other miscarriage of justice is to permit that appellate court to review that cold record that Mr. Roy was talking about where the appellate court does not have its emotions involved and I feel that justice will be more readily done.

If I've not exhausted my time I'll answer any questions....

Further Discussion

Mr. De Bileux Mr. Chairman and ladies and gentlemen, I support this amendment. At the present time in our law, we have a double standard. We have a standard that involves money or property. You can get an appeal on the facts and the law. If it involves your personal rights as charged in a crime, regardless of what mistakes that may be

made in evaluation of the evidence below, it can only be corrected if there is an error in law. That's not right. We should have one standard. If we are going to use it, it should be the same in criminal cases as in civil cases. There is no reason to have a double standard in our law. And I say if you are not going to review the facts in criminal cases, why should you have the right to review the facts in civil cases? It is just as simple as that.

In contrary to the arguments that have been used here, I do not see where the appellate judges are any better able to decide whether or not a witness is telling the truth or not telling the truth, looking at a cold record than they can as a judge or a jury, listening to that witness in his own manner, his own mannerisms, his own voice, his own reflections tell his story.

If they can review it in a civil case, they ought to be able to review it in a criminal case. And if they can't do it in a criminal case, they ought not to be able to do it in a civil case. I think this is a good amendment and I ask you to support it because I think it will eliminate the double standard and give us a whole lot more security and we'd have better facts decided by the lower court than we have at the present time. I ask your support.

[Quorum Call: 110 delegates present and a quorum.]

Further Discussion

Mr. Derbes Thank you, Mr. Chairman. I'll be brief. I rise in opposition to the amendment for primarily reasons of efficiency and the speed with which I believe justice should be granted. There is an old legal axiom that justice delayed is justice denied.

I personally feel that if this particular amendment were adopted that jury trials would become the rule rather than the exception and would slow down the machinery of justice perhaps even to the point where additional sections of court would be required to do the job now performed by those sections in existence in your areas.

I think there is one important consideration to bear in mind, and that is that we have, this convention has adopted the principle of elected judges. That, to me, means that the judge is responsible to the people.

If this provision, if this amendment were suggested as a complement to an appointment system for the judiciary, I think I might be in favor of it because it would insulate the people, the actual petitioners and claimants, from manifest errors by interposing a jury where appointed judges may, in my opinion, occasionally render judgments more in keeping with certain preconceived social notions. For example, if the judges were selected by the Bar Association and were oriented toward insurance companies rather than plaintiffs, this, I believe, would be a good provision.

To the contrary, we have not seen fit to establish an appointment system for the judiciary. Rather, we have chosen an elected mechanism for selection of judges and in my opinion that creates a substantial responsibility and likelihood that the judges will follow the will of the people and will in my opinion, render judgments for the individual rather than for the firm or the company where permitted by law.

So I urge you in the interest of providing speedy trials, and in the interest of dispensing justice swiftly and efficiently, that this amendment be defeated.

Thank you.

Further Discussion

Mr. Tate Mr. Chairman and fellow delegates, I hesitate to trespass once more on your time, but at the request of a few I rise in opposition to Mr. Roy's amendment. Mr. Roy's amendment has a lot of emotional appeal. The reason I am against it is

I think could be summarized for three reasons:

One. Under the present review in civil matters, the review of both law and facts puts on the clerk the duty of reviewing for justice in the truth of the matter. As a matter of fact, a properly replied... the manifest error doctrine prevents an appellate court from disturbing evaluations of credibility and overturning factual findings on the mere whim of the appellate court. But the ultimate aim when you review for presence of fact, is fairness, truth and the just result according to law. Now if our review is limited to questions of law as it is in criminal cases, the sole matter before the court is this technicality or that technicality. This rule of evidence, this instruction to the jury, this procedural step being put instead of that procedural step first, and what can the court do if it finds an error? It can do nothing more...I'll answer the question...than remand for retrial like in criminal cases. The Louisiana philosophy since 1812 has been in accordance with review of facts and law, and one trial wherever possible, and one appeal in civil cases to end the matter forever.

Now, when your review is limited to questions of law, what does a trial lawyer do? Naturally, he tries to raise, and I don't blame him, just as many technical traps as he can for the trial court. Why? In order to...in case he loses, preserve some ground to have another shot at the apple on a retrial. So what happens? Instead of a case being tried in one day, it'll be three days. And instead of being finally over...if there are some technical errors there, it's sent back and it occupies the trial judge again three days.

Now, I respectfully submit to you that the custom, tradition and law of this state since 1812 requiring appellate courts to review facts in civil cases has worked well. I would say that probably ninety-eight percent of the cases, the trial judge and jury and appellate judge are going to reach the same results. Two percent...may differ. And those two percent, maybe they should differ.

But by and large the end result is one fast trial, one faster trial with full day in court. One appeal directed not to technicalities but to the merits. Who should win? And then the final conclusion of the matter. As a result, I may say, the Institute of Judicial Administration which collects statistics on delay in Metropolitan and other areas doesn't even list our state because as bad as we think the delays are, they are nominal compared to other states. Chicago five years to wait for a trial in an automobile accident case. New York the same and so on.

So I respectfully suggest that we should reject the Roy amendment as much as I like the author and appreciate his willingness for me to serve in perpetuity except limited to ten years.

Questions

Ms. Zervignon Judge Tate, you were on this committee. Did you all consider extending review of the facts to criminal cases?

Mr. Tate That is another question. I don't think we seriously did. I think someone proposed it. I don't think it carried with a second. But that's another question. I understand there is another amendment coming up on it.

Ms. Zervignon Do you have any idea why serious consideration wasn't given to review the facts on criminal cases?

Mr. Tate Well, that requires an awful long answer. The reason possibly is, tradition, the fact that we inherited that law from the Anglo-Saxon which traditionally limits review in criminal cases to law. The fact that as a matter of administration of justice, many times people were afraid that, for instance, an appeal on facts in criminal cases might involve, although I don't think it would, the district attorney being able to appeal, the

question of acquittal and things like that. I'm not giving you a completely square answer because it's very complicated. The question you asked why there shouldn't be a review of facts in criminal cases. But for the administration of criminal justice, it's generally felt that....that has just not been extended.

Mr. Perez Judge, isn't it a fact that one of the reasons that you do not review the facts in criminal cases because a criminal case is always tried before a jury whereas most civil cases are tried before a judge without a jury.

Mr. Tate That is a very good partial answer. Of course I think in misdemeanor cases, we only review law. But in the vast majority of cases that is true.

Further Discussion

Mr. Guarisco Mr. Chairman, members of the convention, I rise in support of the Roy amendment. Here we go again. Louisiana is bringing up the rear. The federal system don't do this, the other forty-nine states do not review the facts. In fact, no jurisdiction in the Western world reviews the facts, not even France from whence we supposedly get our civil code. It's unheard of in South America. Nobody reviews the facts on appeal except Louisiana.

Now is it because our district judges are stupid? Is it because our juries are uninformed and not able to listen to a factual situation and make a determination? I don't think we are unique there.

What happens is that someone makes what I call, you've heard of hearsay testimony? Well, this is what I call seesay testimony, in that, a judge reading a cold record as Mr. Roy said, is able to reverse the factual findings of a judge who saw the witness, heard the reflection in his voice, witnessed his demeanor and his whole attitude.

Or if they are better, in a better position to determine whether or not a person is telling the truth. For an example, and we see this in the press all the time. A man makes a statement and the press repeats his statement. The press is correct, but they didn't print his inflection or the way he said it. For an example, someone says, "Are you a liar?" And I said, "Yea, I'm a liar." Well you know I am being facetious. But you put it in print or you put it in a cold record, he said, "Look what he said. He said he was a liar."

Also, we talk about manifest error. Well, manifest error is just a cute little phrase. It's not applied. And it certainly isn't applied in criminal cases as Judge Tate already told you because we don't review the facts in criminal cases. As far as backlogs are concerned, this is just an assumption on somebody's part that somewhere in Chicago they have a backlog of five years, which I don't know if that's true. And if it's true, I don't know the reason. I sure don't know that the reason is....is because they don't review the facts.

So I ask that you vote for this amendment.

Questions

Mr. Weiss Mr. Guarisco, what percent of cases are reviewed by the appellate courts by fact alone?

Mr. Guarisco I think 90 percent or more. Almost every case they look at they look at the facts.

Mr. Weiss Isn't this in contrast to what Judge Tate just said, that 98 percent are not in controversy? Now you say 90 percent are.

Mr. Guarisco Judge Tate only reviews the cases that go up on writ. Let me say this, if Judge Tate was the only judge that was reviewing my facts, I wouldn't mind it.

Mr. Weiss Well Judge Tate has been a district

judge too, hasn't he.

Mr. Guarisco No. Judge Tate has always been either on court of appeals or on the Supreme Court.

Mr. Weiss An appellate judge then, so he should know.

Further Discussion

Mr. Avant Mr. Chairman and fellow delegates, I rise to speak against this amendment. This has been a problem that has concerned me for nearly twenty-five years. I have devoted a lot of thought to it ever since I began practicing law nearly twenty-five years ago. I have practiced law and I have represented, almost exclusively, plaintiffs, injured people, for that period of time. I have practiced law under the federal system. I have practiced law under the state system that we have in Louisiana. I have been involved in cases in Mississippi and Texas where you have jury trials. Under any system that I have been under, there have been times when I was dissatisfied with the results that I got. There have been times when I was ecstatic with the results that I got. I think that's going to happen and continue to happen no matter what system we operate under. But I do know this, and this is what is the compelling and turning and winding factor in my mind. I do know that in Louisiana if you have a lawyer who is tending to his business and pushing his cases and doing what he is supposed to do, in most of the courts of this state and in practically all of the court of appeals circuits, you can push your case to a conclusion and wind it up and get it over with in a reasonable period of time. I do know that in the states where you have the system that this amendment would impose upon you, particularly in the metropolitan areas in those states, that it is the and six and seven and eight years from the time that you file a suit before you can get to a trial before a jury. I think that that is what is going to happen in this state if you go to this system. You are going to go into a proliferation of jury trials in all cases. You are going to have additional expense and much, much, much more delay. Now that is just as absolutely certain as the sun rises and sets. I'm not impressed at all, based upon experience, that if you go to this system that you are going to an absolutely in all cases better system because I know from experience the times I have gone to the courts of appeal in this state, I have been seeking relief from the decision of a lower court or the decision of a jury which I felt was wrong. In just as many times as I feel that I have been aggrieved or my clients have been aggrieved by that system, I have also felt that the system has corrected an injustice that they have sustained at the hands of a local district judge or at the hands of a jury.

Further Discussion

Mr. Kilbourne Mr. Chairman, ladies and gentlemen, I rise to oppose this amendment. Now I do want to mention this matter of appeal in criminal cases and civil cases. Really, it's the same system, I think, inaccurately to compare a civil case with a criminal case. A lady asked a question about that a while ago. But there really isn't any comparison between a civil case and a criminal case. I'll try to explain why. In a criminal case, when a man is tried and found guilty or found not guilty by a jury or by a judge. That ends the case. There is no appeal by the other side, by the prosecution. That absolutely ends the case once and for all. On the other hand, if the defendant is found guilty, he has a right to appeal and if there is an error in the proceedings or a legal error, the Supreme Court can reverse it and give him a new trial. Now that doesn't happen in a civil case. In a civil case, both sides have an appeal and it goes up on the record and the appellate court can read the record and study the record and if they think the judge is right, they

affirm it, if they think he's wrong, they can render judgment. The two things are entirely different and I hope that you won't be confused by the argument that since there is only an appeal of law on the criminal case, it should be in the civil case. It isn't true at all because the two procedures are completely different. Now I've tried cases a long time and I've tried them in unfriendly courts. I've gotten cases reversed. I've had them reversed that I won, and I've had them reversed that I lost. I think that's a good system. If you will pardon me for bringing in a little interjection or a little personal experience. For the first eighteen years I practiced law, my father was judge. Now he was an imminently fair man, but he was so zealous he was so fair, he would bend over backwards. I thought, to favor my opponent, though I knew he wanted me to win. It often happened that I appealed his decisions and they were reversed by the appellate court. I think that's the way it ought to be. I sincerely hope that you will vote down this amendment.

Question

Mr. Stinson Mr. Kilbourne, don't you know that it's a fact that this issue has been presented to the legislature year after year after year, and the legislature, in its great wisdom, has always turned it down.

Mr. Kilbourne That is my understanding and I want to make this point too. I believe it was Ms. Zervignon, asked Judge Tate if this matter of appeals on the facts in criminal cases was considered in the committee, Judicial Committee, of which I am a member. It was discussed briefly but actually it would be such a burden on the courts. . . . In other words, it's just a possibility if you wanted to give the accused person in a criminal case the right to appeal on the facts, then you would have to give the state the right to appeal, also, which nobody wants.

Further Discussion

Mr. Dennis Mr. Chairman, fellow delegates, I rise in opposition to the amendment. I believe very little new could be added. I would like to point out to you that our most recent and reliable statistics show that in Louisiana, we are presently disposing of about 70 percent of our cases in six months or less. That in the parish where the most cases have been appealed, their rate of appeal has only been 14 percent. So I'm guessing that the average is much less than that throughout the state. Also, I don't agree that we are all by ourselves or that we are behind in this area. It is true that we are the only state that has appellate review of the fact, but we are not the only country or the people of the world who do. In fact, many more people live under the French Civilian tradition of appellate review of facts. More of the countries of Europe have it than live under the Anglo-Saxon view of appeal of the questions of the law only. I'm informed that Great Britain itself is having second thoughts about this rule. It would seem strange to me that here in 1973, right after the advent of "cajun power" in its full blossom, that we should discard this French Civilian tradition which has stood us in great stead and made our courts, I think, the envy of the country. So I ask you to vote down this amendment.

Questions

Mr. Guarisco Judge Dennis, did you actually check to see if France reviews the facts on appeal?

Mr. Dennis Did I actually check it?

Mr. Guarisco Yes.

Mr. Dennis I didn't go to France, but I've read law review articles by legal scholars that say that this is a French Civilian tradition that we

have adopted the appellate tradition of review of fact and the procedure for appeal on the limited issues.

Mr. Guarisco Would you believe it if I told you that no European country, including France, today, reviews the facts on appeal? That they have, in fact, abandoned it, if they once had it.

Mr. Dennis No sir, I wouldn't. That's contrary to everything I've read.

[Previous Question ordered.]

Closing

Mr. Roy Mr. Chairman, the ladies and gentlemen of the convention, I know when I've had it, but I'm going to say my piece anyway. I just feel that it is time that we quit playing dirty pool with respect to what issues are relevant and which ones are not. The issue of jury trials is not bore you at this time. ~~Whomever~~ ~~tries~~ to tell you that it is, is erroneous. The issue of jury trials will come up in the future. The legislature and you may, in your wisdom, decide that jury trials will be limited to certain types of cases. What I can't understand, though, is how Justice Tate can talk against the notion that he should not be able to review facts in a civil case and presumably reduce an award and/or reverse a judgment in favor of someone. Yet in his wisdom believe that if he knows that a criminal has been convicted on no evidence, be bound and shackled and say that I cannot vote to reverse you because the constitution does not allow us to, and allow a man to go to prison and lose his life or liberty for that reason. Now that's the sole issue here in a sense about comparing review of facts in criminal cases and civil cases. I think that this whole issue arose in the early days of this state when the landed aristocracy allowed itself to say that when it comes to criminal cases, we don't want our appellate courts tampering with jury verdicts. After all, if a jury is honest and decent enough to convict a man and sentence him to the "pen", what makes it different in a civil case? Will it shrink its responsibility? Will it not do what's right just because it's a civil case? There is no argument that can be made with respect to jury trials in civil and criminal cases. The point is this. If you allow a case to be appealed and an appellate court may review the facts, then you're going to increase the number of appeals notwithstanding what all these people have told you. The other states that have a congested docket, there is no evidence that points out to the fact that it's because the states allow the facts not to be reviewed. I cannot understand how we can allow, in the final analysis, a set of seven judges or a three panel judge and a court of appeal to read a cold record and say that an honest district judge and an honest jury made errors of fact, misinterpreted the evidence, didn't realize that so and so was lying, when all they are reading is a cold record. If you are going to vote on this amendment, and I understand the notion that the way it's going because of what has been said, everybody has got his little pet case where he got some judication in the appellate court that was better than he got in the district court. That's not the issue in my judgment. But if you're going to vote on this, vote on it on the merits. Vote on it as to whether you believe that a person reading a book is better able to tell you what's in the book than the participants or the characters who actually lived out the book itself. That's all I ask you to do.

[Previous Question ordered. Amendment postponed 28-495. Motion for amendment withdrawn.]

Recess

Amendment

Mr. Poynter Sent up by Mr. Conino, Toomy, Gauthier and others.

Amendment No. 1. On page 2, (this goes to 5A) line 12, after the period, delete the remainder of the line and delete line 13 in its entirety and insert in lieu thereof the following: "It may assign a sitting or retired judge to any court with his consent and with the consent of a majority of the members of the court in which the judge is assigned."

Now this is not the same amendment that was heretofore prepared because it deletes one line less of the language, if you will.

Explanation

Mr. Toomy. Mr. Chairman, fellow delegates, this amendment was previously inadvertently overlooked by the Clerk, and with your leave we'll go back to Subsection 5A. The original Conino amendment that was offered, I believe, eliminated more of the committee proposal than the convention had hoped to. This amendment simply concerns itself with the last sentence of Subsection 5A which reads: "The Supreme Court may assign a sitting or retired judge to any court." Under the committee proposal, the Supreme Court at its own discretion could place any judge, whether sitting or retired, without his consent, to any court in any part of the state. It has been said previously by Justice Tate and some others that there has been a rule in the past that the Supreme Court would not assign judges. . . give judges such assignments without their consent. What I'm simply trying to do here is to make it the rule without further exceptions. There would be no exceptions in the future to this rule. Some of the believed judges, it seems, may want to return to the practice of law. As you notice in the committee proposal, judges can retire after 12 or 16 years with pension benefits. They may want to retire after that time and go back to the practice of law and not have this hanging over their heads. . . the constitution. It provides that the Supreme Court could assign them to sit at a court. I'd like to bring to your attention that the present provision in the law provides that retired judges would require their consent for such assignments. In that regard, this only follows the present provisions of the law. I think that it should further be provided that any judges, whether sitting or retired, should have their consent to sit in another court. I'll answer any question there may be. Any questions?

Questions

Mr. Dennis. Mr. Toomy, the way this is written, wouldn't this mean in a one or two judge district that the Supreme Court could assign a judge to that district without the consent of the one or the two judges in that district? You say you have to get a majority of the members of the court to agree to the assignment.

Mr. Toomy. You are speaking just in that case of one or two. . .

Mr. Dennis. Yes sir. I believe we have some one and two judge districts in the state. My question now is directed specifically to those districts.

Mr. Toomy. Well I don't see where there would be any problem at all where one judge was sitting. I just think it's a matter of interpretation what the majority would be. I don't really see that as a problem, Judge Dennis.

Mr. Velazquez. Isn't this in many ways, the same amendment that lost 18 to 80?

Mr. Toomy. No sir. May I bring to your attention that the arguments against the amendment when it was previously offered, was to delete the second sentence of Subsection 5A, which in regards to procedure and administrative rules assigned by the court. This has nothing to do with that whatsoever. It only concerns itself with the last sentence in regards to the Supreme Court assigning judges to another court.

Mr. Velazquez. Don't you think that if some judge wants to practice law full-time after he finishes being a judge the Supreme Court in its wisdom will not force him to go somewhere he doesn't want to go and preside over a court?

Mr. Toomy. I would agree with your assumption, but under this amendment that would be the rule and there would be no exceptions to that case. I think exactly what you are saying would prevail with no exception at all.

Mr. Velazquez. Are you going to make us spend another hour discussing this thing and then defeating it 18 to 80 again?

Mr. Toomy. Mr. Velazquez, I don't think there was any discussion on this at all previously. The matter was in regards to what Mr. Conino had wanted to eliminate, the second sentence. This has nothing to do with procedural and administrative rules of the court. Simply with the Supreme Court assigning judges. May I remind you again that the present provision in the law is that in the case of retired judges, you must have their . . . the Supreme Court must have their consent to assign them to a court.

Further Discussion

Mr. Tate. Mr. Chairman, fellow delegates, without repeating the debate of an hour that occupied us before, I think essentially this is the same argument that was made and rejected just shortly before, principally to the effect that a judge should be able to be assigned to a district which needs his help when he, himself has a light case load and is completely in control of the situation. I think that the adoption of this amendment would destroy efficient judicial administration of the state—the best efficient use of the manpower. I don't want to trespass, as I said a minute ago, on your time, but I just think . . . Mr. Chairman, if there is no other speaker, I move the previous. . .

[Previous Question ordered. Record vote ordered. Amendment rejected: 26-83.]

Point of Information

Mr. Dennis. Yes. Mr. Chairman and fellow delegates, it's my understanding that both of these amendments are directed toward taking out of Section 50 (2), the words "death penalty" because the authors are opposed to the death penalty. The committee did not consider this specifically. However, I believe that majority of the committee would not object to deleting these words. . . if there are any members, I will ask them to come and speak for themselves. I personally do not object to either amendment taking out the words "death penalty" as long as it's made clear that if there is a death penalty in the future, this kind of case will be appealable outright to the Supreme Court. I think if we substituted whatever Dr. Weiss has or whatever the other amendment has, it would probably accomplish that purpose. Unless there is another member of the committee who would like to object to this amendment, I, on behalf of the committee do not plan to object to either amendment.

Amendment

Mr. Poynter. Amendment No. 1 [by Mr. Weiss]. On page 2, line 25, after the word "which" and before the word "penalty", delete the words "the death" and insert in lieu thereof the words "a capital crime deterrent".

Explanation

Mr. Weiss. Fellow delegates, the time has come for discussing a "gut" issue. This has been before the Bill of Rights Committee and I would appreciate your attention because this is an amendment which I believe is more than a political compromise, but rather a just development in the course of civil-

zation as we now stand here in Louisiana at this time. I therefore call upon you to use more than emotion, but reason, and if you will give me the courtesy, Mr. Roemer, Mr. Brown, and others to listen to what I have to say. . . . The purpose of this amendment. . . . If I have to summarize this before you lose interest, may I say that this is a technical amendment, in my mind, that includes anything in the spectrum from, and all inclusive of, the death penalty to imprisonment with pardon. This particular statement is, to me, an updating of an antiquated concept, and that is the death penalty. Certainly, the decision of the Supreme Court was intended to illustrate that cruel and unusual punishment is not now to be accepted in the courts of the United States. On the other hand, on a 4 decision, four justices disagreed with the majority of five, and felt that there was value to the death penalty. However, all justices agreed that if the death penalty is to be abolished, it should be abolished by legislative act and not by the courts. It is therefore my intent, of the use of the term "a capital crime deterrent" to remove the antiquated concept of death penalty which is now equated with capital punishment. Rather, it is intended to be used as it states, as capital crime deterrents. There are certain heinous crimes that we have read about in the paper, and many people are inclined to feel that the tears and the grief of those who have suffered the loss of a loved one are equally important as those of the tears and the grief suffered by those in death row—the murderers. I will not try to make an issue of this because the most enlightened men of the land, the Supreme Court, have come to a 5 to 4 decision in which the majority of the justices feel that capital punishment is no longer a creditable deterrent from crime. Many people, however, and the last vote of our legislature I believe indicated 75 percent in favor of capital punishment, feel otherwise. So, therefore I feel that we should update the wording of our new constitution and to avoid the words "capital punishment," use instead "a capital crime deterrent" or "imprisonment with pardon." The death penalty or imprisonment at hard labor may be imposed or in which a fine exceeding \$500 and so on, should now be read into this section. It blends very well with the Bill of Rights Committee concepts, by some of us, also in the minority, that there is still room for capital crime deterrent punishment, which may include in some instances, the death sentence. But I think it's time to eliminate the concept of capital punishment and equate it with the death sentence. Certainly, that is outmoded. Perhaps man, some day, shall reach the stage where it will be unnecessary to eliminate one of our own race, one of our own creed and color, one of our own human beings because of some heinous crime which was perpetrated upon society. In any event, I believe that as the Supreme Court split 5 to 4, perhaps in the minds of the most enlightened psychologists and penologists and other specialists in the penalty field, there is still a difference of opinion as to whether there should be a sentence of death in any case of any type. So, therefore, I present to you a convention an opportunity upon this convention, allowing them to decide through a judicial act or decision supplemented by a legislative act, which is necessary in the Bill of Rights Committee Article to follow through in a capital crime deterrent concept. I therefore urge the members of the convention to accept this amendment, a capital crime deterrent, to be inserted before the word penalty. Now, if I may answer questions.

Questions

Mr. Burns I'm in favor of your objective but I just can't see the word "deterrent" used to supply what you want to do. In other words, I've always understood in the practice of criminal law an argument before a jury that it was argued that the capital verdict of ten years in the penitentiary or life imprisonment was a deterrent to crime. In other words, to use the words "capital crime deterrent" I just don't think that will accomplish

what you have in mind.

Mr. Weiss I think that the legislature, in accordance with the Supreme Court decision the courts may not impose the death penalty on anyone. The death sentence is the word I want to use, death sentence on anyone, unless there is a legislative act to support it. Therefore, the legislature could pass an act that anyone, for example, who murders the governor would himself be subjected to a death sentence. The court then, if finding this man guilty, would with a judicial sentence, of necessity have this man executed.

Mr. Burns But what I'm trying to tell you, Doctor any sentence, a sentence of five hours in jail under the theory of enforcement of criminal law is referred to as a deterrent. In other words on the theory that imposition of sentence and the prosecution of a criminal is not so much directed against that individual as it is to be a deterrent to future crime on the parts of other people.

Mr. Weiss Then why use the term "death penalty". Delegate Burns?

Mr. Burns I don't object to eliminating the words "death penalty".

Mr. Weiss That's the only point, that we update our constitution.

Mr. Burns I just don't think the word "deterrent" would do it.

Mr. Weiss I think it's far better than the word "penalty", however.

Ms. Zervigon Dr. Weiss, what you're aiming at is abolition of the death penalty or paying the way for abolition of the death penalty?

Mr. Weiss It states neither in this type of crime deterrent. In other words, if some legislative act feels that the penalty should be death, then it opens the way and allows for this type of execution of a sentence and a crime deterrence. The particular point that I have in mind is that we should not punish an individual but rather set him up as an example to prevent others from conducting the same type of behavior.

Ms. Zervigon Well, I'm kind of at a disadvantage on discussing this article because I'm not an attorney, but tell me what a capital crime is. I thought it was one that was punishable by death.

Mr. Weiss That's correct. However, today the term "capital crime" is obliterated by the Supreme Court decision that no unusual punishment is allowed and therefore the Supreme Court has removed most cases of the death penalty. However, the Supreme Court has allowed the use of the death penalty according to the Furman vs. Georgia decision of 1972 by the courts in which there was a five to four split of the justices to allow the death sentence, providing the court does not act upon this decision, but rather a legislative act must accompany their decision.

Ms. Zervigon Should the legislature abolish the death penalty, what would be the meaning of the phrase "capital crime deterrent"?

Mr. Weiss The capital crime has become imbedded in our law and as I understand it, it's time to eliminate the term "death penalty". Now as far as capital crimes we'll leave that to the attorneys to argue out. It's still being used extensively in the law.

Mr. Kelly Dr. Weiss, I think I understand what you're trying to do here but is your interpretation of a capital crime or what used to be a capital crime or what may be a capital crime in the future, the same thing as a felony?

Mr. Weiss A helpful and a serious answer, is that right, Delegate Kelly?

Mr. Kelly Well, I'm asking you.

Mr. Weiss Well, isn't that true?

Mr. Kelly My opinion of it is.

Mr. Weiss That's my opinion too, so it may also be included in here but it does not leave the way open for capital crime deterrent sentences, such as death.

Mr. Kelly As I understand it here, we're not dealing, and see if we are thinking along the same lines. Is it your interpretation that what you're placing into this article is going to make way for capital crime deterrence in the future. It is my understanding that in D2 here, we're talking about appeals. Is that correct?

Mr. Kelly Appeals?

Mr. Weiss Yes sir. Those cases which are appealable to the Supreme Court.

Mr. Kelly Right. For example, suppose the death sentence has been imposed by a judge. It is the desire of the defendant attorney to alter this to life imprisonment.

Further Discussion

Mr. A. Jackson Mr. Chairman, ladies and gentlemen of the convention, I rise in opposition to this amendment. Contrary to what Dr. Weiss has said to the delegates to this convention that his proposition would update our constitution, I take serious issue with it because I believe that it would antiquate the constitution of this great state. My reason for saying that is that I believe that we would be constitutionalizing a concept that is not only uncivilized but would be contrary to what I believe to be in the interest of good prison reform and our ability to rehabilitate criminals incarcerated in the institutions of this state. Secondly, I oppose the amendment because I do not believe that we want to put this kind of ambiguous language in the constitution. I sat back there struggling, trying to fathom what Dr. Weiss means by the phrase of "capital crime deterrent." The only thing that I could glean from this phrase is that he is trying to suggest to us that capital punishment is a means to deter crime. I take serious issue with this because there is not one shred of evidence to support the notion that capital punishment is a deterrent to crime. I point out to the delegates to this convention that there was a period in which we had some two hundred thirty-one capital crimes for which we assessed the death penalty and during this period we had public executions. Individuals would gather in the squares to witness the public executions. One of the capital crimes was pickpocketing and during the time when they would hang people, other individuals would go about picking the pockets of the individuals who came to watch the public execution. I think this only illustrates that capital punishment is not a deterrent to crime and is contrary to what I believe to be a civilized method for dealing with the problems that we have in this country. So I would urge you to vote against this amendment because it is ambiguous, because it would antiquate our constitution and because the language is not clear and would be subject to all kinds of interpretations. Therefore, I do not believe that it is good organic law.

Further Discussion

Mr. Jack Mr. Chairman, ladies and gentlemen, I'm against this amendment. Incidentally, I've never heard anything about a capital crime deterrent any more than I have a woolly ant out in Texas. Now, while I'm speaking against the amendment, I want to mention one thing, Mr. Chairman. You all

listen. You might learn something here. Now, Mr. Chairman, this is for you because I think the amendment is dead. I've practiced law for forty-one years and the thing reads, "clear criminal case which death penalty or imprisonment at hard labor may impose," etc. is appealable to the Supreme Court. Now, it has nothing to do with whether the law or the Supreme Court says you still have a death penalty or not. That's just saying the type of case once the appeal is there. It's very simple, Doctor. I suggest you look at it again. Now, I want to mention this, Mr. Chairman. I want to hurry this constitution along as fast as you do, but at times when I do ask for the floor you look like you can talk me out of it. But let me tell you, the only people who are going to have the privilege of seeing me when I'm not talking are those that attend my funeral.

It's a bad amendment. Let's kill it. Thank you.

[Previous question ordered.]

Closing

Mr. Weiss No, I'd like to make my point a little clearer for those that have older concepts. This to me still is a more modern concept. It allows flexibility from one extreme to the other to what some people recognize as a death penalty to complete pardon. The concept being that the age of penalty is passed. The age of prevention is here. Some people, and by a five to four vote of the Supreme Court, feel that capital punishment as the law has recognized it is still an effective means of deterrence and this is simply stating what some people feel, that there are means of creating deterrents, to heinous crimes by the sacrifice of an individual through an execution as an example. I grant you that this is not palatable to any of us. On the other hand, as I pointed out famous penologists, psychiatrists, psychologists, Supreme Courts justices, attorneys and individuals who profess to be specialists in all fields who have read up on the subject and find that they think that crime cannot be corrected by execution of individuals are still in their infancy in the recognition of what the disorder is all about. I, for one, was in British Honduras several years ago at which time only three years before they removed capital punishment in the form of hanging in the town square just three years before. The incidents of crime had increased, murder had increased and other instances in which we find ourselves in this society in a serious situation. This I believe can be remedied by simply correcting the term "death penalty" to read "a capital crime deterrent penalty" and I recommend that this be accepted by you, the delegates.

[Record vote ordered. Amendment rejected: 7-105. Motion to reconsider tabled.]

Amendment

Mr. Poynter Alright, fine. Amendments offered up by Delegates Taylor, Johnny Jackson, Brown, Stovall and others. This is not the first set of amendments. The second set of amendments which the pages, it looks like, just have completed passing out.

Amendment No. 1, on page 2, line 25, immediately after the word and punctuation (2) delete the remainder of the line and on line 26 delete "punishment at hard labor may be imposed" and insert in lieu thereof "cases in which the defendant has been convicted of a felony".

Explanation

Mr. J. Jackson Mr. Chairman, ladies and gentlemen of the convention, let me first say that the difference between this amendment and the first amendment is that we did not include the phrase "imprisonment at hard labor." As you would appreciate the wording of the first amendment we made reference to the words "conviction of a felony" and it is my appreciation in talking with members of the conven-

tion and Judge Tate that it would be somewhat redundant if we left the phrase in there "imprisonment at hard labor". Now to the meat of this amendment. I think that Dr. Weiss and Representative Alphonse Jackson have expounded pros and cons of the words "death penalty" and the merits of "death penalty". My position to make it very clear to the convention is that I don't believe that we ought to at this point constitutionalize the words "death penalty". If in the future, and I would hope not, but if in the future that the federal courts or the Supreme Court reverses its decision then the wording of this language would provide, it would seem to me, for any imposition for those who may want. I do not. In fact if someone is charged and been convicted of murdering somebody, let's say, then he is in effect, has caused, he violated, been convicted of a felony. I do not as a delegate to this convention, as a citizen of the State of Louisiana want to at any point constitutionalize the words "death penalty". I would suggest that the manner in which this amendment is phrased gives the possibility of the Representative Alphonse Jackson said, positive organic constitutional law and with that explanation I would ask that you adopt this amendment.

[Previous Question ordered. Amendment adopted: 63-52. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendments proposed by Justice Tate. Amendment No. 1, on page 2, line 23, immediately after the word "law" and before the word "has" delete the words "or ordinance".

Explanation

Mr. Tate Mr. Chairman and fellow delegates, the Chief Justice asked me to bring this to your attention and I thoroughly agree with him and I'm pleased to do so. We're talking about the mandatory appellate jurisdiction of the Supreme Court being when a case is decided by a trial court and automatically goes to the Supreme Court without going through the Court of Appeal first. The present committee proposal retains immediate Supreme Court review of statutes which is appropriate because the effect is statewide but it also retained after first taking it out immediate review when an ordinance of a drainage board, a city or town, any of the numerous boards we have that have the power to adopt ordinances. The Chief Justice suggested that, and I agree with him as I say, that the appropriate way to review those when they are declared unconstitutional is right in the court of appeal. If the court of appeal, the Supreme Court, doesn't agree with it, they've got thirty judges in the court of appeal to take those five hundred towns and those numerous boards. If the Supreme Court doesn't agree with it, the Supreme Court will be able to review. For instance, last month we had four ordinances that we reviewed, in two of them, the court of appeal had declared an ordinance unconstitutional, we granted a writ of right because we have to review it under the present constitution, when ordinances are declared under the constitution and reaffirm the court of appeal. It was a waste in my opinion of time and judicial manpower. The reason they went to the court of appeal in the first place is that the trial court had declared them constitutional. **Mr. Denberry.**

Questions

Mr. Denberry Justice Tate, don't you think although there may be some burden on the judicial manpower of the court, don't you think it... the declaration of an ordinance by a lower court as being unconstitutional and then requiring the municipality or the parish or the district to go through two appeals to finally determine whether that ordinance is constitutional might put a terrible burden on the municipality or local government?

Mr. Tate Are you suggesting?

Mr. Denberry Very serious.

Mr. Tate Alright. If the trial court declares it constitutional...

Mr. Denberry No... I said unconstitutional.

Mr. Tate I know. But if the trial court declares it constitutional, it goes to the court of appeal which may or may not declare it unconstitutional and it can still go to the Supreme Court. The... in fact, you're still having only one review as of right. The Supreme Court would not have to take a writ as we had last time when the court of appeal was clearly right... It would only be one appeal... one review as of right as it is in all cases but it would...

Mr. Denberry Well are you suggesting then that the court feels that municipal ordinances are not worthy of being decided by the Supreme Court? The constitutionality of it? It just seems to me Justice Tate that the wrong attitude has been taken here. It seems to me that municipal ordinances and district ordinances and parish ordinances are equally as important as a statute would be.

Mr. Tate Well I would answer that... Are you seeming to say that the courts of appeal, which are very fine courts, which have the facilities to attend to the parishes within their jurisdiction immediately shouldn't also...

Mr. Denberry No sir. What I'm driving at is when an ordinance is adopted by one municipality, the declaration of that ordinance as being unconstitutional could very well affect every municipality in the State of Louisiana and it seems to me it's a matter of statewide importance and interest and therefore should be determined ultimately, not by the grace of the court, but by right by the Supreme Court. That's my point.

Mr. Tate Well I think it's a good point and you may well differ with me. I differ because generally speaking the ordinances are not of statewide interest. Generally speaking they're not and there are a awful lot of ordinances being adopted that could be reviewable.

Mr. Tobias Justice Tate, is it not true that the present constitution provides for direct appeal to the Louisiana Supreme Court for ordinances?

Mr. Tate Ordinances. Yes sir.

Mr. Tobias Now you addressed yourself to the civil case but let us suppose that we had a criminal penalty, for example, a statute which said that no cajun can be on the streets of Shreveport after 8:00 p.m. Clearly unconstitutional on its face. Do you not see any reason why that should not directly... it's of statewide concern. I would dispute with you. Do you not agree it's of statewide concern?

Mr. Tate Well, I think it's of universal worldwide concern if they try to keep cajuns off the streets of Shreveport, but why would they want to go there?

Mr. Kean Mr. Justice Tate, the constitution presently permits the direct appeal from the district court to the Supreme Court with respect to an issue involving the constitutionality of an ordinance. Does it not?

Mr. Tate No. When an ordinance has been declared unconstitutional it also does whenever the legality or constitutionality of any exercise or tax is unconstitutional. The committee in its wisdom took that part out of the recommendation of Chief Justice Sanders because we have an awful lot of frivolous attacks on taxes, you know.

Mr. Kean But your amendment would further reduce the appellate jurisdiction of the Supreme Court, would it not?

Mr. Tate Yes sir.

Mr. Kean And it's your opinion that that could be done simply because ordinances do not have the statewide significance as state laws.

Mr. Tate That in many instances, and probably most instances that come before us, they do not. In the exceptional case, of course it would go all the way I suppose.

Mr. Kean Well isn't it a fact though that many ordinances can deal quite directly with the rights in property and as a matter of fact with respect to life and liberty, and you still feel that there is a distinction under those circumstances between state laws and ordinances so far as action by the Supreme Court is concerned?

Mr. Tate Now we must incidentally, we must separate the civil side from the criminal side. If anybody is convicted under an ordinance whether it's declared constitutional or not, they have their right of review to the Supreme Court. You must leave at the side life and liberty and we're just talking about regulatory ordinances and so on.

Mr. Kean Your objection against the present practice is that it's not of statewide significance, not that it imposes any great burden on the court.

Mr. Tate My ultimate objection and my heart's not...I won't die in the ditch like I did when five-sevenths of my time cut off recently, but my ultimate objection is you have a Supreme Court with an ever-expanding case load. I think you should try to look to the future and provide some stopgap on the mandatory appeals that come there. We're willing to take whatever the convention tells us to, but we didn't even try, on criminal cases which compose seventy percent of our load not to take it...not to continue to do that, but somewhere along the line we may be taxed beyond what we can do and this would just give possibly a chance of some relief. You know there are a lot of these organizations that attack city governmental actions now. You know there are a lot more than there used to be and it's nothing wrong with that.

Further Discussion

Mr. Tobias Mr. Chairman and fellow delegates, I rise in opposition to this amendment. Presently the Louisiana constitution, the 1921 Constitution, provides for immediate appellate review of an ordinance which has been declared unconstitutional. This should be continued. Just take for example this...suppose, and I'm not speaking on the merits of it, let's suppose that New Orleans adopted a metropolitan's earnings tax by ordinance. This would affect a million people at least. Do you not think that this particular type of ordinance should go immediately, immediately to the Louisiana Supreme Court for determination? Suppose, for example they were to enact, I use for example Shreveport enacting a criminal statute which made it criminal to...let's say perhaps Shreveport enacted an ordinance which said that you will be not permitted to parade upon the streets under any circumstances whatsoever. Clearly unconstitutional. Should not...That statute affects a lot of people. It's of statewide concern. I urge you...let's kill this amendment right now and continue the present procedure that was provided by the constitution of 1921.

Questions

Mr. Stinson What do you think if Ville Platte would pass an ordinance that no cajun could walk on the streets of Ville Platte?

Mr. Tobias Well, not being a resident of Ville

Platte, I don't know whether I could support that or not.

Mr. Avant Mr. Tobias, isn't it a fact that if an ordinance was declared unconstitutional, if this amendment was adopted it would add approximately at least nine months to maybe a year to the time that ordinance would be in limbo before we ever got a final decision as to whether it was or was not constitutional?

Mr. Tobias Not necessarily. As a practical matter the Louisiana Supreme Court presently gets very very few appeals on ordinance cases. Very very few and it's minimal and the delay is not that long. They're almost down I believe to six months at this point.

[Previous Question ordered. Amendment rejected: 27-82. Motion to reconsider tabled.]

Amendments

Mr. Poynter Amendment No. 1 [by Mr. Drew], on page 2, line 28, immediately after the period, delete the remainder of the line and delete lines 29, 30, and 31 in their entirety.

Amendment No. 2, page 3, between lines 2 and 3, insert the following: "(F) In all criminal cases not provided for in subsection(D)(2) of this Section, an accused shall have a right of appeal or review, as provided by law."

Explanation

Mr. Drew Mr. Chairman, ladies and gentlemen of the Convention, this is a strictly technical and particularly a substantive change. The reason I am moving a portion of the part that is being deleted into a separate section and it probably still is not in the proper order but I think Style and Drafting will be able to handle it by making it a separate section. As it is now located here in Section D2 you will notice that it is under Section 5 Supreme Court including appellate jurisdiction. The purpose of putting this sentence, "In other criminal cases an accused shall have a right of appeal or review as provided by law or by rule of the Supreme Court not inconsistent therewith", was to provide a vehicle for appeals from courts of limited jurisdiction. That was the entire purpose of this. I was afraid by leaving it into Subsection 2 here that it might be inferred that those appeals would have to go to the Supreme Court. That is the reason for making a separate section and as I said that is more of a technical matter there. Now the substantive change is the deletion of the delegation of legislative authority to the Supreme Court. The legislature is the proper body to legislate rights of appeal or review as provided in the first clause. But the way this reads it can be done by rule of the Supreme Court and I don't think the Supreme Court has any right to encroach upon the legislative powers of the legislature. There anymore than I think the legislature should encroach upon a judiciary. I think that the legislature will take care of it. They are the proper party to take care of it and I ask for the adoption of the amendment.

Questions

Mr. Tapper Mr. Drew, in other words if I understand your amendment, if your amendment is not adopted the words on line 30 "or by rule of the Supreme Court not inconsistent therewith" would remain in the article and the Supreme Court could set forth certain rules by which an accused would have the right to appeal. Is that correct?

Mr. Drew That is correct and I think that is a violation of the separation of branches.

Mr. Tapper Without your amendment they would have that right to make those rules instead of it

30th Days Proceedings—August 15, 1973

having to go to the legislature.

Mr. Drew It would give the Supreme Court that right. Yes sir. If there are no other questions I ask your favorable consideration of the amendment.

Mr. Sandoz Mr. Drew, the way the proposal is presented the legislature would have the right to adopt any rule it so thought was fair and the purpose of permitting the rule by the Supreme Court is to fill in any gaps that may occur. Isn't that true, sir?

Mr. Drew It could be interpreted that way. Mr. Sandoz, but I think it's a delegation of legislative authority to the judiciary which I'm opposed to.

Mr. Sandoz Doesn't the proposal provide that the rules of the Supreme Court shall not be effective if the legislature acts on that point?

Mr. Drew I don't argue with you one minute, Mr. Sandoz, but I don't think the Supreme Court is a legislative body. I ask favorable adoption.

Further Discussion

Mr. Dennis Mr. Chairman, fellow delegates, I rise in opposition to the substantive change. I don't object to the moving of the sentence into a new section. I think that probably is in order. However, the substantive change I think is going to limit the ability of the Supreme Court to work out a pretty knotty problem that brought this provision about in the first place. The main problem we were dealing with here was what to do about trials and J. P. courts where the J.P. doesn't make a record. Under the present law you have a trial de novo. If you aren't satisfied with what the J.P. rules then you can ask for a new trial all over again in the district court which is inefficient and it really means you try the case twice instead of once so here we provided for the Supreme Court to have the authority to make some rules as to how these J.P.'s were going to proceed to record the testimony and to get appeals from these J.P. courts into the other court system. Now this is going to require some working out financially and we don't even know exactly where these appeals ought to go. Whether they ought to go to the district court, the court of appeal, or directly to the Supreme Court and we felt that the Supreme Court would be in a better position by its rule-making power to work out the details for appealing these misdemeanor cases and as Mr. Sandoz pointed out in his question, we have not taken anything away from the legislature because if the legislature doesn't like the rule that the Supreme Court comes up with it can come right back and pass a law and delete that rule. The provision that is in the committee proposal clearly says that the Supreme Court can only make rules consistent with law passed by the legislature and we felt, as Mr. Sandoz said, we ought to give the legislature the authority to fill in the gaps and try to work out a situation that nobody's really been faced with before because in the past we've always had trial de novo's and now we aren't going to have trial de novo's. We've got to figure out a way to appeal from that tribunal up to a district court, court of appeal or Supreme Court.

Questions

Mr. Stinson Then for an appeal from a city court to a district court will not be de novo...under this or any other provision in this section.

Mr. Dennis No sir, that's correct. There is another provision that is going to require evidence be preserved in all courts in all trials. That's another section that is coming up later but it is related to this because this scheme behind both of these amendments is the justices of the peace and mayors and everybody else are probably going to have to go out and buy a cassette recorder or something and record all of the testimony and then

an appeal will be provided by court rule or by law from that court to a district court or maybe a court of appeal or the Supreme Court.

Mr. Stinson But that's another provision later on?

Mr. Dennis Yes, the preservation of evidence provision that I mentioned is in Section 32, I believe.

Mr. Stinson If that is the thought of your committee, and we have always said we are trying to protect the people, isn't it a fact from your past experience as a district judge and practicing attorney, that when they go into city court most people, or a great number of them, do not hire an attorney. They don't know how to present their case, and then when they decide to appeal they hire a lawyer and it is too late for him to help them, it is not de novo, and are we going to be denying the people some protection that they should have?

Mr. Dennis I don't believe so, Mr. Stinson. It has been my experience that layman, with the help of the court, sometimes do a better job without an attorney in these misdemeanor cases because the court usually leans over backwards to be sure they get a fair shake.

Mr. Stinson Well, I have been in court where the court will lean over backwards to see that they were put in jail too, and they have there a private citizen with a hired prosecuting attorney and in most cases the judge trying to send him up too, and you are going to take away his right to appeal de novo?

Mr. Dennis Well, let me say this, Mr. Stinson. This provision doesn't prevent a trial de novo. It simply says that the Supreme Court can work out a rule for appeal and that could be by trial de novo and the legislature could supercede that by law.

Mr. Kelly Judge, I think you just answered the question. The last sentence in two here does not prevent the legislature or by rule of the Supreme Court from establishing the de novo appeal again. Is that correct?

Mr. Dennis That is correct. I believe I probably made some misleading statements. This is my hope that we will get away from the trial de novo but it doesn't have to be that way. It could be provided for again just like it is now by the Supreme Court, or by the legislature, that this is the type of appeal that you would have. You are very correct.

Mr. Hayes Judge, are you saying then that all courts then will be a court of record of some kind, upon request or what?

Mr. Dennis Yes sir, you could put it that way. The provision that requires that a recording be made or that evidence be preserved in all trials is Section 20, so reading that in connection with the provision that we are now on, I believe we will assure that all trials in all courts, even down to J.P. courts, all evidence will be preserved and that either the Supreme Court or the legislature is going to provide a method of appeal, whether it is trial de novo or a review of the record.

[Previous discussion continued.]

Closing

Mr. Drew I just want to make a couple of statements. I hate to oppose the chairman of my own committee but I made this point in committee. Judge Dennis stated that it was such a knotty problem that possibly the Supreme Court should work it out. I take issue with that statement. I think the legislature has knotty problems every time they meet. I think this is a purely legislative problem. I think to permit the Supreme Court to pass a rule of the court which has the effect

of law in prescribing the manner of appeals violates our entire system of three branches of government. I am opposed to Judge Dennis as far as his position on trial de novo and I think that very possibly the legislature will adopt statutes to create or recreate a procedure of trial de novo from the courts of limited jurisdiction to the district court. It has worked satisfactorily. It has not been a burden on the district courts and it has been a means of review for the limited courts. He also mentioned the fact about there would be finances involved. Well I can assure you this, the Supreme Court cannot provide the finances for taking care of the cost of these appeals. If there is any provision there that is another matter that is going to fall on the back of the legislature that has to be financed. I seriously urge that you adopt this amendment. Leave legislation with the legislature and the courts with the judiciary.

[Amendment adopted: 60-50. Motion to reconsider tabled.]

Amendment

Mr. Poynter It is a technical amendment sent up by Delegate Dennis on behalf of the Committee on the Judiciary. It hasn't been distributed.

Amendment No. 1 on page 2, line 32, immediately after the word "of" and before the letter "C" delete the word "Subsection" and insert in lieu thereof the word "Paragraph".

[Amendment adopted without objection. Previous question ordered on the section. Section passed: 110-0. Motion to reconsider tabled. Motion to revert to other orders of the day adopted without objection.]

INTRODUCTION OF RESOLUTIONS

[X Journal 317]

INTRODUCTION OF PROPOSALS

[X Journal 317]

Mr. Poynter Announce that Style and Drafting, Justice Gate, will meet as announced after adjournment on today.

Mr. Rayburn, chairman on behalf of Committee on Revenue, Finance and Taxation, sends up notice that his committee will meet Thursday, tomorrow, after adjournment in Committee Room 4 to continue consideration of the committee proposal, respectfully submitted, "Sixty" Rayburn, chairman of the committee.

[Adjournment at 5:00 o'clock p.m., Thursday, August 16, 1973.]

31st Days Proceedings—August 16, 1973

* * *

have good benefits and I think the legislature can live with it and I believe we'll be asking the legislature to look at our problems each time they create a judgeship and just not try to say well we'll make it at large and cope with the problem later. We're eliminating this at large position which has had such disastrous effects particularly on your Third Circuit and your Second Circuit. I ask you to support it.

Questions

Mr. Abraham Mrs. Miller, as I appreciate your amendment, isn't it true that this would not require any redistricting at all. It simply means the assigning of judges to run in a particular district. Is that not true?

Mrs. Miller That's right. This would just permit the Legislature to assign, it has absolutely no domicile or residence requirements at this time. The legislature wants to delete it in order to be free to do this. It will leave the freedom that I believe Judge Tate mentioned we needed and I'm for leaving that freedom for the legislature except to tell them to quit creating these at large judgeships.

Mr. Abraham Isn't it also true, that there is nothing in this article which requires that a judge reside within the district from which he runs?

Mrs. Miller That's correct. I don't believe you'd force any judge to have to resign.

Mr. Weiss Delegate Miller, the section we just passed, 68, notes that the chief justice is responsible for the judicial system of the state. Do you think the chief justice now will carry any more weight in recommending to the legislature what these changes should and might be?

Mrs. Miller Well, I think as a practical matter, that when it comes to these judicial districts that the legislature has shown a great inclination to listen to the members of the judicial council and take their recommendation and I hope that in the future they'll continue this policy but, of course, none of us ever know what the legislature is going to do.

Mr. Weiss Well, why have they allowed this condition to be established that's presently existing in the state?

Mrs. Miller Well, I believe Judge Tate gave us that background very well, that it just kind of grew. You know, why does a problem grow. It was the easiest way to cope with it at the time, and it didn't cause any problem.

Mr. Arnette This won't cause any changes in the parish of Orleans or in the Fourth Circuit, will it?

Mrs. Miller No, I believe when we discussed that with Mr. Denberry, it looks like it will not cause any problems.

Mr. Arnette So, this will leave the Fourth Circuit just as it is, and it just will help out the people of the Second Circuit and the Third Circuit?

Mrs. Miller Primarily, and it would also help the situation in the future.

Mr. Denberry Mrs. Miller, in our previous discussion I was reading from the present constitution. The way it reads now it would change it considerably, because all...

Mrs. Miller It's not saying that the legislature has to apportion or to make anything equal or to assign an equal number of judges and, of course, you don't have an equal situation now.

Mr. Denberry The way it reads now as it presently is set up in the project, in the proposal, excuse

me, it says that at least one shall come from each district within the circuit. No further limitation. In other words, in Orleans, since there are three districts, Orleans could elect everybody except two, is that correct?

Mrs. Miller Right, and when they create at large judgeships you could create three or four more at large judgeships down there and they could all get elected from one area of New Orleans.

Mr. Denberry I must confess, Mrs. Miller, I hope that you are not as confused as I am, are you? I'm terribly confused by it.

Mr. Jack Mrs. Miller, I'm from the Second Circuit and I haven't heard the judges say one way or the other. Now, you keep saying it would help the Second Circuit. Have you talked to any of them. I don't know whether it will help them or hurt them. We don't have an even number there. We have five judges and, of course, three districts, and we look like at present we need that at large section in the constitution.

Mrs. Miller Well, let's put it this way. You're from the Shreveport area and the Shreveport people have never complained because basically they are usually able to elect their at large judges from that area.

Mr. Jack No, that's not what I'm talking about. Have you talked in any of those judges? I haven't heard from them.

Mrs. Miller Well, let's put it this way. They do not have the same problem that the Third Circuit judges have because they don't run in 21 parishes.

Mr. Jack But, you're not answering my question. I don't want to argue with you. Have you talked with any of them?

Mrs. Miller Thank you; I ask you to support this.

[Amendment withdrawn. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [? ? ? ? ?], on page 3, delete line 30 in its entirety and insert in lieu thereof the word "and".

[Amendment withdrawn. Motion to reconsider tabled. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter "Section 10. Court of Appeal. Appellate and Supervisory Jurisdiction"

Section 10. Paragraph A. Except in those cases appealable to the Supreme Court and as otherwise provided in this constitution, a court of appeal has appellate jurisdiction of all civil cases decided within its circuit. It has appellate jurisdiction of all matters appealed from the family and juvenile courts except criminal prosecutions of persons other than juveniles. It has supervisory jurisdiction over all cases in which an appeal would lie to that court.

Paragraph B. Except as limited to questions of law by this constitution or as provided by law in the case of review of administrative agency determinations, its appellate jurisdiction extends to law and facts."

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, this section continues the appellate and supervisory jurisdiction of the courts of appeal in our state, essentially as it is...as these jurisdictions are set forth in the present constitution. As you will recall under our general scheme of things in our

court system the...most of the criminal cases are appealed directly to the Supreme Court and all civil cases...most all civil cases are appealed to the court of appeal. We add to that juvenile matters and cases appealed from the family courts. The courts of appeal's review of facts and law is similar to that granted the Supreme Court in cases appealable to it. If there are no questions, I ask for your favorable adoption.

Questions

Mr. Duval Thank you, Mr. Henry. Judge Dennis, in the last sentence, it says, it has supervisory jurisdiction over all cases in which an appeal would lie to that court. Now, I just want to get the intent. This is purely for information. That does not, does it, take away supervisory jurisdiction over interlocutory matters in which an appeal would not lie?

Mr. Dennis Wait a minute; say that again, please.

Mr. Duval An appeal does not lie over an interlocutory matter, but under the supervisory jurisdiction of the appellate courts, and writs can be taken. Now...to the appellate court...this sentence does not intend to take away the right to apply for writs to the court of appeal in an interlocutory matter, does it?

Mr. Dennis No, sir. It grants supervisory jurisdiction over all cases in which an appeal would lie to that court.

Mr. Duval So, the appeal would ultimately lie, then, after...

Mr. Dennis The particular ruling would not have to be appealable but it would have to occur in a case that would be ultimately appealable to the court of appeal. This represents no change.

Mr. Jenkins Judge Dennis, in Subparagraph B, you provide that as provided by law in the case of review of administrative agency determinations appellate jurisdiction would not apparently lie as to both law and facts. Now, we have a provision in the Bill of Rights section providing that factual determinations by administrative bodies would be reviewable by the courts. Now, would this preclude that? How would that affect that provision in our Bill of Rights, do you know?

Mr. Dennis Well, if you provided that in the Bill of Rights and there was no other provision in the constitution or law, and I suppose that if you provided that in the Bill of Rights there could be no constitutional law in conflict with this then it would mean it would take out our exception clause, really in effect; it would mean that all facts, even those in an administrative agency determination would be reviewable in the court of appeals.

Mr. Jenkins The thinking of the committee, I think, was that so often in these administrative agencies, factual determinations are made and then the courts are bound by them even though these agencies are made up of people who have no judicial experience whatsoever, and at certain times it's extremely cumbersome and it creates hardships on the parties. I'm wondering, does your committee have any strong feeling about that? Do you think you could go along with omission of that clause relating to administrative agency determinations?

Mr. Dennis We would prefer to have it drawn this way and adopted and if the constitution turns out as you think it will, have the section taken out in Style and Drafting as being unnecessary, because right now there are some statutory administrative reviews limiting the power of the court of appeals to review the facts, I believe.

Amendment

Mr. Poynter Amendment No. 1 [by Mrs. Miller], on

page 4, line 10, immediately after the word "except" delete the remainder of the line and at the beginning of line 11 delete the portion of the word "tion or".

[Amendment withdrawn.]

Recess

[Quorum Call: 107 delegates present and a quorum.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Jenkins, et al.], on page 4, delete lines 10 through 13 both inclusive in their entirety and insert in lieu thereof the following: "Paragraph B. Except as limited to questions of law by this constitution its appellate jurisdiction extends to law and facts."

Explanation

Mr. Jenkins Mr. Chairman, delegates to the convention, the effect of this amendment is to delete on line 11 everything after partial word "tion" through line 12 through the word "determination", so, that it says "Except as limited to questions of law by this constitution its appellate jurisdiction extends to law and facts." The practical impact of this change in the committee's recommendation is to bring it in line with the provision in the Bill of Rights which you'll consider later. It would mean this, in cases coming out of the district courts, your appeals court can reexamine both the facts and the law, but unless we eliminate this provision, unless we eliminate this clause that this amendment would eliminate, it would mean that an administrative agency's determination would have a higher status than a determination by a court of law. Now, this applies to most of the state agencies that have boards or panels of review of one sort or another that make decisions which are basically of a judicial nature, or of an administrative nature in some instances. You just think of an agency and it would probably apply to it. The reason for making this change is this, generally the decisions coming from administrative agencies have very poor fact records. That's because most agencies don't strictly conform to the rules of evidence or many of the safeguards that a court of law would. If you wanted to put something about administrative agencies in this article this would not be the place to do it, and so that's why this attempt is being made to delete this reference to administrative agencies. It would simply say that the appellate jurisdiction of the court of appeals extends to all cases as far as the review of fact and law except those mentioned in this constitution. I say once again, we need this otherwise we put the determination of an administrative agency higher than that of a determination by a district court. The decision by a district court can be reviewed as to law and facts. An administrative agency's decision should be reviewable in the same way, because its decision has probably not been made in any way near the manner that the district court's determination was made. So often there are instances where injustices are done because an administrative agency will make a factual determination. Frequently, it's in tax matters, and say that a certain amount of income, maybe, has been earned by an individual, and then, that determination by that administrative agency, however erroneous it may be, will have to be accepted and dealt with by the courts later on. They can only determine the law in the case and can't determine from the record the facts indicate otherwise than the administrative decision. That's why this amendment is necessary and I urge its adoption.

Further Discussion

Mr. Flory Mr. Chairman and delegates, I rise in opposition to this amendment and I ought to know better, I guess, than to get involved in something that's lawyers' business, but let me tell you what this amendment does in one area of the law. At the

present time, there are 80,000 people in this state unemployed. The law governing the payment of unemployment benefits provides that either the employee or the employer has the right of appeal. The appeal goes first to the appeals referee and then either side has the right of appeal to the board of review. Then, they have the right of appeal to the district court, but only on questions of law set out in the rules. Now, if you take the language out of the proposed Section B, as provided by law in the case of review of administrative agency determinations, what you're doing is requiring the court to review facts in every one of these cases. Now, the board of review, the appeals referee and the agencies all have to conform to rules almost identical with any court of law in this state and that is that they don't take any hearsay evidence. They have time prescribed in the statute as to the rights of appeal, time limits and etc. So, that their rules are set forth in the statutes, but if you adopt what the amendment calls for here you're going to require a review of fact in every one of these cases. I suggest to you that it ought to be only on the questions of law. Now, it's my understanding that one of the authors of the amendment is coming base with another amendment which would do exactly what the authors here purport to do but still protect the right of those agencies whose rule, etc., are in proper form and in accordance with the courts, and still allow them to accomplish what they're after. I would suggest that you defeat this amendment and then go with the amendment that will come afterwards. I'll be happy to answer any questions, Mr. Chairman.

[Previous Question ordered.]

Closing

Mr. Jenkins Just in closing, I'd like to say that with regard to Mr. Flory's objection, I don't think that it's well taken for the reason that every case certainly is not going to be appealed, but in those cases where there is an appeal the decision of the administrative body should not be given any higher sanction than the decision of a district court. That's what would happen, and we don't need this amendment. That's why this amendment is necessary. The law books are just full of instances time after time after time where an administrative agency has made a decision; it has the facts before it; the facts are in the record, but the decision it makes is clearly contrary to the facts. That should not be sanctioned, anymore than it's sanctioned when a district court makes that determination. So, there's no need in this section to talk about administrative agencies as in the proposal originally. This amendment takes out references to administrative agencies and puts them on the plane with the court subject to all the same standards as the courts of law. So, I urge the adoption of this amendment.

Questions

Mr. De Blieux Mr. Jenkins, according to the present wording of the proposal, if the administrative agency or some other of the courts would be overstepping its authority, couldn't the legislature correct it while they would not be able to do it under your amendment?

Mr. Jenkins I'm sorry, I didn't really understand that, Senator.

Mr. De Blieux I say, according to the wording in the present proposal where you say "as provided by law", if there were abuses made couldn't the legislature correct it while in other words, if we took out that language as you have amended it wouldn't it prevent the legislature from making a correction in that abuse?

Mr. Jenkins Well, I think the answer is that with this amendment we allowed the court to make the correction in the case involved. You wouldn't require legislation coming up to correct a particular

injustice because it would allow the appellate court to do justice in the particular case in question. So, I think that gives us justice much more directly than through a legislative sanction. I urge the adoption.

[Amendment rejected: 49-58. Motion to reconsider tabled.]

Amendment

Mr. Poynter On page 4 [by Mr. Avant], between Lines 13 and 14 add the following paragraph: "Paragraph C. The legislature may provide for administrative agencies and authorize such agencies to make factual determinations which shall not be subject to review if supported by competent evidence following notice and hearing."

Explanation

Mr. Avant Mr. Chairman and fellow delegates, this amendment is intended to accomplish what Mr. Jenkins, I think, wants to accomplish and at the same time eliminate the objections to the provision which you've heard which would result if this was taken out completely as Mr. Jenkins' amendment did. I understand it was rejected, Mr. Dennis. May I have my amendments? Now if you read this section or subsection as it is written... All right, now. The purpose of this amendment is to eliminate the danger that Mr. Jenkins brought to your attention and I think it is a very definite danger or possibility... without the objection that Mr. Flory made. Now, if you will read this Subsection B in the Committee Proposal No. 21 you must come to the conclusion, I think that the language "or as provided by law in the case of review of administrative agency determinations" would permit the legislature to create an administrative agency and authorize that agency to make factual determinations from which there would be no review period. It would authorize the legislature to do that which would be exactly the situation that is constitutionalized now with respect to the Civil Service Commission. That's in the constitution. The people put that in the constitution. Now on the other hand, if you take the language out completely and say nothing about administrative agencies then their review or review of the findings of fact of an administrative agency in an administrative determination would be just like any other finding of fact made by a court. It would be completely subject to review on the facts. Now this amendment would incorporate into this section a long-standing, well recognized rule of administrative law and that is simply this, that the legislature may provide for administrative agencies and authorize those agencies to make factual determinations and that they will not be subject to review if they are supported by competent evidence following notice and hearing which meets the requirements of due process of law. I urge you to adopt the amendment to eliminate the condition which would exist. I respectfully submit if you leave this language in that Mr. Jenkins wanted to remove or would also result if you had taken it out.

Questions

Mr. De Blieux Mr. Avant, I'd like to know what could the legislature do under your amendment that it couldn't do under proposal B in the original proposal?

Mr. Avant What could they do or what could they not do?

Mr. De Blieux That's right.

Mr. Avant Well, which one?

Mr. De Blieux Well, either answer, because under the original proposal it says "as provided by law" which means the legislature can enact laws for administrative agencies.

Mr. Avant All right, under the proposal, Senator De Blieux, as it is written, Subsection B, the legislature could create an administrative agency of any kind, you name it, authorize it to make findings of fact, or factual determination and in that same statute provide that those factual determinations were final and not subject to review by any court, period. It could do that.

Mr. De Blieux That's under proposal B?

Mr. Avant Under proposal B. If you read it, I think you must come to that conclusion.

Mr. De Blieux All right, would C keep them from doing that?

Mr. Avant C limits the legislature because it could not do so without the qualification that those finding of facts must be supported by competent evidence and must be the result of a hearing following adequate notice.

Mr. De Blieux Well, couldn't the legislature provide that under proposal B?

Mr. Avant They could provide that but they are not compelled to do so.

Mr. De Blieux Well, they're not compelled to do it under your section, either.

Mr. Avant Yes they are.

Mr. De Blieux It says the legislature "may". It doesn't say they shall.

Mr. Avant Well, they don't have to provide for the administrative agency at all, but if they provide for one then they have to also provide that if they're going to limit the review of its findings of fact that they have to be supported by evidence and they have to be after a notice and hearing, Senator De Blieux.

Mr. Dennis Mr. Avant, don't you think that your Subsection C is subject to the interpretation that apparently Senator De Blieux made of it that this doesn't require or put any restriction on the legislature. It simply authorizes them to do something. It's permissive. Wouldn't it be clearer if you withdrew it and spelled it out a little bit more that this actually says you can't even set up an administrative agency unless you provide this kind of review?

Mr. Avant I think this language in C provides that very clearly. They may provide for administrative agencies, and they may authorize them to make factual determinations which shall not be subject to review but only if they are supported by competent evidence following notice and hearing. That's what it means.

Mr. Dennis Isn't it true that under the basic constitutional theory that anything you say that the legislature... unless you say the legislature can't do something, it can do something?

Mr. Avant Well, you're saying right here, Judge Dennis, that they can't set up an administrative agency and give it authority to make factual determinations which will be final if those factual determinations are not supported by competent evidence and haven't been preceded by a notice and a hearing.

Mr. Dennis Well, I don't know that I agree with you, but even if that is so, would this mean that this is the only standard that could be placed upon a court in reviewing the determination of an administrative agency?

Mr. Avant That is the standard that is imposed now by due process of law, and I'm afraid if you adopt this thing as it is written you're doing away with certain of the present requirements of due

process of law.

Mr. Jenkins Jack, rather than accomplishing what my amendment would have, don't you think that this is just the opposite of my amendment, because didn't my amendment provide that a factual determination of administrative agencies would always be subject to review and doesn't yours provide that they shall not be subject to review if there's any evidence at all to support the decision?

Mr. Avant Any competent evidence, Mr. Jenkins.

Mr. Rayburn Mr. Avant, I certainly don't want to clamor the constitution up with a lot of "may" propositions. If we would adopt this amendment and say the legislature may do this, don't you think that we could do it without this amendment?

Mr. Avant Mr. Rayburn, the purpose of this amendment was to prohibit the legislature from doing something which I think they can clearly do under Section B and that is, to create an administrative agency and authorize it to make factual determinations on any basis they want to, no evidence, incompetent evidence, if that's the way they set it up, and at the same time, provide that that would not be subject to any kind of review.

Mr. Rayburn Mr. Avant, so under Section B, they have the language "as provided by law" and then Section C in your language says they may provide, so I'm at a loss as to know the difference. Section B says as provided by law and you don't say they shall; you say they may.

Mr. Avant We're talking about two different things, Mr. Rayburn. This "as provided by law" means by whatever the legislature does.

Mr. Rayburn That's right. Can you explain to me by what you mean by what they may do?

Mr. Avant I'm sorry, I didn't hear you.

Mr. Rayburn "As provided by law" in my interpretation means what... a law that is passed by the legislature. Now, under Section C you say "as may be provided by law". I want to know the difference.

Mr. Avant I don't say anything about "may be provided by law".

Further Discussion

Mr. Dennis Mr. Chairman, fellow delegates, I rise in opposition to the amendment. It is very unclear, I believe. I believe Mr. Avant is trying to say that if the legislature should provide for judicial review of facts of an administrative agency that if it's going to reverse those facts there must be at least some competent evidence to base its decision on. I think that's what he's trying to say, but I don't think this says that. I think this is... really may add nothing at all to the section beyond what the legislature is authorized to do in the first part. On the other hand, it might be interpreted to have a very bad meaning. To mean that if there is any competent evidence to support any administrative determination it could not be reversed, even though the legislature attempted to say that the court could review fully the findings of fact of an administrative agency. I don't know exactly what it means. I believe many of us are having trouble with it. I would hope Mr. Avant would withdraw his amendment and redraft it more clearly, but if he does not then I must ask you to reject it because I'm afraid not enough of us really know what it means.

Questions

Mr. Kilbourne Judge, you won't be held to your ruling on this if ever comes up in your court, but this says... I'm having the same trouble you are. I don't think I understand it... "shall not be subject to review... shall make factual determination

which shall not be subject to review if supported by competent evidence"...my question is, wouldn't you have to review those facts to determine whether or not we was competent evidence? That's what's bothering me about this. I wanted to ask Mr. Avant the question, but he didn't have time.

Mr. Dennis I'm having the same trouble you are. To me, it means that if there is any competent evidence then the legislature couldn't tell the court that it could change the determination of the administrative agency, but since he puts the word "may" in there, it doesn't seem to compel the legislature to do anything.

Mr. Guarisco Judge Dennis, under the law as it is presently and under this provision, if the fire marshal should check out a person's building and make a determination of fact that his building should be condemned and he reaches that factual determination, can any court review that fact or is that fact conclusive?

Mr. Dennis Well, it depends upon what the legislature says. If the legislature says that the court can review that administrative agency's determination then it could review it according to such standards as the legislature set forth.

Mr. Guarisco But isn't it now that administrative agencies' determination of fact by those agencies are not subject to review by the courts? Yet, court decisions are reviewable by the higher court. Isn't that correct?

Mr. Dennis No, sir. I think unless there's a limitation placed on the court in the constitution or in statutory law it has appellate review of all facts coming before it. Now, we have attempted to say in the previous section that the legislature can withdraw this appellate review of facts from the courts in administrative determinations as the legislature should see fit. Now, Mr. Avant is coming back and saying the legislature may provide a review but can't tell the court it can reverse if there's any competent evidence. I'm confused as to what it means. I don't think it's clear and I'm not sure even if we can all agree upon what it means that it is good

[Previous question deleted. Amendment rejected: 10-0-0. Motion to reconsider tabled. Previous question ordered on the question. SECTION passed: 111-1. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter Section 11. Courts of Appeal, Certification of the Supreme Court, Determination
Section 11. A court of appeal may certify any question of law before it to the Supreme Court whereupon the Supreme Court may give its binding instruction or consider and decide the case upon the whole record.

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, this continues a provision that is presently in our constitution without any essential change except to simplify the language. For those of you are not attorneys, in case you don't get the word from my fellow members of the Bar, on the floor, to certify a question to the Supreme Court from the court of appeal simply means that the court of appeal writes out the question of law that it wants to know and wants to have decided in a particular case and sends it up to the Supreme Court. The Supreme Court can answer that question for them without reviewing the whole case. However, if the Supreme Court finds that it needs to consider the whole case in order to adequately answer the question, it can require that the whole case be brought up and be decided in the Supreme Court instead of in the court of appeal.

Questions

Mr. Roy When Dennis, that's been the rule in the past, has it not?

Mr. Dennis Yes, sir. This is the same provision.

Mr. Roy And it's worked to obviate a lot of extra work and a lot of decisions by a court of appeal that later would need clarification by the Supreme Court anyway. Hasn't it?

Mr. Dennis Yes. The legislature went onto this and decided it would be desirable to strengthen this in our constitution.

Mr. Pugh Judge, as you know by statute, the federal court of appeal may also certify a question to the Supreme Court. I doubt its constitutional validity in its present form. Did you give any thought to providing here that a federal court of appeal may certify such questions or did you intend when you say "court of appeal", without referring to Louisiana Court of Appeal, to cover both the Louisiana Courts of Appeal and the federal Fifth Circuit Court of Appeal?

Mr. Dennis Mr. Pugh, I may stand corrected by other members of the committee, but I don't believe we considered granting to the state Supreme Court, if I understand you correctly, the power to certify to federal courts, questions of law. Is that what your question was?

Mr. Pugh No. The statutes now provide that the federal Circuit Court of Appeal may certify to the Louisiana Supreme Court, questions, much as a court of appeal, Louisiana Court of Appeal, may certify to the Supreme Court. I'm saying that I don't think that statutory provision is constitutional. I'm asking you whether or not you all intend to include, when you used the phrase, "a court of appeal may certify a question to the Supreme Court", did you intend to include both the state courts of appeal and the federal courts of appeal?

Mr. Dennis No sir. I can answer that definitely. We intended only to speak of state courts in this article.

Mr. Pugh Did you intend to cover the federal courts of appeal in any other section?

Mr. Dennis No sir.

Mr. Tate Judge Dennis, with regard to Mr. Pugh's question, did you know that when the Bar Association had made a full study and came to the conclusion that in every state where such a provision was adopted, it was within the constitutional powers of the legislature to provide for that procedure? That the... Did you know that?

[Previous question continued on the question. SECTION passed: 114-0. Motion to reconsider rejected.]

Reading of the Section

Mr. Poynter "Section 12. Courts of Appeal, Chief Judge; Duties
Section 12. When a vacancy in the office of chief judge of a court of appeal occurs, the judge oldest in the point of service on the court, below the age of sixty-five years, shall succeed to the office and shall administer the court, subject to rules adopted by the court."

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, this provision provides for the selection of a chief judge in each court of appeal. In the present constitution, we have such a person already. He's called the presiding judge. So here we are changing

is one parish and they have two judges? Are you going to say one judge runs from North Bossier Parish and one from South Bossier Parish? Are you going to create two judicial districts within one parish?

Mr. Schmitt The number of judges are decided according to case load and this would be divided according to districts within that individual judicial district.

Mr. Stinson I know, but where that exists now is Division A and B which are elected parishwide.

Mr. Schmitt That's correct, they have to run from the entire district and in your case it would be the entire parish. In Orleans it's the entire Parish of Orleans which has hundreds of thousands of people and you have to project your views to these hundreds of thousands of people in order for you to have a chance of winning which means it costs a lot of money.

Mr. Stinson But if you're going to have one judge for each group, you are going to divide the parish into...

Mr. Schmitt Well, that's what you're doing with Representatives and Senators and judges from the courts of appeal and Judges from the Supreme Court.

Mr. Stinson Well, that's an entirely different problem from this.

Mr. Schmitt Why?

Mr. Stinson Because, if you got one parish and you are going to divide it into two different judicial districts, who is going to use the courthouse? The courthouse would be in one part of it and not in the other part.

Mr. Schmitt You are not going to have a new district. You are only going to have those judges elected from part of that district. In other words, as an example, the twenty-fourth judicial district court would still be the twenty-fourth judicial district court. However, the judges would run from just one portion of it.

Example, one might run from Gretna, one from Westwego, one from this other area. They'd all serve in the same building.

Mr. Stinson But in Bossier...my parish, the north part of the parish doesn't even have a lawyer so they wouldn't have a judge then, would they?

Mr. Schmitt I am sure one attorney would move there.

Mr. Dennis Mr. Schmitt, I wanted to ask you a similar question. Do you realize that we are providing in this constitution that in order for a person to run for judge he must practice law for five years first?

Mr. Schmitt I don't see any problem with that...

Mr. Dennis If you divide the state into single member districts based on population you might not have any...

Mr. Schmitt I am not talking about dividing the entire state. I am talking about dividing the individual judicial districts which have the number of judges based upon case loads. You might have one small parish which may have more judges. You may have one larger parish which may have fewer judges. But it would be based upon...

[Previous question ordered on the Section. Section passed: 109-4.
Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter "Section 15. Courts continued juris-

diction, judicial districts, terms.

Section 15. A. The district, parish, city, family and juvenile courts existing at the time of the adoption of this constitution are retained. Except as provided in Section 35 of this article, the legislature may abolish or merge trial courts of limited jurisdiction subject to the limitations in Sections 16 and 21 of this article. Except as provided in Section 35 of this article, the legislature may establish trial courts of limited jurisdiction which shall have parishwide territorial jurisdiction and subject matter jurisdiction which shall be uniform throughout the state. The office of city marshal is continued until such time as the city court he serves, is abolished by the legislature.

B. The judicial districts existing at the time of the adoption of this constitution are retained. The legislature, by a majority vote of the elected members of each house with approval in a referendum in each district or parish affected, may abolish or merge judicial districts, subject to the limitations in Section 21 of this article.

C. The term of district judge shall be six years. Terms established for judgeships existing at the time of the adoption of this constitution are retained. However, the legislature by a majority vote of the elected members of each house with approval and referendum in the parish affected may reduce the terms of district judges in a parish to not less than six years."

Chairman Henry in the Chair

[Motion to revert to other orders of the day adopted without objection.]

Announcements
[1 Journal: 127]

[Adjournment to 9:00 o'clock a.m.,
Friday, August 17, 1973.]

32nd Days Proceedings—August 17, 1973

Friday, August 17, 1973

ROLL CALL

[*One representative present and a pastor*]

PRAYER

Mr. Stovall Let us pray. Eternal God, Father of us all, all of us need those moments when we wait in quietness before you to realize who we are, who it is to whom we belong. Wherein lies our strength, the values for which we live and the direction our lives and our state should take. May this be for each of us such a holy moment. When we realize anew that we are Your children, created in Your image. You are the source of wisdom and guidance and You seek to lead each of us and our state toward Your kingdom, the fulfillment of Your purposes. We are grateful to You for this state in which we live and which we represent. We are grateful for the concern and the dedication of these delegates. We pray for Your presence with us here today that we might be patient one with the other, understanding of the issues that are before us and the willingness to stand for the hard rights against the easy wrong. And above all, work together to move us forward as a state, as a people, as a convention, that we might fulfill Your purposes. Be with our dear loved ones while we are separate one from the other and give us Your presence and Your wisdom for we offer our prayer in Your name, the one who was, and is, and ever shall be. Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Poynter Committee Proposal No. 21 introduced by Delegate Dennis, Chairman on behalf of the Committee on the Judiciary and other delegates and members of that committee.

Which is a substitute for Committee Proposal No. 6. A proposal making provisions for the judiciary branch of government and necessary provisions with respect thereto.

The status of the proposal at this date is that the convention has adopted, as amended, Sections 1 through 14; presently has under consideration Section 15, which was read but I believe not explained on yesterday.

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, we present to you at this time Section 15 of the committee proposal which relates to the courts at the district court level and below that level. As you know, the district courts are the basic trial courts in our state. The other courts below that level are referred to in this section as limited jurisdiction courts and I plan to offer a technical amendment to include special courts to make it clearer. The basic idea here is to retain the present structure of the trial courts of original jurisdiction in the state of Louisiana, and to provide for a mechanism for the legislature to be able to change and reorganize the courts below the district court level as time demands. Now this is not as big a change from our present structure as it may appear at first glance. Because even today, most of our city and other limited jurisdiction courts are really not constitutional courts. Most of them were created by statute pursuant to a grant of authority in this constitution. So here we are more or less continuing the same thing, except that, we are providing that future courts below the district court level must be established parish-wide and have uniform subject matter jurisdiction throughout the state. This we hope, will provide a vehicle for the legislature if it so desires over the next period of years to move toward either a

three leveled or four leveled court system that would be uniform and consistent throughout the state and would not be fragmented and specialized as it is today. Paragraph 8 provides that in order to change a judicial district from those existing at the present time, the legislature would be required to pass such a change by a simple majority and then that change would have to be approved at a referendum in each parish or district affected. Paragraph 8 represents a compromise on a very hard fought issue and that was the term of district court judges. As you know, the terms of district judges in Orleans Parish are twelve years and elsewhere in the state, they are six. Our committee considered increasing them all to twelve, reducing them all to six. A combination of having the first term being four or six years and then the second term twelve and after several days of debate finally adopted this compromise, which establishes the minimum term at six years but provides that the legislature could by a majority vote with approval of the referendum in the parish affected, reduce the terms of any judge who had a term over six years down to no lower than six years. I might add one comment on the style of this section as it might relate to the schedule when we have finally adopted both the section and the schedule. I believe for clarity sake in the schedule and this is my own personal view and it may not prevail in the schedule or in the Style and Drafting Committee. I believe we could set forth in the schedule specifically the parishes outlining the districts as they are today. And simply refer to the schedule in this section, it would make this section a lot neater and a lot clearer when we finally adopt the product. But what this section says now is exactly what we are attempting to do, we are attempting to retain all of the courts as they are today, but allow the legislature to have the power to reorganize courts below the district court level in the future. And as I said earlier, the legislature has this power largely already. We are simply making it clearer and we are imposing two guideline to make sure that the courts established at this level in the future, would be established on a uniform basis.

Questions

Mr. Stinson Jim, I am wondering up in Subparagraph A, you say the legislature... on line 7, "the legislature may abolish or merge trial courts of limited jurisdiction". Is the district court a limited jurisdiction?

Mr. Dennis No, sir.

Mr. Stinson Well, you say "subject to limitations in Section 16". And Section 16 says "district courts".

Mr. Dennis Section 16.

Mr. Stinson Covers district courts.

Mr. Dennis That provides for matters which have their original and exclusive jurisdiction in the district courts. The basic purpose of Section 16 is to make sure nobody else has jurisdiction of many matters, such as felony cases, other than the district courts.

Mr. Stinson I know, but on line 8 and 9 you say "subject to the limitations in Section 16", do you mean some other section other than 16 and 21?

Mr. Dennis 21 is the safeguard against reducing the compensation of judges in office during their term.

Mr. Stinson But I can't understand what is the reason for saying "Section 16" when it doesn't apply to limited jurisdiction. It applies to district courts.

Mr. Dennis What it means, Ford, is that Section 16 says nobody else can have this type of jurisdiction. And we are saying the legislature can't give

it to these limited jurisdiction courts, is what we are attempting to have here.

Mr. Stinson From the next question with reference to city courts. Now, does your research show that city courts will cover ward courts? We do have some ward courts you know, that takes care of two or three municipalities.

Mr. Dennis Yes, sir. The section allowing the legislature to establish courts in cities of certain wards in lieu of J.P. courts relates and is referred to as a city court section in the present constitution. So I think that ward courts are well identified as city courts.

Mr. Stinson My next question is on line 27. It says about reducing the term of office. It says that you may reduce the term of district offices in the parish to not less...does that apply to New Orleans, only? Under that the present officeholders can they be reduced?

Mr. Dennis No, sir. Not during their present terms.

Mr. Stinson Well, why do we need from twenty-four through twenty-eight then?

Mr. Dennis Well, this as I said was a compromise. We are not going...the committee wrestled with this problem and did not decide to take the action of reducing all judges to six year terms. Instead they said, all judges will be six year terms, but if there are any who have more than that, they will continue to have whatever their terms are. But the legislature may reduce that term by a majority vote and a referendum.

Mr. Stinson In other words, in Orleans Parish they will continue the present term unless the legislature reduces it and the people vote likewise in referendum.

Mr. Dennis That is correct.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Dennis]. On page 5, line 8, immediately after the word "limited" and before the word "jurisdiction" insert the words "or specialized".

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, this is in the nature of what I hope and think is a technical amendment. When we were debating this in the committee we were using the term "limited jurisdiction" to cover all of the courts below the district court level. However, it has come to our attention that this may not be descriptive of some courts like juvenile courts, and others who are really thought of more as specialized courts rather than limited jurisdiction courts. So we are simply inserting the word "specialized" here to include all of the courts below the district court level.

Questions

Mr. Avant Mr. Dennis, you are aware of the fact that the family court in the Parish of East Baton Rouge is a constitutional court at this time?

Mr. Dennis Is not a what, sir?

Mr. Avant Is a constitutional court. Now wouldn't this amendment permit that court to be abolished by simple legislative act?

Mr. Dennis Yes, I believe it would. However, it would not prevent the...it would prevent the district court from being abolished by a legislative act.

Mr. Avant ...I understand that.

Mr. Dennis ...It could also, since it is parish-wide, I believe that you could add to it by legislative act to, which I believe is what you have been seeking the last few years, isn't it, Mr. Avant?

Mr. Jack Judge, on that Section 15A, now if we have a juvenile court in Caddo, it can be abolished by a simple act of the legislature, that is correct isn't it?

Mr. Dennis Yes, sir. And it can also be established by a simple act of the legislature.

Mr. Jack Well, it is already established. Let's stick to my question. It can be abolished by a simple act of the legislature.

Mr. Dennis I have already answered that question, Mr. Jack. Yes.

Mr. Jack You all be quiet. I want to show you a great injustice because if you read Section 35 you are going to find you've got another law for New Orleans and in our parts of the state and everything out of New Orleans a different one.

Now isn't this correct, Judge, when you read Section 35, plus Section A of Section 15 you find this situation. A city court or a juvenile court in Caddo Parish or anywhere else in Louisiana that they have those specialized courts or limited jurisdiction courts. They can be abolished by a simple act of the legislature. Except New Orleans?

Mr. Dennis Is that the end of your question?

Mr. Jack Yes, sir.

Mr. Dennis Yes, that is correct. And they can be established by that same...

Mr. Jack ...All right...But in New Orleans, isn't it a fact to abolish a city court, juvenile court or any limited jurisdiction court, you have got to have not only the legislature but a referendum of the people within the district that that court has jurisdiction?

Mr. Dennis That is correct. New Orleans has a special section, Section 35.

Mr. Jack Isn't that the same old thing. One law for New Orleans, another law for the rest of us peons in Louisiana?

Mr. Dennis Yes sir, it is the same thing except that it is not...the referendum would be a local referendum. And I would like to further elaborate on that for the convention. We started out in our committee, with the idea that there would be no New Orleans exception in this article. However, the courts in New Orleans by tradition and custom have operated a little bit differently, have had different terms and different provisions in their law and different organizations. And to be just plain blunt about it, they had the votes in our committee to put in these referendums and since we were not going to give them...their courts separate treatment, they put the referendum in, on all changes of all courts. Well the majority of the committee felt that this was bad for the entire state and so we reached a compromise with the Orleans members of our committee, to go back and create an Orleans exception and let them have the referendum. But for the rest of the state, the committee did not feel that the referendum was a good thing because it actually puts more restrictions on the legislature than presently exists in dealing with courts below the district court level. Presently, the legislature can establish and abolish city courts by statutory law in most cases. But if you put this referendum in on all the other...on city courts all throughout the state, you are going to be more restrictive than you presently are in the constitution. The committee proceeded on the theory that only the main

courts should be constitutional courts. That is, Supreme Court, court of appeal and district courts. And below the district court level, the legislature should be left free to change the specialized and limited jurisdiction courts as the times change. In other words, if you find you need a parish court in your parish instead of the one or two city courts that you might have now. This is the situation that exists in my parish perhaps today. Perhaps my people would want to go to a parish court system. There are some other parishes, Mr. Landry's parish is considering a parish court system. Well, we are attempting to leave the legislature free to meet that problem by establishing a parish court without having to amend the constitution in order to get it. So, we are not attempting to discriminate in favor of New Orleans or against it. They like the referendums, they had the votes in the committee and so we compromised with them and gave them a separate section. But for the rest of the state, I repeat, the committee felt that it was best to not put restrictions on the legislature in dealing with the courts below the district court level. So that is why the article... the article has the exception to Section 35 which is the Orleans Parish court system.

Vice Chairman Roy in the Chair

Mr. Abraham In answering Mr. Avant's question a while ago, on this limited or specialized jurisdiction. You made the statement that the legislature may also establish courts of specialized jurisdiction. If that is true, then should not you put the same language in line 11?

Mr. Dennis No, sir. We specifically wanted to provide that future courts created by the legislature below the district court level would be parishwide and would have uniform subject matter jurisdiction with other courts that would be created throughout the state. We did not want to encourage the legislature to continue to establish ward courts or city courts or fragmented courts. We wanted to encourage them in the future to establish parishwide courts. And so we gave them the power to establish parishwide courts and when they do that, of course, they may find it necessary to merge the city courts and other ward courts into the parish court system.

Mr. Heine Judge Dennis, give me your explanation again please, sir, on why your committee did not give the referendum privilege to the remainder of the state. And let me tell you my situation. Two years ago, the people of Baker voted to create a city court by referendum. Now you are telling me that the legislature would have a right if this is adopted, to come back and abolish our city court and why... would it create a hardship on the legislature to allow the people of my city for instance to vote whether they want a court or not. I don't believe we would have to amend the constitution to do this. I can't see where it would work a hardship on the legislature. If the people of Baker want a court I should think they should have the right to vote to have a court. Or, if they want to abolish... or the legislature wants to abolish the court. I think on that hand the people of Baker ought to vote as to whether they want to abolish the court or not.

Mr. Roy Judge, before you answer that. Delegate Heine, are you on the technical amendment or are you talking about the section in general?

Mr. Heine I am talking about the section that he has been talking about. On the proposal itself. Same question that Mr. Avant was asking about the family court in Baton Rouge, where the legislature would have the right to just vote to abolish these special courts, such as the city court.

Mr. Dennis May I answer that question, Mr. Chairman?

Mr. Roy Yes, go ahead and answer that Mr. Dennis.

Mr. Dennis First of all, Mayor, the 1921 Constitution does not require a referendum to be held to establish a court that you are talking about. I don't know enough about your particular situation and why you had a referendum, but the 1921 Constitution simply provides that the legislature may substitute a city court for a J.P. court, and where you have enough population for it. So, to come in now and put a referendum requirement in the constitution, would put in the constitution more restrictions upon the legislature than you presently have with regard to establishing and abolishing city courts. Now, I am talking only about city courts at the moment.

Mr. Heine Right, I understand this and let me bring you up to snuff on my deal. We established our court by charter when we adopted the home rule charter. We established our court in the charter...

Mr. Roy I don't want to interrupt, but I understand from the Clerk that there was a technical amendment that we should be discussing at this time which would substitute or add "or specialized" in lieu of just the word "jurisdiction". And if that is it, I think we ought to get that out of the way and then go back to the amendment as a whole.

Mr. Heine Ok.

Mr. Dennis Let me say this, Mr. Acting Chairman, if I could. I don't think this amendment would relate directly to the problem the Mayor has and I believe the Mayor has a special problem that is not really going to be changed that much by our constitutional provision.

Mr. Dennery I have a question.

Judge Dennis, as I understand it, starting at line 9 you have a provision that except as provided in Section 35 relating to New Orleans, the legislature may establish trial courts and so forth. Now, under the theory we have been operating on the legislature has power to do anything that is not prohibited to the legislature, is that correct, sir?

Mr. Dennis That is correct, sir.

Mr. Dennery Well, then why would you need this in here unless you say they may only... they may establish trial courts but only those which have this type of jurisdiction?

Mr. Dennis The main reason is we have a limitation upon what the legislature can do in this area. And that is, it must establish these courts with parishwide jurisdiction...

Mr. Dennery ...no, it says it may... doesn't say it "may only" ...and if you don't limit it then you... the legislature has the power.

Mr. Dennis In other words it says if you establish it, it shall have parishwide... territorial jurisdiction and uniform subject matter jurisdiction.

Mr. Dennery Well, now is there anything in the constitution in your provision now which says where these various courts must be?

Mr. Dennis Oh, I see your problem, the reason for the New Orleans exception is, there is no referendum requirement...

Mr. Dennery No, I'm not speaking about New Orleans.

Mr. Dennis Sir.

Mr. Dennery I wasn't speaking about New Orleans. The legislature then could for example, have a parish court with the jurisdiction required here, but it could be set up anywhere in the parish. Is that correct? It wouldn't have to be in that parish seat. As a matter of fact I don't see anything in here which says where the Supreme Court is to be domiciled or any of the courts of appeal are to be

domiciled. So, presumably the legislature could change those, is that correct?

Mr. Dennis Presumably so. We felt that this was a statutory matter. That the population of the state might change, but getting back to your first question, I think unless we provided here that "except as provided in Section 35 the legislature may establish parish courts", then the legislature will be able to establish by act a parish court in Orleans Parish and we were attempting to make that distinction.

Mr. Denberry But you are satisfied that the way it is drafted, the only type of parish courts it may establish are those which have parishwide jurisdiction and is uniform?

Mr. Dennis Yes, sir. Because of Section 1, it would be the only kind of parish court that would be authorized by the constitution.

Mr. Denberry Thank you.

[Previous question ordered. Amendment
retrial and adopted: 103-5. Motion to
reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. D'Gerolamo]. On page 5, line 4, immediately after the word "parish" and the comma ",", and before the word "city" insert the word and punctuation "magistrate,".

Explanation

Mr. D'Gerolamo Mr. Chairman, fellow delegates, what this amendment does, is include the word "magistrate" after parish. We have a magistrate court in the city of Kenner. The legislature in 1972 in lieu of the mayor's court, allowed us to have a magistrate court whereby the mayor and city council could appoint a lawyer as the judge, hearing cases on city ordinances. And this is what we have and I would like to protect that because it is a creature of the legislature, lower than district court and we want to put in with the parish, city, family court.

Questions

Mr. Newton Mr. D'Gerolamo, couldn't magistrate court that you want to put in there be construed to include all mayors' courts in the state?

Mr. D'Gerolamo No, this is not a mayor's court. This is in lieu of a mayor's court.

Mr. Abraham Eddie, you said this was passed by the legislature, is this court in the constitution now?

Mr. D'Gerolamo No, sir, it is not.

[Previous question ordered. Amendment
adopted: 88-20. Motion to reconsider
tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Nunez and Mr. Toomy]. On page 5, strike out lines 4 through 15 inclusive in their entirety. (And I guess we need to now add, Senator, to strike out the previous two amendments which have just been adopted.)

And insert in lieu thereof the following:

"Section 15. Paragraph A. The district, parish, city, family, and juvenile courts existing at the time of the adoption of this constitution are retained. Except as provided in Section 35 of this article, the legislature by a majority vote of the elected members of each house and with approval and a referendum in each district, parish, or portion affected may abolish or merge trial courts of limited or specialized jurisdiction, subject to the

limitations in Section 16 and 21 of this article. Except as provided in Section 35 of this article, the legislature may establish trial courts of limited jurisdiction which shall have parishwide territorial jurisdiction and subject matter jurisdiction which shall be uniform throughout the state. The office of city marshal is continued until such time as the city court he serves is abolished by the legislature."

Explanation

Mr. Nunez Mr. Acting Chairman, and fellow delegates, this amendment would do exactly what you were arguing about before, which some of you were trying to accomplish. That is, number one, it would treat the courts of limited jurisdiction just like you treat the district courts. And number two, it would treat the city of New Orleans, or it would treat the rest of the state just like we are treating the city of New Orleans. It would allow the merging or abolishing of these various courts of limited jurisdiction as per their establishment. Many of them by the constitution, by vote of the legislature and a vote of the people in that or those districts. I think it is a reasonable amendment. I think it is consistent with what we should be doing, that is, being consistent in writing this document on all of these limited courts of limited jurisdiction. I understand that this was an original proposal of the committee. And when we had our huddle up here, I understand that the delegates from Orleans were more successful in lobbying than the delegates from the rest of the state. That is, in eliminating this provision. It speaks highly of those delegates, but certainly we are still faced with the problem as to what to do with these courts of limited jurisdiction, that many were established by the constitution and now can be abolished by the legislature. I think we have to treat this subject consistent as the other courts in this area. And I think that it would be the only way that we can do it.

Yes, I will yield to a question.

Questions

Mr. D'Gerolamo Senator Nunez, just a few minutes ago, we passed an amendment putting in the magistrate courtiness of Section 15A. And I was wondering in your amendment, if you would withhold it a while or draw it back and insert the magistrate court in your article. It would save me then the problem of going back and should yours pass and go back and have mine redrawn and resubmitting it to the delegation.

Mr. Nunez Mr. D'Gerolamo, I suggest...I have been advised by the Clerk, that was as you was drawn yesterday and I had no idea that we would have one passed before it. What we can do, if this is passed is to come back and resubmit yours from the way the Clerk explained it to me.

Mr. D'Gerolamo Thank you.

Mr. Newton Senator, you say you want to treat everybody the same, would you be satisfied if we took the referendum provision out of the article on Orleans Parish?

Mr. Nunez That would be another way to treat them the same. But I think this would be a better way to handle it. It is a more positive way of handling it. Those courts were established many of them by the constitution and many of them voted on by the people. And I think if you are going to abolish them, I think that it should be handled in the same way they were established.

Mr. Lebleu Mr. Nunez, I don't have a copy of the amendment, but I just wonder if your amendment is adopted, would Section 35 really be necessary since you indicate in your explanation that all of these specialized courts would be treated the same as far as the referendum is concerned throughout the state. And if I am correct in that, I just wonder if your

amendment shouldn't include the deletion of Section 35?

Mr. Nunez Mr. LeBlue, I would think it would be necessary if we have...if the committee...if we have to establish a procedure in which to merge or abolish the district courts, we should do it with the other ones also.

Mr. Jack The question is this, just what was asked in...I don't think you caught what the delegate was referring to, about a little better than half way in your amendment, and I like the whole amendment except I think this part that says "except as provided in Section 35 of this article." Now, weren't you just tracking Section A of Section 15, it has no application, Senator, in your amendment here because these parish courts are going to be statewide. And by limiting to 35 in any way, that is all of Section 35 has to do with Orleans Parish. I think if you will check that out you will find that you would want to eliminate the words "except as provided in Section 35 of this article."

And your sentence would read, now please follow me. "The legislature may establish trial courts of limited jurisdiction which shall have parishwide territorial jurisdiction and subject matter jurisdiction which shall be uniform throughout the state. The office of city marshal is continued until such time as the city court he serves, is abolished by the legislature".

Do you follow me?

Mr. Nunez Yes, Mr. Jack, I follow you and that is exactly the way the article reads. From conferring with the committee while you were asking the question and Judge Tate, I was informed that that could be handled by Style and Drafting.

Mr. Jack I am telling you it wouldn't take long to take that out the Clerk could...

Mr. Roy Mr. Jack that is not a question.

Mr. Dennis Sammy, to clarify something, did you just say in your opening remarks that the delegates on our Judiciary Committee from outside of Orleans wanted a referendum, and that the Orleans delegates kept us from having it? Somebody asked me if you didn't say that.

Mr. Nunez Judge, the only thing I said, is what you told me. That the delegates from Orleans were more successful in keeping in the article as your original proposal of keeping in their section as proposed to your original proposal. Now, evidently it is correct because it is in here and the other ones are out. And I am just assuming that that was the...

Mr. Dennis Well, did you know that is not exactly what happened. What happened was that the delegates from outside of Orleans were agreeable to not having this restrictive referendum below the district court level, but that Orleans wanted it and that is why we created a separate section for Orleans in order to give them what they wanted.

Mr. Conroy Mr. Nunez, I noticed that the last part of this section provides that the legislature may establish trial courts of limited jurisdiction without any vote within that particular parish. As I read it, it just can establish trial courts of limited jurisdiction throughout the state. If the legislature did that, would the sentence which you propose putting in, prohibit the legislature then from abolishing any courts or anything without a referendum in that area, or does that apply only to presently existing courts, your proposed amendment?

Mr. Nunez The proposal as written, Mr. Conroy, if you will read the original proposal, is just about the same as it was.

Mr. Conroy So it is intended to apply...to abol-

ish the requirement for a vote is intended to apply only to the existing courts, not to any new courts, is that right?

Mr. Nunez Yes.

Mr. Jack Senator, now up above and as I say, I am for yours, but I find these things. And with approval in a referendum in each district, parish, I think and ask you, don't you think you should have city apportion affected?

Mr. Nunez Mr. Jack, I understand again that can be handled by Style and Drafting.

Mr. Jack Well, let me ask you this and then I am through. I am preparing an amendment to correct the two things, and I am going to vote for yours and I want to ask you, will you support the others? So we won't have to leave it to Style and Drafting.

Mr. Nunez Yes sir, I will.

Mr. Abraham Sammy, I see what you are trying to do. The question I wanted to ask, is that...does the present constitution provide that these courts are created or may be abolished by referendum? It is a simple act of the legislature?

Mr. Nunez If they were created by the constitution, they would have to be abolished by constitutional referendum.

Mr. Abraham Well, the point I am asking, though, these particular specialized courts now are courts of limited jurisdiction. Are they constitutional courts now or were they simply created by the legislature?

Mr. Nunez Yes. Further Discussion

Mr. Burson Mr. Chairman, fellow delegates, I rise in opposition to the amendment. It seems to me that the provision that the committee has come out with here is the only really significant reform in their proposal. And to accept the amendment as proposed would be not a step forward, but a retrogression. Under the present constitution I would urge you to look at Article VII, Section 34, which reads as follows:

"Article VII. Section 34, reads as follows: The legislature may rearrange the judicial districts and by a two-thirds vote of the membership of each house, may increase or decrease the number of judges in each district. Now it takes a two-thirds vote to increase or decrease the number of judges. But by a simple majority vote, the legislature can rearrange judicial districts at the present time. And as far as my knowledge goes, there is only one time since 1921 when this power has been abused. That was when Huey Long got the legislature to gerrymander that Judge Pavy out of office in St. Landry Parish, which is my home. And I hope and pray that we are long since passed the days when that kind of thing would happen in our legislature. Now when we adopted the legislative article, we heard a lot of rhetoric with which I agree, talking about how the legislature has come a long way since those days. We heard a lot of rhetoric in which we wanted to emphasize the responsibility of the legislature. I say to you if you adopt this amendment, you will be taking away from the legislature a significant power which it has at the present time and ought to have to run the business of the state. Now our people sent us up here, in most cases, asking us to cut down on the number of unnecessary elections that they had to vote in. They don't like the idea of having to vote on a lot of unnecessary constitutional amendments. I submit to you they also don't like to have to vote in a lot of unnecessary referendum. We have single member legislative districts. Is it plausible to believe that a legislator who comes from a single member district is going to get up in the House or the Senate and sponsor a piece of legislation regarding local courts that the people in his district don't want?

It does not seem to be plausible to me. In that light, I say again that the authors of this amendment, it seems to me, are motivated by a fear which is not grounded in fact. But the most important consideration, on this issue is, that you have got to leave to the legislature the power to do what is necessary to modernize and update our courts as the need arises. If we adopt this amendment, we will in my view be sponsoring the Balkanization of our judicial system. Let me give you a very clear and concrete example. Suppose we have, at the present time, a ward court. And suppose the people of the parish decide, in their wisdom, and get together with the legislative delegation of five or three legislators if we want some parish courts. We need parish courts. But you have one small country ward whose got a justice of the peace. Who happens to be very well liked, he has been in office for thirty years. Well, the way I read this amendment, and especially in light of the amendments to it that Mr. Jack said he is going to propose, it would be necessary in order for the people, let's say of St. Landry Parish, to establish a system of parish courts. That they would have to get the consent of the voters of each and every ward in the parish. And even though ninety percent of the population wanted a parish court, if you had the members of one rural ward who liked their justice of the peace and wanted to keep him, they could vote against the establishment of a parish court and thwart the will of the majority of even ninety percent of the people of the parish. And certainly this is a real and pregnant possibility under this amendment. So I ask you in the name of legislative independence, in the name of giving the legislature power that it ought to have, and most of all in the cause of true judicial reform, vote down this amendment and maintain the committee proposal as it stands.

Questions

Mr. Kilbourne Mr. Burson, did I understand you to say that the legislature could change these courts by just a simple majority vote now?

Mr. Burson They can change the judicial districts. Mr. Kilbourne, under Article 4.

Mr. Kilbourne Is there any other article in there that you know of except Section 34, Article VII, which said that it required a two-thirds vote of the legislature to merge the districts or rearrange the districts?

Mr. Burson No, sir, not that I know of.

Further Discussion

Mr. Leithman Mr. Acting Chairman, members of the convention, this is a very serious matter as far as each of you and the courts that you have in your related districts are concerned. I'm speaking primarily to draw a parallel to give you some idea how it relates to my district, which is Jefferson Parish. In this constitution, we have heard previous speakers ask that we maintain the article as it came out of committee. Which will give New Orleans legislative approval and referendum approval. All that we're asking is that each of us around the state have that same opportunity. Now I'm going to speak to you, to give you some idea of what and how valuable the courts are in Jefferson Parish. I'm sure this can be drawn and related to your own district. In Jefferson Parish we have some nine district courts right now, which are heavily burdened. We have one juvenile court and we have three parish courts which we are now discussing. Let me give you the workload on just one of these parish courts over the last nine years. This parish court, that we're discussing now, has had over 180,000 criminal cases filed, in excess of 22,000 civil cases filed. This same court handles traffic courts, municipal court business, city court business up to \$1,000 and criminal court activities with the except of felony cases. So gentlemen, in this essence, this court that we relate to in this important amendment re-

lieves our district courts to a tremendous extent and is vitally needed. Just as each court is in your district, New Orleans is granted this privilege and I'm certainly not opposing or directing my opposition at New Orleans. New Orleans has a population just a little bit in excess of Jefferson, perhaps within the next ten years it will be equal population. So gentlemen, this is an issue that this relates to your family courts and your courts your district. I don't think we should set Orleans aside and handle them in any different manner than we handled your court or my court around the state. I strongly urge that you adopt this amendment. Thank you.

[Quorum Call: 102 delegates present and a quorum.]

Further Discussion

Mr. Tate Mr. Chairman, and fellow delegates, I see you are somewhat tired of hearing me speak. I understand I'm going to beat my good friend, Senator DeBlieux, this month. But if I have said anything to be of assistance to you, I'll tell you, I'll listen to me right now. Because this is the most important issue before us for judicial reform. I don't speak for my own term, I'm not going to speak on some things that affect me personally. But this affects the future of judicial reform. I'm telling you if you pass this amendment, you might as well go home as far as any possibility of this judicial article being any improvement on the present. First though, I'm not going to go into details. I'm just going to tell you. Under the present constitution, there is some flexibility as to many of these courts. The legislature may do things with regard to them that this particular amendment will take away. Now under the present constitution, Orleans has a very specialized system. Every change in that court system for city court and all that needs a statewide vote and a parishwide vote. Although, I was personally originally against the referendum for Orleans. I could live with that compromise because it doesn't change, it makes the present constitution more flexible for Orleans. But for the rest of the state, the rest of the state, the rest of the state, it is to look to the future, thirty and forty years ahead we hope. Now, the committee has drawn up a proposal that allows the future to develop this way. Either we will have a uniform four tier system eventually, as court by court drops out and they establish parish courts. Or, it will allow them perhaps to go as the future deems necessary. To district courts uniform three tier level, but that's for the future. We aren't making that choice for them. What we are trying to do, is not freeze in courts that can be taken out, freeze in uniform statewide judicial reform. As Mr. Burson pointed out, if you need a referendum, for instance not only in the parish, but every place in the parish affected, it would mean in my parish for instance...before you get out of the parish court, get rid of the city court or the Turkey Creek, there's no more any but there could be as it goes on. Ninety-five voters could defeat the will of the parish, ninety-five, you couldn't uniform it. I hesitate to speak as strongly as I do, I hope that I will not trespass as much of your time as you are going to have to spend on this issue. But I can only tell you from every ounce of sincerity, and I have never said this before, I haven't tried to influence you that something like the end of the world is at hand. But I promise you, if you doubt this amendment in my opinion, and my opinion may be wrong, but I don't think it is. You have defeat judicial reform under this constitution and we might as well forget about it. I'll yield to questions.

Further Discussion

Mr. Drew Mr. Chairman, ladies and gentlemen of the convention, I regret very much that at this stage and on this particular article, that we have gotten into an argument already between Orleans Parish and the rest of the state. Let's do this, let's

consider this article and we will consider the Orleans article when we get to it. It's very difficult for me to add too much to what has already been said by Mr. Burson and Judge Tate. But they have said, have pointed out the problems that we will be faced with, if you adopt this amendment. This amendment was thoroughly discussed, the contents of the amendment at least, in committee and all of these danger points were pointed out to us as the reason it was not submitted in the final proposal. I think this, if you will, really stop to think, of what a small percentage of the people of this state have any contact whatsoever with the courts, to leave the decision of the needs of the judiciary to a referendum is a dangerous and very erroneous way to approach a problem. We need flexibility, as far as Mr. Leithman is concerned, they have the courts they need. I cannot, under any circumstances, foresee that the legislature would override their will of the representatives from Jefferson Parish and start abolishing courts down there. Under this we could increase their courts without having to go to a referendum. I'm not saying that the people of the state shouldn't know, but I am telling you that they do not necessarily know the needs of the court. We have the judicial counsel. The legislature relies heavily on their recommendations where courts are needed. I don't know in my short tenure of where they have been denied when it was shown that the courts were needed. If we defeat this proposal, the legislature has that flexibility to provide for the future. Let's not lock this thing in to where we cannot foresee what may be needed in the future and not be able to provide the needs of the courts. I humbly ask you to reject this amendment.

[Motion for Previous Question rejected:
27-10.]

Further Discussion

Mr. Gravel Mr. Acting Chairman, ladies and gentlemen of the convention, I don't think I can add much to what Justice Tate has already said. But I can assure you of one thing, if you want to create the probability of a crazy quilt, patchwork judiciary system for all times in the future, then vote for this amendment. If you afford judicial reform and moving the state of Louisiana forward, vote against it. Thank you.

Further Discussion

Mr. Abraham Mr. Chairman, delegates, I think it's time that the lay people speak out on this issue. Now we have already adopted in this particular article, provisions where the legislature can change the size or the arrangement of the Supreme Court districts. We have already provided for the legislature to provide for additional courts of appeal districts. It can revise those, and then we come along here and we're going to say now that the legislature can't handle these minor courts except through a referendum. I think this is wrong, it's dead wrong. I can't add a whole lot to what Justice Tate and Mr. Gravel and the rest of them have said, other than I am vehemently opposed to this amendment. If we're ever going to get some order to this court system, we are going to have to give the legislature the authority and the flexibility to set the thing up as it should be. I ask you to...we've got to vote this amendment down and we're going to have to go along with the committee proposal. Thank you.

Further Discussion

Mr. Jack Mr. Chairman, ladies and gentlemen, I arise in favor of the amendment but I also have amendments as I indicated when I asked questions. Now, I think and most of you have pledged yourselves over the years to home rule. Now take in Caddo, we have had a juvenile court prior to 1940. I've never heard anybody want that repealed. We have had a city court since I got caught for speeding when I was about sixteen and I'm sixty-five. I've never

heard anybody want that law repealed. Now, I think there would be plenty of justification and justification in order to change these, you not only have two legislatures but a referendum. However, this does not provide for certain amendments. It's left out the word "city" and it has in a referendum in each district parish a portion affected. Now my amendment is going to leave to district and parish and city. Now I'm going to take out, and Judge Tate I think this is one of the things you were worrying about, I'm going to take out that word "a portion". Because I'm not concerned about the referendum in a small area like the justice of the peace court. But I am interested in having a referendum before the legislature can abolish well established things like juvenile courts and city courts. I do not, in short, believe in a three tier system of the Supreme Court, court of appeals, district court or a four tier system which includes the parish court. I think it's a step backwards to get rid of juvenile courts because that's a special field. I think it's a step backwards to get rid of city courts...

Now, today, the world's moving fast. No one can be an expert in every field. Lawyers can't, doctors can't, any other profession can't. Now how can a three tier court with the district court handling everything be experts. When they couldn't as lawyers cover all the fields. You are doing away with having criminal judges, and civil judges and juvenile judges and city court making it all one. I say this is a good amendment except it should be amended. I have talked to Senator Nunez over the mike and he agreed that my amendments and in closing my amendments are simply that you are going to add where they accidentally left out our parish. Then you're going to leave out the words "except as provided in Section 35". Because Section 35 has to do with Orleans Parish alone and this article, as amended by Nunez, as amended by me, will be statewide. I trust you will go along with this amendment. You have my word that we have our amendments and also Senator Nunez and he speaks for Mr. Toomy because he is the head author. Now Mr. Drew, I'll answer your question.

Questions

Mr. Drew Mr. Jack, can you at twenty-four years in the legislature, was there ever any attempt to abolish a court that you know of? Other than when a city court was created and a J.P. court was automatically abolished?

Mr. Jack I saw one of the most amazing things in my life happen on that line. There was a lady representative came down there, this had to do with the J.P. court. And we aren't saying it, but I'm showing you how people can do when they are mad. She came down there, she had just been elected, this lady. And the J.P. had just been elected and the marshal had just been elected and she tried to abolish their office.

Mr. Drew Was she successful?

Mr. Roy He's exceeded his time. Thank you, Mr. Jack.

Further Discussion

Mr. Stovall Mr. Chairman, ladies and gentlemen of the convention, I rise to speak in opposition to this amendment. It seems to me that there is something very basic and fundamental here that we need to consider. It is the question of whether or not we are going to trust the wisdom and integrity of the legislature of our state. I submit to you that former Representative Jack and Representative Leithman and the other legislators are not the kind of men who would eliminate courts that are serving a useful purpose in the state. It seems to me that what we need here is some trust in their wisdom to deal with this matter in a meaningful way. And therefore, we ought to reject this amendment and

we ought not to involve the people unnecessarily in elections. Amendment No. 4 deals that to reject the amendment will provide the kind of flexibility which the future might demand. I encourage you to reject this amendment and to have the kind of trust in our legislature that I think they will merit in the future. Thank you.

Questions

Mr. Anzalone Reverend Stovall, my concern is mainly with the line beginning on line 4, the district, parish, city, family and juvenile courts existing at the time of the adoption of this constitution are retained. If we are going to go into judicial reform, is this first sentence not locking us to this type of judicial reform, rather than another type which we might foresee would be better in the future?

Mr. Stovall Mr. Anzalone, the amendment that I'm opposing does not change those first three sentences. The amendment which I am opposing does not change those first three sentences at all. I think if you want to change that, you should present an amendment to come at a later date, at a later time, which would change that.

Mr. Avant Reverend Stovall, do you believe and feel that when the people drafted the Constitution of 1921 that they had this faith and confidence in the legislature and in the executive branch that you feel we should have now, that they had that confidence when they drafted that document?

Mr. Stovall Mr. Avant, I feel that they did not have enough faith in the legislature and governor at that time. And possibly that's one reason why the legislature and the executive branch has not merited that much faith. I think if you show faith and confidence in the legislature, that this will encourage us to elect better people to the legislature.

Mr. Avant Do you know, that under that constitution, which didn't have this protection that we are asking for, that a very well and able and respected judge was gerrymandered out of office by a powerful political figure and a subservient legislature? As a result of that, a direct result of that, it led to the assassination of a United States Senator.

Mr. Stovall Yes, I'm aware of that and that's possibly happened once in fifty years. Mr. Avant. And to conclude from that, that we should provide for the many elections which would be called for in this amendment, I think is taking, is responding more than we should to that one situation.

Mr. Burns Reverend Stovall, to clarify Mr. Anzalone's question to you just now, is it not a fact that this Section 15A provides that they should not do away with any existing courts. But in the future, if the condition should justify that the legislature could merge, abolish or establish a new court. Isn't that what this section provides?

Mr. Stovall Yes, sir. Below the district court level.

Mr. Burns Of course I'm referring to that.

Chairman Henry in the Chair

Mr. Champagne Reverend Stovall, are you aware that the Judge that Mr. Avant speaks of and the parish that he represents, that he was a friend of mine and his entire family and I represent that parish and I am against this amendment.

Mr. Stovall Yes.

Further Discussion

Mr. Sandoz Mr. Chairman and fellow delegates, I'll attempt to be brief but I served on the Judiciary

Committee for the past six months. I urge you to defeat this amendment. As Judge Tate says, if we have one provision in this entire article that gives us room for judicial reform in the future, it is this section. I don't think because of the history that we had in the legislature, Mr. Champagne comes from my parish too, and I feel that the one instance that he speaks is not something that should preclude us from moving forward. I feel with the testimony and the expertise that this committee had, and that you should follow the wisdom of the committee proposal and reject this amendment. It gives us an opportunity in the future, to give the legislature an opportunity to abolish some of these courts and go into a more modern system, such as the parish courts that Jefferson has. We have in our state. In addition to the Supreme Court, the courts of appeal, the district courts, we've got these family courts, juvenile courts, city courts, ward courts. As our society becomes more urbanized and more complex, we need to move into the parish court system, and do away with these city courts and these mayor courts and other courts of lower jurisdiction. I urge you, if you're going to vote for any section of this judiciary article, to support the committee proposal on this section and defeat this amendment.

[Quorum Call: 112 Delegates present and a quorum.]

Further Discussion

Mr. Heine Mr. Chairman, fellow delegates, I rise in favor of this amendment and also of the Jack amendment. I don't see how we can stand up here and be opposed to giving the people the right to speak for themselves. I'm not an attorney, but I do have eight years experience as serving as a judge. My situation may be unique in East Baton Rouge Parish, but I think it's possible that the legislators in East Baton Rouge Parish could decide that they wanted to expand the city court of Baton Rouge to take in the city court of Baker. And by a vote of the legislature, they could do this. About ten years ago the people of Baker decided for themselves that they wanted a city court. They voted for a city court, they've got a city court. And I don't want to see them in a position of losing this court unless they vote themselves that they want to get rid or abolish their court. There may be other situations throughout the state, or other courts that are in the same position that we are in Baker. So I ask you to vote favorably for this amendment and also for Mr. Jack's amendment because I think it is good and I just don't see for the life of me how you can argue with giving the people the right to speak for themselves. What is the cost of an election? This is the American way. I put many issues before my people in referendum. Many of them that I was in favor of that I lost, but at least the people have a right to be critical of me. I have been in office eighteen years. I think this speaks well. I think this is successful and I give the success to the fact that I let the people back home speak and I don't see how you can argue against that.

Further Discussion

Mr. Dennis Mr. Chairman, fellow delegates, I rise in opposition to the amendment for the same reason as stated by Justice Tate, Mr. Gravel and others. If this amendment carries, you will strip from our committee proposal the only real, significant movement toward court reform that I believe we have made in the past six or seven months. I can't really add to any of the reasons they have all been stated. And it boils down to simply, the only reason to vote for this amendment is to show your distrust to the legislature and to freeze the present court system and perhaps create a crazy quilt work in the future. The reason to vote against the amendment is to show some trust in the legislature to deal with the courts below the district court level and allow us, hopefully, to move

toward a more logical and consistent court system that the people will understand and get justice from. So I ask you to defeat this amendment.

Further Discussion

Mr. Duval Mr. Chairman, fellow delegates, I realize the natives are restless and this issue has been argued and reargued. But I would like to state my reasons for opposing it. One thing we have to do, in this constitutional convention, is eliminate sacred cows. Now I ask you, how can the legislature vote on laws that affect the life and limb of its citizens without public referendum? It can pass local and special laws, affecting the locality much more than the court system. It can pass criminal laws, it can pass tax laws, new taxes without referendum of the people. I think the concept of public referendum is a great case of buck passing. We, in this convention, I think have been mandated by the people to make this constitution concise and progressive. This is a step backwards, it is fixing sacred cows in this constitution and is showing great mistrust of the legislature, which we have already increased the powers of, showing a trust in that legislature, who are the representatives, the direct representatives of the people. Why not a public referendum for everything? What makes this so sacred? Why is this any different than any other law? Why is the court system and the courts of limited jurisdiction any different? The laws affecting life, imprisonment, laws affecting revenue, laws affecting any other facet of government, I suggest to you that this is a bad amendment, it should be killed and this constitutional convention has got to stop putting sacred cows in the constitution. And has got to eliminate them, if we are going to do our job. Thank you.

Questions

Mr. Burns Mr. Duval, do you think any Senator or Representative representing a district or a parish would take it upon himself if he knew that it did not meet with the approval of the voters and the citizens of that parish...would take it on himself to abolish arbitrarily, abolish or create a court of limited jurisdiction in his district or parish if he wasn't sure that it met with the voters approval?

Mr. Duval I couldn't agree with you more.

[Previous question ordered.]

Closing

Mr. Nunez Mr. Chairman and fellow delegates, I'll be brief in my closing. Constitutional reform or judicial reform, it seems like we want judicial reform for half the state and let the other half the state not have judicial reform. It seems like we have the purist who want the Supreme Court, the court of appeals and a district court and deny the other courts their right to exist as set up by the people of this state. And that's all this amendment does. That's all it does. It treats the courts that were constitutionally created exactly like it treats the court, the district courts that were constitutionally created. It just amazes me to hear the type of rhetoric we hear today about the people in the legislature. Certainly what's wrong with allowing the people to do what they have done. What's wrong with submitting them to the people, if they want to abolish those courts and allow them to abolish them. If they so created them, and they so created them. I just can't believe that we are here rewriting a constitution and we are going to take constitutional rights away from people that we had given them before. These courts were created by the people, and they serve a useful purpose. And that purpose is judicial reform. Now if we are going to have reform, let's have reform all the way, let's have reform all the way, and I certainly don't want to start a New Orleans voice that's anti-New Orleans controversy here. Because it's going to come up again and

somewhere along the line we are going to have that reform. So, I would say for the people of New Orleans to vote for this amendment and very possibly it would be consistent throughout the constitution. Rather than waiting for Section 35, and they abolish 35, and then you don't have what you want in your courts down in New Orleans, which I want you to have. So I said, let's be consistent. Let's leave the people what they now have and let's make it consistent with the judicial districts or the district courts of this state. That if we want to merge or abolish those courts, they shall be merged or abolished by a majority vote of the legislature and by the people, just like they were created. That's terrible to say that I guess in these halls, that we are going to let the people do, undo what they did. Let's trust the legislature, first time I've heard that in a long time. All of a sudden, we want to trust the legislature. Let's trust the people, if those courts worked good for them, and they were constitutionally created, let's let them undo them. You know I imagine there would be a lot of people in this state that would like to do away with all the mayors. Let's do away with all the municipalities, let's have purity in our parish government. Let's have one form of government in our parish government. One government in all parishes. All of these municipalities throughout the state don't do any good, they don't serve the people. Let's abolish them. Let's abolish what the people want, if that's what we want to do, let's go ahead and do it. I would ask you ladies and gentlemen at the convention, these courts exist and they exist for a reason. That reason is a good reason. The people wanted them, they voted for them and they serve those areas of this state that they were created to serve. I see no real drawback or no real condition if they want to create an additional district court that the people would not vote, because they have a parish or city or family or what have you court. Mr. Chairman, I've finished my remarks. Mr. Leithman, I think wanted to say something. If there is additional time, I would yield to him to close.

Mr. Leithman Mr. Chairman and fellow delegates, the big word that I've heard from the people opposing this amendment was "consistency" and I thought this constitution and this article. I find something that we have been able not to do apparently and that is what we wanted to do and that's to keep New Orleans separate, Orleans opposed, from the rest of the state. I want what is good for Orleans. In the article on education we have a section "except Orleans." Here, thirty-five, "except Orleans." Orleans doesn't want to be...Gentlemen and ladies, I do ask that you bring this state together and support this amendment. Thank you.

[Amendment rejected: 35-81. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1, [By Mr. Tobias and Mr. Arnette] on page 5, line 13, immediately after the period, delete the remainder of the line and delete lines 14 and 15 in their entirety.

Explanation

Mr. Tobias Mr. Chairman, fellow delegates, the sentence which I am trying to delete from Paragraph A of Section 15 is covered in sentence No. 1 of Paragraph A of Section 15. In the first sentence of that paragraph it says "The district, parish, and town magistrate, city, family and juvenile courts existing at the time of the adoption of this constitution are retained". This automatically implies that a city marshal would be continued. Now presently city marshals are not in the constitution. What this sentence at the bottom, "The office of city marshal is continued until such time that the city court he serves is abolished by the legislature.", we are creating a new, a new constitutional office. Presently, city marshals are provided for only by

statute. They would not be abolished until such time as the city court would be abolished. They are protected under the first sentence of this paragraph and I would urge that you adopt this amendment.

Questions

Mr. Pugh Mr. Tobias, is it not true that this sentence as it presently is proposed and exists is another instance when we talk about continuing or substituting or replacing an office without specifically spelling that office out prior to the time we talk in terms of either continuing it or replacing it or showing what would happen upon a vacancy?

Mr. Tobias It is.

Mr. Lanier Mr. Tobias, wouldn't you agree that really to do what this sentence wants to do would probably more properly be done in the schedule anyway?

Mr. Tobias Yes.

Further Discussion

Mr. Arnette There are several reasons to pass this amendment. I guess the main one is I don't think city marshals are a proper constitutional office. That's the main thing. The next thing is this type of thing doesn't belong in the constitution itself. If you want to have this type of thing it can much more properly be done in the schedule. The main thing though is a city marshal...if we are not going to constitutionalize many local offices, let's not constitutionalize the city marshal's office. Also, what this does is it prevents a local option on whether you want to have a city marshal or not and I think local offices like city marshal need to be properly left up to the local option on whether they want to have it or not. I think this constitutional convention is going to come out with a strong home rule provision and I think if we adopt this amendment it will aid that home rule. Thank you.

Further Discussion

Mr. Bel Mr. Chairman, ladies and gentlemen of the convention, I rise to oppose this amendment. I feel, and the forty-six marshals in the state of Louisiana feel, that they are entitled to be in this constitution. As much as the clerk, he is part of the court and for that reason I am asking you to support the original proposal which we have studied in committee. We have had the approval of the majority of the members of the committee, I say not majority, only two members dissented, present, ten to two was the vote. So I ask you: I am not going to make a lengthy speech. We have too many lengthy speeches up here already on this. We will never get done, so I am asking you to go along with the proposal and recommendations of our committee that we keep this in the constitution. You have forty-six marshals representing forty-six parishes and therefore I ask your favorable report to defeat the amendment. Thank you.

[Previous Question ordered. Amendment rejected: 40-66. Motion to reconsider tabled.]

Amendments

Mr. Poynter Amendment No. 1 [Sw Mr. Tobias], on page 5, line 6, immediately after the period, and if you will follow with me he has changed the technical instructions here. It should read on page 5, line 6, immediately after the period insert the following: "Notwithstanding any provisions of this constitution to the contrary there shall be no civil district courts or criminal district courts but a district court may sit in specialized divisions as provided by rule of court."

Amendment No. 2, on page 5, delete line 7 in its entirety and insert in lieu thereof the following: "The legislature may abolish or merge trial"

Explanation

Mr. Tobias Mr. Chairman, fellow delegates, this one amendment is what I consider the major reform that this constitutional convention can adopt that will correct a rotten situation in the city of New Orleans. Presently in New Orleans is the only parish in the state that has separate civil and criminal district courts. Every other parish...sixty-three parishes have one court which handles both criminal and civil cases. The system works in sixty-three parishes. Why would it not work in New Orleans? Sixty-three parishes. In East Baton Rouge Parish there is one district court and that district court by rule of court sits in specialized divisions. Some judges sit on civil matters and some judges sit on criminal matters and some sit on mixed matters. They decide it by rule of court, that is more fair than to let the judges decide among themselves. I have been pressured beyond belief by the judges of Orleans Parish, the civil district judges, to keep the present diversity of courts in the city. I can say this, that seven of the criminal district judges have publicly stated that they are in favor of this merger. Why are the civil district judges of Orleans Parish opposed to this merger? They see the rotten situation, a situation at the corner of Tulane and Broad where the criminal court is situated, where defendants are not getting what they should, a fair trial probably, they see that and they don't want to have any part of it. They don't want to be anywhere near this. It's dirty, dirty, dirty to get involved in any criminal matters. Well let me say this. Basically, the Orleans Parish there is a division between the lawyers of that city. There is a group that practices generally nothing but criminal law. There are three groups. There is a group that practices nothing but civil law and that is the largest group. And there is a group that practices both criminal and civil law. The overwhelming majority practice nothing but civil law. I wish you would consider this. When you listen to nothing but criminal cases, nothing but criminal cases, you become hardened to the plight of the criminal and to the rights of an individual. I was a law clerk, as many of you probably know at the Louisiana Supreme Court for a fourteen month period. That was about a year and a half ago. I aided in the drafting of a lot of criminal opinions, very few civil opinions, and towards the end of my tenure in that position as a law clerk, I got to the point from handling criminal cases that I said to myself, "Well why was the defendant charged if he wasn't guilty?" and "Why does the jury convict him if he wasn't guilty?" You ask yourself that. If you hear nothing but criminal matters you have to be convinced or you have to be convinced that probably the district attorney must have a case up there that this guy is guilty. Why would he have brought the case to trial? The guy must be guilty. You automatically think that. You become hardened. This amendment in effect attempts to merge, to move, the New Orleans court system back into the state back into the mainstream. It's a state court. It's not a city court. It's a state court. Let me say this. A lot of people would say that the trend in law today is toward specialization. True. The trend today in law is toward specialization. But it is not that way in the court system of this country. The trend is toward one court that will handle all cases. A judge who is well rounded, sees all sentiments of the society. An argument may be made, "Well there will be two separate buildings. Two separate buildings. You have the thirty-five fifteen blocks away from the other. The judges have to run around like chickens with their heads cut off." Let me suggest to you this. First of all, fifteen blocks is not that far. But I am not saying that these judges have to sit in different courts, in separate courts, have to sit on all types of cases. I am just saying let them decide among themselves. Now let me also point this out. I'm not saying that there should be the same civil, criminal and criminal district courts. I am not saying abolish those offices and create one sheriff. I make a distinction there. There is enough work that you

runs for judge, when he runs for a criminal judge in New Orleans, the people know what he is running for. If they don't like the work he is doing, fine, they can vote him out. When a man runs for a criminal judge in New Orleans he knows he will be handling criminal matters. If he doesn't want to be a criminal judge, he doesn't run for that office. I would like to point out also that we had a poll of the lawyers in New Orleans. The facts revealed overwhelmingly that the attorneys of our city favored the way the court system in New Orleans is operated. I would just simply like to say to vote this amendment down. You will be greatly harming the working of our judicial system in New Orleans. Thank you.

Further Discussion

Ms. Zervigon Mr. Chairman and fellow delegates, I rise in opposition to the amendment. First let me say that I oppose the separation of criminal and civil district courts. I think it is an evil system that allows a good part of the people who ought to be working for court reform in New Orleans to ignore the court where many of the problems are, but I think that this amendment makes an exception for New Orleans and that is one of the things that's been said over and over again on the floor that we want to avoid doing. In every other parish and in every other municipality the courts are continued as they now exist subject to a change by the legislature. I am supporting an amendment by Mr. Jack later on that will take the local referendum out of Section 35 so that Orleans will be just like the rest of the state, subject to change by a vote of the legislature. But I object to singling out Orleans and changing something in this body. I don't think that this body is the vehicle that this change ought to be made through. I think we were sent here to write a flexible document to allow the proper agencies of government to make changes after long consideration and study. I think the flexibility is what we were sent here to provide, not the change. I think the other thing we were sent up here do is to take amendments off the ballot and I believe the Judiciary Committee has done a very, very fine job of that by taking out all the minute description of judicial districts. There are lines on how many judges sit there and that sort of thing. That was one of the things that bred the most amendments over the years. I'll say again, I don't think we were sent up here to mandate change to the local people in the areas. I think the legislature may do that for Orleans as it does it for other parishes over the years after due consideration, and I urge the defeat of this amendment.

Further Discussion

Mr. Casey Mr. Chairman and delegates, the Chairman reminded me again that I can do it in a minute and a half which I did not do last time I was up here. At this time New Orleans does have a specialized court system, criminal court and also civil court. Mr. Tobias certainly made some points and there are many merits for merger of those particular courts. But there are some real practical difficulties and I just don't think this is the way it can be properly achieved. All I am saying is that it really should not be done by rule of court. I can imagine some of the difficulties that the judges would have, ten civil district court judges and eleven criminal district court judges getting together and trying to work this out. I think it might be more properly handled by a legislative act. At this time we have separate court buildings. We have a civil court building and a criminal court building. There is a lot of merit for specialization. We have specialization in family court. We have specialization in city courts, traffic courts, magistrate courts and many other types of judicial proceedings throughout the state of Louisiana. If it becomes meritorious and necessary at a later date, my preference would be that after a proper study whether it be in the city of New Orleans or East Baton Rouge Parish, that it would be properly han-

dled by a legislative act and not by a rule of court. I think there are many difficulties that could arise in handling this by a rule of court. I would urge defeat of the amendment.

Further Discussion

Mr. Deshotels Mr. Chairman, ladies and gentlemen, members of the convention, I was on the Judiciary Committee that came up with this proposal. We had a lot of debate on it and we had a lot of pro and con, and the more debate we had the more we realized the importance of the question. And the more we realized that we had to be careful what we were going to do and what we were going to provide for in this situation. We are talking about a fundamental court. We are talking about a district court. In our proposed article we provide that district courts can only be merged and changed by referendum. Well, this is a district court. This is a basic institution that Orleans has had, we've been impressed, for years and years. We are not running a constitution in a vacuum. There are already institutions existing. This was brought to our attention when we passed upon the existing proposal. My dad, look at the problem we had with trying to get some of these institutions merged and changed and moved around. This is the same thing that we have got here. We're not locking anything in, Mr. Tobias. We are providing for change. We are providing for a living constitution. Today you say that civil and criminal district courts don't work. Well, people disagree with you. In fact, it is pretty well split. The point is maybe in ten years from now the entire state will want that. It may be a thing of the future. So don't lock it in. Don't tell New Orleans that they don't know what they want, which is what you are doing. Their system has been working. Let's give them a chance and let's provide for the same type of change for them that we are providing for the rest of the state, to wit, changing the district court by referendum. Now, are we also going to force all the other district courts to be like the majority of the district courts in the state? You realize that we have family courts here in East Baton Rouge Parish. Does anybody propose an amendment to take the family court a part of the other courts? In other words, abolish it and provide that judges in the district courts in East Baton Rouge Parish may sit according to court rule as a family court judge. I haven't seen it and I don't expect it. I understand there is one also in Shreveport and some other districts. Nobody is trying to force them to change and I don't believe we ought to force Orleans to change something. We provided for the change. Ladies and gentlemen, we wrestled over this in our committee. We come to you with not a unanimous proposal on this particular area but it has an overwhelming majority of our committee. I would ask you to support our committee proposal in this area. Allow New Orleans to change whenever the people in Orleans Parish want a change. We are not forcing anything on them. Mr. Tobias would not do that. Let's go along with the committee proposal and let's defeat the amendment and move on. Thank you.

Questions

Mr. Kelly Mr. Deshotels, does not our committee proposal allow the flexibility for Orleans in the future to solve this problem themselves?

Mr. Deshotels Absolutely, Mr. Kelly, just like we provide for other judicial districts to merge, to be created, by referendum and act of the legislature. This is no different. We are talking about a fundamental part of our judicial system, our judicial district courts. And, let's be consistent. Let's allow the referendum, if we are going to allow it. Thank you.

[Previous Question ordered. Quorum call: 109 delegates present and a quorum.]

Closing

Mr. Gauthier. Thank you, Mr. Chairman. Members of the delegation, I could have been a good deal pleased with you for logic and reason. We have heard the argument that Orleans wants it this way and it should stay this way. And I ask you, whose court is the criminal court in Orleans Parish? If your brother your sister, your relative or your neighbor is charged in the Parish of Orleans, then whose court is it? I suggest to you that this plan is a great improvement. And talking about improvements, if I can have your attention for a minute I would like to tell you a little joke. There was a factory worker that on his way to the factory—he was a big, bungling guy—he found a little sparrow that was crippled, had a wing out of focus. So he picked up the little sparrow, put it under his arm to keep him warm, and walked all the way to the factory carrying this little sparrow. When he got to the factory door, he realized he would look pretty funny going into the factory with a little sparrow under his arm, so he looked for a nice warm place to put him. Not finding any good places, he bumped upon a pile of cow manure and he snuggled this little sparrow down into it, and the little sparrow was nice and warm and he was comfortable and he was chirping away. Then along came a cat and snatch, off the little sparrow's head went. The moral of that story is that it is not always your enemies that put you into it and it is not always your friends that take you out of it. Now if I have your attention, every judicial district in this state has one district court. In Orleans we have separate criminal and separate civil district courts. What does this do? What does it accomplish? There are approximately 4,500 attorneys in Orleans. Out of this number a small few, I am told around five or six hundred, practice criminal law. From this amount comes all of your criminal attorneys, your criminal judges and the district attorneys. I suggest to you that the criminal court has been taken out of the mainstream of the practice of law and isolated. Consequently, we are not getting the best qualified people for judges, we are not getting the best qualified people for district attorneys. And if you doubt this, ask yourself why, why are there two judges that are presently under federal indictment and a district attorney under indictment? The argument has been raised again and again and again that this is an Orleans matter. Don't be deceived by this. That court is your court, it's our court, it's every person in this state's court. If you don't believe it, how are criminal charges titled? The state of Louisiana versus. That court belongs to us and I suggest to you that if you pass this amendment it will simply say, there is one district court in the city of Orleans. Now, what will that do? What will that accomplish? Will it force them to build two buildings? No, no one does not say that. It says one district court and by local rule. By the judges meeting together, they can decide if they want to sit on just civil matters or just criminal matters. Now, what will this accomplish? It will take the criminal division back into the mainstream of the practice of law in New Orleans where it belongs. We are not trying to force them to build new buildings, force them to rotate. We are saying create one district court. Who agrees with this concept? The senior district judge, Judge Bernard Boudreaux, the criminal division after sixteen years of practice said, "It is good. We want it. Let's merge." One of the junior judges, Judge Israel Augustine, said "It is good. Let's merge." They are saying this with experience and with a true devotion to try and improve on a system that is not working. The argument about us causing Orleans to do something they don't want to do to make them spend money and build buildings is not so. It is definitely an improvement. It's a step in the right direction, and I urge your support of this amendment. Thank you.

Questions

Mr. O'Neill. Mr. Gauthier, we've been told this

is a New Orleans matter. Let me see if you agree with my appraisal of it. The criminal judges in New Orleans have a very heavy case load and they pretty much favor merger with the civil district judges down there. The civil district judges have a fairly light case load and they don't favor merger. Is that an accurate appraisal?

Mr. Gauthier. Also, Mr. O'Neill, the criminal judges have recognized the fact that hearing criminal cases day in and day out does one of two things to a man. He either becomes callous and hard or vice versa, he becomes lax. Now that is not true in every case. There are some exceptions. Some judges can hear it all day without it bothering but I am told by Judge Augustine and Judge Bagert that it does something to destroy a man's equilibrium listening to one matter all day.

[Record vote ordered. Amendment rejected: 46-68. Motion to reconsider tabled.]

Recess

[Quorum Call: 104 delegates present and a quorum.]

Personal Privilege

Mr. Heine. Mr. Chairman and fellow delegates, you know when I was a boy my old dad gave me what I think was some very good advice. He said to speak only when spoken to and be a good listener if you want to learn a lot and stay out of trouble.

Well, that's what I've tried to do during the convention. And I must admit I've learned a lot. I've learned a lot of parliamentary procedure and I'm not sure that my council chairman in Baker is going to be able to put up with me when I get back.

I've also learned that when you get up here to speak, you're supposed to say, "Mr. Chairman, I'm going to be very brief," and then you go ahead and speak for five minutes.

You know there have been a lot of questions going around about this red coat that I am wearing such as, "I wonder if he likes red?" "I wonder if he's got more than one?" "I wonder if he's got another suit?"

Well, I want you tonight, if you will, to tune in Channel 33 at 7:30 and you will see why the Mayor of Baker is so proud to wear this red coat which is the official blazer of my city. And I'm giving you all a special invitation. That's on Channel 33 at 7:30 tonight and I'll appreciate it and all the people of Baker will.

Personal Privilege

Mr. Tobias. Mr. Chairman, fellow delegates, I will just call to your attention that on that last vote regarding the Orleans Civil and Criminal District Court, there was a split in the parish of Orleans. The vote was 13 to 9.

Vice Chairman Roy in the Chair

Amendments

Mr. Poynter. Amendment No. 1 [by Mr. Abraham], on page 5, line 6.

Immediately after the period, delete the remainder of the line.

Amendment No. 2, page 5, line 7, at the beginning of the line before the word "legislature", delete the words and punctuations "of this article the", and insert in lieu thereof the word "the".

Amendment No. 3, on page 5, line 9 immediately after the period, delete the remainder of the line.

Amendment No. 4, on page 5, line 10 at the beginning of the line immediately before the word "legislature", delete the words and punctuation "Section 35 of this article, the" and insert in lieu thereof the word "the".

Explanation

Mr. Abraham Mr. Chairman and fellow delegates, this amendment will determine how serious this convention is in taking care of the constitution the exceptions for particular parishes. In the previous arguments this morning we talked about having all parishes treated alike in the judicial system, that what is good for New Orleans is good for the rest of the state and vice versa.

So what this does, this is the beginning and all this does is it takes out the words, "except as provided in Section 35 of this article". And Section 5 is the one that deals with the Orleans courts. So I ask your adoption of this amendment.

Further Discussion

Mr. Vesich Mr. Acting Chairman and members of the convention, I hope we do not have to go through this particular section, Section 15, all day long like we did in the committee for months and months on the Orleans situation. We listened, we talked and we fought in that committee about the situation in Orleans and what I ask for, and the majority of the members from the Orleans delegation on the Judiciary Committee asked for, is only one thing. Please don't do it to us overnight.

If you are going to merge us or whatever you are going to do, give us some time. Put it on a local option basis. That's all we ask. That's the way it stands in Article 35. It says that when the majority of the legislature and a referendum of the people in the City of New Orleans decide, they will do it.

You just don't understand the complexity of the situation of the courts in New Orleans. They are financed from different sources. We get some from the judicial expense fund, we get some from the criminal court fund, we get some from the state, we get some from the city, our different courts down there are financed separately and you just cannot say overnight you are merged.

And we have asked that you please just go along with us and let us do it in the orderly process. That's all we ask for and that's all Section 35 does.

In the event that sometime in the future, I sat there and I listened to the opponents, in the future we decide in the City of New Orleans that it is best for us to merge or the legislature decides that it is best for us to merge, that at least proper preparation will be made for it.

Now you have to admit that your situation in the country parishes is different than ours and if you just look at it, you will see how different it is. I mean we are sorry that it is. It was something that was created many years ago. We can't help it, but you can't say today you merge... bang! it's over with. If you do, you are going to have complete chaos in the City.

I ask you, please defeat this amendment.

Further Discussion

Mr. Tapper Mr. Chairman and fellow delegates, I rise in opposition to the amendment. I was talking to Mr. Abraham. I'm a little confused and I don't know whether he is or not. I hope he will explain it in more detail when he closes if he does. But I think what he is attempting to do is to authorize the legislature to either abolish or create certain offices within the parish of Orleans. And of course, I'm from St. Bernard, but I represent part of Orleans and I do some practice in the City of New Orleans.

I don't believe that we want to allow the legislature to maybe abolish something that would be all right but to create a particular office and have the people in a particular parish have to pay the salary and fees and costs of operating that office... I think it's a bad principle and I don't believe that we really want to do that. I don't think that Mr. Abraham wants to do that. I believe that his amendment will set into motion the procedure by which that can be done. I believe it's unfair to the people of any locality for the legislature to be able to create an office and not fund it; an office that will be funded by the people of that

particular parish, and I urge that you defeat the amendment. I hope someone would withdraw it or maybe explain it in more detail when he comes up.

But I ask that you defeat it at this particular time.

Further Discussion

Mr. Alexander Mr. Chairman and delegates, this is more or less the same amendment that has been defeated previously and it poses the same problems, the same questions and the same threat to the orderly operation of the courts in the parish of Orleans.

I agree with previous speakers who have said maybe there are some improvements and some changes necessary. But to do it helter skelter as proposed here would create chaos and confusion in the court system in the city of New Orleans. I am going to say if something was wrong in the parish of Orleans, I agree with previous speakers who have said that parish before introducing an amendment affecting that parish.

Let me raise one little question briefly. When an individual is convicted in criminal courts, in any criminal court for that matter, the judge retains jurisdiction. That criminal may appeal and his case may go to several courts including the United States Supreme Court.

In the meantime, that judge is back in civil court. What happens? And this may not include just one case, there may be many cases. What he does... he runs back and forth from criminal court to civil court and etc., and etc. This would entail time. This would make, or... the other alternatives... Then while the case is on, when the case is before him again or would come before him, the case has to remain on the docket and the individual stays in jail, especially if it's a capital case or what used to be a capital case where he can't make bond. Then the man stays in jail until this judge is shifted back to criminal court.

All these are possibilities and all these things could happen, and I ask you to defeat the amendment.

Thank you.

[Quorum Call: 105 delegates present and a quorum.]

Further Discussion

Mr. Tobias Mr. Chairman, fellow delegates, this amendment, and I wish you would listen to this carefully. This amendment is a technical amendment and I'll explain to you why. I disagree with Mr. Abraham. It does not substantively change anything. If you will look at Section 35 of the proposal, the first line says, "Notwithstanding any provision of this article to the contrary..." the provisions... and then it continues with the provisions for Orleans Parish.

That would override the statements, "Except as provided in Article... in Section 35 of this Article" as proposed by the amendment. It's better constitutional draftsmanship, it cuts down on a lot of words. It's just surplus wordage. It doesn't do anything and don't let anyone up here kid you.

Further Discussion

Mr. Fontenot Mr. Acting Chairman, fellow delegates, I rise in support of this amendment and I'll try to be brief.

The point was made that the judicial system in New Orleans is different from the judicial system in the parish courts throughout the state. But whether they are different or not, or whether they should be different or not is not the issue before us today.

I can sit here today and decide which courts ought to be maintained and which courts ought to be taken out of the New Orleans system or Evangeline Parish or Baton Rouge or any other parish. I'm not here to decide that. I don't think the committee decided that either.

The committee decided that the legislature should have that power and I agree with the committee. The

thing I don't agree with what this committee did was give New Orleans a special treatment in the sense that it allowed both the legislature and the people in the New Orleans area to decide whether they would change their system among the rest of the state, the legislature has that power to do without the referendum of the people.

Our job here is to decide what should go in the constitution or what should be left out of the constitution. As far as I can see it, we have to take away these certain words, "Except as provided in Section 35", then we have to take away the particular section Mr. Tobias stated, concerning notwithstanding any provision to the contrary or set or...whatever words he used. We will have to do away with that if we want to let New Orleans join the rest of the state.

And like I said, I am not trying to decide what judicial court should remain in the state or through the rest...in New Orleans or the rest of the state. That's not our job. Our job is to decide what should go in the constitution.

Therefore I feel that we should treat everybody the same, New Orleans included, and let the legislature decide which courts ought to be maintained and which ones should not.

Like I said, I am in support of this amendment. I feel that it is needed to get rid of this extra language and then whenever we get the article in Section 35, we will be able to clear out the rest of the mess.

I urge your adoption of this amendment and I would now move the previous question if there are no other speakers.

Chairman Henry in the Chair

Further Discussion

Mrs. Zervigon Mr. Chairman and fellow delegates, I don't want to take much of your time. I just want to say that I am from Orleans Parish and I agree with everything Mr. Fontenot said.

It's only a technical amendment. Let's remove it here and let's go ahead and remove the referendum in Section 35 and treat Orleans Parish like the rest of the state in this instance. The process for change in Orleans ought to be exactly the same as the process for change in the rest of the state.

Further Discussion

Mr. Jack Mr. Chairman and fellow delegates, I am for this amendment. Let's get New Orleans in Louisiana and have the same laws there as we have other places.

Now what started all the big argument this morning, and we really had a good one, when you consider Section 15 and 35, take the points...suppose a...city court...I'm not going to yield until I finish...city court in Caddo, juvenile court in Caddo, suppose the legislature if all this passes like it is they could abolish the city court in Shreveport. They could abolish the city court in New Orleans. They could abolish the juvenile court in Caddo, the juvenile court in New Orleans if these pass. Then the city court in Caddo and the juvenile would be abolished. But this provides further that New Orleans has the right of referendum and the people there, after being abolished by the legislature, if they voted to keep their city court, they would have theirs, but we in Caddo would lose ours. And the same thing for the juvenile court.

Let me tell you, it's time that New Orleans be subject to the same laws that we in Shreveport and the rest of Louisiana are subject to. I just know it must have been a compromise up in the Executive Committee to ever have dragged, or whatever is correct, this kind of paper out on this floor.

Now ladies and gentlemen, let's pass this amendment and let's amend Section 35 where the same thing is done again.

Thank you.

Further Discussion

Mr. Landrum Mr. Chairman and fellow delegates, I am of the opinion that New Orleans is different. Now maybe some of you say disagree with me. But I do believe that New Orleans is different. I believe that some things that could be done and will work well in one part of the state will not work well in New Orleans. Now that's my belief.

I've heard, too, about bringing New Orleans into the state. I always believed that that when you pay taxes, you must accept part of it. That New Orleans therefore carries a responsibility to the State of Louisiana.

I ask that you defeat this amendment.

Further Discussion

Mr. J. Jackson Mr. Chairman, ladies and gentlemen of the convention, I must admit to you that before the Tobias amendment came up, I had some very strong reservations concerning the status of all courts, particularly the unique status of Orleans Parish. I must also admit to you that I weighed very heavily the arguments as presented pro and con for the Tobias amendment. I think that the amendment as presented here and the arguments that we previously heard have convinced me that this amendment will begin to bring New Orleans, and particularly our courts, to the rest of the state. I recognize the political implications involved. But it just seems to me that we are talking about the courts of the State of Louisiana.

I am particularly concerned, and I must say I was convinced, about the remarks made concerning the posture or the attitude that can develop when we do get into the situation of constantly having to hear kinds of cases that threaten us.

I am also particularly concerned to the fact that the attitude towards the criminal area of judicial...of the criminal justice system. I know it's going to be very hard, and I guess it kind of pro and con. And I know being from New Orleans, I want to make it perfectly clear, as I quote someone else, I want to make it perfectly clear that I think the amendment as presented by here has great merits.

I think what it will eventually do is bring the kinds of judicial reforms, the kinds of equal treatment of not only the court, not only the defendant, but the courts throughout the state. I know this sounds somewhat in opposition to some of my colleagues from New Orleans, but I would seriously ask that they would weigh this proposition because I would imagine, and I know there will be other circumstances where we are going to be pushing for maintaining exceptions.

And I think it has gotten to the point now within the state that we ought not to allow, particularly if sixty-three other parishes that it has worked, that we ought not to allow for such an exception to continue. I just felt that I had to rise in support of this amendment so that those delegates that are swaying, non-voting, those delegates who maybe took in some political considerations, would think about what will that mean, not necessarily to the judges, not necessarily to the political factors involved in the City of New Orleans, but mostly to the people who have to go before these various courts.

And with that, I would ask for your favorable adoption.

Questions

Mr. Nunez Mr. Jackson, when you say that the amendment this morning tried to put the rest of the state in line with New Orleans, and it was defeated...now this amendment today puts New Orleans in line with...puts the rest of the state in line with New Orleans, if passed.

Mr. J. Jackson Well, if I understand what you are trying to say, Senator, I think either way we ought to be talking about one state or another. We ought to be talking about one judicial system. In civil law and criminal law in Shreveport, in Lake Charles, in Lafayette, it's the same civil law and criminal law in the parish of Orleans.

[RECORDING OF QUESTIONS AND ANSWERS.]

Closing

Mr. Abraham Briefly, I just want to say that we rejected the Nunez-Toomy amendment this morning, 35 to 81, and that amendment provided that you would have referendums in the rest of the state if the legislature wanted to revise or change a court or a system.

Now this amendment here does not do away with any of the offices of New Orleans or anything else. All it does, it paves the way so that when we get to Section 35, we can do...either decide on what we want to do on the referendum there, see. So it just simply, all this other leaves it up to the legislature to decide the issue in New Orleans the same as it does for the rest of the state if we want to take off the referendum.

Now I don't disagree that New Orleans differs from the rest of the state. But so is Shreveport different from Lafayette, and Monroe is different from Baton Rouge, Lake Charles is different from Alexandria, and if the legislature can decide things for these different areas of the state, well then surely it can decide for New Orleans.

All this does is just paves the way so that when we get to Section 35 we can make a decision then.

Question

Mr. Tapper Mack, I realize what you are trying to do and what your theory is, and in principle I agree with you, but don't you believe that it is better for the people to decide locally whether or not they want these particular offices than for the legislature to do it when the people locally are going to have to fund these agencies?

Mr. Abraham Well, how I feel right now is not the issue because we decided this morning that we did not want the referendum.

[Record vote ordered. Amendment adopted: 68-47. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Duval], on page 5, line 18 at the end of the line, delete the word, "with", and delete line 19 in its entirety.

Explanation

Mr. Duval I think the convention has already voted against the public referendum concept in reference to judicial districts and courts. To reiterate, this amendment deletes the public referendum portion of Section 8, of Paragraph 8. It seems rather ludicrous to have a public referendum on a matter of this sort and not to have a public referendum for each additional crime enacted by the legislature; for each increase in the criminal penalty; for each law changing the Civil Code; for each law affecting a profession; for each law affecting a parish; for each law affecting wildlife; for each law affecting environmental control and every other matter which affects the citizens of a locality. This is not an orderly way to conduct state business to have a public referendum on the merging, or creation of a judicial district.

Why a public referendum here when there are many many more crucial issues in the state where there is no public referendum. I think it should be deleted. It has no purpose here. It puts something in the constitution which shouldn't be here, and if you are going to have it, you ought to put it everywhere because almost every other type of law affects the people more than the changing of a judicial district and the people have no public referendum. They have their legislators in Baton Rouge and that is a representative to vote on the issues which affect them far more than the merging of a judicial district.

And I suggest to you that you adopt the amendment and delete the language on the public referendum.

Questions

Mr. Jenkins Stan, I'm concerned about the possibility particularly of some of the smaller rural areas being merged with the urban areas.

For example, if we take this out, wouldn't it allow the Twentieth Judicial District, which is composed of East and West Feliciana, to be merged with the Nineteenth Judicial District which is East Baton Rouge Parish, even though the people of East and West Feliciana would be opposed to such a merger?

Mr. Duval Mr. Jenkins, I answer your question in the following way.

Why have a public referendum here when you have no public referendum regarding laws which affect life, limb, local government, wildlife, the basic economy of your state, and why have a public referendum dealing with judicial districts and nowhere else? I think it's a bad concept and it's not an orderly way to run state government, and I'm totally opposed to it.

Mr. Jenkins Well, but isn't there a distinction to be made because, the court system, the judges, the district attorney assigned to each of these various districts, which will administer all of the life and death things? And shouldn't the people in the particular locality be able to determine who will be administering the life and death laws which are passed by the legislature?

Mr. Duval I think as a practical matter additional to the things I have already said, that the legislators in the various districts can work out equitable solutions to those problems.

Mr. Pugh Mr. Duval, is it not a fact that we don't have any general referendum law in Louisiana and that, therefore, if this constitutional amendment, as it's provided, if we did have a referendum, will have to amend this section further to provide that the legislature would have to provide the manner in which said referendum would have to be called?

Mr. Duval Yes, sir. That is correct.

Mr. Stovall Mr. Duval, don't you think we can trust the legislature to act wisely and impartially in matters of this kind?

Mr. Duval Yes.

Mr. Fontenot Mr. Duval, I'm not exactly sure what the effect of this would have on certain possibilities. Let me give you an example.

Suppose St. Landry Parish, right now has a district court and they have three judges over there. And Evangeline Parish, which we are right next to them, has a district court with one judge in it.

Could the legislature, without the people voting on it at all, just say, "O.K. we are going to have one big district," and include Evangeline Parish and not give the people in Evangeline Parish a voice at all?

Mr. Duval Mr. Fontenot, I might point out for the last...since 1812, we have been managing without this provision that is proposed by the committee.

Mr. Fontenot But I mean, the legislature could just, if I understand you correctly, without this referendum, just suck in a whole geographical area into a new district and create a new district without the people having any say-so at all.

Mr. Duval The legislature, aside from the facts I have already said, the legislature can also pass laws affecting your area without your having voted on them which certainly will affect you more than the judicial districts.

Further Discussion

Mr. Burns Mr. Chairman and fellow delegates, we have heard a lot of talk this morning and prior days about referendum and I thoroughly agree there are many, many instances where a referendum is unnecessary, and it'd be left to the wisdom of the legislature.

But this is one situation, this is one issue, that I think that if there ever was a referendum necessary, it is necessary when you start redistricting the judicial districts of the state or abolishing judicial districts or merging judicial districts. That strikes at the very heart of the judicial system of our state as far as the voters and the citizens and the people of the state are concerned. And that's what we lay so much stress and emphasis on up here in this convention. And I think we should very properly do so, is to think about the people and how their interests are affected.

And I don't think any judicial district of the State of Louisiana should be abolished or I don't think any judicial district or any parishes should be forced into another parish unless the people of that district are entitled to vote on it.

And I ask you in all seriousness to give this matter your most earnest consideration and thought before you vote for this amendment.

Questions

Mr. Abraham Mr. Burns, don't you think if we empower the legislature...

Mr. Burns, don't you think that if the legislature has the authority to revise or change Supreme Court Districts without a referendum of the people, or to change the appeals court district without a referendum of the people, that it should also have the authority to revise the districts themselves?

Mr. Burns Mr. Abraham, in some instances I would agree with you. But in this instance I can't because there are so many political considerations that could come into this situation that perhaps the wishes of the people of that particular district might be ignored.

Mr. Flory Mr. Burns, isn't it true that where the legislature has the right to change the judicial districts as they relate to the appellate court and the Supreme Court, it requires a two-thirds vote of the legislature rather than as is provided in this section, a simple majority of the legislature?

Mr. Burns Well, I might agree with you on that otherwise, Mr. Flory. But I still...this is one question or one situation where I think the people residing in a particular district should have a voice in it.

Mr. Flory That's correct. But what I'm saying in answer to Mr. Abraham's question he asked you where the legislature solely had the jurisdiction to change those judicial districts, it requires a two-thirds vote of the legislature where this does not.

Mr. Burns I see.

Further Discussion

Mr. Rayburn Mr. Chairman and fellow delegates, I rise in opposition to this amendment and I see where we can do a lot of damage to the people in the rural areas and the small areas of this state by not allowing them an opportunity to vote. I have been in the legislature when the governor fell out with some certain individual and removed certain individuals from public office and replaced them with a plan of his own. And I don't want to have to compete with some people who are really not interested in my judicial district by saying it would be arranged and what would compose it. And I think the best thing to do is to do like we've been doing in the past...let the people of those districts have an opportunity to speak because they are going to be the ones that are going to be con-

cerned. And I have seen things like this happen in the legislature. I hope I don't see it any more. But it has happened and I can't happen when someone would want to interfere with your local government or your local district, and they would get a majority of the legislators who didn't live in that area or weren't too concerned over that area to go along with them and let the little people back in the rural parishes do the best they could without having a chance to speak and I don't want to have them an opportunity to vote on their judicial districts and I think they should have that opportunity and I hope you don't take it away from them.

Further Discussion

Mr. Avant Mr. Chairman and fellow delegates, I rise in opposition to this amendment and I think you should well heed the words of Senator Rayburn.

I want to give you a specific example. I'm not saying that this would happen or is going to happen, but it could happen. I live in East Baton Rouge Parish. We have eight Representatives in the legislature. We have one Representative whom we share with East and West Feliciana. We have two Senators. We have one Senator whom we share with one or more of those parishes, or maybe both. I am not sure.

We have in this parish approximately seventy thousand plus registered voters. We have in the parishes of East and West Feliciana less than half that many people altogether. Now many people in East Baton Rouge Parish own property in East and West Feliciana Parish which is the Twentieth Judicial District. They have a judge there and they have a district attorney there. A U.S. highway, 61, goes through that parish.

Now this is just an example, and I'm not saying it would ever happen, but if the people of East Baton Rouge Parish ever decided for some reason or another that they wanted to gobble up and swallow that judicial district, they could do it if you adopt this amendment. And the way this article is written as it now stands, it would require the approval of both the people of East Baton Rouge Parish and the people of East and West Feliciana before that could be done. Now that is exactly...I didn't rise this morning on Mr. Nunez's amendment, I didn't speak on it although I was in favor of it...but this is exactly the Judge Pavy situation, exactly what was done in the nineteen-thirties when you didn't have the protection that this article as it's drawn gives you, when a judge was gerrymandered out of office for political reasons. And this is what we are trying to protect against ever happening again. And I say you should well heed the words of Senator Rayburn because that's why you write constitutions. If you wanted to put your complete faith in the legislature and in the judiciary, and in the executive, you could just say, "Let there be government," and forget the rest of the constitution.

But what happened in the nineteen-thirties in the case of St. Landry and Evangeline Parishes, the Judge Pavy situation, pray to God never happens again. But it certainly won't happen if we reject this amendment.

Further Discussion

Mr. Tapper Mr. Chairman and fellow delegates, I rise in opposition to this amendment, not so much because it's in this section, but the convention. I think this morning, set a dangerous precedent and this will be a continuation of that dangerous precedent, and I'd like to leave with you just one thought.

If we continue with this procedure, where do we stop? Where do we stop?...what about governing bodies, what about school boards? You answer that question and think about it when you vote, and I hope you vote against this.

Questions

Mr. Staggs Mr. Tapper, the question before the house at the moment is whether or not there needs to be a referendum to change judicial district

lines. Is that not correct?

Mr. Tapper I believe you're right.

Mr. Stagg Do you know what the present constitutional provision is?

Mr. Tapper Yes.

Mr. Stagg Does it not permit the legislature to change district lines and has it not so permitted for the last 51 years?

Mr. Tapper I believe you're right.

Mr. Stagg By an ordinary vote of members of that most special protective vote or anything.

Mr. Tapper But it says two-thirds of the legislature.

Mr. Stagg If I may ask you a question this way: does the Section 7, Paragraph 34 not say "the legislature may rearrange the judicial districts", and then it says "by a two-thirds vote of the membership of each house, may increase or decrease the number of judges in a district". It does not put a two-thirds vote on the rearrangement of district lines and it has not so for 51 years. Do you not know that to be the case?

Mr. Tapper You're reading and you have me at a disadvantage, Mr. Stagg, as you so often do, however, if that is in the present constitution I think, like on many, many other things that are in there, we're here to change that and I hope that we change it in this convention. It is wrong to burden the people with the decisions of the legislature at the whim of the vote in the legislature to rearrange your judicial districts, your school boards and your governing bodies, and I hope that you defeat this amendment. If we're going to do this with the judicial, we're going all the way.

Mr. Perez Mr. Tapper, isn't it true that Mr. Stagg's interpretation of the constitutional provision must be patently wrong because of the fact that many, many times there have been attempts to pass constitutional amendments in order to attempt to divide judicial districts as we, I believe you can recall, that we had with respect to the 25th Judicial District.

Mr. Tapper Yes, sir, Mr. Perez, I sponsored and passed successfully through the legislature two such bills attempting to divide our judicial district, and we passed it in both Plaquemines and St. Bernard, the rest of the state voted it down. Ladies and gentlemen, for the sake of getting at the judiciary let us not ruin the whole state, please.

Further Discussion

Mr. Kilbourne Mr. Chairman, fellow delegates, I rise in opposition to this amendment. I oppose this concept for the same reason that I opposed it on the Judiciary Committee. Now, in the article in the sections that we've already passed, it's true that the legislature can rearrange the Supreme Court districts and the Court of Appeal districts, but that takes a two-thirds vote. If this amendment is passed it wouldn't take anything but a simple majority of the legislature to do that. I think it's a very dangerous thing and it's not solely because I'm from a rural district as Mr. Avant pointed out, the 20th Judicial District, East and West Feliciana; it's not simply for that. We could get gobbled up just like he said, but as I said in the committee, I'm not so afraid of what might happen again that happened up in the St. Landry situation. What I am afraid of is all of the propaganda we have been getting and I don't know if the rest of you got it but we got it on the Judiciary Committee. This modern concept of a unified court system; it's in the model state constitution which the League of Women Voters so kindly sent, I'm sure, everyone. But,

under that concept you wouldn't have any district courts; you would just have a court, a state court. There would be no judicial districts. Ladies and gentlemen, I want you to know that there is a great hurrah for this concept by the social engineers who are pushing all of this socialist stuff on us in this country today. That is a part of it. Do away with your judicial districts, do away with your local control, concentrate it all in a Supreme Court, in the governor, in just a few people, and you won't have any more local control. I know the gentlemen that introduced this amendment doesn't have anything like that in mind, but I have been watching what has been... was tried to be put off on the Judicial Committee by the reformers and let me say this that most of them were outside the state of Louisiana. We had all kinds of experts come in and talk to us and explain to us that great advantages this uniform court system could be, and I can see in this amendment the effect of it would be an opening wedge where you turn this matter simply over to the legislature and the legislature is going to be bombarded with these reformers' efforts to change. I want you to know that they have their organization and they have the money to put these things over. I ask you to defeat this amendment. Leave this thing to local control. I believe, I know that people make mistakes at elections, but I am a fundamental believer in the ultimate wisdom of the voters if they are free to vote as they please. If anyone has a question, I'd be glad to answer it.

Question

Mr. Weiss Delegate Kilbourne, who finances the judicial district courts? Who pays for this?

Mr. Kilbourne The state pays most of the expense, but not all of it, and that's another thing. That's another angle they are taking. The state pays the judges. Most of the other expenses are paid for locally. That's another thing that's going to be brought up here, I imagine. They'd have to take all the local bonds and everything and send them into Baton Rouge and let the state dole out your funds for the clerks of court and your sheriffs and everything.

[Previous Question ordered.]

Closing

Mr. Duval I've heard the many arguments against the amendment. I understand these arguments, and I certainly would be willing to accept an amendment to the section that it takes a two-thirds vote of the legislature. But I might point out this, why have a public referendum here on judicial districts and this great paranoia here, when the legislature can pass laws which affect us far more than judicial districts affecting directly our local area without a public referendum. If this amendment fails, I suggest to you we have a public referendum for every law affecting wild life, for every law affecting oil, for every law affecting a local government, we ought to have a public referendum affecting the economic structure of the state, affecting reorganization of our government, etc. etc. But I suggest to you that the concept of a public referendum in this instance is not a good idea, why here and no other place which is just as crucial, why not in every article? Every article is equally sanctified. I think in this constitution, equally important. Why not have a public referendum on all laws affecting those articles? Why even have a legislature? We'll just have a public referendum on everything. I suggest to you that that's the basic fallacy with the committee proposal. I don't harm in a two-thirds vote and would like to see an amendment for a two-thirds vote, but I don't think the public referendum concept is a good idea. It's not an orderly way to run state government, and why is this so different than every other area of state government. Why can't we pass laws affecting the economy of a local parish and not have a public referendum in that parish? Why can we pass

taxes and not have a public referendum on that? I suggest to you it's a bad idea. It's such a dangerous precedent, and if the amendment fails we ought to have a public referendum everywhere.

[Amendment introduced. 94-97. Motion to reconsider tabled.]

Amendments

Mr. Poynter Amendment No. 1 [by **Mr. Perez**, et al.] on page 5, line 19, between the words "district" and "parish" delete the word "or" and insert in lieu thereof the word "and".

Amendment No. 2, on page 5, line 20, between the words "establish" and "or" insert the following: "divide".

Explanation

Mr. Perez Mr. Chairman and delegates to the convention, these amendments are primarily technical in nature. The first amendment on line 19 would make it clear that in order to be able to change a judicial district it would require the vote not only in the district but also in each parish affected. The second amendment on line 20 would simply make it clear that not only can judicial districts be established and merged but they may also be divided. I've discussed this with most of the members of the committee, and they have agreed to the amendment, and I don't believe there should be any objection. So I ask your favorable vote.

Questions

Ms. Zervigon Mr. Perez, you speak of this as a technical amendment, but isn't there a difference between a referendum in the district or parish and a referendum in the district and parish?

Mr. Perez Yes, Ms. Zervigon, what I mean by the fact that it's technical, I've discussed the matter with the author of the amendment and with most of the members of the committee. It was an intention to require that the vote be both in the district and in the parish and it was just a bad choice of words of "or" instead of "and". The intent of the committee was that the requirement be both in the district and in the parish, and that's the reason that I call it a technical amendment because it would carry out the intent of the members of the committee that I've talked to and that's been most of them.

Mr. Jackson Mr. Perez, I'm not as familiar with the judicial districts as I feel I ought to be, but would there be cases whereby a district may transcend maybe a parish line?

Mr. Perez No, all judicial districts are composed of one or more parishes, but there are no parishes where the judicial districts are divided with one part of the parish in one and one in another, as far as I know.

Mr. Jackson Well, conceivably, what you're saying is that you could not have a situation whereby the vote could pass maybe in either the parish or the district or fail in either one?

Mr. Perez It could be done in the future, but it would require the approval of the entire parish.

Mr. Jack Mr. Perez, I voted against knocking this referendum out, but I want to know this; it looks to me like that you're going to change "or" to "and". Suppose the judicial district had three parishes in it. My idea for a proper referendum is the majority vote of all three of those parishes, but it looks to me like this might mean that when you put "and" that it would have to be approved by a majority of each of the three parishes.

Mr. Perez Yes.

Mr. Jack Well, in other words, you could have a hundred thousand votes for making whatever the change is and then one little parish that had only 15,000 and yet the 15,000 would defeat the hundred thousand votes.

Mr. Perez I think that's probably hypothetical but the proposition is to protect the little fellow against being put into a very large area and thereby eliminating the opportunity of the people of that area to be able to elect a judge.

Mr. Jack O.K.

Mr. Reeves Mr. Perez, is this not consistent with our ideas on the local and Parochial Government of more home rule and ideas of bringing the rule of the people back to the local areas to protect the small people.

Mr. Perez Yes, sir, Mr. Reeves, it certainly is, and I hope that we can return government to the people as much as possible.

[Previous Question ordered. Amendments adopted: 92-18. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by **Mr. Pugh**], on page 5, at the end of line 12, after the period, add the following: "the manner of holding such referendum elections shall be as prescribed in the legislative act providing for the referendum."

Explanation

Mr. Roy Mr. Chairman, ladies and gentlemen of the convention, the amendments are self-explanatory. They simply provide that the legislature shall provide the vehicle by which these referendums will be called. That is you won't have different referendums from different parishes and the legislature should designate exactly how the people will vote for or against the amendment. I think it's more of a technical amendment than anything else, and Mr. Pugh asked me to explain it because he had to leave.

Questions

Mr. Dennery Mr. Roy, in the Bill of Rights and Elections Committee, I know there is a section on initiative. If it were to contain a section on referendum this would be unnecessary and would you agree that Style and Drafting could then take it out?

Mr. Roy Yes, sir, I would agree, but I think we ought to maybe pass it at this time.

Mr. Dennery I agree with that. I just wanted to be sure that you thought we could take it out if it was a general law on it.

Mr. Roy He just wanted and I think he was right, a uniform type of referendum vehicle all over the state.

Mr. Fontenot Mr. Roy, if you leave out these words exactly what will the situation be whenever there is an attempt to change these districts? Why do you require the language in the constitution? I'm not exactly sure what the intent is of your amendment.

Mr. Roy I think Mr. Pugh was worried about the fact that there's no special act or law right now on referendums and it may differ from parish to parish as to how the referendum would be called, how it would be presented, and in what form would it be presented, and the voter may not know what actually he's voting on. It may just promote some type of litigation. You would have a uniform referendum method presented with each particular attempted

amendment or change of a judicial district.

Mr. Foster: But, if you say they should be uniform, this doesn't say that, it says in the legislative act that providing for a referendum you could have a variation of kinds of referendums proposed. Isn't that correct?

Mr. Roy: Well, that would be possible, but in that particular district, the legislature would be setting forth something that would be specific. I guess that you have point in a sense there.

Mr. Kean: Mr. Roy, would it not be better to make this a separate subsection to this section, if we're going to include it, because we again have in Subsection C a reference to a referendum and it would seem to me that if we put it in this particular paragraph B that we're simply going to have to repeat it everywhere we have such a requirement.

Mr. Roy: That's a good suggestion, probably, Mr. Kean. Mr. Pugh did have several...he has two such amendments and maybe we ought to just put it as a next alphabetical designation with the same language, that all referendums will be provided by the legislature.

Mr. Henry: Are you going to pull them, Mr. Roy? Do you withdraw the amendments?

Mr. Roy: No, I'm not authorized to withdraw his amendment.

Mr. Stinson: Mr. Roy, isn't a fact that Style and Drafting can do that like they're going to do everything else?

Mr. Roy: I would think they could, and just suggest that we put it in as an extra alphabetical designated number...alphabet area, but Mr. Chairman, you wanted me to be very brief, and I've been trying to be and that's my problem. I can't be brief.

Mr. Rayburn: Mr. Roy, I know we've done a lot of stupid things in the legislature but I see here where this places in the constitution that the legislative act providing for a referendum, that we will state in the act how the referendum will be called. I don't believe I've ever seen one that didn't provide where it would be called according to general statutes or either put the provision in the act. I hope that we haven't got so bad that we'd pass an act calling for a referendum and then provide how it would be handled. I don't believe this belongs in the constitution, Mr. Roy.

Mr. Roy: Senator Rayburn, I can't vouch for what the legislature would do, and I do.

[The following action ordered. Amendment submitted by Mr. Stinson to reconsider tabled.]

Amendment

Mr. Poynter: Amendment No. 1 [by Mr. Willis, et al.], on page 5, at the end of line 22, delete the word "term" and delete lines 23 through 28, both inclusive, in their entirety.

Explanation

Mr. Willis: Mr. Chairman, gentleladies and gentlemen of the convention, notwithstanding the gallant support of the co-authors of this amendment, asking its approval, I cannot be studious of brevity with a full heart. It is the sense of omnipresent duty which pursued me to this podium. I do not appeal to you from lip to ear; I appeal from heart to heart. I rise with reluctance, to express my version to a sentence in an article of the judiciary plan for which we are so much obliged to the honorable men who laid it before us. After you attentively listened to prayer this morn, you stood at attention with hand over heart and repeated a pledge

of allegiance to the red, white and blue bunting on this platform which is a symbol of our union, and ended by saying, "...justice for all." This you said. Did you mean it?

With the virtuous education and dedication you have, I warrant you did, because no time is good time to tell ourselves or each other an untruth, which immediately compels me to recall the final advice of Polonius to his son, Laertes, upon the latter's departure, in the tragedy of the Prince of Denmark by the bard of Avon:

"This above all, to thine own self be true, and it must follow, as the night the day, thou canst not then be false to any man."

Especially at this time, heed God's monitor in your bosom—conscience. On this side of the grave, there is no greater luxury of enjoyment than a clear conscience and sense of duty performed. Righteousness is always an evidence of greatness and honor. Wrong is the property of small souls.

Your loyalty is due to no mortal man in authoring this constitution; it is due to good government -- justice for all.

I ask you to please your constituents and so the public at large. If you do what is right, the consequences are nothing and you clothe yourself in armor that the arrows of consequences can never penetrate, and only nature is responsible. If you do wrong, you are responsible for all the consequences to the last sigh.

Much evidence was heard by the Committee on the Judiciary. The totality of that sponsoring the disparity of terms of district judges whereby those serving within the crescent of the integrity and muddy Mississippi, a block away, should have double terms of all other judges in Louisiana is that campaign costs are higher in that half-moon area. If you project that argument vis-a-vis other officials in any branch of our government, you will see how ludicrous it is to measure the terms of officials by the costs of campaigns. So, I do not belabor the point. Although a majority of the committee embraced that argument from that evidence, I am inclined to a contrary opinion, because the term of a judge should not depend upon its price or the size, population, or configuration of an area.

I cannot admonish you enough that equal judges should have equal terms and that the bad habit of history, another argument for disparity of terms, should not be repeated in this constitution in total violation of justice for all.

I am sorry to dissent from the proposal of the committee to which I have been assigned, but my heart is full of contempt for injustice, so I must exclaim as did Malcolm, son of Macbeth, to MacDuff: "Give sorrow words; the grief that does not speak Whispers the o'er-fraught heart and bids it break."

I envy the happy moment so soon to arrive when you will restore justice to our district judges by carpeting our voting board in green, the color most favored by God and our word.

And therefore, Mr. Chairman, if there are no questions and no further speakers, in great security, I move the amendment and I am content with the satisfaction of having poured my heart, given my frank opinion and done my duty.

Questions

Mr. Lowe: I'm a co-author to this proposal, Mr. Chairman, and I didn't have it explained to me that way and I'm not really sure whether I really want to be a co-author any more or not.

Mr. Willis: You put a question mark to that and here's my answer, Mr. Chairman. You may visualize a dream in deep slumber but you must be wide awake to realize it.

Mr. Anzalone: Mr. Willis, do you know that one time in the history of the fifth ward of Tangipahoa Parish that we had a man that made a speech something akin to what you just made and after he finished it, an old fellow that I'd sat next to reached and punched me in the ribs and he says, "Jody, I

32nd Days Proceedings—August 17, 1933

sure don't know what he said but it sounded pretty.

Mr. Willis I accept it as an accolade.

Mr. Derbes Mr. Willis, I just can't resist this, do you remember the quotation from, I think it's Macbeth, which says, "Life is but a walking shadow, a poor player that struts and frets its hour upon the stage... [Mr. Derbes and Mr. Willis: *For the first time*], and is heard no more. It is a tale told by an idiot full of sound and fury signifying nothing."

Mr. Willis Do you have my answer?

Mr. Henry Would you yield to a question from Mr. Jack, the Falstaff of Caddo Parish.

Mr. Willis I do yield to a question from Mr. Jack and warn him that brevity is the soul of wit.

Mr. Jack First, I want to mention, Mr. Chairman, I do not drink, but when I did I never drank Falstaff; it was always Jax Beer.

Mr. Henry I'll have to say, you're still a hundred proof, Mr. Jack, a hundred percent.

Mr. Jack Thank you.
I'm the gray hair... I'm "Old Grandad".
I'm a co-author of this and I believe...

Mr. Henry The amendment or the proposal?

Mr. Jack This amendment. Not that other... of the amendment.

I believe we have 74 co-authors so I don't look for the vote to be too close, so I suggest we get on with it. Thank you.

Mr. Willis That is wit.

Mr. Henry I'd like to hear Mr. Willis close.
Do you have a closing statement, Mr. Willis?
If Mr. Willis has a closing statement, I'm going to object to the amendment.
Do you have a closing statement, Mr. Willis?

Mr. Willis Yes, I do, Mr. Chairman.

Mr. Henry I object to the amendments.
You have the right to close, Mr. Willis.

Mr. Willis Just one moment and I shall.

Closing

Mr. Willis Mr. Chairman, with gratitude, gentlemen again, and gentlemen of the convention, in the name of justice, to adjure you to deal fairly with judges. Be loyal to justice. Beware you do not betray it or our district judges. They await your decision with composure and fortitude and with union, justice, and confidence, the three words written on our state seal which is lighted in front of this podium.

You may not, you must not, deprive justice to judges. My calm analysis of the evidence supplied the Committee on the Judiciary demonstrates to me that there was no valid evidence to support unequal terms for equal judges. Why is equality so difficult to understand or to live by?

I plead for our district judges nothing more than that justice which they or you would mete out to the humblest citizen: equal justice. If equality is part of justice, then justice requires equality. That is no more arguable than the Ten Commandments.

I am calm and confident that you will lean on your daily pledge to "Old Glory" and glorify your vote for justice for all judges and receive the blessings and honor of our people by so doing. I am equally confident that you will vote for union, justice and confidence as I am that you will vote for justice for all, including our district judges. Because I wish our decision remembered with un-

distinguished interest, Mr. Chairman, I request the vote on the amendment be recorded, and I, if you please, pose the question.

[Previous question ordered. Record made.]
Now, Mr. Chairman, I request the vote on the amendment be recorded, and I, if you please, pose the question.
[Previous question ordered. Record made.]

Personal Privilege

Mr. Miller If I may say, I would like to say to the delegates who gave this overwhelming vote on this issue, to Mr. Willis and to Mr. Wall for his very generous statement, I would like to say in the words of Hamlet, "for this relief, much thanks."

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Toomy, et al.]. On page 5, line 22, immediately after the word "district" and before the word "shall" delete the word "judge" and insert in lieu thereof the words "and parish judges."

Explanation

Mr. Toomy Mr. Chairman, fellow delegates, this amendment simply clarifies the committee proposal. If you will notice in the first sentence of Section 15 they provide that the parish courts would be retained in the new constitution. Nowhere in the proposal do they clearly specify the terms or what the terms of these particular judges would be. I talked to several members of the committee, including Judge Dennis and Justice Tate, and each of them concurred that it was their intention to provide for the same terms for the parish judges, but that they hadn't clearly enumerated it. Presently, the parish court judges have a six year term and we simply wanted to make it clear in here. Section C would read, with this amendment, "The term of district and parish judges shall be six years." Presently, only Jefferson Parish has parish court judges and the present term is six years. They were established under a constitutional provision and the intention here is just to have specified what the terms of these judges should be. I ask for your favorable adoption of this. I will yield to any questions, Mr. Chairman.

Questions

Mr. Conroy Mr. Toomy, the problem I've had is that I'm not quite sure it's clear what your amendment is proposing to do. In Section A, it says "The legislature may establish trial courts of limited jurisdiction which shall have parishwide territorial jurisdiction and subject matter jurisdiction which shall be uniform throughout the state." It doesn't, that section doesn't establish a title for those courts, but those are all parishwide courts that the legislature might establish in the future. Does your amendment, in effect, say that the judges of all such courts in the future would have six year terms or is it limited only to the present existing parish courts?

Mr. Toomy The amendment, with the amendment, line 22 would simply read "the term of district and parish judges shall be six years." The establishment of any further parish courts, the judges' terms would be six years. A number of people had mentioned earlier in the day that for a uniform court system, more parish judges may be established. Parish court judges.

Mr. Conroy So this is intended to make it six year for all parishwide judges. Is that correct?

Mr. Toomy Right, which as we presently have in Jefferson and any new ones which may be established.

[Previous question ordered. Record made.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Juneau, et al.]. On page 6, between lines 28 and 29, add the following: Paragraph D. "The legislature may increase or decrease the number of judges in any judicial district by a two-thirds vote of the elected membership of each House."

Explanation

Mr. Juneau Mr. Chairman and fellow delegates, this is a provision which was specifically stated in the 1921 Constitution, but which is, in essence, I submit, silent in the proposal which is now before you. If you will look at your books that were provided for the compilation on Article 7, Section 34, it provides that the legislature by two-thirds vote may increase or decrease the number of judges in a district. The reason for this was this: If you're going to create another judgeship in a judicial district, you will of necessity create a financial condition or burden upon a locality. The court report, the facilities, the judge's salary and so forth. It has been in our law, and I think a worthwhile purpose that if you're going to impose that financial burden on a locality, which may be necessary, then it should require a two-thirds vote of the legislature. I respectfully submit that I think that's a legitimate, well-founded principle that was in the 1921 Constitution. I find it to be silent in the proposal which you now have before you, and I think silence would connote the word majority. Again, I think that this is merely a protection and giving security to a local government that if they're going to put that financial addition on a locality, then it at least should require the consideration of two-thirds vote of the legislature. I would ask for your favorable consideration. I think that it puts in proper perspective the relationship between state government and local government and is consistent with the provisions that will be before you with regard to the local government provision. I move for final passage, Mr. Chairman.

Questions

Mr. Brown What are the abuses that you are so concerned about if only a majority vote is allowed to, say, create a new judicial district? What are you so concerned about happening that it's going to require a two-thirds vote?

Mr. Juneau Well, I could visualize a situation, Mr. Brown, that if someone wanted to, for a particular reason, create a judicial district in a particular area, I wouldn't think that it would be that difficult to muster a majority because of friendships, Mr. Brown. I think what we're doing in this situation is not dealing with the matter necessarily of state interest, but of local interest. Lafayette Parish or Webster Parish, whatever parish it may be. I think when it gets to that magnitude, the history has shown that to get a two-thirds vote is not necessarily difficult in that regard, but it does assure to a locality some stability that they will not be indiscriminately taxed with additional appropriation on a local level.

Mr. Brown Well how is the two-thirds vote of the legislature going to have any effect on the locality? As a member of the legislature, on something like that, most of your legislators, they've got a twofold purpose in looking at something like that. Number one is the local delegation for it? Number two, what does the judicial administrator have to say? Does he say there is a need right there? So I don't see how the local people are going to be protected by the two-thirds element.

Mr. Juneau Well, I'll put it this way, Mr. Brown. We have many, many provisions in this constitution, apparently, which are going to retain the provision of two-thirds. I think this is just one more of the

continuation of what is considered to be historically a protective device, be it local government or otherwise, even in the tax field. It's my impression and my strong feeling that that again is nothing more than a protection for local government. That's the best way I can answer your question.

Further Discussion

Mr. Singletary Ladies and gentlemen, I urge the rejection of this amendment. I think that the authority would be in the legislature to increase or decrease the number of judges needed by a majority vote without this amendment. I think historically the problem has been that there have not been enough judges, rather than too many.

[Previous Question ordered. Amendment adopted: 86-23. Motion to reconsider tabled. Previous Question ordered on the Section. Section passed: 115-1. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter "Section 16. District Courts; Original Jurisdiction"

Section 16. Paragraph A. Unless otherwise authorized by this constitution, a district court shall have original jurisdiction in all civil and criminal matters. It shall have exclusive original jurisdiction of felony cases; cases involving the title to immovable property..." I might interrupt here, Justice Tate indicates to me that there was a technical error in the preparation of this and he will propose an amendment to line 1 so that it would read, the portion of the word "carried over" original jurisdiction of felony cases and cases involving the title to, etc."

Picking up on line 3, "position, civil or political rights; probate and succession matters. The state, a political corporation or a succession is a party defendant regardless of the amount in dispute and the appointment of receivers or liquidators to corporations or partnerships."

B. A district court shall have appellate jurisdiction as provided by law."

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, Section 16 provides for the jurisdiction of district courts. Paragraph A speaks of two kinds of jurisdiction. One is original jurisdiction which means that the district court may hear all civil and criminal matters upon their original trial. It also speaks of exclusive original jurisdiction which means that these kinds of cases must be started in the district courts. These include felony cases, cases involving title to immovable property and the other types of cases listed therein. This is no substantive change from the present constitution and the present scheme of original and exclusive jurisdiction for district courts.

Paragraph B does represent a change. It provides that a district court shall have appellate jurisdiction as provided by law. This is not in the present constitution. But this is simply a provision authorizing the legislature to provide for appeals from limited jurisdiction courts to the district courts. There is no provision in the present constitution providing for trial de novo which means a new trial all over again in the district court from such a limited jurisdiction court. The legislature could, under this, bring back the trial de novo. However, the trial de novo has been subject to some criticism and it may be that the legislature would wish to authorize a different kind of review in the district court rather than trying the case all over again. So that is why we have provided for a permissive grant of power to the legislature to supply provide for appeals to the district court from the courts below them. If there are any questions, Mr. Chairman, I will be happy to answer them at this time.

Amendment

Mr. Poynter Amendment No. 1 [i.e., Mr. Stinson]. On page 6, line 1, immediately after the word "jurisdiction" insert a colon (:) and delete the remainder of the line and insert in lieu thereof the following: "of felony cases and of cases involving: the title to".

Explanation

Mr. Tate Mr. Speaker and fellow delegates, this is in the nature of a technical amendment. We were originally wrote this article to say... incidentally, the wording of this article comes from the project of the 1954 Constitution before we inserted something. It originally said "jurisdiction of cases involving the title to immovable property," cases involving, in other words, the right to office, if you follow what I mean. Of cases involving all those semicolons were the objects of that phrase, cases involving (1) the title to property, (2) the right to office, (3) civil or political rights, (4) probate and succession, (5) the state as a party defendant, etc. Now when we added jurisdiction of felony cases and put a semicolon and then we say cases involving the title to property, this can be read, and two or three delegates whose draftsmanship I have confidence in pointed out to me, you could read it to say jurisdiction of felony cases, of cases involving title to immovable property, of the right to office or other public position. You see, it's not a sentence. It doesn't make sense unless you understand that "of cases involving", that phrase, is an understood... whatever some grammarian... it's an understood... the prepositional phrase which has an object, each one is involving the title to immovable property, involving the right to office, involving civil or political rights. Does anybody follow me? You want me to talk some more? You know when I taught Law school, somebody got up and said "Why do you talk so fast, and why don't you finish your sentences?" And why don't you make sense, they should have said. But I wish a grammarian like John Thistlethwaite would explain it a little better than I can. Does anybody see any difference in putting it this way and not putting it this way? All right...

Questions

Mr. Deshotel Justice Tate, unless we put it the way you have it, I'd refer you to line 4, for example, as one example, right after "matters," if you omit the semicolon... if you omit after the semicolon the first line and then jump down to the fourth line, it wouldn't make sense as we have it now. Isn't that correct?

Mr. Tate Yes. Without my amendment.

Mr. Deshotel That's correct.

Mr. Tate It was a friendly question, thank you sir. It's a grammatical mistake.

Mr. Stinson Judge Tate, I think that kills what we were talking last night. But on line 5, didn't we say instead of "as", it should be "is"? I don't think it will cure that, will it? Style and Drafting will do that?

Mr. Tate Well no, Mr. Stinson. It does that because it says "cases involving the state, a political corporation, or a succession as a party defendant." You'd have to put "where" in, otherwise, Cases "where" the state is... if you said it.

[Amendment adopted without objection.]

Amendments

Mr. Poynter The next set of amendments is sent up by Delegates Abraham, Tobias and Gauthier.

Amendment No. 1. On page 5, line 30, after the letter (A) delete the remainder of the line.

Amendment No. 2. On page 5, line 31, at the beginning of the line delete "stitution, a" and insert

in lieu thereof the word "A"

Explanation

Mr. Tobias Mr. Chairman, fellow delegates, this is another one of the technical amendments similar to the technical amendment that we adopted in Section 15A. If you will follow me, we say in Section 16, "unless otherwise authorized by this constitution." If you will look at Section 35 of this constitution, of our proposed draft, the second paragraph which says "the civil district courts shall have civil jurisdiction as provided in Section 16 of this article and the criminal district courts shall have criminal jurisdiction as provided in Section 16 of this article." So in effect, this refers you, Section 35 would refer you back to Section 16, and it would override the previous article. In other words, it's simply technical. It should be non-controversial.

Question

Mr. Denny Mr. Tobias, I understand the purpose of your amendment. Where would jurisdiction of public service commission cases be? It's a civil case therefore original jurisdiction would be, according to your amendment, with the district courts. Where would civil service commission cases go? According to your amendment, it would be the district courts. It seems to me that it is overly technical because I think it goes beyond what you intended it to go. Now I believe the purpose of your amendment, if I am correct, and please correct me if I am wrong, was to clarify the situation with regard to New Orleans. But do you not agree that it goes much further than that?

Mr. Tobias I stand corrected. I withdraw the amendment.

[Amendment withdrawn.]

Amendment

Mr. Poynter Amendment No. 1 [i.e., Mr. Deshotel and Mr. Stinson]. On page 6, line 9, after the word "law" change the period "." to a comma "," and add the following: "except that from parish courts, appeals by trials de novo are prohibited."

Explanation

Mr. Gauthier Members of the delegation, if you refer to Section 15, line 10, we provided that parish courts could be created at a time when they were needed. In our committee, we hassled back and forth about appeals. Presently in the constitution, trial de novo is a right granted. Trial de novo simply means this, the ability to have a complete new trial in the district court. Now this is what happens. If you create new parish courts and then you give the right to have a complete new trial in the district courts, you would be doubling the expense of the state. The parish courts, as we foresee them, will be totally equipped. They will have record keeping equipment and the appeals should be on the record. This is all this does. It prohibits a new trial bringing back all the witnesses, bringing back the defendants. It simply provides that the appeal will be on the record. Thank you.

Questions

Mr. Abraham Wendell, though you've explained the meaning of the term de novo, doesn't the manual on Style and Drafting specify that we should not use terms like this in the constitution?

Mr. Gauthier That objection has been raised and I'm told that there would be no problem for Style and Drafting to change it and put it in English language which would be acceptable and mean the same thing. They would not be changing the meaning, then.

Mr. Kean Mr. Gauthier, when you talk about parish

courts, what kind of a court are you talking about?

Mr. Gauthier If you refer back to Section 15, Mr. Kean, on line 10, "the legislature may establish trial courts of limited jurisdiction which have parishwide territorial jurisdiction and subject matter jurisdiction which shall be uniform throughout the state." The intent of the committee was that these courts be parish courts.

Mr. Kean All right. Now, as I appreciate that proposition which you have just read, the legislature could create a parish court, that is one having parishwide jurisdiction, over nothing but traffic violations and misdemeanors.

Mr. Gauthier That's correct.

Mr. Kean In an effort to help handle traffic violations. Under the circumstances of your amendment, a person who was tried and convicted in that parish court of a traffic violation would not be entitled to a trial de novo in the district court in the event of appeal.

Mr. Gauthier He would be entitled to an appeal on the record. Right, not a new trial de novo. Not having a complete new trial. That's correct.

Mr. Kean In other words, it's not the intention by this to limit the appellate jurisdiction of the court, simply to avoid a trial de novo.

Mr. Gauthier No sir. Not at all.

Mr. Anzalone Mr. Gauthier, aren't what you are really saying, that if you set up a parish court, you are going to set up a parish court of record?

Mr. Gauthier That's correct.

Mr. Anzalone Well, Mr. Gauthier, of course there are those people that represent small municipalities in which there are mayors' courts and there may or may not be a conflict in term in here which are not courts of records because of the expenses involved. Do you think that a better language, and I hate this, but I'll ask you anyhow... is to establish trial courts of record with limited jurisdiction would be better language than the prohibition that you have here?

Mr. Gauthier Mr. Anzalone, I personally would have no objection to that amendment and I agree with you. However, there are members of the delegation that say that they have smaller courts which would not be able to afford the necessity of record keeping and therefore they couldn't go along with it. This is a compromise providing that just parish courts which will be courts of record.

Mr. Velazquez In effect, Delegate Gauthier, when you cut in half the expense of the state in this matter, aren't you in effect cutting in half the rights of the defendant?

Mr. Gauthier I don't follow you on that question at all, Mr. Velazquez. In the parish court, there will be a complete record of the trial. He will have an appeal on the record. You're not in any way cutting off any of his rights. No.

Mr. Velazquez Well, often, isn't it true, that very often a new trial is much fairer to the man than to have to go on his record?

Mr. Gauthier I wouldn't say that in the parish courts, no, Mr. Velazquez.

Mr. Roy Mr. Gauthier, I'm a little worried about... because I'm not familiar with parish courts, not being from Jefferson area or so. But is it your idea that you could have a parish court with, let's say, jurisdiction of up to ten thousand dollars in civil cases that the legislature could provide for in the future?

Mr. Gauthier Mr. Roy, I'd find it difficult to answer you because we provided in Section 15, line 10, that the legislature will establish the jurisdictional limits.

Mr. Roy Well, that's what I'm saying, and if it does, then your amendment necessarily implies that all litigation from a parish court even with a jurisdiction of as much as ten thousand dollars would have to go to a district court. My question is, couldn't the legislature decide that it would go up to the circuit court of appeal rather than the district court?

Mr. Gauthier You're correct. It could go either to the district court or the court of appeal. I checked with Justice Tate on this and you would have a right of appeal on the record to either the district court or the court of appeal.

Mr. Roy When you say "except from parish courts, appeals by trials de novo are prohibited"....

Further Discussion

Mr. Avant Mr. Chairman and fellow delegates, I must rise to oppose this amendment. I hate to anticipate another section, but we're in a situation where I think you have to look ahead to the future provisions that we are going to be coming to. Now, the idea behind the parish court was that it would be a court of limited jurisdiction and that the legislature could establish these courts of limited jurisdiction. Their jurisdiction would have to be uniform wherever they were established. But the question of the trial de novo, I have to go and make a little explanation. Under the present constitution, in criminal cases where there is an imprisonment of less than six months or a fine of less than three hundred dollars, you do not have any right to appeal to the Supreme Court. Under the provisions that are drawn in this article, if it's less than five hundred dollars or less than six months, you do not have any right to appeal to the Supreme Court and there is no provision for an appeal to the court of appeal. Now, under the present law, there is a right to appeal in those cases to the district court if you're in a court that is not a court of record. If you're in a city court or a mayor's court or where they do not have a record. You have a right to appeal to the district court for a trial de novo, which means you get a complete new trial. Now, we got into this question and we considered it at great length in the Judiciary Committee. I for one, I wanted to put a provision in here that any person could not be convicted of any crime and sentenced to any imprisonment, or fined, or forfeit his driver's license without a right of appeal based upon a complete record of all of the evidence that had been taken. Since we had done away with the trial de novo in this. But the result that we came up with, and you have to look forward to Section 20 is to provide that evidence shall be preserved in all trials, and that the legislature or in the absence of a legislative provision the Supreme Court by rule, would provide how that evidence would be transcribed. Now then, in those misdemeanor cases where you presently have a right to a trial de novo, then we simply made a provision that the district court will have appellate jurisdiction as provided by law. Now what we have done then in the courts of limited jurisdiction have, in effect, provided that all evidence has to be recorded, or preserved or kept in some way. That then, in those cases where you do not have a right to appeal to the Supreme Court, that is in those cases where there has been an imprisonment of less than six months or a fine of less than five hundred dollars, that the legislature would have the right to provide an appellate procedure of some kind which could go to the district court. It could be either on the record or it could be by trial de novo. Now if you adopt this amendment that Mr. Gauthier is offering, I feel that you are disrupting the plan or the system that we had tried to put into effect which was simply to provide that in those cases where you don't have an appeal to the Supreme Court, coming

from one of these courts below the district court level, that there must be a record and that then we would leave it up to the legislature as to whether or not the appeal would be on that record or based upon the trial de novo. The reason for that was, is that this language which says that evidence shall be preserved in all trials, the legislature is going to have to implement that in some sort of way because it provides that it shall be as provided by law. There was discussion of many practical problems that would arise in certain cases such as mayors' courts and city courts where they don't have the facilities to do that, and the expense that would be involved in doing that. So that's why these two provisions were put in there. They've got to be looked at together, and that is the Section 8 in Section 16 and Section 20. They have to be looked at together. Therefore, the legislature the legislature the leeway to provide how those appeals will be handled.

Vice Chairman Casey in the Chair

Further Discussion

Mr. Stinson Mr. Chairman, members of the convention, I wanted to clarify this by a question, but wasn't able to. The statement was made that it was a hardship on the defendant to go trial de novo. Well the defendant is the one who is appealing. He's the one that's asking for a review by the higher court. Certainly there's no hardship on him. And again I'd like to point out if we want to or you want to help the litigating man, this is the same as an appeal from the city court in which ordinarily the defendant goes in the court without an attorney, not knowing that he's got to introduce all the witnesses and have it transcribed if he is to have his day in court on appeal. I think to protect that type person, that we should make the appeal, leave it like it is recommended by the committee so the legislature can say it will be de novo, if in the legislative wisdom they so see. I'd like to urge you, let's defeat this amendment.

Questions

Mr. Sandoz Mr. Stinson, the proposal as contained in the committee proposal does not provide that a parish court is a court of record. Is that right sir?

Mr. Stinson Yes sir.

Mr. Sandoz Therefore, if you did not... if you denied them a right to a de novo trial, there would be no transcribed evidence on which the other court could go on. Is that right, sir?

Mr. Stinson Exactly. That's one main objection. I believe Mr. Gauthier, himself, said that some courts could not afford to make the appeal. Therefore, they wouldn't have a record. Well I don't think that the people of this state should suffer by having such a burden placed on them. They are being denied the right to appeal.

Further Discussion

Mr. Conino Mr. Acting Chairman, fellow delegates of the convention, if you refer to the amendment you'll notice that we stated parish courts. These parish courts will be all uniform. We happen to have two in Jefferson Parish that I'm very familiar with. These are what is known as courts of record. In other words, we have a stenographer there who takes all of the testimony regardless of the type of case that it might be. If it's a traffic case it's taken down, or a DWI, or a misdemeanor, or a civil matter up to a thousand dollars. Regardless of what comes into these parish courts, they will be recorded. They are called courts of record. These records can be taken up on appeal. If you have to have, if you feel justice has been neglected then you ask for a new trial in that particular court. You don't have to go up on appeal without a record. Usually the judges in these particular

instances will advise the defendant, if it's a matter of a serious nature, that that particular defendant should obtain counsel so that he will have his day in court. When he has his day in court, there is a record and this record will go up. It saves the state and it saves the defendant and all of us a lot of money so that we don't have to try at a lot of expense by going de novo. De novo means all new, completely new, where you subpoena a of your witnesses and your state evidence and whatever you have. So I urge the adoption of this particular amendment.

Questions

Mr. Anzalone Mr. Joe, do you realize that what you are saying that you are prohibiting a trial de novo from a parish court that has not kept a record?

Mr. Conino No, Mr. Anzalone, I stated that a parish court is a court of record.

Mr. Anzalone No sir, you are not saying that. You are leaving up to the legislature... or do you know that you are leaving up to the legislature the right to decide whether or not this will be a court of record? If the legislature should so decide that this is not a court of record, you are, in fact, prohibiting an appeal from that particular court.

Mr. Conino I have been told that all parish courts will be modeled after Jefferson Parish and they will be courts of record.

Mr. Anzalone But that isn't what you're saying here.

Mr. De Blieux Mr. Conino, as the provision now reads it says "A district court shall have appellate jurisdiction as provided by law." Now the question I want to ask you, couldn't you accomplish the same thing that you're trying to do with this language by a legislative act?

Mr. Conino Yes, yes.

Mr. De Blieux Well why do you want to clutter up the constitution with it, then?

Mr. Conino Because we feel that the trial de novo is not necessary.

Mr. Denney Mr. Conino, under Section 20, the provision is made that "Evidence shall be preserved in all trials. The method of preservation shall be provided by law or by rule of the Supreme Court not inconsistent therewith." Don't you think it would be far better if you want a provision of this nature, rather than saying "except from parish courts," that you say except from courts of record, and then no question could arise? If you have a court of record, I can't see that there would be any damage done. But if the record is preserved by means of a tape recording, it wouldn't do much good on appeal. Do you agree?

Mr. Conino I'm sorry, but I can't hear you.

Mr. Denney I say if the record is preserved merely by a tape recording, it wouldn't be of much value on an appeal. Do you agree?

Mr. Conino No, it would have to be transcribed. That's correct. The court would have to have those facilities or make those facilities available, and I believe that with the decisions coming down from the United States Supreme Court that that would be made available to any defendant who decides that he needs it.

Mr. Jack Let me ask you this. Suppose, I'm not familiar with this parish court in Jefferson, but we passed today, a provision where other inferior courts can be created and they may have parish courts available to any defendant who decides that he needs it.

32nd Days Proceedings—August 17, 1973

of us. Under your law regarding the parish courts now, where a suit is filed there for \$25, now that's what we would term in city court in Shreveport a non-record case and evidence is not transcribed. Do you mean you transcribe the evidence in an account that's contested, say, for \$25?

Mr. Conino That's correct.

Mr. Jack All right. Now remember, \$25 is involved. Suppose you passed this law that you can't have a de novo trial and you've got to appeal on a record. Who pays for that record when there's only \$25 at stake?

Mr. Conino It would be paid by the plaintiff.

Further Discussion

Mr. De Blieux Mr. Vice Chairman and ladies and gentlemen, I just want to make this observation. The provision as it presently reads says that a district court shall have appellate jurisdiction as provided by law, which means that the legislature can set that appellate jurisdiction as it sees fit. Mr. Conino just said that the legislature could do exactly what he wants to provide here. So if the legislature can do it, why do we want to clutter up the constitution and add additional words, which you might say is meaningless and which we do not need. Therefore, I think the amendment is a bad one and we should not stick meaningless words in the constitution. I ask you to vote against it.

Further Discussion

Mr. Jack Mr. Chairman and ladies and gentlemen, I rise to oppose this amendment. We will probably have other parish courts, and in my opinion, if we adopt this amendment, we will have an article in the constitution that's going to govern all of them. Now Section 8 says "the district court shall have appellate jurisdiction as provided by law." Now nothing should be added to that. To show you how ridiculous this could be to do away with appeals by trial de novo, take the example, I was asking the question on when the speaker's time ran out, suppose in that parish court you had a case involving \$25. The plaintiff has to appeal it, or the defendant. You've got to, as he said, the plaintiff pays for the appeal, I imagine whoever lost in the lower court. Well the general cost on transcripts per page is one dollar unless you have a scale law like a flat filing fee which some parishes do, Caddo does. But in certain parishes, like we tried a case just recently over in another parish in north Louisiana, for a case that lasted a day and a half, and it's a dollar a page, \$285 for 285 pages. But if we win that case, we're going to win a lot of money—thirty or forty thousand dollars, that's different. But if a person sues for \$25 or \$30 or under \$100 in a non-record, it's not justice where there's an appeal, the loser have to pay maybe a dollar a page. So I say, let's defeat this amendment. Also, there's another amendment dealing with this same thing that I have a copy of, and I'm speaking now against both those amendments.

[Previous question ordered. Amendment rejected: 28-78. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Jack]. On page 6, delete lines 6 and 9, and insert in lieu thereof the following:

"B. The district courts shall have such appellate jurisdiction as the legislature shall provide by law."

Explanation

Mr. Poy This amendment was going to be introduced by Mr. Pugh. He asked me to introduce it for him. I submit it for your reading and I will not yield to any questions.

Further Discussion

Mr. De Blieux Mr. Vice-Chairman and ladies and gentlemen. Mr. Pugh discussed this amendment with me before he left this afternoon and his explanation was this and I think it makes sense. It is the nature of a technical amendment. He takes the provision that jurisdiction has to be conferred by the constitution. It cannot be done necessarily by the legislature unless the words explicitly provide that. And as the reading of the present provision says, it just says "appellate jurisdiction as provided by law" which doesn't necessarily clarify the situation and give the legislature the right to make jurisdiction with reference to the appeals of court. And he just wanted to reword that particular section as he has outlined it here. It is a technical amendment and I think that he has made his point and it would be worthwhile to adopt it. That is his explanation.

Questions

Mr. Weiss Delegate De Blieux, isn't the legislature the only law...section which makes the laws in our state?

Mr. De Blieux That is not true, but you have law contained in the constitution too, Dr. Weiss. He just wanted to clarify that the legislature would have this particular right to grant the jurisdiction to a court. It only applies insofar as jurisdiction of courts are concerned.

Mr. Weiss Well, if it is in the constitution, it is spelled out too then. It seems like a redundant bit of amendment.

Mr. De Blieux Well, you can decide as you see, but I am just giving you his explanation of it to me.

Mr. Stinson Senator De Blieux, some of those that might not know, isn't the jurisdiction of venue all important, you can have a good legal action, but if you get in the wrong court, you'll have a sad day and lose your case, don't you? So this is an all important to be placed in the constitution, isn't it?

Mr. De Blieux That is true.

Mr. Champagne Really, do you think that this has to be in the constitution?

Mr. De Blieux I think he has made a point... Mr. Champagne, I don't necessarily say I agree with him in all points, but I think he has made a good point in this, and certainly no damage would be done by rewording that particular provision as he has outlined it here on this particular issue.

Mr. Duval Senator De Blieux, doesn't this merely mandate the legislature as it should in reference to jurisdiction?

Mr. De Blieux That is true, yes that is right.

Mr. Kean Senator De Blieux, I understand the intention that Mr. Pugh has in this amendment and that is to make it clear when we say "provided by law" that we are talking about the legislature doing it. But we have got a number of other instances in the constitution where we have used the term "provided by law". Under those circumstances, wouldn't this change raise some questions as to the meaning....

Mr. De Blieux Not necessarily, because in this particular provision he is stating that the legislature shall provide...he doesn't say that as provided by law "because this is to make the mandate to legislature to provide the appellate jurisdiction of district court."

Mr. Kilbourne Senator De Blieux, do you feel that

32nd Days Proceedings—August 17, 1973

this amendment is really necessary?

Mr. De Blieux Well, let me put it this way. It does...it clarifies the situation. I certainly think that it will make a little bit better provision out of it. I can't say how much it would actually change...if you did not adopt it but I think it does make a little bit better provision. It is only a technical amendment.

[Previous Question ordered. Amendment reconsidered: 10-0-0. Motion to reconsider tabled. Previous Question ordered in the section. Section passed: 10-0-0. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter Section 17. District Courts; Chief Judge

"Section 17. Each district court shall elect from its members a chief judge who shall exercise, for the term designated by the court, the administrative functions prescribed by rule of court."

Explanation

Mr. Dennis Fellow delegates, Section 17 supplies something that we, on the committee felt has been long needed in the district courts of Louisiana, and that is, someone who is officially designated as the administrative judge, the chief judge in each district court. Some of the district courts do this by agreement already but in other districts they have failed to choose a district judge because there is no requirement in the constitution or in law that they do so. You will notice that although this requires the selection of a district, of a chief judge in each district, it does not grant him carte blanche the administrative powers. It provides that he is delegated administrative duties and functions as prescribed by rule of court. Which gives the other judges on the court a voice in formulating the rules under which he will administer the court.

Questions

Mr. Lanier Judge Dennis, in the Seventeenth Judicial District, which is Lafourche Parish, we have two district judges. What would we do in the circumstance if the vote was tied one to one as to who would be the chief judge?

Mr. Dennis What do you do now for court rules if you can't agree upon a rule when the vote is tied?

Mr. Lanier We don't have court rules if they don't agree. And fortunately they have agreed, but if we are mandating that a chief judge be elected in the constitution and our two judges are unable to agree as to who is going to be the chief judge and it is a one to one tie, what do we do?

Mr. Dennis I suppose you don't have a chief judge. But I think that knowing your judges, Mr. Lanier, I know that they will have worked something out and one of them will be the chief judge.

Chairman Henry in the Chair

Mr. Stinson Mr. Dennis, in that case don't you think that Representative Guidry could cast the deciding vote for them?

Mr. Dennis He might arbitrate for them a little bit there.

Further Discussion

Mr. Guarisco Might I suggest that we do the same thing that we do to women, appoint a head and master.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Bollinger].

On page 6, delete lines 11 through 14 both inclusive

in their entirety and insert in lieu thereof the following:

"Section 17. There shall be a chief judge of each district court who shall be the judge oldest in point of service on the court."

Explanation

Mr. Bollinger We voted to allow the Supreme Court to have the chief justice be the oldest judge in point of service. We voted to have the court of appeal chief judge to be the oldest judge in point of service. I can see no reason why we should differentiate between the district courts. As Mr. Lanier said, Lafourche Parish has two judges and if for some reason they could not agree we wouldn't have a chief judge. Now, possibly the two judges that we have now could agree. However, we are not writing a constitution for two judges that are presently in office, but for judges who are to come in the future. So I feel for the sake of uniformity throughout this article that we should adopt the language in the amendment.

Questions

Mr. Flory Mr. Bollinger, wouldn't it really be better to leave that up to a rule of the court, and I say that in the form of a question because of the fact that in East Baton Rouge in the Nineteenth Judicial District, I believe, the court here rotates on an annual basis?

Mr. Bollinger Mr. Flory, I think that if you had a chief judge in name the chief judge could designate someone to administer it if he saw fit. However, I think that for the sake of uniformity throughout the constitution we shouldn't make exceptions because East Baton Rouge decides to rotate it from year to year. I think if they decide among themselves that they want to let someone act as chief judge although one man is the chief judge, it would be legal.

Mr. Flory How could it be legal if you spell it out in the constitution that the oldest in point of service shall be the chief judge?

Mr. Bollinger Well, I agree that one will be the chief judge. However, another could execute his duties if he so allowed.

Ms. Zervigon Mr. Bollinger, in the section you are proposing to replace it says "that the chief judge shall exercise the administrative functions as prescribed by a rule of court". What would be the duties of the chief judge under your amendment?

Mr. Bollinger Mrs. Zervigon, we have had the same problem I think with the court of appeal chief judge in that Mr. Guarisco had offered up amendments saying that he would not be the chief administrative officer because he often times designated someone else to administer the duties of the court. I think the same thing could apply to this. Where the chief judge could appoint someone or designate someone to administer the duties of the court.

Ms. Zervigon He could appoint some other judge?

Mr. Bollinger A judge or an administrator.

Ms. Zervigon And then all we would have to show that he was chief judge is the title and no duties or powers?

Mr. Bollinger If he so saw fit, yes.

Ms. Zervigon Thank you.

Mr. Sandoz Mr. Bollinger, in the cases of the Supreme Court, that court sits as a panel of seven and the chief justice presides, is that right, sir?

Mr. Bollinger That is correct.

Mr. Sandoz And of course in the courts of appeal,

you have panels again sitting, more than one judge on each case, is that right, sir?

Mr. Bollinger That is correct.

Mr. Sandoz Now, in the district court, each judge sits individually, and has the same powers, is that true sir?

Mr. Bollinger That is correct.

Mr. Sandoz Now, don't you think then there was a reason behind the distinction that the committee made because of that fact?

Mr. Bollinger Well, if you would go along that premise you wouldn't need a chief judge in the district court.

Mr. Sandoz Well, but the point I am making is that the judges in the district courts are all elected coequal and they do not sit in panels, is that true?

Mr. Bollinger That is true.

Mr. Smith Mr. Bollinger, don't you think that it would be better to get a judge that is the oldest in point of service. You take in our parish of Caddo with five judges, we may have one elected to be the oldest that he won't have to be there but about maybe a day or two and yet he would be the chief judge, won't you cause an abnormal situation there?

Mr. Bollinger The purpose is, the judge oldest in point of service, yes, sir.

Mr. Smith Is that your amendment?

Mr. Bollinger Yes, sir.

Mr. Smith Well, that is all right.

Mr. Silverberg Boysie, earlier you said that the chief judge could relegate his responsibilities to an administrator?

Mr. Bollinger If he so desires, yes.

Mr. Silverberg However, do you still think that...do you mean that he could relegate his authority?

Mr. Bollinger I don't...I think the basic or the...responsibility of the court would lie in him, however, I think he could designate someone else, if for instance he didn't want to be the chief judge.

Mr. Silverberg You mean...the day to day technicality of the management of his office?

Mr. Bollinger Exactly.

Mr. Silverberg Thank you.

Mr. Arnette Mr. Sandoz brought up a fairly interesting point when he talked about the panels of judges sitting. In some appellate circuits, don't they have more than three judges?

Mr. Bollinger I would presume so, Greg, I am not sure.

Mr. Arnette Well, they do in most...in fact in all of them. Now, in a lot of cases the chief judge of the circuit court is not sitting so he has no presiding power over that particular thing which would be exactly the same situation as a district court, is that not correct?

Mr. Bollinger That is correct.

Mr. Champagne I just had a question. It probably doesn't mean anything, but now point of service, would his ten years that he had been a justice of the peace, would that count too?

Mr. Bollinger Is a justice of the peace considered

a district judge?

Mr. Champagne Well, does this say as a district judge?

Mr. Bollinger Well, it is in point of service in his office I would presume...

Mr. Champagne Ok, well...

Mr. Stinson Mr. Bollinger, isn't it a fact that in Caddo Parish at least once a week they come in as a panel and they decide at the time the future setting of the cases and the motion that day and someone has to be in charge and preside don't they?

Mr. Bollinger I would agree with you, Mr. Stinson.

Mr. Fontenot Mr. Bollinger, excuse me for not paying attention, and right at the beginning, but if I understand your amendment and the discussion now. Suppose you have nine district judges and the oldest in point of service doesn't want to be the chief justice, or doesn't want to run the show, are you going to require him to be the chief justice or the chief judge?

Mr. Bollinger Yes, he would. Just like the Supreme Court or the court of appeal.

Mr. Fontenot Well, of course, you know like in the court of appeal or the Supreme Court you know it might be some kind of honors you know to be the chief justice, you know up there. But down in the district court level you might have a man who just does not want to be the presiding judge. Don't you see that you might have problems if you force a man to be the presiding judge?

Mr. Bollinger Well, I presume that they could elect him and he still wouldn't want to be the chief judge. So I don't think that argument is valid.

Further Discussion

Mr. Dennis Mr. Chairman, fellow delegates, I rise in opposition to the amendment. First of all I think that if the chief judge in the district courts is elected in ninety percent of the cases the judges are probably going to elect the senior judge. But for the benefit of those courts who have already been rotating the job of chief judge, I think we should allow them to do so because where they have tried this, this has worked well. Also the amendment is defective from the standpoint that it...it leaves out the last two lines where the committee had provided that the chief judge would be selected by the other judges to exercise for the term designated by the court, the administrative functions as prescribed by rule of court. Mr. Bollinger, by leaving this language out is either going to make the senior judge in point of service the complete dictator of the court because he is not subject to court rules, or he is going to make the title meaningless because he doesn't allow the other judges by court rule to delegate any duties to him. In either event, it would be a bad situation. You would either have a man with a title with no requirement that the other judges delegate any duties to him or he would have all the duties and functions that are implied in the words "chief judge". So for those reasons I ask that you vote this amendment down.

Questions

Mr. Schmitt Did you vote for in favor of the chief judge being elected for the court of appeal in the different divisions?

Mr. Dennis On the committee Mr. Schmitt, I took the position that we should elect the chief justice and the chief judges of all the courts.

Mr. Schmitt And how did you vote today?

Mr. Dennisbut I was in the minority on the

chief justice....

Mr. Henry Gentlemen that is not relevant....

Mr. Dennis As I explained earlier, we reached a compromise on the chief justice. But let me say this, I don't think you have the argument here at the district court level that you have at the Supreme Court level about politics entering the elective office. As Mr. Fontenot has pointed out, there is not a whole lot of honor attached to the job of being the administrative judge at the district court level. It is a job of very great responsibility and a lot more work, but it doesn't have near about the honor of chief justice of the state. And I don't think you will have the politicizing and this was the main reason that the committee shied away from election at the Supreme Court level. I believe, was because they thought it might inject politics. And I don't think that would happen on the district court level.

Mr. Bollinger Judge Dennis, could not the language be added "who shall exercise the administrative functions as prescribed by rule of the court" and cover any and all instances where he might not want to serve as chief judge or he might want to designate someone else as the administrative officer. Because the court could adopt the rule to allow him to do so?

Mr. Dennis I think what you are suggesting now if I understand it would be better than what you have. It still would not solve the problem of what you are doing to the courts that would like to rotate this job and elect a different man from time to time for periods of three or five years.

[Previous Question ordered. Amendment rejected: moved. Motion to reconsider tabled.]

Further Discussion on the Section

Mr. Roy Mr. Chairman, ladies and gentlemen of the convention, I don't want to waste your time, but I just see no need for Section 17 at all. As specific examples have been brought out that if you have a two man court or an even numbered court you are just not going...you can't force somebody to elect someone else. Besides that it provides that they will have the administrative functions as prescribed by rule of court. Now, you can't say in response to a question like when Mr. Duval asked, or Mr. Lanier, what happens in a court with two judges? Well, knowing the personalities of the court we will never reach that problem. When you are talking about constitutional language and constitutional law you don't solve a problem by saying the personalities will never create it. Either you can obviate the problem or you can't. Now the problem can't be obviated as Section 17 is presently written. It mandates something that may not be able to come about. In my opinion it is eyewash. It is not needed. The courts have gotten along fine, the district courts in the past without such a provision. I just think it is redundant and we ought to defeat the whole Section 17 as it presently exists and go on to something else.

Questions

Mr. Champagne Mr. Roy, do you agree with me there's a possibility by putting this in the constitution that you might arouse a lifetime conflict between the friendly judges, or three like we have in my parish? They might figured somebody grouped up against them, they might not even talk to each other.

Mr. Roy That's exactly right. It's just not needed, it's worked fine in the past. The Supreme Court, with the judicial administrator, is actually able to conduct and have all judges of districts courts respond to it. It's not needed.

Mr. Weiss Mr. Roy, if judges have such problem as that, do you think they should be on the bench if they can't talk to one another?

Mr. Roy Dr. Weiss, that's not the issue. I was going to answer that.

Mr. Denberry Mr. Roy, are you aware that this provision states that the term shall be fixed by the rules of court?

Mr. Roy Am I aware of what?

Mr. Denberry The term for which the judge shall serve as chief judge, shall be fixed by the court rules.

Mr. Roy I think probably some district courts have that and they ought to solve their own problems.

Mr. Denberry No, no I asked you if you are aware of the fact that the provision against which you are presently talking, has that specific language in it. And if you are aware of it, would that not solve the problem that has been raised as to judges fighting with each other?

Mr. Roy I don't see that... The only thing I see that this provision has in it, is that the administrative functions will be prescribed by rule of the court.

Mr. Denberry No, read this before that, Mr. Roy, if you please.

Mr. Roy "Shall elect from its membership, a Chief Judge who shall exercise for the term designated by the court, the administrative functions as prescribed by rule of court".

Mr. Denberry "for a term designated by the court". Correct? So that you could rotate the judgeships, and that would obviate any problems of personal difficulties, would it not?

Mr. Roy Yes, if they agree to it fine. But suppose they don't agree and you have a two man court.

Mr. Denberry Now, Mr. Roy, let me ask you this question. If you don't like this rule for your courts, would you agree to put in an amendment which would say the parish of Orleans excepted, if we wanted it in our courts?

Mr. Roy No, I'm not liking it for my court or not, I just don't think it makes any sense.

Further Discussion

Mr. Tate Mr. Chairman, fellow delegates, the committee considered this long and hard. In many districts, Rapides, which my friend Chris Roy just spoke from, they have no problems. In St. Landry, which my friend Mr. Champagne just spoke from, they have no problems. The senior judge in each of those instances does exercise administrative powers. The reason the committee ultimately concluded to put it in, is that without constitutional status a chief judge, no matter what rules there are, has absolutely no authority over a brother judge who's elected to him. When he says you didn't get to court at nine, he says I'm responsible to the people just like you. It gets a little bit more sanctioned to the fact that in large, multijudge district courts, you may need some administration. The best way to provide it, as they do in many large cities throughout the country, is to let the judges provide the rules and elect one or another for two years at a time, or however they want to do it. They would usually I would say, for instance in St. Landry Parish, they would elect a senior judge, Judge Layton, one of the finest judges in our state. But in neighboring parishes, a senior judge is a man who just doesn't like administration. Mr. Chatelein, mentioned he talked to them last night. There would be no way to do it. In Baton Rouge Parish, they do elect an administrative judge. And they do follow them, and

it works. We were just letting every district decide what function that judge should have.

Questions

Mr. Lanier Judge Tate, did we not previously adopt a provision that gives the chief justice of the Supreme Court of Louisiana administrative control over all courts in the state?

Mr. Tate That's an excellent question, Mr. Lanier. And one of the reasons that this was adopted, was to be sure that we, in our supervisory administrative power, would not have a super riding authority over the local districts way it wanted to select its own chief judge and the functions it wanted to give to them. Very good good question, though.

Mr. Lanier Wouldn't the court have the authority, under this power given, to do this on the local level?

Mr. Tate I do not believe they would have the power, if this amendment is adopted, to provide for a method of selecting chief judges and to allot such chief judges, duties by Supreme Court rule. I do not believe, and that's one of the reasons, those who proposed it wanted it in the constitution. I'm glad you brought that point up.

Mr. Lanier Well, let me ask you this then, so we can make the record on this real clear. It is your feeling and opinion, as a member of the committee, that the intent of the committee here was that the administrative rules fashioned by the district judges and the chief judge thereof, would have precedence over those rules which would be promulgated by the chief justice of the state of Louisiana.

Mr. Tate No, Mr. Lanier, what I mean, is this. The administrative powers of the chief judge and for each district, and how it shall be selected are exclusively the prerogative of the district. I'm not saying that under the general rule-making power, the other authority that the court might suggest, for instance, that all judges decide cases within thirty days as required by statute, and so on. Is that an answer to your question?

Mr. Lanier I'm not sure, Judge. Are you saying...

[Previous question asked on the Section.]

Closing

Mr. Dennis Mr. Chairman, fellow delegates, I think we've got to assume that most of the judges in the state are going to follow the law and the constitution. If we provide in the constitution that each district shall select a chief judge, I feel that they will all do so. No matter what these problems may be, and I really don't see any because he is ultimately subject to court rule adopted by all of the members of the court. There could possibly arise, a situation where some individual would devise a means to circumvent the law. But that would be so, in just about any situation. I think we must give our judges more credit than that. I think they're going to try to implement this constitutional provision and carry it out. Because, there is a much needed purpose behind it. Right now, we don't have administrative heads designated by the constitution or by law, in our district courts. I disagree with Mr. Roy, to this extent. He says everything is working well. But it seems to me, that is one of the big problems we have in our district courts. We do not have enough consistency or uniformity and discipline in our district judges because there is no administrative head now, in the district court bench. I submit to you, this is the most democratic, the most flexible way to do it, that will fit with the way most courts are handling their problems already. So I ask you to adopt this provision, as a move toward court reform and toward the better administration of justice in our state.

Questions

Mr. Lanier Judge Dennis, do you agree with Justice Tate? That if this provision is in here, this would give the local courts, on the district level, the exclusive right to make their own court rules?

Mr. Dennis I believe that this grants the chief judge, the authority to exercise administrative functions, as prescribed by the local court rules. Yes, sir.

Mr. Lanier And if they prescribe their own local court rules, pursuant to this provision, that the chief justice of the Louisiana Supreme Court could not supercede those rules.

Mr. Dennis As long as these rules are related to administrative functions of the local court. I agree, yes, sir. Because that is all we are talking about here, Mr. Lanier. We're not talking about procedural rules relating to the operation of the entire system. We're talking about the administrative functions in the local court, as I perceive the section.

Mr. Lanier Well, the point I'm driving at, is I think Justice Tate brought up a very good point. Which I think has changed my mind on how I'm going to vote on this thing. But, I want to make sure the record is clear. If we don't have this, then there would be no authority for the local court to make these administrative rules which would be exclusive on the local level. Is that correct?

Mr. Dennis I think you might be right. I think, then this would leave the door open completely for the Supreme Court to spell out now the local functions are administered, possibly, unless you had this section. If that's what you're saying, I think you may be right.

Mr. Lanier So then that the legislative history of this provision will be clear, is it your feeling and the intent of your committee of which you are the chairman, that if this provision is adopted, the local court would have the exclusive authority to make its own administrative rules?

Mr. Dennis It is my personal view, that this would grant them the complete authority to make administrative rules about local functions. As long as they did not interfere with some overall state policy of the Supreme Court, in the administration of justice. But, I can't tell you that every member on my committee would express it the same way. But this is the way I see it.

[Section passed: 95-15. Motion to postpone not laid.]

Motion

Mr. J. Jackson Mr. Chairman, ladies and gentlemen of the convention, the next matter under consideration has to do with the jurisdiction of the juvenile courts. I am prepared to make a motion before this body that we pass over this section, temporarily, in order that persons who are interested in the protection of the jurisdiction of the juvenile courts, particularly, the courts of East Baton Rouge Parish can get their heads together and work out some sort of reasonable approach to this problem. I think that the matter of jurisdiction of where our youngsters are going to be handled, should not be embedded in the constitution in a simple sentence. Particularly, in light that we have spelled out the jurisdiction of the Supreme Court, the court of appeals and the district court. I would ask, and plead for your consideration, to allow us to pass over this section, temporarily. Mr. Chairman, I so move.

Mr. Henry The gentleman moves now that we temporarily pass over Section 18.
Is there objection?

Judge Dennis, you object?

Mr. Dennis I don't know whether to object or not, Mr. Chairman. Could I get some more information about how long the delay will be? And whether or not this would be establishing a bad precedent. I think there may be some other sections, some other people would like to defeat or change and have a little more time to...

Mr. Henry You might address your question to Representative Jackson.

Questions

Mr. Dennis Could you tell me that?

Mr. J. Jackson Judge Dennis, in talking with particularly with Mr. Kean and other delegates, we feel that we could resolve whatever problems that we have concerning this section by Wednesday. In fact, that we meet tomorrow, and we wanted the rest of the present articles as basically a matter of routine. That by Wednesday, which would give us the weekend and a couple of days before the convention reconvenes to work out the approach to this problem.

Mr. Dennis Well, I won't raise any objection at this time. I would ask, maybe, if we could do it by tomorrow, it would be better. We might be able to finish this article if we proceed.

Mr. J. Jackson Judge, we will begin to work on it immediately.

Mr. Gravel Mr. Jackson, if I understand you correctly, you want some time for the amendment, with the understanding that we will take it up before we conclude this article and it will not unduly delay that.

Mr. J. Jackson Right.

Mr. Fontenot Mr. Jackson, concerning this section. The jurisdiction of juvenile courts, as it is now, is it in the constitution or in the statutes?

Mr. J. Jackson Yes, sir. It's in the constitution.

Mr. Fontenot Is it just like it is here?

Mr. J. Jackson No way.

Mr. Fontenot It's more detailed, than it is here?

Mr. J. Jackson It's more detailed because it talks about the jurisdiction in the area...

Mr. Fulco I just wanted to ask Representative Jackson, he said something about making out problem that exists in East Baton Rouge Parish. Now, would the solution that you would come to, have an effect over the whole state? Juvenile cases in juvenile court in Caddo?

Mr. J. Jackson Yes, sir. I would suggest that the parish of Caddo, because there is a particular reference about the juvenile courts of Caddo also in the constitution.

Mr. Fulco Well, don't you think that maybe some of us from Caddo should get involved in the conference?

Mr. J. Jackson Yes, sir. I would seriously agree, right.

Point of Information

Mr. Burns Information. If we agree to pass this over, I would definitely suggest that some definite time be fixed so that if we finish this article, we won't be confronted with the situation they haven't come up with a solution.

Mr. Henry Mr. Burns, it's a temporary pass over,

and I'll guarantee you we are going to take it up at least when we get to the last section of this. If you understand what I mean? I've already discussed this with Representative Jackson and Mr. Kean, and I don't think there will be any problem on that at all, sir.
No objection to the motion, so ordered.

Reading of the Section

Mr. Poynter "Section 19. Mayors' courts, justices of the peace, continued.

Section 19. Mayors' courts and justice of the peace courts existing at the time of the adoption of this constitution, are continued, subject to change by the legislature."

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, it is the intention of this section to continue the substance of the present constitutional provisions relating to mayors' courts and justices of the peace courts. Under our present constitution, these offices may be changed or abolished by legislative act. Some of the delegates have pointed out to me, that this language is not very exact in this section. That it does not completely track the language in the present constitution. And I agree with those delegates. Although the committee has not authorized me to do so, I would like at this time to offer an amendment on my own. If any members of the committee object, then we will discuss it further. But it's my intention, at this time, to offer an amendment placing into this section the same language that is in the present constitution. Which does the same thing that I have just explained to you. It allows the mayors' courts and J.P. courts to continue, but to be subject to abolishment by the legislature as they now are in the present constitution.

Amendments

Mr. Poynter Amendment No. 1 [by Mr. Pugh]. On page 6, line 20, immediately after the word "mayors' courts", delete the remainder of the line.

Amendment No. 2. On page 6, line 22, at the end of the line add the following "any parish of the state, the parish of Orleans excepted, may be divided by the police jury thereof, into not more than six nor fewer than three justice of the peace wards. From each of which there shall be elected one justice of the peace, provided that the legislature may reduce such number or even abolish the office of justices of the peace throughout the state. The number of justice of the peace wards in the several parishes, shall remain as now fixed until rearranged or until the office of justice of the peace may be abolished as herein provided."

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, I believe I have already explained the amendments. This is the exact language from a previous section of our constitution, Article VII, Section 46. It is the intention of this amendment to clarify what the committee, I believe, intended to do. Which was to simply leave the J.P. and the mayors' courts just like they are. Which means, that the legislature could reduce the number or abolish them all together.

Questions

Mr. Tate Judge Dennis, in fairness to the Justices of the Peace Association, I think I'll have to object to the amendment. I had brought it to their attention. What it was, they asked about the language, and I replied that the language meant only such and such. In fairness to them, I will have to object to let whoever has talked about the matters with them have a chance to debate that change.

Mr. Burns Judge Dennis, I notice in your amendment, you say after excepting the parish of Orleans,

to force you into the abolition of the same. Well, we have heard just a few minutes ago some of the very valid reasons as to why we should keep them. I do not think that it should be a constitutional provision that evidence be kept in all trials in all sections of the court and I urge your adoption.

Questions

Mr. Derbes: Here I am, Mr. Anzalone. I've been diagramming this sentence here and it says...

Mr. Anzalone: I tell you what. It was drawn quickly now, you can believe it.

Mr. Derbes: Well I hope so for your sake. If you take out one of these clauses, it says, "evidence shall be provided by law." Now, I don't know what that means. Can you tell me what that means?

Mr. Anzalone: Mr. Chairman, can I talk for a few more minutes until I get another amendment?

Mr. Derbes: I thought evidence was provided mostly by witnesses.

Mr. Anzalone: Well you see, you all practice law different in the city than we do.

Mr. Henry: You don't belong to the same organization Mr. Anzalone belongs to.

Mr. Anzalone: Mr. Chairman, in all honesty, I have not had the chance to really prepare the thing in its proper form nor digest it and if it says what Jim says it does, I would like to withdraw it and take Judge Dennis to the bathroom until such time as I can get another one.

[Amendment withdrawn. Previous Question ordered on the Section. Section rejected: 37-67. Motion to reconsider tabled.]

Recess

[Quorum called: 21 delegates present and a quorum.]

Reading of the Section

Mr. Poynter: "Section 21. Judges; Term of Office or Compensation May Not Be Decreased

Section 21. No judges term of office or compensation shall be decreased during the term for which he is elected."

Explanation

Mr. Dennis: Mr. Chairman, fellow delegates, this section is fairly short and simple and self-explanatory. It simply provides that the judges' term of office or compensation shall not be decreased during the term for which he was elected. It is similar to the provisions we adopted in the other articles affecting other public officials. I ask for your adoption of the provision.

Amendments

Mr. Poynter: Amendment No. 1 [by Mr. Bollinger, et al.], on page 6, line 27, after the word "of" delete the remainder of the line and insert in lieu thereof the words "office, compensation or retirement shall."

Amendment No. 2, on page 6, line 30, at the end of the line change the period to a comma and insert the following: "nor shall the retirement benefits or judicial service rights of any judge, whether sitting or retired, or the benefits of the surviving spouse of any judge be reduced."

[Section moved with proposed amendments.]

Explanation

Mr. Bollinger: Mr. Chairman, fellow delegates, I think the committee proposal is good. This merely

expands on the committee proposal to include the protection of retirement. A big underlying factor has been discussed with regard to Section 23. Regardless of what happens to Section 23, this is a good amendment. It just simply protects the retirement of judges and their spouses' right to those retirements. I move its favorable adoption.

Further Discussion

Mr. Jack: Mr. Chairman and members, I rise to oppose this amendment and I hope you will listen carefully. Now the section on retirement of judges is Section 23. There are going to be amendments to delete that, and put the judges' retirement in the hands of the legislature where all other retirement systems are. But be that as it may, this to begin with is not the proper section to have it under even if you don't agree with me. Now the next thing that's wrong with this amendment, and please listen, if we put the judges' retirement system in the legislature, then if you had this amendment passed you are making theirs entirely different from other people's. For instance the Representatives and Senators, the legislature's retirement, is set up by legislative act. They can change that, for active members. Members that were in the legislature in 1964 had their's changed. Senator Rayburn had his changed. A different formula was made and they are made from time to time. Now I cannot for the life of me see why the judges, if they are placed in the legislature's hands on a retirement system, they should have a clause in here restricting that legislature except where they are retired, then that is another matter and there are numerous amendments that have been prepared. Mr. Gravel and I have been working on one and he's got a good one, that will keep from prejudicing the judges at all if their retirement system is taken out of the constitution and placed in the legislature. I again repeat, this amendment is bad because it will place them in an entire different position from anybody else that is under the legislature.

Point of Order

Mr. Tate: Mr. Chairman, the project of the Judiciary Committee has retirement as a different section. It seems to me that this is not germane or can you make it germane by amending the title. Because where we ought to discuss this it seems to me would be back when we come up to the retirement. Who would provide it and so on instead of now.

Mr. Henry: Justice Tate, it has to do with the reduction of benefits, compensation one way or the other, so the chair would rule that it is germane, sir.

Mr. Landry for a question.

Question

Mr. A. Landry: Mr. Jack, if we adopt this particular amendment would that provide anything, supposing that the retirement system of the judges would be defeated, does that provide anything for the new judges who are going to come into office later?

Mr. Jack: What, this one? It says whether sitting or retired, "nor shall the retirement benefits or judicial service rights of any judge, whether sitting or retired, or the benefits of the surviving spouse of any judge, be reduced." Now that's just what I was saying. Sure, it will freeze into the constitution any rights and the legislature will be ham-strung by this if we vote later, when we get to Section 23, to take that out and let the legislature handle the judges' retirement system. The people, it's been for a long time they are tired of the judge not paying into a system and a system regulated, I'm for the judges. I've helped them a lot. But, I mean, we just can't give them everything. They should pay into it. Poor policemen pay into it. The highway worker pays into his. Everybody else, and the judges should have to pay into theirs. They don't pay anything and yet when you get to 23

you are going to find where they are asking more. Where they can serve twelve years, one term on the court of appeal if it is twelve years, and at fifty-five quit and things like that. Let's just level it down.

Mr. Gravel Mr. Chairman, and ladies and gentlemen of the convention, I disagree with my friend, Mr. Jack. I think this amendment is needed because what we are saying here is that during the term of office for which a judge is elected, that none of the emoluments of his office will be diminished, including his retirement benefits.

Now it's very important that we have this kind of a provision in the constitution for two reasons: Number 1, there is presently in favor of the judges a provision in the constitution that has to do with retirement. So any approved rights there have got to be protected by any new constitution.

Number 2, it's proper and appropriate to make sure and to give constitutional assurance to those who run for public office such as judges here, that their rights, including retirement rights, will not be diminished during the term for which they are elected because those potential retirement benefits, the judges may consider, or the candidates may consider before they seek office.

I think it's absolutely essential that we expand on the very good concept that the committee has suggested by adding to the compensation guarantees the concept of retirement and making sure that there shall be no diminution of any benefits that the judge may have during the term for which he has been elected.

And I urge your support of this amendment.

Questions

Mr. Kean As I read your amendment, it is based upon the presupposition that the legislature is going to provide for the retirement of judges, does it not?

Mr. Gravel Either the legislature will, or the present provision in the constitution will probably be carried over into the law by some provision that this convention will adopt.

Mr. Kean My point is that if he put it in the constitution, the retirement benefits of the judges in the constitution by whatever formula we want to divide, then this provision is not necessary, is it?

Mr. Gravel Well this provision, to me, doesn't have any relationship to the formula. All this says is, "that with respect to the judges, that any retirement benefits to which they are entitled during their term of office, there shall be no diminution of those benefits by any legislative act".

Mr. Kean But if the provision with respect to judges' retirement is in the constitution, we don't need that protection against legislative action, do we?

Mr. Gravel That might be correct.

Mr. Kean It would be correct, would it not, sir?

Mr. Gravel I think you are right. In other words, I think if later on the constitution spells out in detail all the things that relate to retirement for judges it might not be necessary. We are not there yet.

Mr. Asseff Isn't it true that we have not provided, or do not have such a provision for legislators, state employees, teachers or anyone else? So my question is, why should we have a special provision for the judges, sir?

Mr. Gravel Only because, Dr. Asseff, that in the present constitution there is a special provision for judges. And in the event this convention carries over that constitutional provision into the statutory law or otherwise provides constitution-

ally for judges, this provision will be needed.

Mr. Asseff I have no objections to it, but I feel that it should be statutory.

Mr. Dennis Mr. Gravel, are you attempting by this to transfer the provision in 23-B over to this part, and if so, why didn't you include all of the language there? It seems to me you've left some pretty important provisions out.

Mr. Gravel Well, Judge Dennis, there's no such intent. The intent, of course, is to make sure, as I've mentioned before, that the judges' retirement benefits that are accrued are protected.

Now, when we get to Section 23, probably a great deal more will be said and be done about judges' retirement.

Mr. Dennis Mr. Gravel, isn't this really just part of your plan to defeat Section 23 when we get to it?

Mr. Gravel This is part of an effort to be fair in reaching a determination with respect to provisions relating to judicial retirement.

Yes, Judge Dennis, it certainly is a part of an effort that we are making that encompasses some of the aspects of Section 23. Yes, sir.

Further Discussion

Mr. Weiss Fellow delegates, this approach that's being used, I'm happy the judges themselves detect because there's just something that smells about it. I would suggest we defeat this proposal.

We are talking about an extremely complex matter. I am sorry that neither of the more vocal advocates, Mr. Wall, Delegate Wall and Delegate Vomack, are not here to explain to you how complicated this issue is. I spent some time with both of them last night and this morning discussing this. It amounts to insurance, and if you know, and I'm sure all of you do who have policies on health and automobile life or automobile, will simply look at that policy, you will see how complicated it is and how complicated the actuarial components are and how when you are through taking it, that is taking the policy out, sometimes you don't have what you think you have and then the company doesn't pay what you think they should pay.

This matter of retirement involves not only judges but all other officials of the state, and I will not go into details. But to me, it is extremely complicated with many percentages being paid by the employees of the state whether they be the judiciary or the district attorneys or the harbor police of the Port of New Orleans, or whoever the retirement system may be for, some thirty-eight systems, I understand, in the state, and each has its own formula.

Representative Wall, who is Chairman of the Committee on Retirement in the House, I understand, has tried to consolidate this and make money for the one and a half, I believe, billion dollars that are now in these funds. In any event, this matter is so complicated that I see no reason for it to be introduced at this time, nor discussed or introduced until we come to the retirement section.

And I resent for the judges, those who are using back door methods to defeat the amendments so early before a frank understanding of the problem is presented to you.

I therefore recommend that this floor amendment be defeated.

Further Discussion

Mr. Tate Mr. Speaker, fellow delegates, can you see me above this thing?

I promise you when Section 23 comes up, I will not speak. I rise only now to speak to ask for you not to pass this amendment but to defeat it because it comes up at the wrong time and the wrong place when we should when we get to retirement discuss all the ramifications.

you've heard three opposing views on the merits of judicial retirement. That should be discussed in the retirement article. I point out questions this thing raises to me. For instance:

It says, "No judges' term is to be reduced during the term for which elected". Now what about a sitting judge who has been on the bench eighteen years and he's reelected. Does that mean that all that eighteen years is out and the new term starts under some new system that he gets no credit for the past if the legislature doesn't provide for it?

Does it mean...those are a lot of problems that we should discuss in an orderly way when we get to Section 23, Section 23, Retirement. Let's discuss the whole ball of wax, and I promise you, and this ought to get me a few chances and plaudits, I promise you I won't speak when Section 23 comes.

Now, if there are no questions and no other speakers, Mr. Speaker, I move the previous question.

Question

Mr. Nunez Judge, I don't know whether it was you or the previous speaker said this was a "judges amendment". I don't read it that way. I read it as a test vote on who to work on for tomorrow. Don't you agree?

Mr. Tate Senator Nunez, I am not a politician. Senator Nunez, I don't understand parliamentary tactics.

Mr. Henry If you ain't a politician, you ain't a judge, Judge Tate.

Mr. Tate I'm trying to learn parliamentary procedure. In fact, I don't understand what you meant, sir.

Further Discussion

Mr. Dennis Mr. Chairman, fellow members, I think we are about to take a step here that's very inadvisable on something that is extremely serious. You may be about to affect the retirement rights of all of the sitting judges in this state, and this amendment is obviously introduced by Mr. Gravel as a tactical maneuver to defeat the entire retirement provisions that are contained in the committee's proposal in Section 23 that we labored on for seven months and which is based upon actuarial advice, the advice of experts, it's been carefully thought out and here in five minutes we are going to adopt something that is going to change the entire course of this convention's deliberations on judges retirement.

I think this is a shoddy way to debate this issue. This issue should be debated in the Retirement Section. And Mr. Chairman, before we do something here that is wrong and detrimental to our state, if I'm in order, I'm going to move that we return to other orders of the day.

[Motion to take up other orders rejected: 44-56. Previous question ordered.]

Closing

Mr. Bollinger Mr. Chairman and fellow delegates, I'm going to be very short.

First of all, I want to say this is my amendment. I'm the one who looked in this Section. I'm the one who brought it up. Mr. Gravel saw the amendment and then co-authored it. It was not his move.

We have been here for four or five days discussing how judges should be free from politics. All this amendment does is protect a little bit of the political part of politics. What's wrong with saying that their retirement benefits shall not be reduced during their term of office?

I move the adoption of the amendment.

[Amendment reported: 44-56. Motion to reconsider tabled. Previous question on the motion ordered. Section adopted: 44-56. Motion to adjourn adopted: 56-46. Adjournment to 10:00 a.m., Saturday, August 17, 1973.]

error and would you accept the technical amendment to line 6, when it says "shall have been domiciled in the respective circuit or parish or district or district, circuit or parish." I have the amendment being prepared. I think this was left out. Because, otherwise it's ambiguous, for instance, whether a judge of the Supreme Court can live somewhere else or in the same circuit and so on. I think you need "district" in because district courts come from districts and so do Supreme Court judges and so do court of appeal judges.

Mr. Dennis I would have no objection and I think your amendment would be in keeping with the intention of the committee.

Amendments

Mr. Poynter Amendment No. 1 [by Mr. Tate]. On page 9, at the end of line 6, immediately after the word "respective" add the word "district."
Amendment No. 2 On page 9, line 7, place a comma after the word "circuit".

Explanation

Mr. Tate Mr. Chairman, this is strictly a technical amendment. I think in the process of typing the qualification that a "judge of the district court shall be from the respective district" or "judge of the Supreme Court from the respective district" was left out. It just says "circuit or parish" and that doesn't make sense when you are talking about, for instance, a district court judge. Would he have to be eligible to run for district court if he lived in a circuit and so on? Someone who speaks better English than me, want to ask a question if there's any doubt? It's a technical amendment, it carries out the intent. I think the typist left it out when we went to the committee.

Questions

Mr. Pugh Yes, it's not directed to you...well, I guess it'll have to be, now that you are there. What concerns me, is the possibility, if not the probability, of changing if not parish, at least district and circuit lines. From time to time, you have a real serious question raised here, where you changed the circuit line and obviously the fellow couldn't have lived in the area for two years because the circuit has not been there for two years.

Mr. Tate Mr. Pugh, would you accept this technical amendment before we address that question? Because that is a question that we should do.

Mr. Pugh It was for the last man, but I couldn't get up quick enough.

Mr. Tate Mr. Chairman, unless somebody wants further explanation, it's adding one word, "district", to the end of line 6. It's strictly a technical amendment unless somebody wants further discussion or the thing to be passed out. I move the adoption of this technical amendment.

Mr. Casey Judge Tate, I see we have the wording "circuit, district or parish" area where a judge must be domiciled. Does the word "district" also cover the Supreme Court district?

Mr. Tate Yes, sir. I have to admit that once we added "parish" we got into trouble. It originally had said "district or circuit". At the time we drafted the thing, everyone was elected either from a district of the Supreme Court, of a judicial district or a court of appeal and so on, or at large from a circuit, so district or circuit was very clear. Then we added this system of parish courts, we had district, circuit or parish. But if you go on back to the parallelism, I think it's plain enough what it means. But I have to admit, it's not as clear as it was before we added the word "parish".

Mr. Casey But it is intended to cover Supreme

Court districts?

Mr. Tate Yes, sir.

[The motion was adopted. 111-0. The motion was tabled. Motion was adopted without objection.]

Reading of the Section

Mr. Poynter "Section 25. Judiciary Commission, Composition; Terms, Vacancy; Grounds for Removal and Powers

Section 25. (A). The Judiciary Commission shall consist of one circuit judge and two district court judges, selected by the Supreme Court, three attorneys admitted to the practice of law for at least ten years who are not judges, active or retired, nor public officials, selected by the Louisiana Conference of Court of Appeal Judges' Association or its successor and three citizens, not lawyers, judges, active or retired, nor public officials appointed by the Louisiana District Judges' Association or its successor.

B..."

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, this section continues the Judiciary Commission in the constitution. The Judiciary Commission is a vehicle for removing, suspending or otherwise disciplining judges. The Judiciary Commission was established in our constitution in recent years and has worked well and served a good purpose. Before this time, it was very difficult to remove a sitting judge. It was found that the impeachment process, as we have already noted in considering another article, was rarely used. We have changed the total membership and the way the members are selected somewhat. The commission has been enlarged from seven to nine members, three of them are judges, one a court of appeal judge and two district court judges, selected by the Supreme Court. The members of the bar are to be three, rather than two as formally provided. It is also provided that one court of appeal judge shall be appointed, as with the case under the present law. Lay representation is increased from one to three members. The attorneys are to be appointed by the Louisiana Conference of Court of Appeal Judges' Association, rather than the Board of Governors of the Louisiana Bar Association, as is presently the case. The layman on the commission are to be selected by the Louisiana District Judges' Association, rather than by the Judicial Council as is presently the case. Also enlarged, is the range of sanctions which the commission can recommend, extending to censure and supervision with or without salary, in addition to removal or involuntary retirement. The grounds for discipline have also been enlarged, the additions being "persistent and public conduct prejudicial to the administration of justice, that brings the judicial office into disrepute or conduct while in office which could constitute a felony". Deleted as a ground for discipline is habitual intemperance. New is the provision allowing the Supreme Court, on recommendation of the commission, to suspend a judge without loss of salary during the pendency of proceedings in the Supreme Court to discipline the judge. The actual procedures and rules for the operating of the commission are omitted from the constitution. The new document providing that the Supreme Court shall make rules to implement the section, including rules of procedure. The Supreme Court is also mandated to provide for the confidentiality and privilege of the proceedings.

Questions

Mr. Lanier Judge Dennis, I'm concerned about the language on page 10, lines 11, 12 and 13. It says the Supreme Court shall make rules implementing this

section and providing for the confidentiality and privilege of proceedings. Am I correct in assuming that this "confidentiality and privilege of proceedings" applies to the investigation conducted by the commission prior to action being taken in court?

Mr. Dennis Yes, sir. The present constitution, as I'm sure you know, provides that all documents filed with and evidence and proceedings before the Judiciary Commission pursuant to this section are confidential. And the present constitution further provides that the record filed by the commission with the Supreme Court and proceedings before the Supreme Court are not confidential. It was with this in mind that we included this provision, thinking that the Supreme Court would probably continue the confidentiality of the Judiciary Commission proceedings.

Mr. Lanier But, it's not intended to mean that the Supreme Court can make confidential the formal proceedings in front of the court by which a judge would be disciplined?

Mr. Dennis No, sir.

Mr. Lanier Because it's certainly, at least for myself personally. Were you aware of the fact that I would not want to have a confidential proceeding in front of the court to remove a judge that I elected?

Mr. Dennis You're correct. And we thought that since the section pertains to the Judiciary Commission proceedings that this was clear. This was what the Supreme Court could make rules with regard to and not with regard to its own proceedings.

[Quorum Call: 105 delegates present and a quorum.]

Questions

Mr. Stagg Judge Dennis, as I read the proposal of the committee, there are going to be on the commission now, nine men—three of them are judges, three of them are lawyers and three of them are citizens, but all of them are appointed by presently existing judges or organizations of judges. As I understood it in the present constitution, the Supreme Court appoints four judges, the Bar Association appoints two lawyers who have had at least ten years experience, and then one citizen who is appointed by the Judicial Council, who's not a lawyer and not a member of the Bar Association. Now that's a complete change from what we have now and you didn't explain to us why the Committee on the Judiciary felt that this change was either indicated or necessary since the commission apparently is doing a real good job as it is presently constituted.

Mr. Dennis Mr. Stagg, I did not go into detail on that because Mr. Willis, who was the author of the amendment of the section on the composition, is going to speak on that in detail. However, it's my appreciation that the main things that moved the committee in this direction were: one, to give greater citizen participation and two, to allow the appointment to be made of the attorneys by the judges who know more about them than anyone else...

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Schmitt]. On page 9, line 14 immediately after the word "law" and before the word "who" delete the words "for at least ten years".

Explanation

Mr. Schmitt This is a very simple amendment. All it does is remove those five words from the constitution and it allows the people who... whichever type of agency, board or commission or so forth, who appoints these people, to have the discretion of

utilizing people who have practiced for less than ten years of time. I don't see anything magic about a person who spends ten years in the practice of law, having any greater qualifications to judge whether or not a person is making a proper or improper decision. In fact, a lot of times you might get a much more objective position from an individual who has not had ten years in the field of law. Change, and some changes are good. I feel this will be a change for the better, in that it'll eliminate the probability that the person whom is appointed to this special commission will have dealt with this judge in some other type of capacity. Oftentimes, younger lawyers will be more bold in their ideas and thoughts and will hold the judge to a higher standard of care, than will an attorney who has practiced for a longer period of time. I don't feel there is anything magic about the ten-year time. I don't understand why it was placed in here, other than the fact that it existed in the past. I would also feel if no one else comes forward with any amendments, that the judges should not be the ones who appoint persons to watch over what actions and activities they make and determine whether or not these activities are proper or improper. I feel that some other type of group of people and I believe that lay people should have more of a say, in determining whether or not these actions are proper or improper. By allowing those whom are to be the accused or possibly accused to determine whom their judges are going to be, seems to me to set up a situation where many improprieties could result. I feel that in certain sections of the State of Louisiana we have problems with judges at the present time and if we had more lay people serving upon this review commission, this Judiciary Commission, we would have a much better chance of getting even more honorable people. Just by the simple fact of the existence of this commission, preventing people from making decisions that may not be in the area of either black or white but in the gray area, against the interest of the people. I therefore feel that we should adopt this amendment and eliminate the requirement of at least ten years of experience in order for a person, an attorney, to serve upon the judiciary commission.

Questions

Mr. Denberry Mr. Schmitt, as I understand it you are not suggesting that the attorneys not be attorneys. You are merely suggesting that the length of time which they have practiced law be reduced?

Mr. Schmitt That's correct.

Mr. Denberry I don't have the amendment before me, how much time?

Mr. Schmitt It would read, presently it reads, "three attorneys admitted to the practice of law for at least ten years, who are not judges," etc., etc. Subsequent to the amendment, it would read, "three attorneys admitted to the practice of law who are not judges." In other words, it would eliminate the requirement of them practicing law for ten years.

Mr. Denberry It could be someone who has just been admitted the day before?

Mr. Schmitt It could be someone who had just been admitted or it could be someone who had been practicing law for fifty years. It would be up to the discretion of the appointing commission, whom they wish to appoint to this commission.

Mr. Denberry And that Commission is the... that particular phraseology comes in with the appointment by the courts of appeal, is that who it is?

Mr. Schmitt That's correct.

Mr. Denberry Well, do you think that many of the judges of the courts of appeal would know a lawyer who has just been admitted to practice?

Mr. Schmitt Than less than ten... I guess they

would, they better.

Mr. Denberry No, I mean someone who has just been admitted to practice who had never necessarily practiced before then, for example, I'm trying to find out whether, in other words, if the appointment is to be made by appellate judges...

Mr. Schmitt I'm not necessarily in favor of that. I just don't think there should be a restriction on here of saying "for at least ten years of practice." I don't think there should be a restriction upon whatever lawyer there is, by whom they ever are appointed, that they should be in the practice for at least ten years.

Mr. Denberry Thank you.

Mr. Derbes Mr. Schmitt, isn't it true that without your amendment and taking into consideration the previous articles under consideration by this convention, that an individual could become a state senator at the age of eighteen, I believe, a state representative at the age of eighteen, governor at the age of twenty-five, but he could not effectively become a member of the Judiciary Committee until approximately his thirty-third year.

Mr. Schmitt Well, possibly even longer than that. In fact, he could have become a judge and just decided to quit and still not be able to serve upon the Judiciary Commission.

Mr. Derbes Thank you.

[Previous question ordered. Amendment tabled.]

PETITIONS, MEMORIALS, AND COMMUNICATIONS [I Journal 352-353]

Mr. Henry If you'll allow me while we wait on these amendments, I'm going to read a letter from Delegate Triche.

"Dear Mr. Chairman,
Personal business and family matters require that I resign as a delegate representing the public at large to the 1973 Constitutional Convention. I, at this date, tendered my resignation to Gov. Edwin W. Edwards, who originally appointed me as a delegate representing the public at large. I have hope and confidence in the convention and look forward with a great deal of optimism to the new constitution which the convention will present to the people of this state. Please accept my sincere congratulations on the work of the convention thus far and I express my regrets to the convention that I am unable to continue to work with this convention."

This is from Delegate Triche, who resigned, effective today.

At this time it gives me a great deal of pleasure to introduce the new delegate who will replace Representative Triche, Mr. Paul H. Goldman, from Monroe. I ask that you welcome Paul at this time.

[Oath of Office administered to Delegate Paul H. Goldman.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Denberry], on page 10, line 13, after the word "of" and before the word "proceedings" insert the word "commission".

[Quorum Call: 111 delegates present and a quorum.]

Explanation

Mr. Denberry The purpose of this amendment is to avoid any possibility of a... of confusion as to whether or not the Supreme Court may make rules providing for confidentiality and privilege of proceedings before the court itself. When Mr.

Lanier raised his question of Judge Dennis I suggested to Judge Dennis the possibility of inserting the word "commission" before the word "proceedings" in line 13 so that there would be no such confusion. Judge Dennis has authorized me to say that he has no objection to this. I suppose you could call it a technical amendment.

Vice Chairman Miller in the Chair

[Previous question ordered. Amendment adopted without objection.]

Amendments

Mr. Poynter Amendments submitted by Delegate Perkins as follows:

Amendment No. 1, on page 9, line 13, immediately after the semicolon and before the word "attorneys" delete the word "three" and insert in lieu thereof the word "two".

Amendment No. 2, on page 9, line 14, immediately after the word "years" and before the word "who" insert the following: "and one attorney admitted to the practice of law for at least three years but not more than ten years".

Explanation

Miss Perkins The only purpose of this amendment is to assure that there will be one younger lawyer on the commission. As we all know, during the course of practice of law many times we gain certain professional friends that... it puts us in a little bit more difficult position to cast a vote on with reference to disciplinary action. I certainly think that we need at least two lawyers with more experience. Therefore, I have left the provision in with reference to at least two lawyers having ten years experience and thereon let the third lawyer have at least three years. In other words, they will have been in the profession for some amount of time, but no more than 10 years. The difference between this amendment and the amendment submitted by Mr. Schmitt is that his amendment removing the ten years was... it left it discretionary as to whether we'd have a young lawyer on the commission or not. Whereas, this provision makes it mandatory that we have one young lawyer with no less than three years and no more than ten years experience.

[Previous question ordered. Amendment adopted: 95-13. Motion to reconsider tabled.]

Amendments

Mr. Poynter Amendment No. 1 [Mr. Duval], on page 9, delete lines 9 through 27 both inclusive in their entirety and insert in lieu thereof the following: "Section 25. Paragraph A. There shall be a judiciary commission which shall have the power and duty to investigate misconduct on the part of any judge. The structure of the judiciary commission under the previous constitution is continued until changed by the legislature. The commission shall establish its own rules of procedure."

The second amendment changes the letter "E" to "B" on page 9, line 28.

Also the third amendment, page 10, line 14, the letter "F" is changed to the letter "C".

Explanation

Mr. Duval Madame Chairperson, fellow delegates, I thought we'd put the issue right on the head right here one way or the other. It doesn't take a great deal of debate, I don't think; this amendment eliminates the statutory language contained in Section 25. I think most of us ran on a platform to keep our constitution free of statutory material so the people won't have to come back and vote on amendments constantly. Section 25 is replete with statutory language if it's read carefully. It structures the judiciary commission in detail, and if this structure, even us, this great body in our infinite wisdom, could possibly make a mistake. It is con-

reasonable. If we have a failure in the structure here, we're going to have to amend it. To amend it will require a constitutional amendment. There is no reason why all of this detail has to be in the constitution. If we structure the judiciary commission, why not structure every state board in the constitution. One of the great problems with our present constitution is the fact that so many things are structured in that document. I think this amendment retains the judiciary commission as it is and gives the legislature the right to subsequently change its composition. I think this is the way it should be and it's basically whether you want to put all of this detail in the constitution or whether you want to leave it out and only put a simple statement about the judiciary commission in the constitution.

Questions

Mr. Jenkins Stan, wouldn't one justification for putting the structure of the commission in the constitution be the fact that the commission has extraordinary power, namely the power to remove a judge from office and this is not the type of power that most agencies or commissions or boards have under law.

Mr. Duval I understand that reasoning, however, I feel that, of course, that the Supreme Court would have the ultimate removal power. Not the commission. I feel like all boards are important, but what's so sacrosanct about the way we structure it here? Why...the way it reads...three attorneys admitted to the practice of law for at least ten years. Now, there's one three years...appointments by the Louisiana Court of Appeal Judges Association...three citizens not lawyers. This is an unwieldy constitutional language. This, I think, should be our primary concern...to stop putting statutory language in this constitution, or we're going to have a great big monster like we have now.

Mr. O'Neill Mr. Duval, under this provision that you have here, the legislature could conceivably make a one man commission, right?

Mr. Duval Yes, sir. The legislature could conceivably pass an act saying that everybody under six feet has to live in the Gulf of Mexico.

Mr. Denberry Mr. Duval, I notice you deleted lines 9 and 10. Will this not require an amendment to the constitution to put a title back in?

Mr. Duval I'm sorry, Mr. Denberry, I can't hear you because of the tremendous attention that the delegates are giving me.

Mr. Denberry I said I notice you have deleted lines 9 and 10, and I asked whether or not this will not require an amendment to the constitution in order to insert a title which is not in your amendment.

Mr. Duval Yes, sir. It certainly would. That's you, very much.

Mr. Poynter Mr. Duval, did you want to change that just to delete lines 11 through 27, instead of 9 through 27, which would leave the title of the section in?

Mr. Duval No sir, because then "composition, terms, vacancy, grounds for removal and powers" wouldn't be applicable.

Amendment

Mr. Poynter Do you want to add a third amendment putting a title in?

All right, the gentleman withdraws the previous amendment, adds a new...resubmits them adding an Amendment No. 4, which would delete lines 9 and 10 and insert in lieu thereof "Section 25. Judiciary Commission."

Further Discussion

Mr. Burson I rise in support of Mr. Duval's amendment. I just want to say that this seems to me to be a classic example of the kind of thing that does not belong in the constitution. Certainly, I think, that if we can't trust the legislature to set up a proper judiciary commission we're in a bad fix, because we're trusting the legislature with an awful lot of things that are as important or more important than that. I would urge everyone here to support this amendment as one good way to shorten this constitution without doing violence to any important provision therein.

Further Discussion

Mr. Willis Madame Chairman and fellow delegates, in consideration of this amendment we are losing sight of the fact that the amendment does not give a decent burial to the old constitution. The argument that it should not be in the constitution is self-destructing, because you are in this new constitution referring to the old. It marries the new constitution to the old one. If you will look at the executive proposal, the legislative proposal and the judiciary proposal, you will see where... what we should keep in mind is kept in balance. Under Section 20 of the Executive article you will find that the executive branch has a right to take care of its members. Under Section 6A of the legislative proposal, the same power is given the legislature. Under the article under proposal the judiciary takes care of its own kind, and in this manner: the Supreme Court appoints three judges and who is better qualified to test the qualification of judges than the Supreme Court. The court of appeal chooses the three lawyers, and I assert to you that the court of appeal should be totally and very competent and perhaps the most competent body to choose the lawyers, and the district judges who are familiar with the citizenry and in close touch with them could choose the three citizens. This would give us three citizens, three lawyers, three judges, three citizens. Ultimately, the power of those nine men or ladies would be to make the accusation; the decision of whether or not that accusation is valid will be based upon due notice and hearing and be made in the Supreme Court where it should be. In other words, I am suggesting tersely to you that the legislature should take care of its kind, the judges should take care of their kind and the executive officials should take care of their kind. That is the proper balance that I suggest and for that reason, though I loathe to do so on account of my good friend who sits before me, I shall have to oppose the amendment.

Questions

Mr. Roy Mr. Willis, disregarding all the other comments, I think you do favor this amendment if it were worded properly. Do you not?

Mr. Willis I hear you not well, sir.

Mr. Roy Don't you...if this amendment were worded properly, I think you'd favor the concept of it, and removing all this other stuff out of the constitution. Is that right? The present provision of the Judiciary Committee.

Mr. Willis Let's dissect what you say there to show how I cannot agree with what you say. That is, this amendment directs me to consult an old and dead constitution. So, we have two constitutional articles in one. We're just dodging the issue.

Mr. Roy Suppose the Transition Committee... isn't it a fact that the Transition Committee, and isn't it implied in this amendment that it will be taken out of the constitution... it won't be in the constitution, but it will become statutory law under the Transition Committee's work and therefore, what you are trying to avoid will not be met?

Mr. Willis I just don't agree with that because you are giving to the legislature something which is in its article which you don't give to the

34th Days Proceedings—August 22, 1973

Judiciary, in this article in which you should.

Mr. Roy Well...

Mr. Burns Mr. Willis, in view of the fact that PAR has given the Judiciary Committee credit for reducing the present article from 30,000 words to 3,000 words, don't you think that we are entitled to use a few extra words, perhaps, in such an important commission as the present one that we are talking about?

Mr. Willis I am not married to all this big talk about simplicity. My fiber is not that sensitive that I want to put myself on a par with PAR. It would lower my par value.

Mr. Stagg Hi there, Mr. Willis; you said you don't want, in a provision of the constitution, to marry the old constitution and I think you said it twice. May I point out to you in Committee Proposal No. 21 that is under debate that in Section 4 it says the present districts and number of judges are retained. That marries it. In Section 9 it says the present circuits and districts and number of judges are to be retained. In Section B, Subsection B of Article XV the judicial districts existing at the time of the adoption of this constitution are retained. You, as a member of the Judiciary Committee, have already married the old constitution to the new one three times. Why do you find this one so objectionable?

Mr. Willis Well, I'm glad you asked the question. You said "you and the Judiciary Committee". If you say the Judiciary Committee, I would have no aversion to what you say as accurate because it is obvious; however, I find that there are very many invalid marriages in the judiciary article and though there were no shotguns they are still in my opinion invalid. I would with fastidious precision have printed the plan of what is what and this is what the article we have, under consideration does. It sets out and delineates with that precision that I should like in a constitution and which would prevent me to refer to another one which is dead and buried to find out what the law is. By the way, I might add, that Dr. Pugh for whom I have the greatest respect suggests that those invalid marriages that you talk about should have been spelled out and I would have spelled them out, but I'm one of 18.

Mr. Stagg In the Committee on the Judiciary did you find that the old article of the Judiciary Commission was now unworkable and that you now have...

Chairman Henry in the Chair

[Previous question ordered.]

Closing

Mr. Duval I really will be brief. There is a thing called a schedule. We cannot, in adopting all these provision, say this is going to be in the schedule and this isn't, but something like this certainly can be placed in the schedule. I think we all know what the schedule is. It'll handle the transitional matters and it'll make it a lot more neat and clean. This is merely a way of handling it right now to the basic concept that the language in the present proposed section is statutory and we intend to delete it and to preserve the judiciary commission to however... constitution. Thank you.

Questions

Mr. Avant Mr. Duval, are you aware of the fact that the sentiment which resulted in this change from the present constitution was the fact that there were four judges on the present commission... two lawyers appointed by the bar association, I believe, and one citizen that the citizens who elected the judges and the citizens who were judged

by the judges had one voice out of seven on a seven man commission? The other six members being representatives of the judiciary and the bar association and that the sentiment which led to this modification was to give the citizens a greater voice on the judiciary commission. Are you aware of that fact?

Mr. Duval Yes, sir. I understand that but I think it points up that any structure, specifically of a board, in the constitution is subject to change and therefore should be statutory.

Mr. Avant Now, if your amendment is adopted the present one voice out of seven which the citizens have will continue unless and until it is changed by the legislature.

Mr. Duval That's correct, yes, sir.

Mr. Avant And if it is changed by the legislature no one can predict what that change will be.

Mr. Duval Likewise true.

Mr. Burson Mr. Duval, don't you think that the Legislature as the elected representatives of the people from single member districts will see to it that the general public is well represented on the commission?

Mr. Duval They better.

Mr. Warren Mr. Duval, don't you think that we and a number of us like myself, we are elected members too, just like the legislature. We're from representative districts.

Mr. Duval Yes, ma'am.

Mr. Warren All right, now I'm going to ask you one more question.

Does you think it would be real simple if we would just say everything should be and leave it to the legislature and we could all go home and we could just sine die and be finished with it?

Mr. Duval No, ma'am. Because some things are constitutional conceptually, some things are statutory and in my opinion, this is statutory. We each have to make the decision what is and what isn't using reason, judgment and all the faculties that we might have at our disposal.

[Record vote ordered. Amendment adopted. SJ-64. Motion to reconsider rejected.]

Amendment

Mr. Poynter Amendment No. 1 [Am. Mr. Landrum and Mr. Singletary], page 9, delete line 19 in its entirety and insert in lieu thereof the words "the governor."

Explanation

Mr. Landrum Mr. Chairman and fellow delegates, once again we're trying to involve the governor in this constitutional writing. I do believe that the appointment by the Judiciary... by the judiciary commission... if all those appointments are going to be made by the judiciary I believe you leave a little hoax for the people. I think the governor should be able to make these appointments in order that somebody... a person who is not really involved in the judicial procedure... could be able to explain and to hear and interpret the simple man's point of view and when I say the simple man's point of view I mean the layman's point of view. I do not believe that the Supreme Court should make these appointments. Now, what I'm saying here and as I told you before I don't beat around about a thing, I tell you what I mean. There should be more black involvement in government... in every level starting with C.C./73, but if we are going to write a constitution that's supposed to affect the lives of all the people of this state without

involving all of the people of this state. Then, we're going to find ourselves wasting our time here. You think that the judges could stop the passage of this constitution. Some believe that the governor could stop the passage of it. I believe that black people could stop the passage of it, too. I believe that poor white people could stop the passage of it, because they want to have a voice in their government and we must give them a voice and we must give them a voice in our government. I'm answering no questions.

Further Discussion

Mr. Pugh Mr. Chairman, fellow delegates, though appointed by the governor to this convention, I am opposed to this amendment. It is my understanding that prior to the time I was appointed to this body, that it had moved away from the concept of the governor appointing judges. Whether that be good or bad, I not now address myself to, however I think that this is an evident instance where there should definitely be a separation as between our three points of government: the executive, the legislative, and the judiciary. For that reason, I oppose any appointment by our governor to the Judiciary Commission. Thank you.

Question

Mr. Landrum Mr. Pugh, yes, it seems as though there is an encroachment on the judiciary. But also, when you think of the Senate acting as a jury in impeachment proceedings, don't you think that is an encroachment on the judiciary?

Mr. Pugh I wouldn't suggest for a minute that there are no encroachments by one of these as to the other. I say where it's possible to eliminate them, and have an active, viable form of government in Louisiana, I say let's do it.

Further Discussion

Mr. J. Jackson Mr. Chairman, delegates of the convention, I rise in support of this amendment. To some delegates, this seems like a replay of a previous amendment. I want to suggest to you that I rise in support of this amendment, and I rise very strongly because I do believe, as the committee has proposed it, that whether consciously or unconsciously, the end results will be the non inclusion, the non inclusion, of a significant segment of this state. I want to suggest to you that as we go through these various articles and particularly as we have discussed other articles, that there is separation of powers, but there is also the concept of checks and balances. It seems to me that I heard one of the speakers mention earlier about, the role of the judiciary as part of the judiciary, the executive take care of the executive branch, and the legislative take care of the legislative branch. I want to suggest to you that that's known as inbreeding, and at a point, you have diminishing returns when you constantly have inbreeding among one particular branch of government. I want to also suggest to you that as Reverend Landrum has stated, I think that if this convention is concerned about the kinds of political consideration that it has to deal with, I would suggest to you that when you reach a significant segment of this population, that I don't see how we can say that we are preparing a constitution. Particularly in the area of criminal justice, civil justice of the entire judicial system where we, by right, in the constitution, remove meaningful input from the citizens of this state. I want to also suggest to you that a citizen's committee, a citizen representation on this Judiciary Commission, it seems to me ought not come from the judiciary. It ought to come from a department that is not necessarily associated or connected with the judiciary in terms of hopefully some impartial input on the kinds of policy and decisions that this commission is going to make. I would ask that you seriously consider this amendment. That we do not repeat what I have conceived, and I've

got to admit to you it is a very personal conviction, that we do not repeat what I consider a very tragic mistake that we made when we removed appointive powers of the governor to the judges. I think that this request that's being made by Reverend Landrum is a request with much merit and that it does deserve your favorable vote.

Further Discussion

Mrs. Zervigon Mr. Chairman and delegates, I rise in support of this amendment. First let me tell you that I opposed the amendment that would have given the governor the power to appoint judges and then allow those people to run for that office on the basis of separation of powers. But I think you can get to a place where you have the powers too separated, and any one branch too inbred. It seems to me that this is a very serious decision we are making, that we really need to think about. But bear in mind that when it comes to judges of courts of record, the citizens have no input on the removal process. No one outside the judicial branch really has meaningful input on the removal process because there is no recall and because of the other removal processes that we put in the executive department section and the legislative department section don't apply to judges of the court of record. So that the argument that the people that are lay people on this commission ought to be appointed not by the District Judges' Association, which means that they would know about judges, be known by judges and be more or less inbred into the process, but be appointed by the governor and therefore more removed from the process, hopefully, and look at it with a more impartial eye, is a compelling argument. I urge you to support this amendment.

Further Discussion

Mr. Alexander Mr. Chairman and delegates, I can't blame some of you, possibly, for feeling a little disgusted, but when we come to this amendment to raise these questions, these questions of exclusion. May I cite one little statistic to you that I think will bring out what we are talking about, especially our problem? There are some four or five hundred judges sitting on the various benches in the State of Louisiana. Only three of them are black. Now I submit to you, delegates, that with us, those of us who are black, that is a problem. That is a problem that will be with you, that's a problem that's going to be with us, and I find myself in this predicament. That I can't change my color. If I live another thousand years I will still be black. There is no way to change that condition. But that's one thing I am determined to change, and that is those conditions which restrict me because I am black. Now we have the solution by which this problem can be solved. We don't want to solve it in the courts. We don't want to solve it in the streets. We don't want to solve it with bricks and rocks and guns, but we want to solve it within the framework of this democratic process that we have in this state. We want to solve it in a way that all citizens should solve these problems. Now I submit to you, delegates, that you may be a little disgusted sometime when we raise these questions, but bear with us. Remember, we could also be a little put out when we look on boards and commissions, when we look on the various committees in the State of Louisiana and see no blacks. In fact, this convention itself is an example of our problem. We are thirty percent of the population of the State of Louisiana and only twelve delegates serve in this convention, which is just about twenty percent of the delegation of 132. We must solve this problem. I ask you to vote this amendment. Don't vote on the basis of what you think or the extraneous conditions or the subterfuges or the unusual conditions that you have cited, but vote on the basis of fair play and justice to it will be possible that we can change the posture of this state so that black citizens can participate in government on all levels. Thank you.

[Previous Question ordered. Amendment re-referred: 4 yeas, 10 nays, 10 abstentions, 10 no votes.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Pugh]. On page 9, delete lines 11 through 19, both inclusive in their entirety and insert in lieu thereof the following: "Section 25 (A) The Judiciary Commission shall consist of nine citizens of the State of Louisiana who shall be appointed by the Supreme Court. There shall be one citizen appointed from each congressional district and one from the state at-large."

Explanation

Mr. Schmitt This is a very simple amendment. Primarily what it does is it requires that each area of the state of Louisiana be represented upon this commission. It allows for one area not to be prejudiced by the interest of another section of the state. It prevents the stacking of the commission against one section of the state of Louisiana. I feel that in other sections we have attempted to protect the different people across the entire State of Louisiana and we should continue in this vein. We were elected, many of us by the people, for the purpose of protecting their interests. This would spread the power around. Why should we allow certain urban areas to have the advantage of stacking this commission with members from their district? I don't feel that the present article is restrictive enough with reference to representation of all the areas of the State of Louisiana. The primary purpose of this amendment is to protect the people from the stacking of the commission by whichever group might attempt to stack it, and to prevent wholesale politics upon this commission.

Questions

Mr. Abraham Earl, your amendment simply states that it shall be composed of nine citizens. Now, everyone being a citizen, this allows the Supreme Court then to appoint judges, lawyers or whomever it wants to it, does it not?

Mr. Schmitt That's correct.

Mr. Abraham So they could either have the same distribution of three, three, and three or they could have nine judges, or they could have nine civilians, lay people?

Mr. Schmitt That's correct. They can vary it according to whatever the needs are at the time.

Mr. Zervigon Mr. Schmitt, aren't the members of the commission going to find themselves feeling rather awkward when they are considering whether to recommend dismissal of a Supreme Court justice?

Mr. Schmitt What's that?

Mr. Zervigon Aren't they going to find themselves in an awkward position if the justice under consideration is a Supreme Court justice?

Mr. Schmitt Well, I think they'd find themselves under that situation if it would be an appellate court justice, if you have three people recommended by the Louisiana Conference of Court of Appeal Judges. I mean it doesn't make any...I don't know of any instance in which they have attempted to do this in the past, but I can understand your problem.

Mr. Zervigon I've got another problem with it. What, if for some reason we end up in the State of Louisiana with seven congressional districts or nine congressional districts, what does it do to the composition of your board?

Mr. Schmitt It changes the composition of the board because the amendment states that there shall be one from each of these districts.

Mr. Zervigon It says there shall be one from each of the districts and one at large, and the

total shall be nine. If there are less than lost a district or gained a district, what does it do to your provision?

Mr. Schmitt It makes it kaput.

Mr. Burns Mr. Schmitt, if the Supreme Court would have the authority to appoint all nine members of the commission and they in turn would make the recommendations to the Supreme Court, there would be no purpose in having a commission. Is that right? Because the Supreme Court would make the final determination anyway.

Mr. Schmitt The Supreme Court members do not have to be involved in the investigations of these individual judges. That's the reason for the establishment of the Judiciary Commission.

Mr. Fulco Delegate Schmitt, you're talking about nine citizens. Nine citizens. Is a judge or a lawyer or a lay person a citizen?

Mr. Schmitt "Citizen" has been defined already. Any person eighteen years of age or older.

Mr. Fulco Well, I understand, but can't a lawyer be eighteen years or over?

Mr. Schmitt I hope so.

Mr. Fulco Are you trying to keep attorneys off of this, or judges off of this commission?

Mr. Schmitt No, sir.

Mr. Fulco You're not?

Mr. Schmitt No, sir.

Mr. Willis Well, I'm afraid too my children if those under eighteen are not citizens of these States and the State of Louisiana.

[Previous Question—Amendment No. 1—tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Pugh]. On page 9, line 15, after the word "nor" and before the word "public" insert the word "elected".

Explanation

Mr. Pugh Mr. Chairman, fellow delegates, this is technical in nature. This takes it out of the present constitution, and provides "elected". The difficulty with the section as it now reads, it provides that insofar as attorneys are concerned, that they may not be public officials and serve on this commission. Ninety-nine percent of the members of the Bar of the State of Louisiana are notaries public, and they are public officials unless we amend the section to provide elected public officials, then they would not be able to serve on this Judiciary Commission.

[Previous Question—Amendment No. 1—tabled. 100-8. Motion to reconsider tabled. On the Section, motion passed: 107-5. Motion to reconsider tabled. On the Section, motion passed: 107-5.]

Amendments

Mr. Poynter Amendment No. 1 [by Mr. Pugh]. On page 9, line 6, after the word "shall" and before the word "domicile" delete the words "have been" and insert in lieu thereof the word "be".

Amendment No. 2. On page 9, line 7, after the word "parish" delete the remainder of line 7, and at the beginning of line 9, delete the portion of the word "in election," and insert in lieu thereof

34th Days Proceedings—August 22, 1973

move into another judicial district, run for judge and wouldn't even be qualified to vote in the election?

Mr. Jago From a practical standpoint the answer is no. Technically, it could occur.

Mr. Avant Isn't that actually what would happen under the present state of the law, don't we have a residential requirement of a certain number of days before you can vote in a precinct?

Mr. Pugh I believe it is thirty days. I think the qualification time versus the time for election is never less than thirty days. Therefore, if you were living there, to qualify, you should have the thirty-day requirement. I think the only reason that we have got thirty days insofar as people being able to vote is concerned is a mechanical requirement to put them on the roll.

[Amendments rejected: 26-80. Motion to reconsider tabled. Previous Question ordered on the Section. Section passed: 113-5. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter "Section 26. Department of Justice; Composition; Attorney General; Election and Assistants

Section 26. There shall be a department of justice, consisting of an attorney general, first and second attorney general, and other necessary assistants and staff. The attorney general shall be elected for a term of four years at the state general election, and the assistants shall be appointed by the attorney general to serve at his pleasure."

Motion

Mr. Vick Mr. Chairman, I would respectfully move at this time that the convention dissolve itself into a Committee of the Whole for the purpose of hearing the attorney general, for one-half hour.

Mr. Nunez I believe that possibly it would be more palatable to the delegates if we invited the attorney general and the representative or the president of the District Attorneys' Association, so we can hear both sides if there are two sides.

Mr. Henry Well, could we just make that a motion to hear each one of them for fifteen minutes. Don't you believe Senator that if they want to talk that anything they have got to say they can say in fifteen minutes apiece and you are going to make that...

Substitute Motion

Mr. Nunez That is what I am saying, but you... the motion was to hear the attorney general. Some people... I make a substitute motion that we go into a Committee of the Whole to hear the attorney general and a representative of the District Attorneys' Association.

Mr. Henry I understand the motion.

Let me state the motion, and then I will recognize you.

Mr. Vick has moved that the convention resolve itself into the Committee of the Whole for one-half hour to hear the attorney general. To which motion a substitute motion was made by Senator Nunez that the convention resolve itself into the Committee of the Whole for one-half hour. Fifteen minutes of which we will hear from the attorney general, fifteen minutes of which we will hear from the representative of the District Attorneys' Association.

[Substitute motion adopted: 85-24.]

Committee of the Whole

Vice Chairman Miller in the Chair

Mr. Miller The convention having resolved itself into a Committee of the Whole, what is the pleasure of the convention?

Mr. Vick.

Motion

Mr. Vick Madam Chairman, I move that we hear from the honorable president of the District Attorneys' Association first.

Substitute Motion

Mr. Munson I make a substitute motion, that we hear from the attorney general first.

[Substitute motion adopted without objection.]

Mr. Guste Madam Chairman, Mr. Speaker, and delegates to Constitutional Convention '73 and friends. First of all, I would like to express my appreciation for the opportunity to meet with and discuss this very important aspect of a new constitution with you. I recognize the difficult task which you have and I also recognize how difficult it is to try and write articles of a constitution, in effect, from the floor of a convention, such as this. I also recognize that among men of goodwill there can be real and serious and honest differences of opinion about what words mean and what they are intended to mean. As I understand the present constitution and as I read it, it gives to the office of the attorney general, to the attorney general, the power to initiate, intervene in, and prosecute any civil or criminal matter on behalf of the people of the state. It gives him the power to supervise district attorneys. I have met with length with the district attorneys to discuss just what is the meaning of those words as they relate to the district attorneys themselves. I really believe that as far as philosophy is concerned, that there isn't one bit of difference between my point of view as attorney general, and the point of view of the district attorneys as to what ought to be included as a matter of intent in the article in the constitution. I would like to say, that I was very, very concerned with the terminology, as I read it, as reported to the convention floor by the Committee on the Judiciary. Because, since it left out the word "criminal" in giving jurisdiction to the attorney general I believe that it was an attempt to weaken the power of the attorney general. If that power was weakened he would not have the right to investigate into criminal matters that were pending as in original jurisdiction. He would not have the right to look into matters of public fraud, of contract fraud, of public corruption of any sort where a district attorney was failing to act. As I understood it, it weakened this original jurisdiction. I have talked at length with the district attorneys on this subject and I am not so sure that they also don't agree that we don't agree together on this philosophy. First of all, that the district attorney has, or should have, primary responsibility for prosecution and, with the grand jury, for investigation and indictment of criminal matters. That should be his primary responsibility. The attorney general should have the right to watch him do that, to supervise as it were, him do that. Now the word "supervise" might be a bad word. Perhaps we ought to use a better word, but at least the attorney general should have a right to see what is going on in the investigative process, in the grand jury proceedings and finally if he determines that the matter is not being handled in the best interest of the state, for cause and only for cause, to supersede. Now as I have discussed this, I really don't believe, in philosophy, there is a basic difference between the viewpoint of district attorneys and Mr. Ware will address himself to that. If we can incorporate those words in some way into an article in the constitution. But I am not certain yet that the way the article is presented by the Committee on the Judiciary it accomplishes that purpose. As I understand the viewpoint of the district attorneys

who have been meeting, they believe it does establish that purpose. I therefore, come to the conclusion, that there is necessity for more study of this article. I would like to continue our meetings with the district attorneys in hopes that we can jointly suggest to you words that might accomplish that philosophy and I will repeat it. One, that the district attorney has prime responsibility for investigation and charges and, with the grand jury investigation and indictment and prosecution then of criminal matters. If the attorney general has the power to watch what he is doing, to review it, and if necessary, for cause after judicial review, to supersede him and do those things which a district attorney can do. If those powers can be spelled out succinctly in the constitution, I don't believe there will be one bit of difference between the attorney general's office and the district attorneys. So today, I wanted to clarify this with you and suggest that perhaps there need be more time for discussion of this article because I don't believe the nuance of meaning can be properly analyzed as quickly as it would seem they should be analyzed. We have been meeting just after I have had discussions on and off with district attorneys for several days now, trying to talk about words and what those words have led us to is I think, a meeting of the minds on philosophy but not on words. I would hate to see this convention floor attempt to cope with those words until we have had an opportunity for additional review of the subject. So Mr. Chairman, if that... that is all that I have to say at this moment unless... and I would be glad to answer any question from any delegate from the floor for whatever additional time I may have.

Questions

Mr. Lanier Mr. Attorney General, with reference to the cause for which the attorney general should be authorized to supersede a district attorney, do you think that that should be such cause as may be determined by the court without any further definition, in which event we could only develop what "cause" is by the jurisprudence, or do you feel that this cause should be established by the legislature?

Mr. Guste Well, let me just say this. I feel it ought to be determined by judicial review. I think if you attempt to write it into the constitution there would be no end to the things that you might... the conditions on which you might place the matter. I think the court understands words like "for cause." In tort cases they are constantly interpreting what "proximate cause" means. In other cases they are interpreting what "reasonable cause" means. What... general terms of that kind have been copied with and the law will make a decision, the court will make decision. I think it is adequate for the court to determine what is "cause."

Mr. Lanier Well, do you feel that this would be in the best interest of say, someone like me as an individual citizen. How would I know what cause would be sufficient for me to go to the attorney general and ask him to intervene in a proceeding by my local district attorney?

Mr. Guste Well, remember now, we are writing a constitution. The present posture of the law is, that an attorney general, without cause, cannot supersede. That is the leading case law. In the case of Stanley vs. Kemp, Eugene Stanley, an attorney general, tried to take over a case from a district attorney and the lower court said, "wait a minute, you didn't assign any reason for this, you gave no cause, and without cause, you can't do it." That is what the law presently holds. That is why the Committee on the Executive and why, I believe, the Committee on the Judiciary wrote that the attorney general "for cause", which is a positive statement of that which was written in the case in the form of obiter dicta in Kemp vs. Stanley, wrote in a positive way that only "for cause" could

he supersede. I believe that the courts are capable of making a determination of that matter.

Mr. Lanier I have here a copy of the decision in Kemp vs. Stanley. Is it your opinion that this case said that the attorney general can supersede "for cause", or that the attorney general can only intervene with the consent of the local district attorney?

Mr. Guste It is my view, reading that long decision which is many, many pages, that the precise holding of the case is that an attorney general can't supersede... the fact... a district attorney, but the facts of that case were that the attorney general in that case assigned no cause. I have always been of the opinion, and I am talking about my opinion, and I have discussed this with some of the delegates here who are lawyers, and since the facts of those cases gave no cause that if you read the constitution, which makes the attorney general the chief legal officer of the state, with power to initiate and prosecute any criminal or civil case. That if there had been a cause that he could have done so. That is the way I interpret it.

Mr. Lanier Would you concede that perhaps a reasonable person reading this opinion could also reach the conclusion that the present law is that the attorney general cannot intervene without the consent of the local district attorney?

Mr. Guste Yes.

Mr. Anzalone Mr. Attorney General, the decision reached in Kemp vs. Stanley or Stanley vs. Kemp, did not allow the attorney general to supersede, is that correct?

Mr. Guste Yes.

Mr. Anzalone Now under your philosophy as to the powers of your office, you are asking this convention to give you the authority to supersede for cause.

Mr. Guste Yes.

Mr. Anzalone ...this is something new...

Mr. Guste Under my interpretation... it is, if you interpret the constitution as the preceding speaker suggested it could be interpreted.

Mr. Anzalone The Constitution of 1921 did not give you the authority to supersede a district attorney?

Mr. Guste It did not. It only gave the authority to supervise.

Mr. Weiss Mr. Guste, you made reference to an agreement between you and the district attorneys where there apparently is some conflict now between the two offices. How long would it take you two to resolve this matter to your satisfaction and theirs so that we may act upon your and their decision?

Mr. Guste I don't know the answer to that. I simply say, that I would think it would be well if we both could have more time to actually discuss the article.

Mr. Weiss We lay delegates have learned that a politician must be both expedient and prudent. We would appreciate all the information, but we will have to act and now is your turn.

Mr. Guste Yes. I would hope that if we could defer this, hopefully a day, that we may be able to thrash this matter out.

Mr. Weiss You think twenty-four hours would give you an answer?

Mr. Guste I would certainly, at least we would have had a good faith opportunity to pursue it.

Mr. Weiss Thank you.

Mr. Guste Madam Chairman, I would just like to close with one remark. I would like to say that we have enjoyed a very good relationship with the district attorneys. We have tried to work very closely with them and in this discussion there is no animosity or ill will. I appreciate their efforts, they are doing a good job towards trying to enforce the law in their respective communities. We are here to write a constitution which is a franchise for government and for government officials and we are trying to work out an article which would accomplish the philosophy on which I believe both the district attorneys and I agree. Now with that, there was one other question, I believe.

Question

Mr. Newton Mr. Guste, would you if you could in the time remaining, could you tell us what your supervisory responsibilities over the district attorneys are, please sir?

Mr. Guste Well, specifically right now by act of the legislature, they deal with gathering crime statistics in the event that a...and this probably addresses itself to what...a former question. If a citizen comes to me and says I don't think I got justice down there in that case, that the district attorney was handling" we will then review the matter, investigate the matter with full knowledge of the district attorney, to find out what was done and if it were necessary, we would urge him to act and to act which we have done. We have never had occasion to supersede anybody because in each case where we have made the request, they have either gone ahead with a review of the matter or they have invited us to handle it. That is the practical way in which we have worked it in the field day by day.

Well I want to thank all of you for this opportunity and I appreciate your kind attention.

Mrs. Miller Thank you, Mr. Attorney General, we appreciate your coming.

Mr. Ware, are you going to handle this?

Mr. Ed Ware, the president of the District Attorneys' Association.

Mr. Ware Madam Chairman, members of the Constitutional Convention '73. On behalf of the district attorneys of Louisiana, we appreciate very much the opportunity to be allowed to respond to the remarks made by the Honorable William Guste, Attorney General. I was somewhat at a loss, however, to know how to take the remarks that he made about the agreements that have been reached between the attorney general and the district attorneys. I am at a loss to understand the good faith efforts that have been made by his department to work with the district attorneys in arriving at some understanding as to what would be best for the people of this state, to be incorporated in this constitution. The first time the district attorneys knew that General Guste was dissatisfied with the language as adopted by your Judiciary Committee was when we read his news releases and said nothing to the division. It was over a week before there was any contact between General Guste and the district attorneys. Until today, there really has been no discussion between the district attorneys about what the language should be. I think General Guste made a very good statement of what the law presently is, as interpreted by the Supreme Court, and the district attorneys are satisfied with the law as it presently is and we think that the Committee on the Judiciary has done a good job in drafting an article for the consideration of this convention. The district attorneys are willing to submit this matter to this convention for your good judgment, following the hearings that have been held by your Committee on the Judiciary in arriving at a satisfactory solution

as to what the language should be. We think as Attorney General Guste just admitted to you, under the present law as interpreted, he does not have the authority to supersede and we would like to leave it that way. He says that the article as proposed is going to do a number of things and he wrote you a letter. Now gentlemen, we must take issue with the conclusions which he reaches in this letter. First of all, the article as proposed does not weaken in any way the present authority of the attorney general. In fact, the district attorneys cooperated with him in 1972 and went to the legislature and got him authority that he didn't have to appear before grand juries. We got him authority to investigate, that he claims that he did not have before. Nothing, in any of the articles as presently written or proposed in any way diminishes this authority which has been given to him legislatively. Nothing is in conflict with it. He says that the district attorneys shall have the primary jurisdiction to prosecute criminal cases and with that we agree and we think the article should so state. He says that the district attorneys should have the prime authority to investigate and with this we disagree. The district attorney should not be an investigator but a prosecutor. It is only when the sheriff or the city police or the local authorities fail in their investigative responsibility that the district attorney has to come in with investigators of his own and perform their job for him. In closing, let me say this, we do not have a super sheriff in Louisiana, we do not have a super assessor in Louisiana. We do not have a supervisor for the other elected officials in Louisiana and why the district attorneys should be singled out for a supervisor and someone to supersede him, I do not know. Let me ask you this question. Who are you going to provide as a supervisor for the attorney general and certainly, in the memory of most, we have had attorney generals who have not carried out the functions of their office as they should have and assuredly in the future we can look for the same thing. This is not making any reference to Mr. Guste personally. Mr. Guste will not always be the attorney general and there will be others. With this, gentlemen, we submit the matter to this convention for your consideration.

Questions

Mr. Newton Mr. Ware, would the district attorneys have any objection to giving the attorney general power to exercise supervision over the several district attorneys and, upon the request of district attorney, advise and assist in the prosecution of criminal cases and then go on and leave the third article in here allowing him to supersede for cause shown?

Mr. Ware The language in the present constitution gives the attorney general the right to supervise district attorneys. No one has ever satisfactorily explained to any of us what that means. If you will spell out what you mean by supervision, I'll be glad to give you a definite answer.

Mr. Newton Thank you.

Mr. Derbes Mr. Ware, apropos what the attorney general said earlier, then reflecting on your remarks, do you think any useful purpose would be served in our moving to pass over this matter at the moment? That would give you and him an opportunity to discuss this further?

Mr. Ware In all deference to Attorney General Guste, I think that is a question which should be addressed to the Committee of this convention on the Judiciary. They are the ones who have studied this problem and made a recommendation. Whether or not something should be done, should be done, should come from me, the district attorneys or General Guste, but should come from that committee.

Mr. Derbes Would you have any objection to doing

that?

Mr. Ware I have no objection to anything that that committee and this convention decides should be done.

Mr. Derbes Thank you.

Mr. Weiss Mr. Ware, I just would like to make it clear in my own mind and that is, the attorney general seemed to think that twenty-four hours would lead he and you perhaps, and who you represent, to come to some type of recommendation that would be acceptable to this body. On the other hand, from the tone of your presentation there seems to be an impasse. Are you suggesting now, that we make the decision or will you be willing to meet with the attorney general and try and resolve this?

Mr. Ware In response to that question, let me say this. The attorney general has had ample opportunity in the last two weeks to come to the district attorneys for the purpose of discussing this and attempting to work it out. If it could not be done in two weeks, I don't know what another twenty-four hours would accomplish.

Mr. Weiss Thank you.

Mr. Abraham Mr. Ware, I realize that the language in the present constitution has created or has posed some problems in the past and the attempt was made here to clarify some of them. But is there any real quarrel with the present language in the constitution that says "that the attorney general shall have charge of all legal matters in which the state has an interest with the power and authority to institute and prosecute or to intervene in any and all suits or other proceedings, civil or criminal, as they may deem necessary for the assertion or the protection of the rights and interests of the state."

Mr. Ware As interpreted by the Louisiana Supreme Court in the case of *Kemp vs. Stanley*, no sir, we have no objection to that language.

Mr. Abraham Well, then...but I notice that the recommendation of the Judicial Article does take out the reference to criminal proceedings. Does this clarify it any further or simply confuse it more?

Mr. Ware Well the position that the district attorneys take is that the language, as interpreted by the Louisiana Supreme Court in that case, gives the district attorneys the sole authority to institute criminal proceedings unless there is cause established by the attorney general and we have no quarrel with that.

Mr. Duval Mr. Ware, the committee proposal provides that "for cause" when authorized by the court of original jurisdiction, subject to judiciary review, the attorney general can supersede any attorney representing the state. Do you think that the committee proposal is merely setting forth "cause" and leaving it up to judiciary review is sufficient, or should we attempt to clarify this, as the legislature attempted to clarify this, by spelling out what "cause" is?

Mr. Ware I think the word "cause" has a sufficient legal meaning among judges to not require any further clarification.

Mr. J. Jackson Sir, you mentioned earlier...as one...as a part of your objection is that there were no super assessors, no super sheriffs. It is not true that there is no one comparable to a...no one person on a statewide level that is elected statewide that is comparable to, let us say, a sheriff or an assessor. Also that on the other side of that coin, where we do have parish registrar of voters that they are accountable to some

extent to the secretary of state.

Mr. Ware The registrar of voters are not elected, they are appointed by police juries. So that takes care of the elected part of it. Insofar as there being no person on the state level that would correspond to the attorney general with super assessors, there is not a thing in the world that would prevent this convention from so establishing such an office if they felt that people other than the district attorneys needed supervision and supervision.

Mr. J. Jackson Well, I guess I raised that question because as I appreciate it, unless we go back to the Executive Department Proposal then what you say about super assessors or super sheriffs is comparable to the district attorney then maybe that something that we ought to...maybe we ought to consider having one statewide assessor or maybe one statewide sheriff to perform the role.

Mr. Ware But you see, you run into difficulty when you tell a person "you must go to the people to obtain your job as an elected official," but then make him responsible to somebody other than the people.

Mr. Burson Mr. Ware, in correspondence that we have received from the State District Attorneys' Association, it has been indicated to the delegates here that the district attorneys of this state were satisfied with the language of the Judiciary Committee Proposal as is. Is that still correct?

Mr. Ware I think that would be a fair statement, sir, yes.

Mr. Juneau Mr. Ware, don't you think that since January up until the present time that all parties concerned, including the district attorneys, have had an ample forum in public meetings you know to make their views known to Judiciary Committee?

Mr. Ware Yes, we have. We have not only been invited but encouraged and a great many district attorneys have appeared and testified before the Judiciary Committee and I know I did, I don't know whether others did or not before the Executive Committee dealing with this subject matter.

Mr. Juneau Don't you think with the passage of six months and deliberations that this convention should have at least reached the stage where we can make a determination on this article at this time?

Mr. Ware I would like to defer the answer to that question if you would, to the Judiciary Committee because they are the ones that did the deliberating.

Mr. Juneau Thank you very much.

Mr. Rayburn Mr. Ware, is it not true that the district attorneys and the attorney general have met on several occasions in an attempt to work out this so-called problem.

Mr. Ware No, sir, that is not true. We met at The Prince Murat today, the board of directors met, and we talked for just a few minutes just prior to coming here.

Mr. Rayburn You did not reach any agreement?

Mr. Ware No, sir.

Mr. Rayburn Thank you.

Mrs. Warren Mr. Ware, one of the questions I wanted to ask, I think you partly answered it and second part to it was, first of all I wanted to ask you, since you said you didn't know anything about it until the attorney general was on television, then I was wanting to ask you if you had

34th Days Proceedings—August 22, 1973

Mr. Ware: Yes, that's what you had had a slight discussion. I would like to know some of the things that you discussed.

Mr. Ware: We discussed the proposal of the Judiciary Committee, the Executive Committee, the present constitution, the authority of the attorney general under the legislation that we help get him passed in 1972.

Mrs. Warren: You didn't say anything especially on this particular proposal concerning the attorney general and the district attorneys?

Mr. Ware: Yes, we did, but we did not reach any agreement concerning the minds.

Mr. Stovall: Mr. Ware, what language would you suggest for the constitution which might enable the people to deal with the situation where a district attorney is derelict in his duty and might need to be superseded or supervised by someone?

Mr. Ware: There is any number of languages or words or phrases or provisions that could be used, sir. What do you do when a sheriff does not do his job. You don't supersede him, you file a civil suit to have him removed from office or you circulate a petition to recall him. You don't call in a super sheriff and say, "all right, now we want you to supersede him and in the meantime we want you to supervise him."

Mr. Burns: Mr. Ware, would not this answer to Reverend Stovall's question, what would the people do if a district attorney just arbitrarily refuses to perform his duty or the law enforcement breaks down in the district? The attorney general comes in and shows cause and gets the authorization of the local court and he supersedes the district attorney?

Mr. Ware: As proposed by the Judiciary Committee that is exactly what would happen, Mr. Jimmie. It sure would.

Mr. Burns: Isn't that for the protection of the people?

Mr. Ware: Yes.

Mrs. Miller: Our time has now expired under which we went into the Committee of the Whole.

Mr. Ware, we appreciate your coming, did you want to conclude your remarks very briefly.

Mr. Ware: I only wanted to express to you, and to this convention, our thanks for listening to us, thank you.

[The committee members introduced each other.]

Chairman Henry in the Chair

[Announcement: 107 information presented and a resolution.]

Mr. Kilbourne: Mr. Chairman, I understand that we amend Section 26, am I not correct?

Mr. Henry: That is correct.

Explanation

Mr. Kilbourne: I think that most of the talk that we have heard or all of the talk we heard was on Section 27, but we are on Section 26 at this time which is essentially the same as the present constitution. It just says "there shall be a department of justice consisting of an attorney general first and second" and I believe there was an error there, I think that should be "first and second assistants attorney general and other necessary assistant and staff. The attorney general shall

be elected for a term of four years at the state general election and the assistants shall be appointed by the attorney general to serve at his pleasure." That is all I believe that is before the convention at this time, as I understand it. I think it is self-explanatory. I don't perceive how there could be any particular question about it. It is a very simple statement, but I will be glad to answer any questions, if anyone has any on that section.

Questions

Mr. Denberry: Do you think that there is any conflict between the language in this section regarding a first assistant, and the language in the executive department proposal which requires that the first assistant be confirmed by the Senate?

Mr. Kilbourne: Do I think there is any conflict between this section and the executive... apparently there is, I haven't looked at the executive proposal recently and I really can't answer your question.

Mr. Denberry: I'm not sure that there is as a matter of fact. The executive department proposal, the section which we adopted provides that the first assistant for each of the statewide elective officials must be confirmed by the Senate. I don't want that this conflicts with it, and I just wanted to get your opinion on that.

Mr. Kilbourne: Well, I think there would be some conflict there because the article that we have here does not require that the assistants be confirmed by the Senate. The language is almost exactly as it is in the present constitution.

Mr. Denberry: Mr. Kilbourne, do you think that we should have an amendment to the effect that the first assistant must be so confirmed?

Mr. Kilbourne: Frankly, Mr. Denberry, I don't feel that way. I think the general should have a right to appoint his assistants and I do not see any reason why they should be confirmed by the Senate. I've never thought about it really. It never has been that way and I've never given it any consideration, but my present feeling is that it isn't necessary.

Mr. Denberry: Well now, the first assistant attorney general would succeed to the office of attorney general in the event the attorney general vacates that office for any reason. Is that correct?

Mr. Kilbourne: That's correct. Yes, sir.

Mr. Denberry: That was the reason in the executive section, as far as all statewide elected officials were concerned, we required that the first assistant be confirmed.

Mr. Kilbourne: This particular matter didn't ever come before the Judiciary Committee. It was never discussed, to my knowledge.

Mr. Stinson: Mr. Kilbourne, this does not prohibit it. Therefore, when the other requires it, there wouldn't be any conflict whatsoever. To be a conflict, this would have to say he would name an assistant who would not have to be. This being silent on that, would be governed by the other. So really, it wouldn't be any conflict at all, would it?

Mr. Kilbourne: I believe you are right, Mr. Stinson. [like I say, I just hadn't thought about it, but I believe you are right.]

Mr. Lebleu: Mr. Kilbourne, I was concerned about the words "necessary, assistants and staff." Since 1972, the budget for the attorney general has been increased substantially, and even though this is the same language as set forth in the 1921 Constitution and allows the attorney general to hire the necessary staff and assistants, I just wondered if it was

34th Days Proceedings—August 22, 1973

necessary to put the word "necessary" in there. It seems that that might be a binding term on the, not only the Budget Committee, but the Appropriations Committee and the whole Legislature as well.

Mr. Kilbourne Well, Mr. LeBlanc, that just gives him... spells it out that he will have that authority. Of course, he is going to always have to clear these things, as far as his budget is concerned, with the Legislature. I feel, and the Committee thought that it should be like that.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Lanier], on page 10, line 20, immediately after the word "first" and before the word "attorney" delete the words "and second" and insert in lieu thereof the word "assistant".

Explanation

Mr. Lanier Thank you, Mr. Chairman, fellow delegates, the purpose of this amendment is to delete reference to the second assistant attorney general. By the previous discussion, you realize why we have already constitutionalized the first assistant, because he will succeed to the attorney generalship if that position is vacated by the attorney general. I see no necessity to constitutionalize the position of second assistant attorney general. The deletion of this language will do no violence to this provision and, although I will concede this is the language in the present constitution, I think this was copied from the language in the present constitution from a style point of view. There is no necessity for us to constitutionalize the second assistant attorney general, anyone than it would be for us to constitutionalize the second assistant anything else. For that reason I offer this amendment. I will be glad to yield to any questions, Mr. Chairman.

Questions

Mr. Stinson Mr. Lanier, don't you think the reason is that if the first assistant attorney general, then automatically the second one would step in his place. Don't you think that is the reason it is outlined? I believe this is the way it is in the present constitution.

Mr. Lanier But I think he would then be the first assistant attorney general just like anyone else in any other chain of succession in any other position that we've created constitutionally, so I see no need to constitutionalize the second assistant.

Mr. Henry Does that complete your remarks? Justice Tate. Injustice Tate, I should say.

Mr. Tate Injustice Tate. Just saying for the committee, I think this is in the nature of a technical amendment that I am reasonably sure that no one on the committee has any objection to. I think that was our intent.

[Previous Question ordered. Amendment adopted: 110-8. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mrs. Zervigon], on page 10, delete lines 17 through 24, both inclusive in their entirety.

Explanation

Mrs. Zervigon Mr. Chairman and delegates, the purpose of the amendment is to delete this section because I believe that, considering the language that we have already put in the executive department section, it's unnecessary. Section 9 in the executive department section now reads, "There shall be a Department of Justice, headed by the attorney general who shall be the state's chief legal officer."

Section 13 of that article now reads, "Each statewide elected official, except the governor and lieutenant governor, shall appoint a first assistant, subject to confirmation by the Senate..." and so on. It seems to me that takes care of the mechanics that this section of the judiciary article is trying to take care of. I think the language is unnecessary. I can see no reason to repeat it in two places in the constitution and I urge your favorable consideration.

Amendment

Mr. Bollinger Mrs. Zervigon, did not we already have the provision that the attorney general would be elected in the executive article?

Ms. Zervigon We deleted the attorney general's name in a list of statewide people belonging to the executive branch. However, we came later on to outline the various departments within the executive branch, we left the Department of Justice in there.

Mr. Planchard Mary, in the executive department, did we take care of a four-year term for the attorney general?

Ms. Zervigon I believe that we said that all statewide elected officials have four-year terms, but I am not certain of that.

Mr. Stinson I don't believe we have adopted the executive. We may end up not having one, so don't you think we better leave it in this?

Ms. Zervigon No sir, I really don't because if we don't adopt the executive article, we don't have a governor either. I think without a governor our constitution hasn't much chance of acceptance by the people.

Mr. Stinson Well, don't you think the attorney general, Mr. Guste, would make a good governor?

Ms. Zervigon You didn't specify a year in that question, Mr. Stinson.

[Previous question ordered. Amendment adopted: 110-8. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Stagg and Mr. Denney], on page 10, delete lines 17 through 24, in their entirety, and insert in lieu thereof the following: "...You had the intention, Mr. Stagg, of deleting the previous amendment with this, is that correct, sir? I add appropriate language. "Section 26. Powers and Duties of the Attorney General. Section 26. There shall be a Department of Justice headed by the attorney general, who shall be the state's chief legal officer. As may be necessary for the assertion or protection of the rights and interests of the state, the attorney general shall have authority to: 1) institute and prosecute or intervene in any legal actions or other proceedings, civil or criminal, 2) exercise supervision over the several district attorneys throughout the state, and 3) for cause, supersede any attorney representing the state in any civil or criminal proceeding. He shall have such other powers and perform such other duties as may be authorized by this constitution or provided by statute."

Explanation

Mr. Stagg Mr. Chairman and fellow delegates, when the Committee on the Executive Branch was deliberating and trying to design an executive branch of government, it was the feeling of that committee, one, that the attorney general ought to be considered to be of the executive branch of government, and two, he was the state's chief legal officer. In the

second instance, the committee, over a period of several hours, debated what ought to be the powers that would adhere to that office for him effectively to be able to be the state's chief legal officer, to guard the rights of all of the people of the state, without having him so much authority that he might become more than just the state's chief legal officer. The purpose, the effect, the thrust of this amendment is simply to allow this convention, in the collective wisdom of the delegates to this convention, to have the opportunity to examine the two languages side by side; that proposed by the Committee on the Judiciary and that proposed by the Committee on the Executive Branch. There are strong feelings among the delegates to this convention as to what ought to be the proper powers of an attorney general. Somewhat unfortunately, as in the case of other elected officials in the executive branch, personalities of the occupants of those offices at the moment have been intruded into the argument. I have tried completely to divorce the personality of the present incumbent from the duties that the constitution would give to an office of state government. I think that was what the Committee on the Executive Branch sought to do. There have been, in your memory and mine, several instances in recent history, in isolated instances I will admit, where in a given parish infractions of the law were not prosecuted by the district attorney for reasons felt by him to be sufficient unto themselves.

[Quorum Call: 100 delegates present and a quorum.]

Explanation continued

Mr. Stagg The root cause of the disagreement among delegates of this convention occurs in the Subparagraph 3. The language reads, "for cause, the attorney general may supersede any attorney representing the state in any civil or criminal proceedings." We laid great stress by the words "for cause" and we debated the language contained in the case of *Kemp against Stanley* in which the district attorney was thought to be superseded by an attorney general for purely political reasons and not for cause. It was the feeling of the members in the Executive Branch in the discussion that if a proper case brought forward to the Supreme Court, where sufficient actual cause did exist, that the case of *Kemp against Stanley* would not be the basis of an unfavorable ruling by the Supreme Court on the powers of the attorney general. For that reason, after strong debate, we inserted the words "for cause" so that an attorney general who was feeling his oats couldn't go storming around the state and causing disagreements among and between district attorneys who were lawfully exercising the duties of their office. That's the argument, that's the basis of the argument in this convention at the moment. The purpose of the amendment is to settle the argument. Mr. Chairman, I move the adoption of the amendment.

Point of Information

Mr. Milbourne Mr. Chairman, I understood we were on Section 26 and what Mr. Stagg is really addressing his amendment to is Section 27.

Mr. Henry Well, of course, while you may be right insofar, and you are right insofar as what you say, he has apparently chosen to attack Section 26 in this manner and it will be up to the convention delegates to decide.

Questions

Mr. Pugh Tom, what gives me grave concern about this is the same language that you say is the salvation, this "for cause." Your explanation suggests that the cause may be judicially determined. You also said that that might ultimately be judicially determined by the Supreme Court. The section, as devised by the original redactors, set forth a solution for that "cause" problem by order of a local

court. With this amendment, would this not perhaps delay what might otherwise be rather serious civil and criminal proceedings, while we are trying to decide who is going to handle them?

Mr. Stagg Mr. Pugh, if you would read carefully the language contained in the Judiciary Committee's article, you will note that it states "that when a judge before whom a proceedings is being carried on. Now, for there to be proceedings before a court, a district attorney must have brought in a bill of information or a grand jury must have indicted, and the problem would arise, in my mind, when a district attorney did not bring in a bill of information and did not move for a grand jury indictment and there would be no proceedings before the judge on which the judge could then rule. That's the failure of the language in the Judiciary article, as I see it. There is no proceedings until one has actually been brought into a court and then the court could say whether there would be proper intervention by the attorney general. That language is insufficient, in my opinion.

Mr. Pugh Well, it says, "for cause, supersede any attorney representing the state in any civil or criminal proceeding." Does that not contemplate the existence of some proceeding at that point?

Mr. Stagg Yes, sir, but if you will read back in the Judiciary's first provision on where a district attorney can supersede, if I had my yellow copy in front of me I would read it to you. Well just a minute, Bob. At the top of page 11 under Article... Subparagraph 3, "For cause, when authorized by the court of original jurisdiction in which any proceeding is pending." A failure to act by a district attorney would prevent there to be any judicial proceeding and a court to act, and that's why we thought that for cause, from this very beginning if a district attorney, for some reason, failed to act, there would be no proceeding as envisioned in Article Subparagraph 3, in line 3 on page 11.

Mr. Pugh Well as I read your proposed amendment, it contemplates the existence of a civil or criminal proceeding. That's what it says.

Mr. Stagg That's right.

Mr. Pugh Therefore, you've already got a proceeding under your amendment, to get to that point.

Mr. Stagg That's correct.

Mr. Pugh However, your illustration is where a district attorney fails to act. If he fails to act, then there wouldn't be any proceeding, would there?

Mr. Stagg But Bob, in paragraph 1 of my amendment it says that the "District attorney can institute, prosecute or intervene in any legal action or other proceeding." so his intention could bring that proceeding into court and, having brought it into court, if the district attorney wouldn't act then he could supersede him in that action.

Mr. Pugh Well then, under your thesis insofar as this amendment is concerned, you would contemplate the attorney general going into a parish and instituting some proceedings before it's judicially determined that he ought to be there? That this cause has been determined?

Mr. Stagg That's correct, Bob.

Mr. Fayard Mr. Stagg, the way, and correct me if I'm wrong, the way I read your proposed amendment, is it not true that in Paragraph 1, if the attorney general could institute and prosecute any legal action, including a criminal action? He would have direct authority to do this under your amendment, would he not?

Mr. Stagg Yes, he would.

Mr. Fayard He would have the authority, under your

34th Days Proceedings—August 22, 1973

amendment, to be this whether or not we are requested to do so by a local district attorney, would he not?

Mr. Staggs Yes, sir.

Mr. Fayard Reading Paragraph 1 of your proposed amendment, in connection with Paragraph 3, would not the attorney general be the sole and primary person responsible for the supervision of the prosecution and the actual trial of any criminal proceeding? Could this not be interpreted this way?

Mr. Staggs No, sir, that is not correct. The district attorney would still...

Mr. Henry You have exceeded your time, Mr. Staggs.

Further Discussion

Mr. Burson Fellow delegates, I rise in opposition to the amendment. The primary reason is in the discussion of philosophy that I have heard on this question thus far, there is one major underlying philosophical interest that I have not heard discussed at all. That is the interest of the average citizen in having the system of criminal justice as much as possible be an instrument of local government rather than the central government. Now under our United States Constitution, Amendment 6 to the federal Bill of Rights, guarantees each citizen of this country, in a criminal matter, a trial in the district where the crime has been committed, by a jury of his peers. A clear constitutional interest is expressed there that a man be tried in criminal matters, where his life or liberty are at stake, by people in his community. I submit to you that the same sort of interests lie in the area of deciding who will be the lead in criminal prosecution. Now most of the remarks that I have heard in advancing the power of the attorney general to supersede local district attorneys seem to assume that a statewide elected official will be inherently more virtuous than a locally elected official. I challenge that assumption. There is nothing on the record in the history of this state to support that assumption and I submit to you that in recent history there is evidence to the contrary. It seems to me that it is just as likely that we will have an attorney general who will not want to do what he was elected to do, as it is that we will have a district attorney who will not want to do what he was elected to do. But the only difference is that in the case of the district attorney, since he is a locally elected official, he is much more responsive to the thoughts, the cares and the concerns of the local citizenry than any statewide elected official could ever be. I submit to you that maintaining local prosecution in criminal affairs humanizes the whole process of criminal justice and that when you move to permitting the central governmental authority to take charge of criminal prosecution, you move inexcusably, in my view, eventually toward a police state, something that none of us want. Now the remarks that I make in no way impinge upon the man who presently holds the office of attorney general in this state, for whom I have the highest regard, but I think in the end, it is a matter of principle. I submit to you that any other constitutional objections to this amendment that have not been brought out. For instance, when we say, "for cause, the attorney general could supersede any attorney representing the state in any civil proceeding," we present the possibility that the attorney general could supersede the attorneys of the Public Service Commission in a rate-making case. The attorneys for the Public Service Commission, who are career people, have a special expertise in this field, which I do not feel could be duplicated by any assistant attorney general who received a temporary assignment on a particular case involving utility rate-making. I suggest to you that the powers that are set forth in this proposed amendment go much further than the superseding of local district attorneys in criminal matters. I urge all of you, be-

fore you vote on this question, look at the present Section 56 of Article VII of the Constitution of 1921, and you will see, if you do look at it, that the language there provides for supervision of local district attorneys and not for supersession.

Further Discussion

Mr. Roy Mr. Chairman, ladies and gentlemen of the convention, I rise in opposition to this particular amendment. I know that Tom and Moise have tried to accomplish something and have us meet the issue head-on, but it just does not, in my opinion. The reason is that the first... number one of the amendment says that, "The attorney general shall have authority to institute and prosecute in any civil or criminal proceeding..." Now let's just stop right there. Once he has that authority, then number three is automatically negated. He doesn't have to wait to do anything for cause, if you give him the authority to institute and prosecute in any civil or criminal proceeding and he jumps in at first, you will never get to the cause issue. For that reason, I just don't think that their amendment does what they sought to do, which was to give you the option of viewing this amendment with the present section. That's the reason particularly that I rise in opposition to it, because you just as soon eliminate number three altogether.

If there are no other speakers, I move the previous question.

Further Discussion

Mr. Denney Mr. Chairman and delegates, I think we should first look at the present constitution to see what it says and then compare it with the two proposals before you. According to the present constitution, "The attorney general or one of his assistants shall attend to and have charge of all legal matters in which the state has an interest, or to which the state is a party, and he shall have authority to institute and prosecute or to intervene in any and all suits, on the proceedings, civil or criminal, as they (and the words "as they" refer back to the attorney general or his assistants) may deem necessary for the assertion or protection of the rights and interests of the state." Now both of the proposals before you remove the language "as they may deem necessary" and requires for the attorney general to first institute and prosecute or intervene that it be necessary for the assertion or protection of the rights and interests of the state. That is a matter which is not within the discretion any longer of the attorney general under either of these proposals, but it must be determined by a court, if there is an objection to it, that it is necessary for the assertion or protection of the rights and interests of the state. Now the first section of the Staggs-Denney amendment states that the attorney general under those situations shall have the authority to institute and prosecute or intervene in any legal actions or other proceedings, civil or criminal. The judiciary article leaves out the criminal, so that under no circumstances could the attorney general ever institute a criminal proceeding. Now we have known in this state of instances where the local district attorneys, for one reason or another, have refused to prosecute when everyone around them knew prosecution should be instituted. In those situations, our amendment would give the attorney general the right to come in and prosecute. It would not, as Mr. Roy stated, that would not negate the right of the attorney general, under Section 3, to supersede, for cause, an attorney representing the state in any civil or criminal proceeding. The first permits the attorney general to institute or prosecute, or intervene, but if a suit has been filed, or if a prosecution has been commenced, the interested parties have the intervention control of the case. He must take the case as he finds it and the attorney general would not have the right to supersede, for cause, in those instances. So that the two sections do not conflict with each other and one does not cover the other. It seemed

to us on the Executive Committee, those of us who voted for this section, that it was essential to continue the right of the attorney general to institute and prosecute civil and criminal actions. We believe that is quite necessary, if it is necessary to protect the interests of the state. Furthermore, we think that for cause, he should have the right to supersede a district attorney. Now both of those, in other words for the interests of the state and for cause, are matters which would have to be decided by the court because we must assume that if he did this, the local district attorney would probably object, and then it would be up to the courts in each instance to reach a determination. So we believe that the local citizenry who were mentioned by Mr. Burson would have ample protection. There is nothing in here which would permit the attorney general to prosecute elsewhere than the location where the crime was committed, so that he would be tried before a jury of his peers. We believe, Mr. Stagg and I believe, that it is essential for the orderly prosecution of justice in the State of Louisiana to have a provision such as this in the constitution. Thank you.

Questions

Mr. Burns Mr. Denberry, do you see anything in this amendment under your number three, where it refers to the local court having a hearing or authorizing and determining whether cause has been established?

Mr. Denberry Mr. Burns, I should think if an attorney general would intervene or try to supersede an attorney representing the state that the attorney representing the state would have a perfect right to object before the court.

I don't think we have to put that sort of language in the constitution. I think it is self-evident.

Mr. Burns Well, you don't think that that's very sacramental for the protection of district attorneys to give the attorney general the unrestricted authority or decision to determine what is the cause or if a cause exists?

Mr. Denberry I don't believe it is within the power of the attorney general or the district attorney to determine what is...

No, sir.

The cause would have to be determined by the courts, Mr. Burns.

Mr. Burns But there's nothing in this amendment that says that.

Mr. Denberry No, I think it's self-evident from the amendment.

Further Discussion

Mr. Kilbourne Mr. Chairman, fellow delegates, I ask you to vote this amendment down. This amendment, under the guise of amending Section 26, Mr. Stagg and Mr. Denberry have actually come in and amended Section 27 which we are not even on... I mean the committee proposal. And if you vote this amendment down, we will go ahead and get on Section ...and pass the Section 26. Then we will get on Section 27 and I will attempt at that time, if and when that happens, to give you somewhat the background and the history of what happened in the past and why I think, and why the committee, the Judiciary Committee thought, this language that we have in the Judicial Committee article, relative to the powers of the attorney general was necessary. But because of this manner in which Mr. Stagg, under the guise of amending one section, has attempted to amend an entirely different section. We are not on that section nor can we go into that matter at this time.

And I just simply ask you to vote this down and then we can debate Section 27 when we properly get to it, not by any back door method like it's being tried here.

Any questions?

Questions

Mr. Fayard Mr. Kilbourne, do you agree with me in reading this proposed amendment that the attorney general under Subsection No. 1 could, by bill of information or indictment, just institute a legal proceeding without the knowledge or without the consent of the local district attorney?

Mr. Kilbourne I think there certainly is a possibility. And as I said, I would go into that at length if we get on the proper section. What they have done here is just absolutely taken the exact language as Mr. Guste has suggested and attempted to put it in the amendment...where, in a section where it doesn't belong.

Mr. Fayard Well if my interpretation of Subsection 1 is right, then would that not shift the burden of proof and the actual burden to the local district attorney to then contest the action?

Mr. Kilbourne There is no question at all about it.

[Sustained Question of Order.]

Closing

Mr. Stagg Mr. Chairman and fellow delegates, in closing I only want to point out to those who have the amendments before them, the first amendment is on Section 26. Immediately following this amendment is a further amendment to take out Section 27. All we have done is to substitute our amendment for number 27 that's in here. Number 26 has already been covered in the Executive Branch Article and Mr. Chairman, I move the adoption of this amendment and I think we can go on and vote. It has been fully discussed.

[Roll call vote requested. Amendment substituted 24-97. Motion to rescind tabled. 116-0. Motion to amend tabled. 116-0. Motion to amend tabled.]

REPORTS OF COMMITTEES

[1. Judiciary, 116-0.]

Announcements

[1. Judiciary, 116-0.]

[Adjournment to 10:00 a.m. on September 1, 1973. Every August 22, 1973.]

Reading of the Section

Mr. Poynter Section 28. District Attorney; Election Qualifications; Assistants.

"Section 28. In each judicial district a district attorney shall be elected by the qualified electors of the district for a term of six years. He shall have been admitted to the practice of law in the state for at least five years prior to his election and shall have resided in the district for the two years immediately preceding election. A district attorney may select his assistants and other personnel and prescribe their duties."

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, this is the first section relating to the office of district attorney. This office is presently included in the Judiciary Article of the 1921 Constitution. We are here continuing the substance of the same provision except that, the experience requirement is increased from three years to five years for the district attorney, and we have deleted the experience requirement for assistant district attorneys. The reason for this latter is that it is becoming increasingly difficult to get young attorneys to go to work for the district attorney's office after they have had three years experience or more and we thought that it would be desirable to open this field for young men one or two years out of law school to go to work for district attorneys. They have always proven capable in other legal positions that they have filled, and we felt like they would do a good job here. So that is the reason for these changes. I believe there was a provision about the district attorneys retirement system in the original article, but since they have this taken care of elsewhere, we have not included it in this section.

Amendment

Mr. Poynter Amendment No. 1 [By Mr. Lanier and Mr. Duval]. On page 11, line 22, immediately after the word "select" and before the word "other" delete the words "his assistants and" and insert in lieu thereof the following:

"such assistants as may be authorized by law and".

Explanation

Mr. Lanier Mr. Chairman, fellow delegates, the problem with the present provision as drawn is that it seems to give the district attorney a constitutional right to select as many assistants as he wishes. Now that is not the present law. The present law is that he has such assistants as are established by a statute or by law. The reason you need to put this language in here "that he shall have such assistants as may be authorized by law", is because in most places the assistants are paid both by the local governing authority and also by the state. There is a basic salary established by statute which is a contribution from the state. Various judicial districts around the state have authority to supplement this salary by various amounts. If you put in the constitution that the district attorney has a constitutional right to select as many assistants as he wishes, this could create a very dangerous situation where he could select assistants in great numbers which could impose a very great financial burden on the state as well as the parish. Or it could create a sort of a crisis situation if these agencies did not choose to put up the money to pay for these jobs. In order to maintain the present law, which has worked quite well, I have included the language that he.... "he may select such assistants as he may be authorized by law" which brings us in line with the present law. If there are any questions, Mr. Chairman, I will be glad to try and answer them.

Mr. Henry Are there any questions?
Apparently there are none, Mr. Lanier.

Amendments

Mr. Poynter Amendment No. 1 [By Mr. Deshotels, et al.]. On page 11, line 14, after the word "qualifications;" add the words "duties and functions";

Amendment No. 2. On page 11, line 16, after the word and numeral "Section 28." add "(A)"

Amendment No. 3. On page 11, between lines 23 and 24, add the following:

"(B) A district attorney has the entire charge and control of every criminal prosecution instituted or pending in his district, and shall represent concurrently with the attorney general the state in all civil actions instituted or pending in his district."

(C) The district attorney shall be the representative of the state before the grand jury in his district, and shall be its sole legal advisor.

(D) A district attorney shall perform such other duties as may be provided by law."

Explanation

Mr. Kelly Mr. Chairman, ladies and gentlemen of the convention, this amendment does nothing more than add the respective duties and responsibilities of a district attorney. Looking back over the past few weeks, I think we can say that for all practical purposes we have tried to at least spell out some duties, functions, and responsibilities that this particular officer will carry out. Now, in the old constitution, or in the present constitution that is, that we are operating under at this time the district attorney is set forth as the constitutional officer; yet, nothing is stated therein concerning his powers, duties and responsibilities. I think that we should go ahead and add the powers, duties and responsibilities of this office. The Judiciary Committee saw fit to add and set forth the powers, duties and responsibilities of the attorney general; they have set forth those of the sheriff, they have set forth those of the clerks of court and this does nothing more than give the district attorney in the constitution the powers, duties and responsibilities that he has been exercising over the years. To break it down as best I can, of course Amendment No. 1 would do nothing but add the words "duties and functions" to the title of Section 28. Amendment No. 2 would make the first paragraph as set forth in your yellow copy there to read "(A)" and then we would add the language which has been read to you which in effect does nothing but set forth the duties and responsibilities that are now included within the statutes of the State of Louisiana. The "B" part a district attorney has the entire charge and control of every criminal prosecution institute or pending in his district and represent concurrently with the attorney general the state in all civil actions instituted or pending in his district. "C" portion would be the district attorney is the representative of the state before the grand jury in his district and is its sole legal advisor. It is my understanding that this tracks totally R. S. 16:2. Then, of course, a catch all [catchall] phrase at the end saying "a district attorney shall perform such other duties as may be provided by law." Leaving any other duties, powers, and functions to be set forth in statute by the legislature. Now, one of your first questions might be, well now, in Paragraph B in the amendment, does this in fact cause a conflict with the attorney general provision which was just adopted? I think we can safely say, it does not. Because under Section 3 of or Paragraph 3 of Section 27, we talk in terms of cause, superseding by the attorney general. Of course, this Section 27 would have to be read in conjunction with 28. I think it is inherent that a district attorney has entire charge and control of every criminal prosecution instituted in his jurisdiction. Yet, if he

fail to meet the obligations as apparently this convention expects him to meet, then you would of course revert to Paragraph 3 of Section 27 which would give the attorney general the power to come in and for cause proven or shown supersede and intervene in any criminal case or, for that matter, any civil case that was pending in that particular judicial district.

Questions

Mr. Lanier Mr. Kelly, don't you agree that in order to bring your Subparagraph B in line with Paragraph 3 in Section 27 that you would have to add the language "except as otherwise provided in Section 27 of this article"?

Mr. Kelly I don't see that it would make that much difference, I really don't, because we are talking about in Section B, we are talking about a district attorney having entire charge and control of his prosecution, so to speak. I think that must be read in conjunction with 3. It simply says, I think when you read them in conjunction 3 as it now is stated and as adopted because when authorized by the court of original jurisdiction in which any proceeding is pending, subject to judicial review, supersede any attorney representing the state in civil or criminal action. Now that is plain to me. I mean it may not be to you, sir.

Mr. Lanier Well, do you think that where one provision says that the attorney general may supersede the district attorney for cause and another provision says that the district attorney with no exception put into the provision has entire charge and control of every criminal prosecution instituted or pending in his district, that there is no conflict between these two provisions. Is that your position?

Mr. Kelly Well, that is my position. I will say this, that is not the intent of this particular proposal. I mean if you feel like that a technical amendment would be necessary, then I have no objection at this particular point to a technical amendment. But you asked me my position on it, and it is my personal opinion that there is no conflict; however, I will have....I would not be objective to your preparing a technical amendment to that effect if you so desire.

Mr. Lanier Do you think that the same problem might also be created with reference to the language "that the district attorney shall be the sole legal advisor of the grand jury"?

Mr. Kelly No, once again, in my personal opinion, I do not see any conflict there.

Mr. Lanier Then it would be your position that if it were necessary for the attorney general to go before the grand jury in a judicial district and supersede the district attorney, that this provision "that the district attorney is the sole legal advisor" would no longer be applicable.

Mr. Kelly No. That is not our position. In other words our position is, at this particular time....let's take first things first. I think ordinarily we think in terms of the district attorney of a particular judicial district as being the prosecutor, so to speak, in that particular district. Under the present law, that district attorney, it is my understanding that C tracks R:S 16:2 also verbatim. At the present time, that district attorney is the sole legal advisor to that particular grand jury. Now the exception to that would be....be under the powers and auspices of the attorney general's office under Subparagraph 3 of Section 27. Of course if the district attorney....if the attorney general comes into court, proves cause for superseding the district attorney, I think that then the provisions of Paragraph C under proposed Section 28 would no longer be applicable. In other words, he would supersede the district attorney in all respects.

Mr. Stagg Mr. Kelly, are you familiar with the provisions of Act 409 of the 1972 legislature, which said that the following persons may be present at the sessions of the grand jury and that act passed last year allows the attorney general or an assistant attorney general to be present and that in Act No....

Mr. Kelly But, may I answer that at this particular point, please sir. It is my understanding of that particular act, that you are referring to the presence of the attorney general in the grand jury proceedings. Subsection C here says "that he shall be the representative of the state before the grand jury in his district and shall be its sole legal advisor." Now I do make a distinction between the permissibility of appearing with or being present in the grand jury proceedings than usurping the power of being the grand jury's sole legal advisor.

Mr. Stagg How about the....action..

Mr. Henry The gentleman has exceeded his time.

[Quorum Call: 100 delegates present and a quorum.]

Vice Chairman Roy in the Chair

Further Discussion

Mr. De Blieux Mr. Vice-Chairman and ladies and gentlemen of the convention, there are three parts to this amendment....as I read this. I am not a criminal lawyer. I don't practice very much criminal law, but sometimes I think that I might be able to read and understand some things. As I read this....this first portion B would just about allow the district attorney to supersede the courts and tell the courts what to do in criminal cases. In other words he would determine the trial dates or whatever that he wanted to do. I think it's bad from that standpoint. In addition to that, we had a discussion quite some time ago about the supervisory powers of the attorney general over the district attorneys. This would, you might say, particularly in the parish of East Baton Rouge, in the capital, where you have many actions pending by the attorney general in the state, would allow the district attorney to supersede the attorney general in many of those cases. I just think it's bad from that standpoint. Now, going to Paragraph C, I have known of cases to where that there has been certain members, citizens who have served on a grand jury, who thought that they should seek outside legal advice sometimes. They felt like they were not getting the advice from the district attorney. This would absolutely prohibit them from ever seeking any advice from anybody else other than the district attorney in any case or matter pending before them. I don't think this is right. I certainly think that they ought to have some leeway to where that if they wanted to get some outside legal advice, they could do so. (D) portion is the only part of it that's worth the paper it's written on. The rest of it is bad and I ask you to vote it down and let's have an amendment to allow the legislature to prescribe the duties and responsibilities of the district attorney. I ask you to reject the amendments.

Question

Mr. Lanier Senator De Blieux, with reference to this Part (C) where it says that, "the district attorney shall be the sole legal advisor of the grand jury." Are you aware of the fact that we have laws on the books now that require the judge to advise the grand jury of their duties?

Mr. De Blieux Well, that's what I'm talking about. It would absolutely take away the judge's authority to instruct the grand jury. It's a very bad amendment.

Further Discussion

Mr. Pugh Mr. Chairman and members of the convention,

35th Days Proceedings—August 23, 1973

I rise in opposition to this Amendment No. 3 for these reasons. As stated by Senator De Bileau, there is a problem. In most of the districts the judges themselves determine when cases will be tried, criminal cases will be tried. For that reason it would in effect allow them to supersede the authority that the judges are going to take and have taken for years. In addition to that Subsection (B) provides that he must act concurrently in civil actions with the attorney general. I am of the opinion that that means the attorney general must necessarily be in every civil action along with him. That is to say, that both the attorney general and the district attorney must appear in these civil actions in his district. Insofar as (C) is concerned, he may or may not be aware of the fact that by this provision the district attorney is the only one who must represent the state before the grand jury. In addition to the problems already raised, obviously in most of the districts, the assistant district attorney also handles matters before the grand jury, and that's not herein provided for. As to (D), I call to your attention that the district attorney, obviously, ought to perform his duties or he shouldn't be there. Therefore, we don't need that subsection.

Question

Mr. Arnette Mr. Pugh, would this amendment in effect do away with the previous section? In other words, it would completely undo what was done in the previous section?

Mr. Pugh In my opinion it would gut the previous section.

Further Discussion

Mr. Avant Mr. Chairman and fellow delegates, I rise against this amendment, Part (B). That's the part that concerns me and only one part of that concerns me, the language, "and shall represent concurrently with the attorney general the state in all civil actions instituted or pending in his district." Now, what that means is simply this. In any suit in which the state is a party, a civil suit, an expropriation suit, a damage suit against the Department of Institutions, a damage suit against the Department of Highways, that then all of these state agencies are in most cases represented by their own counsel who happened to be a special assistant attorney general. It would give the local district attorney a constitutional right to be in that suit and to act concurrently with that attorney. He would be given a constitutional right to do that and just submit that that's just not a good sound policy. I ask the defeat of that portion of the amendment if it stays like it is.

[Amendments withdrawn.]

Amendment

Mr. Poynter The next set of amendments are offered by Delegate Gravel.

Amendment No. 1. On page 11, line 22 immediately after the word, "personnel," insert a period and delete the remainder of the line, and delete line 23 in its entirety.

Explanation

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, as this sentence presently reads, that's the sentence beginning on line 21 and ending on line 23. It gives to the district attorney the authority, constitutionally and exclusively, to prescribe duties of his assistants and other personnel. This would prevent the legislature from prescribing such duties in the event they were in conflict with those prescribed by the district attorney. Now, I've talked to the representatives of the District Attorneys' Association who are here today, Mr. Mamouides and Salter. They have no objection to this amendment. I think it's a whole lot better to take this out of the constitution

because it could cause very, very serious conflicts with respect to statutory law that will be adopted. I move the adoption of the amendment.

Questions

Mr. Willis Mr. Gravel, it seems that if we do what you ask us to do, it would make the provision limp. It would read, "a district attorney may select such assistants as may be authorized by law and other personnel."

Mr. Gravel That's the way it stands as a consequence of the amendment. I think that that authority should be given to the district attorneys. They shall do the hiring and firing.

Mr. Willis I understand that, sir. But if it's "as may be authorized by law and other personnel," don't you see....

Mr. Gravel Mr. Willis, the problem that I have is with giving to the district attorneys....

Mr. Willis I embrace your problem. I understand it, but I'm saying the sentence to me limps. It would mean that the personnel and the law would authorize. Don't you see? It needs a little cleaning up, it seems to me.

Mr. Gravel Well, I think we would have a Style and Drafting problem after we delete the words, "and prescribe their duties". I think it could be clarified. But I'm very concerned about this language....

Mr. Willis I agree with you.

Mr. Gravel Thank you, sir. I hope that by this amendment we can at least delete that. Thank you very much.

[Amendment adopted without objection.]

Amendment

Mr. Poynter Amendment No. 1 [By Mr. Arnette]. On page 11, line 19 immediately after the word, "least" and before the word "years", delete the word "five" and insert in lieu thereof the word "three".

Explanation

Mr. Arnette It's a very simple....I'm offering this amendment just simply to keep the present provision as it is in the 1921 Constitution, and keep it the same in this new constitution. It had been three years in the '21 Constitution and it was increased to five, I'm told, just to keep it even with the judges. I think we need to keep it just as it was, to allow a person with three years experience to be the district attorney. It's been a good provision in the past, and I think it will continue to be a good provision. Thank you.

Further Discussion

Mr. Dennis Mr. Chairman, fellow delegates, I must rise in opposition to the amendment. The reason the committee changed the experience requirement from three years to five years was that we had instituted this requirement for an attorney before he could become a judge. We feel that an attorney must be equally qualified to be a district attorney, because it is an equally important position in our state government. So, I ask you to reject the amendment.

Questions

Ms. Zervino Judge Dennis, has there been a lot of problems with inexperienced district attorneys fumbling the ball across the state in the past years under the '21 Constitution?

Mr. Dennis No, as I said, the sole reason for this was, we had already arrived at the five year

experience requirement for a person to become a judge and we felt that the district attorney office should be treated on an equal basis. That is the only reason.

Ms. Jervison No particular abuse that you were trying to correct?

Mr. Dennis No, not that I know of.

Ms. Jervison Thank you very much.

Mr. Arnette Judge Dennis, in your committee's proposal did you not reduce the requirement of practicing law for an assistant down to nothing?

Mr. Dennis Yes, sir.

Mr. Arnette Don't the assistants handle cases that the district attorney handles at the same time.

Mr. Dennis Yes, but under his supervision.

Mr. Arnette Doesn't it seem kind of odd to you that you would introduce an assistant who is qualified to handle any criminal case down to no experience at all and yet, you raise the requirement for the district attorney himself?

Mr. Dennis No, sir. Once you accept the fact that a man should have practiced law for five years before he becomes a judge, I think that you should then follow through and say that he should practice five years before he becomes a district attorney. Perhaps if you are going to have men only one year out of law school as assistants, perhaps you should require a greater amount of experience in the head man in the office, the district attorney.

Mr. Toomy Judge Dennis, had the committee reconsidered its position on this age since the convention adopted the provision in regards that the attorney general must have practiced law for four years? I believe the convention lowered that from five to four years in regard to the attorney general.

Mr. Dennis It's still five I'm informed. In any event we have not reconsidered this matter since we reported the proposal to the committee.

Mr. Pugh Judge Dennis, was there any reason for requiring the district attorney to be a resident and all of the judges to be domiciled in an area? Was there an attempt to draw a distinction between the two?

Mr. Dennis I hesitate to answer because I'm a little foggy on this, but I believe it was because of the problem peculiar to Supreme Court justices who must leave their homes and live in New Orleans, and allow them to maintain their domicile in the district from which they come. I hope that Justice Tate will correct me, but I believe that was the reason for the different treatment.

Mr. Pugh Of course, in addition to the Supreme Court all of the judges are required to be domiciled. I notice that the district attorney only need be a resident. I just wondered if there was a reason for that distinction other than what you have mentioned on the Supreme Court?

Mr. Dennis I know of no other reason for the distinction.

Further Discussion

Mr. Tobias Mr. Chairman, fellow delegates, I rise in support of this amendment. The present 1921 Constitution provides that a district attorney need only practice law for three years. This has not been a problem. Under our present draft an assistant district attorney need have not one day's experience. Being a district attorney entails a lot of power. It has a lot of power. Most of the offices in the state are near autonomous, completely autonomous. Three years has worked. The provision

for three years practice has worked in this state. Now, the attorney general we require five years for. He has to have practiced law for five years. But that's a statewide office. That can be justified on that basis, but on a local level three years is quite adequate. I urge you to adopt this amendment.

Further Discussion

Mr. Lanier Mr. Chairman, fellow delegates, I would ask that you support this amendment. Right now, the day after a young attorney is licensed to practice law in the State of Louisiana he can defend a capital case. That is a pretty serious responsibility. So it would seem to me if there is no objection under our law in that circumstance, except with reference to the indigent defense board, then it would seem to me that there is no reason why a long enough time to require him to practice before he can be an assistant district attorney, who would be under the supervision of the district attorney. For that reason I would urge the adoption.

Thank you, Mr. Chairman. If there are any questions, I'll be glad to try and answer them.

Question

Mr. Derbes Mr. Lanier, correct me if I am wrong, but isn't there a requirement in the Code of Criminal Procedure which in fact does require that an attorney representing a person charged with capital crime be...

Mr. Lanier My understanding of the law, Mr. Derbes, and make an exception in my comments, that with reference to an indigent defense board... in order to get an appointment under the indigent defense board system, you cannot be the main counsel of record unless you have five years experience. You can be a co-counsel but you cannot be the main lead counsel, unless you have five years experience. With reference to hiring a man's own attorney, a man has an absolute right under the law to hire whomever he wishes to defend him in any case. I know of no prohibition in Louisiana law against a young attorney coming out of law school and defending a capital case.

Further Discussion

Mr. Kilbourne Mr. Chairman, fellow delegates, this provision was placed in the proposal by the committee after some thought and some discussion and some testimony. I would like to say this. From my own experience, I really think that a district attorney has to make really some very important decisions affecting people's liberty, their property and their rights. I just cannot think of anything better than experience. He has to make the same kind of decisions that a judge makes very often. I believe it would be a wise thing to have... to keep the provision as it is in the committee proposal at five years. I certainly have nothing against young men becoming district attorney. In fact it's a young man's job, but I really think that five years would be a wise thing to keep in there. I urge the defeat of this amendment.

[Previous Question ordered.]

Closing

Mr. Arnette This will be very short. I'd just like to point out the convention, first of all you have reduced the age requirement for the governor from thirty down to twenty-five, for the lieutenant governor from thirty to twenty-five, for the other elected officials you have reduced the age. You have reduced many age requirements and I think this is a good step forward. Yet, this committee proposal has increased, not remained the same, increased the practice requirements for the district attorney. The committee chairman himself admitted there has been no problem with the district attorneys in the past under the present provision which is three years. I think we ought to keep it at three years. This amendment would do just that.

35th Days Proceedings—August 23, 1973

I urge your support for the amendment.

[Previous Question ordered. Amendment rejected: 51-63. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. De Blieux]. On page 11, line 23 after the word and punctuation, "duties," add the following: "the district attorney shall have such powers and duties as may be prescribed by law."

Mr. De Blieux Mr. Chairman, I might say that since Mr. Gravel's amendments deleted the word "duties" that maybe we ought to add this after the Gravel amendments.

Mr. Henry Mr. Clerk, check and see if technically this amendment is correct. If it is not, let's see if we can technically make it correct.

Mr. De Blieux Mr. Gravel eliminated the word, "duties."

Mr. Poynter Let me check it. Just a second. I'll fix it for you, Senator.

Explanation

Mr. De Blieux Mr. Chairman, and ladies and gentlemen, at the present time in the section there are no duties prescribed for the district attorney whatsoever. To be sure that we have the right... that is that the legislature will have the right to set his duties. They cannot deny that right. I just added that one clause, it's more in the nature of a technical amendment, to the effect that "the district attorney shall have such powers and duties as may be prescribed by law." That's all this does. I think it would therefore, set the way for the legislature to tell him what he ought to do and where he ought to conduct his business. It's a technical amendment.

Question

Mr. Denney Senator De Blieux, I understood when we went through the Legislative Article that anything that the legislature wasn't prohibited from doing they had the right to do? So do you conceive that this amendment is actually necessary? In other words, doesn't the legislature have the right to prescribe the powers and duties of a district attorney?

Mr. De Blieux Well, I would certainly think that this would mandate the legislature to prescribe his duties for him. It's more in the nature of a mandate to the legislature to prescribe his duties, and it will not be left hanging in the air as to where his duties and responsibilities will come from.

[Previous Question ordered. Amendment rejected: 42-44. Motion to reconsider tabled.]

Amendments

Mr. Poynter Amendment No. 1 [by Mr. De Blieux]. On page 11, line 20, after the word, "election" and before the word "shall" delete the word "and," and insert in lieu thereof a comma ",".

Amendment No. 2. On page 11, line 21, after the word, "election" change the period to a comma and add the following: "and shall not engage in private practice of law."

Explanation

Mr. De Blieux Mr. Chairman and ladies and gentlemen, this is a very technical amendment. I believe here in East Baton Rouge Parish, and I'm sure there may be some other districts as well, that the district attorney whose salary is more than that of judge. Now, we do not permit any judge to practice

law. But we have permitted in the past, district attorneys to do so. I just feel like under the circumstances, particularly where the district attorneys have assistants, after assistants, after assistants... the very nature of the types of cases that come before them in which there may be civil cases of damages, etc. in that way. He should not be in a conflict of interest in that respect and therefore, he should not engage in the private law practice at all. It may somewhat sometimes color his actions in the way that he prosecutes a criminal case because of the possibility of a civil action drawing out of it. Therefore, I urge you to adopt this amendment and let's treat the district attorneys who are elected for the same term, drawing sometimes more money, as the same way we do the judges. I ask you to concur in the amendments.

Question

Mr. Stinson Mr. De Blieux, does this have the endorsement of the District Attorneys' Association?

Mr. De Blieux I am sure it would have the endorsement of the Judges' Association, Mr. Stinson. I don't know about the district attorneys.

Further Discussion

Mr. Jack Mr. Chairman and gentlemen, this is a serious thing. This is an excellent amendment. Now, you have district attorneys in Louisiana that make thirty thousand dollars a year. Will you get some quiet, please, Mr. Chairman?

Mr. Henry Mr. Jack, I'll get you the mike, but I can't make them listen. Just a minute.

Mr. Jack Well I wouldn't want to be impolite and say "shut up," but I sure would like to be heard. I'll answer any question when I finish.

Now, ladies and gentlemen, this is a serious amendment. It's not directed at any person, but a district attorney is well paid in this state. To my knowledge, some of them make as high as thirty thousand dollars a year. That is thirty thousand with no overhead. That is with a fine retirement system. Now, I say to you, when you let a district attorney practice law, you are opening the doorway for all kind of things to happen. For instance, suppose the district attorney, and lots of them do, they handle damage suits. The criminal end of those auto wreck cases come to the district attorney's office. They are not in a position to take part in the civil end of an auto accident where you ought to be checking out to see if somebody ought to be prosecuted in the criminal action. Now I'm not going into personalities, but all over the country there's been a lot of people figuring that it ought to stop. I don't know what happened to the Alabama bill they had in their legislature to stop district attorneys from practicing law. Now you have in here they can't practice criminal law, but it's just as bad for them to practice civil law as it is criminal law because sometimes it winds up doing the same thing. If they are employed in a damage suit and the accident is a question of whether it's going to be somebody ought to be prosecuted criminally, there's a temptation not to prosecute the person if that person will cooperate with them. It's not fair to place them in that position. I could go on and show where, by this type of thing, it's gotten prosecutors in trouble throughout the United States. Now I know, the district attorney is the emperor in a lot of parishes in south Louisiana, and I don't know whether Mr. De Blieux's amendment will get to first base. But I'd feel remiss in my duties if I didn't get up here and say something about it. When people are paid these excellent salaries for full-time duties as a district attorney to protect the peoples' rights in that criminal district court and the attorneys for various boards and all that, that's what they ought to be doing instead of having a big civil practice. This is a good amendment and I hope you'll vote for it.

Further Discussion

Mr. Pugh Mr. Chairman and fellow delegates, I rise in favor of the amendment. I recognize in doing so that perhaps there are some parishes who would not pay thirty thousand dollars to a district attorney. I, therefore, recognize that this alone is not the answer, that perhaps there should be some additional provision relating to either a monetary amount or based upon population of the area that the man represents. However, predetermining those questions, since they are not before you, I do rise in favor of the amendment and I think that its passage will go a long way to resolve some of these other problems we've been debating all day long.

Further Discussion

Mr. Hayes Mr. Chairman, ladies and gentlemen, I guess more out of confusion than anything else, this Judiciary Article has confused me more than anything I have ever heard by anyone. It appears to be really a private social club. There are all kinds of requirements that appears to keep the average citizen out of everything. They want the attorney general, number one, they've got to practice law for so many years, they've got to go to school so many years, they've got to hang out a shingle which guarantees nothing, you've got to hang it out for five years whether you practice law or not. All of these things, pretending to the people that you're guaranteeing them something, when, in fact, the district attorney gets his practice on the floor practicing. That's where he gets his five years practice. It isn't that he practiced out there. You might have a shingle out there hanging for five years and never get a case. When you really get your five years is when you're on the floor. So they defeat it three years when you could have gotten five years practice, and that's what you need. That's the reason why the people require five years for an attorney to practice against a district attorney, is because a district attorney has been practicing for some time. Now we come up with all kind of requirements. We don't want the judge to practice the law. We give him six years, they cut everybody's term down to six years. You have an honorable person and I don't see why you should prohibit him from practicing if you're only giving him six years. What is he going to do when you kick him out? We got rid of our district attorney in the last election and what do we plan for him to do now? So, okay, we act as if when you elect a person, you elect him for life. Well, it appears that way, but it's not true if you only elect the person for six years. He serves six years, when he gets out of office what is he going to do? Now I'm not a lawyer, but I can't understand how the lawyers treat each other like they do. A person who goes to school all these years and then he comes out and they say you serve in the D. A.'s office six years and then you say you're going to kick him out of the profession forever, I don't understand it. You all got to keep in mind that all these various commissions and various boards he serves six years, you should just throw him out for life. You should let him practice. I think he ought to be ethical enough not to practice under himself. So this is why I don't know whether I'm for.... I suppose I would support this amendment to let a person practice. I think he should be ethical enough to know where to practice, and I think a judge should know where to practice also.

Further Discussion

Mr. Avant Mr. Chairman, fellow delegates, I speak against this amendment. Now, I want to tell you that this was a matter that was specifically considered by the Committee on the Judiciary. I hesitate to say that this is what the committee thought. All I can tell you is what I think they thought and what the reasons for this being written as it was are. Point number one, in many of the judicial districts of this state where you have a district

attorney, you do not have the workload on that district attorney that would require a salary which would be an appropriate salary, because the workload is simply not there. For that reason, if you prohibit a district attorney in those areas of the state, particularly some of the rural areas, from practicing law, you're going to find that competent, qualified attorneys will not seek the office of district attorney. So what it simply means is that if you put this in, you are going to raise the cost to the taxpayers of the state because they are going to have to come up with a salary which will justify the right, qualified man to seek this office. Now, in the second place, as far as any abuse of the system is concerned, it was my understanding of the consensus of the Judicial Committee that in those cases where there is abuse, that there is ample authority and responsibility and power for the Supreme Court, through the disciplinary procedures that exist now, to do something about it. So those are the things that we did consider, plus we are aware of the fact that in the larger metropolitan areas where there are full caseloads and much, much work to be done, that the district attorneys don't have time to practice law and don't practice law. Another consideration that we considered was the fact that if it is a problem, that there's nothing in this language that will prohibit the legislature in fixing the salary of a district attorney in a given district where they feel that it's a full-time job, that he needs to be in the district attorney's office all the time, and because of the salary and the workload he should not be practicing law. There is nothing to keep the legislature, when they fix that salary, from saying but that this district attorney shall not practice law. So those are the things that we considered. We feel that the amendment... I feel, and I think I speak for the consensus of the committee, that this amendment is an ill-advised amendment and I ask you to vote against it.

Questions

Mr. Chatelain Delegate Avant, aren't districts equated with people? Aren't districts designed to take in so many people?

Mr. Avant No sir, not necessarily. I'll give you an example. The Twentieth Judicial District, I believe it's the twentieth, but it is composed of East and West Feliciana, as I told you the other day, and I think they have in that entire district, about thirty or maybe forty thousand people and East Baton Rouge Parish is a judicial district, the Nineteenth Judicial District, and we have approximately three hundred and fifty thousand people in that judicial district. So, the size of a judicial district is not necessarily equated with population.

Mr. Chatelain One more question, please. You would be willing for a district attorney, on the one hand working for the public, on the other hand he could be working for... practicing law as a private attorney. Is that correct?

Mr. Avant Well, legislators do that, city councilmen do that, many public officials do that, Mr. Chatelain.

Mr. Chatelain But you must remember the district attorneys... sir, I mean the attorneys have they have assistants for these district attorneys. They have assistants...

Mr. Avant They have a what?

Mr. Chatelain They have assistants.

Mr. Avant Assistants?

Mr. Chatelain Where the population is high enough for it. Very few districts attorneys don't have assistants, sir. Is that correct?

Mr. Avant I think some don't. They are probably few in number.

Further Discussion

Mr. Burson Mr. Chairman, fellow delegates, I take the floor with some reluctance here because it is certainly obvious that my remarks may be interpreted as being motivated by a personal interest. However, I am an assistant district attorney, not a district attorney, and I do not read this amendment to in any way affect the situation of assistants. It seems to me, however, that I would be remiss in my duty as a delegate if I did not express an opinion which is grounded in my own experience. That opinion would be this. That there are, certainly, valid justifications for differentiating in the treatment of issues like this between rural areas and urban areas, and we cannot make that kind of differentiation in a constitutional treatment which would be a blanket prohibition against the private practice of law for all district attorneys. It seems to me, as Mr. Flory has previously pointed out, that this is an essentially matter that can and should be handled by statute. Moreover, I would submit to you it seems to me that this would be unfair by a floor amendment that has not been considered by the Committee on the Judiciary as part of their proposal, so that testimony could be taken from the parties who are concerned, as testimony has been taken from parties who have been concerned on other issues. In fact, we've even heard people speak here on the floor of the convention, that this would be a restriction, and would be an unconsidered action. Now I would have to say that I am most disturbed by some rather direct comments that have been made alleging improper conduct on the part of some district attorneys who, of course, remain unnamed. Now it seems to me that that's the kind of comment we can't, where you say that all district attorneys are subject to improper influence because they practice law, that can be said in a scatter-gun way about all legislators. You know, and I would never say that kind of thing because I think it is unfair to ever brand a class of individuals in that way. If you've got an indictment to level against an individual, do it as an individual, don't tar everyone who is doing his duty with the same brush as you do one individual that you happen to know about who is not doing his duty. I submit to you that in my experience operating in the rural areas, that it would be very unfair to prohibit a group of public officeholders from handling even private family business, such as successions, estates... I want you to realize that if you pass this amendment which says they shall not engage in the private practice of law, that you mean that if the district attorney in my parish has a grandmother who dies, that he can't handle her estate. Now if that's what you want to do, well, vote for that amendment. But I suggest to you, that the problems that have been raised by the proponents of this amendment can be well handled by statute and should be handled by statute. I hope you will vote against this amendment.

Question

Mr. Flory Mr. Burson, in following your statement, do I understand you correctly that if you pass this amendment then, supposedly, and I'm sure it would follow one to prohibit the assistants from practicing law, that you're actually talking about in the way of increasing the salaries of the district attorneys and the assistants and also their retirement, that amount that the state pays, you're talking about cost to the state somewhere in the neighborhood of a million dollars?

Mr. Burson I would think you'd have to at least double these salaries and it certainly would come to that.

[Motion for the Previous Question on the entire subject matter rejected: 16-84.]

Further Discussion

Mr. J. Jackson Mr. Chairman, ladies and gentlemen of the convention, I'll be very brief because

I think if we would just kind of think for what Mr. Jack has said, that he laid the foundation for a support of this amendment. Someone raised the question that legislators and councilmen are allowed to participate in the practice of law, but they also failed to mention to you that as legislators, we cannot, by code of ethics and by rules of the House and the Senate, cannot vote on legislation that we are personally going to gain from. I want to also suggest to you that this has only been allowed to continue because persons in the past have not decided to challenge it. I think that it has been brought to light and this is the forum by which we ought to make the necessary changes, not against the D. A.'s but primarily in the interest of the taxpayers. I could foresee, as Mr. Jack mentioned, that you could have conflict of interest, conflict of interest that would arise in cases whereby the district attorney, at one point would be the prosecutor and in another division of the courts could be a defendant. At the same time, for those who are concerned about the sanctity of the judiciary and keeping some sort of independence and diminish and decrease the kinds of political ramifications, then you ought to be in favor of this amendment because, at present, if you allow district attorneys to practice law, at the same time serve as chief prosecutor for a particular parish, then it allows for the introduction or the increase of political manipulation. Finally, let me in closing just suggest to you that there have been some concern about taking away the powers of the attorney general or diminishing his effect upon district attorneys. I want to seriously suggest to you, and I don't think I could say no more than what Mr. Jack and other proponents of this amendment have said, but I want to seriously suggest to you that the district attorney's office ought not to be allowed to continue to practice law and at the same time receive, in effect, dual compensation which ultimately may result from taxpayers as being the prosecutor or an individual taxpayer as being the defendant in a lawsuit. I would urge your favorable adoption of this amendment.

Chairman Henry in the Chair

Further Discussion

Mr. Kilbourne Mr. Chairman, fellow delegates, I rise in opposition to this amendment. Now I recognize that this is a problem and I certainly admit that there is merit to what the proponents of this amendment have said. When I was district attorney it was a problem, but I ask you to remember this, that this would keep a district attorney from even so much as examining a title to property in his spare time. In the rural areas, it would certainly be a considerable problem, and I feel that if this amendment is passed that there will be a clamor for increased salaries for many district attorneys, especially those in the rural areas who are dependent and have to have their salaries paid by local police juries which can only be done by the authority of the legislature. Now there are, for instance, many city judges that practice law. I don't know where this thing would stop, but I really feel that this is a statutory matter. The legislature could, at any time, prohibit district attorneys from practicing law, but I feel that we have not done so. I believe, Mr. De Blieux, in the legislature, has on occasions introduced such measures. They have not passed and I would ask that this question not be... such an amendment as this not be passed by this convention on such short notice without any more consideration than we have had time to give it. If the legislature, after consideration and in their wisdom, decide that they want to stop the district attorneys from practicing law and decide that they want to raise their salaries to compensate for their loss that the district attorneys, particularly in the rural areas, would suffer, why that would be the thing to do. I really think that this will create some serious problems and I just feel that it ought to be left to the legislature. If they want to do it, why they can do that. But they would have to be prepared, at the same time,

to increase the salaries of these district attorneys. It is a serious problem and I certainly don't think we ought to go off half-cocked on it, which we would have to do if we pass this amendment today. I'll answer any questions.

Questions

Mr. Shannon Mr. Kilbourne, you made reference to the district attorney, just now, in his "spare time." I thought a district attorney ran for a full-time job as a district attorney. Why should we have spare time?

Mr. Kilbourne Well it so happens that in the rural areas, particularly, they do have spare time, and I don't think that is true in the large urban areas where they have very large offices as, for instance, here in Baton Rouge. I don't think they even have time, I don't think they have any spare time. I don't think any of them do practice law, but they are paid a normal salary which is not the situation in the rural parishes.

Mr. Shannon Do you have any parishes in the state where they do not have an assistant, one or more?

Mr. Kilbourne I don't believe... I don't think there are any parishes in the state where the district attorneys do not have at least one assistant. But I ask you to bear in mind this, that there has been a vast increase in the...

Mr. Shannon Yet you refer to them as "spare time." That's what I wanted explained to me, this "spare time."

Mr. Kilbourne Well I'll explain it this way. When I was district attorney, at times I worked at night and I figured that was my time and I wasn't on state hours.

Mr. Rayburn Mr. Kilbourne, if I read this amendment right, in the event, I don't think it's got a chance to be adopted, but in the event it is adopted, my D. A. just got reelected a little over a year ago and if this is adopted by the people, that would mean for the next five years, he ran for a six year term, that he couldn't practice law. When he ran for the office, he ran with the full understanding he could practice law. Am I correct?

Mr. Kilbourne You are absolutely correct, Senator Rayburn, and I think that's a real good point. For all of those who were just elected under the present situation where they can practice law if they can find the time.

Mr. Warren Mr. Kilbourne, what is the minimum pay for district attorneys? What is the lowest paid district attorney's salary?

Mr. Kilbourne The state pays the district attorneys, when... I was, I just can tell you what I was paid. I don't know about the others. The state paid me fifteen thousand...

Further Discussion

Mr. Gravel Mr. Chairman and ladies and gentlemen of the convention, just to answer Mrs. Warren's question, the state pays district attorneys now, twenty thousand dollars a year, if that has any particular bearing on this issue. I'd like to make it very clear that in principle, I certainly support the concept behind Senator De Blieux's amendment. Not only that, so far as it would apply to district attorneys, but insofar as it would apply to assistant district attorneys. I don't believe that we should, however, put this kind of a provision in the constitution. If the principle, which as I say I think is a good one, does become, and I hope someday that it does, does become the law of the State of Louisiana, it's going to have to come about as a result of a full comprehensive legislative study of the role that is played throughout the state by each district attorney, and by the assistants that

are authorized by law. We're going to have to take into consideration jurisdiction, salaries, retirement benefits and whether or not it's feasible to get district attorneys in certain parts of the state and assistants in certain parts of the state, particularly in rural areas, who can comply with a mandate from the legislature that they shall not engage in the private practice. We're going to have to make sure that the district attorneys and the assistant district attorneys, if this restraint and restriction is put on them, is adequately, are adequately financed by the legislature. So I agree with Mr. Jack and with Mr. Jackson and the others who support this concept, but I certainly can't agree that it should be in the constitution. Senator Rayburn has made a very excellent observation, and that is that this would be unfair to those district attorneys who have been elected to office, to those throughout the State of Louisiana who ran for office under the impression that they would have the right to practice law. Hopefully, the same kind of support that I think may exist with the delegates here will be maintained in some effort to get the legislature to implement this concept. I urge, only for the reasons stated, that the amendment be rejected, but not that the cause be terminated.

Questions

Mr. Jack Mr. Gravel, while you haven't served in the legislature, you are familiar with it.

Mr. Gravel I've been there, yes sir.

Mr. Jack Isn't it true that the district attorneys have the most powerful lobby and the legislature would never pass any law like we are asking here, and it's been before them?

Mr. Gravel Mr. Jack, I don't think that with the kind of legislature we've got now that that's necessarily true. No, I can't agree with that.

Mr. Jack When did we get it?

Mr. Gravel Principally, I think, from the single member district change that was effectuated just recently.

Mr. Jack One other question. I think some statements were made incorrect by a speaker a while ago. Isn't it a fact that on all district attorneys now, the state pays twenty thousand? All right, I want everybody to hear that loud and clear. Every district attorney gets twenty thousand from the state.

Mr. Gravel That's correct.

Mr. Jack So the people that say some of them get just ten thousand a year all total, they are wrong. Isn't that right?

Mr. Gravel You are absolutely correct. Let me say this... let me say this... The district attorneys get twenty thousand dollars from the state, and I don't think there's any question but that they get some additional amount, and it varies from area to area, from the local governing authorities.

Mr. Jack That's right. In other words, they get in addition to that twenty thousand, they get from the police jury an appropriation, from the parish.

Mr. Gravel Every one of them to my knowledge. Thank you.

Mr. Jack My heart bleeds...

Further Discussion

Mr. Roy Mr. Chairman, ladies and gentlemen of the convention, I rise in support of this amendment. I don't believe that justice is served when there is any indicia of money involved at all. Now let me give you the history of district attorneys. Many years ago district attorneys got a commission,

actually, on the number of people they convicted and the amount of fines that were brought into the parishes. Finally, after years and years and years of this abuse, the legislature decided to pay them a living wage. Twenty thousand dollars free and clear of library books, typewriters, secretaries, and even investigators, is a lot of money sometimes. I know of no district attorney that needs to have a civil practice going. What does that breed? It breeds a lot of conflict of interest cases. It breeds of cases where the district attorney happens to be consulted by a woman to represent her in a divorce claim against her husband on a civil matter, and subsequently, the husband finds that he has been charged with criminal nonsupport on the criminal side of the court. I know there is a conflict of interest and I'm sure Mr. Avant is going to say isn't that unethical? Shouldn't he not do that? The answer is yes, but it's done. Until the attorney for the husband, if he gets one, happens to file a motion to recuse the district attorney, then he may proceed. But sometimes the recusation of the D. A. takes place on the criminal side because he can't serve both masters. He can't serve justice on the criminal side, or justice is best served when justice is done by representing the state against the husband. He can't serve his client of course, who has an interest in the outcome of the case. So if he recuses himself, then maybe you'll have to get someone else to represent the state in the criminal proceedings because the D. A. has chosen to select the civil side of it. Now there's no need for this rhetoric about not enough pay from the state. Several years ago, the Thirty-third Judicial District Court was asked to fix this state. The D. A. in that parish, I understand, well naturally makes twenty thousand dollars from the state, plus whatever the legislature gives him. There is an assistant there. I know of no parish that doesn't have an assistant. Avoyelles Parish has now, two assistants and the D. A. in 1960 to '66 it had one D. A., and it's got the same population. Maybe there are more cases. Maybe they're having to defend the school board more, I don't know. But it appears to me that if you're paying assistants at least a thousand dollars a month, that you could live that in with what the D. A. is making and give him a salary that would allow him to be full-time, just like a judge is full-time. If he's got extra time because he doesn't have enough D. A. work to do, then he can go fishing. But he need not get in the conflict that necessarily arises as a result of being able to represent both sides. So I rise in support of this because the issue is justice. The issue is whether a person can really serve two sides. The D. A.'s in the big cities don't need this and the D. A.'s in the country don't need it if they get the salary that they are getting plus, instead of having an assistant who does really just a little extra work that the D. A. could do himself, he could be making the money. I'll yield to any questions.

Questions

Mr. Avant Mr. Roy, in this example that you gave a while ago, isn't it a fact that if that was proven and not just rumored or insinuated, that the district attorney would also, most likely be disbarred?

Mr. Roy No, it's not a fact. He has to make a choice. It's a question of ethics, and he has to recuse himself. Mr. Avant. Look, I know of too many; it's not done.

Mr. Avant All right, now question number two. Isn't it also a fact that there's nothing in the world that would prohibit a local...

Mr. Henry The gentleman has exceeded his time, Mr. Avant. I'm sorry.

Explanation of Vote

Mr. Foyard Mr. Chairman and fellow delegates, my remarks will be very brief. Although I was nominated to this podium by Delegate Anzalone, I did

not choose to come up here and speak in favor of this amendment. However, I'm not going to speak against it. My main purpose in rising to the podium is to ask that the Chairman instruct the Clerk, when the roll is called on this, to register me as abstaining, because I do not choose to either vote in favor of or against it. I have no personal interest. I would urge that the delegates of this convention, when items come up that affect them personally, they do the same. But let me tell you a little bit about my experience in my short time as assistant D. A. Now I've been appointed now for some four or five months and I have not had any flow of gold into my office. As a matter of fact, I consider it more than a full-time job. I spend more than eight hours a day as assistant D. A. when it's averaged out. I further submit to you, that if you want to govern what do I get to do? I get on a basis of a forty hour week, you better multiply that by about two or three times. As far as the salary paid district attorneys, twenty thousand a year, sure they get benefits from the police jury, from other sources, but I don't have any typewriters, and secretaries, and cars, and income of this nature in my office. That comes out of my office operating expense account. Now if the state wants to pay me for that, that's fine, and I would probably choose to serve as assistant district attorney if I was compensated for the time that I spend and for the expenses also, that I have to pay to keep my office going. I do not understand exactly what the proponents of this amendment are trying to do other than the fact of forcing the state to get on a professional system by which district attorneys would be paid comparable to the work that they performed. Now if the state is ready for this, that's fine. I'm going to let the delegates of this constitution make a determination of this issue. But I further submit to you that you have to reach a happy ending here or are you going to get the assessors from owning property? They levy property taxes against property. So you have to try to draw an analogy here. In my experience as assistant D. A., we represent the school board, the police jury and we prosecute criminal cases. I have not had the experience that Mr. Roy mentioned. Perhaps as time goes along, maybe I'll encounter that, but I hope not. Because I do not allow myself or anyone else in my office to practice law or perform any duty of my office that would conflict with the district attorney's work. I can't imagine a district attorney who has been elected by the people allowing this to happen. As a matter of fact, you have law firms which have assistant D. A.'s that are appointed in a particular law firm, maybe one member will be an assistant D. A., and it's my understanding that the entire firm is prohibited or at least on their own merits, do not practice any type of conflicting interest work with the D. A.'s office. So I haven't run across this. I feel sorry for Mr. Roy and the unfortunate experiences that he must have suffered to make him get up here and say what he did. But I would ask that each delegate review this amendment and if you want to carry out this theme throughout the constitution, I would say that it would be a real good theme. As you know, I proposed an amendment to make legislators be paid on a full-time annual salary. Also, I proposed that we could back, perhaps, and clear up the proposition that where some city judges can also act as judge and practice law. So let's carry it on through. In my closing remarks, Mr. Chairman, again I would like to ask that the Clerk record me as not absent, but as abstaining from this vote. Thank you.

Point of Order

Mr. Nunez After ten hours in here you get a little woozy and a little incoherent. Is this the same amendment that you had ordered the previous question, no objection. Mr. Jack said way in the back he hadn't spoken and wanted to speak, and then somebody resurrected this thing from the dead, and we are still on it? If this is the same one, I'm a little lost... my mind isn't working.

Mr. Henry Yes sir, that's the same one.

Mr. Nunez Why don't we bury it once and for all. Does it take the previous question to get to the vote?

Mr. Henry Yes sir, it does.

Motion

Mr. Nunez Well I move the previous question, if there are no further speakers.

Mr. Henry There are two other speakers, Mr. Stinson and Justice Tate. Do you insist on your motion, sir?

Mr. Nunez No, if there are others, but I think it....

Mr. Henry Mr. Perez, why do you rise?

Mr. Perez I would just like to suggest that possibly these speakers might want to waive the right to speak and then we could move the previous question.

Mr. Henry Mr. Stinson?

Mr. Stinson I've been trying to ask a question. I don't want to speak.

Mr. Henry I'm sorry. I thought you wanted the floor.

Mr. Stinson No. I want to ask a question. I don't care about speaking on it.

[Previous question ordered.]

Closing

Mr. De Blieux Mr. Chairman and ladies and gentlemen, I just want to tell you, there are district attorneys in the state of Louisiana that are making more salaries than the judges under which they have to prosecute their cases. There is not one single district attorney in the state of Louisiana who does not have an assistant and I tell you this, if he's got an assistant, he should be a full-time district attorney. If he's got an assistant, he shouldn't have the time to practice law on the side. Let me tell you, the lowest paid district attorney in the state of Louisiana still makes, in the lowest places I'm sure that's way out in the rural sections, at least \$23,500 and up to \$37,400. That's what the salary of your district attorney is and if any of you want to know what it is in your judicial district, just ask me the question and I can tell you. As long as they are making that type of money, as long as they have assistants, why treat them different than you do the judges under which they prosecute their cases. I want to tell you one thing else. They are already going to retire and pay up their benefits of retirement on that pay, so Mr. Flory, don't worry about it increasing their retirement. It's not going to do that. They are already getting the maximum amount now. One thing else I want to tell you before I close this matter. You know and I know as long as the district attorney has clients appearing before him in matters to be prosecuted, he is going to be prejudiced and biased in that respect. He has to be, so why not eliminate that conflict of interest. Yes, it could be taken care of by the legislature, but I doubt if it will. This is the place it ought to be taken care of and I ask you to vote for this amendment and do what your conscience knows that we ought to do here at this particular time. Let's don't play favorites. Let's put the district attorneys on the same basis that we do the judges. I ask you to vote for this amendment.

Questions

Mr. Gravel Senator De Blieux, did I understand you to say that the lowest paid assistant district attorney made \$23,000 per year?

Mr. De Blieux No, I said the lowest paid district attorney. The lowest paid district attorney in the state of Louisiana makes \$23,500 per year. That's his salary. It goes from \$23,500 up to \$37,400.

Mr. Gravel I misunderstood you. I'm sorry.

Mr. Nunez Senator De Blieux, you are a public official. You are in the legislature. What is your salary? What do you make annually?

Mr. De Blieux My salary. What do you mean, as a public official?

Mr. Nunez Yes, sir.

Mr. De Blieux About the same as you do, Senator Nunez.

Mr. Nunez Well I'm asking a question, if you would like to answer it.

Point of Order

Mr. Stovall I think that is a personal question that Senator Nunez really doesn't have the right to ask concerning Senator De Blieux.

Mr. De Blieux I might say this. If he wants to find out what I make, he can go down to the Clerk of Court's office. I file my income tax every year.

Mr. Stovall My point is, I don't think he has the right to ask that kind of question of the Senator.

Mr. Henry Well he doesn't have to answer it, you know, so proceed.

Mr. Nunez Senator De Blieux, I asked you as a public official...we are knocking around...it's been mentioned how much district attorneys make and assistant district attorneys make, legislators. I'm not asking you personally, what do legislators make? I think it is public records, Mr. Stovall, and I'm just asking a question. We've talked about everybody else's salary. I don't know why we can't talk about legislators. Is it sacred?

Mr. De Blieux I believe that legislators will average about \$9,000 per year, between \$9,000 and \$10,000.

Mr. Nunez Question No. 2, you are an attorney? You practice law?

Mr. De Blieux Yes, I do.

Mr. Nunez How much time do you spend as a legislator?

Mr. De Blieux I spend a whole lot more than I get paid for.

Mr. Nunez That's questionable.

Mr. Chehardy Senator, wouldn't you say that the whole concept you have may be all right, but it is an issue of whether or not a man can afford it? Now in my particular case, the day that I took the oath as assessor eight years ago, on that day I gave up the practice of law because I could handle the job without the practice. If I didn't have extra income, it would have been a mighty tough thing to do, so I think that what you are not looking into is, you may have a good concept, if a man can afford it. That's what I'm asking you.

Mr. Henry The gentleman has exceeded his time.

[Resumed debate ordered. Amendments re-recorded. 14-76. Motion to reconsider tabled.]

Personal Privilege

Mr. Stovall Mr. Chairman, I simply wanted to

apologize to Senator Nunez. I misunderstood the question as he asked it a moment ago.

Personal Privilege

Mr. Nunez Maybe I just should explain. I didn't certainly mean to be personal with Senator De Blieux, but I thought since we were comparing and everybody was saying what everybody else made, it is public record what legislators made and I just tried to make the point that legislators work other than being legislators and I just couldn't see why other people couldn't.

Point of Information

Mr. Anzalone Mr. Chairman, as a point of information, I would like to ask the Judiciary Committee, according to the article that they have written, do we not have a district attorney and we have not given him anything to do.

Mr. Dennis Yes, sir. This is substantially the same provision that is in the 1921 Constitution, under which the district attorneys have operated very effectively for fifty years.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Kilbourne, et al.], on page 11, line 14, after the word "qualifications" add the words "duties and functions". Amendment No. 2, on page 11, line 16, after the word and numeral "Section 28" add "(A)".

Amendment No. 3, on page 11, between lines 23 and 24, add the following: "(B). A district attorney shall have charge and control of every criminal prosecution in his district and shall perform such other duties as may be provided by law."

(C) The district attorney shall be the representative of the state before the grand jury in his district and shall be its legal advisor."

Explanation

Mr. Kilbourne Mr. Chairman, fellow delegates, it is a fact that we have provided, I think, for the duties of every constitutional officer except the district attorney. This matter wasn't considered by the Judiciary Committee at all and I really believe that it might be a good idea to have something in the constitution about what the duties of district attorneys are. That problem was discussed in the case that we have talked about many times, *Kemp vs. Stanley*, and the Supreme Court had to go looking all around to find just what the status of district attorneys are because the present constitution does not have such a provision. Now what this amendment provides is precisely what the law is, that the statutory law as to the duties of the district attorneys is, at the present time. I really don't feel that it is controversial but I have felt that way before and it was. Without any further talk by me, I will be glad to answer any questions.

Questions

Mr. Champagne Mr. Kilbourne, in view of what we just went through, and some people don't want you all to even practice law, aren't you afraid maybe they might do away with the job at all, if you keep bringing this up?

Mr. Kilbourne Well it is a bad time, I agree with you, but I hope that won't happen.

Mr. Kean Mr. Kilbourne, did I understand you to say that the language of this amendment is now in statutory law?

Mr. Kilbourne It is, Mr. Kean. That's substantially what is in the statutes at the present time.

Mr. Kean That's been the basis on which the district attorneys have operated over the years.

Mr. Kilbourne That's correct.

Mr. Kean Why do we need it in this constitution?

Mr. Kilbourne Well, I don't know that we do particularly need it, but they are constitutional offices and we've got them hanging there as constitutional offices without giving them any duties at all. I really think it would probably be wise to have something in there.

Mr. Pugh Is it not true that the existing Constitution of 1921 has a section providing that anything the district attorney can do, the assistant district attorneys can do. I pose that question...as you recall some time ago when I was at the mike, I objected on the premise that you state that the district attorney will represent the state before the grand jury. I have serious doubt whether or not an assistant can do it under this existing language. If we had put it in the constitution, would it not be preferable to indicate that the district attorney and his assistants shall do it?

Mr. Kilbourne I don't really believe that would be necessary because in whatever an assistant does, he is always acting for the district attorney and under his charge. I just thought it would be wise to have something in the constitution, Mr. Pugh. This may not be the best language in the world, but I thought it would be a good idea to have something in there and not just leave it vacant.

Mr. Pugh I have no quarrel about the presence of it in the constitution.

Mr. Fontenot Mr. Kilbourne, I think I understood you to say that this was somewhat of an oversight in your committee proposal. Is that correct?

Mr. Kilbourne As far as I can recollect at this time, it just was never discussed. We discussed so many things. As far as I am concerned, it was an oversight. I don't know about the other committee members. It really was an oversight as far as I am concerned because I do feel that there should be something in the constitution on that.

Mr. Fontenot So, in other words, if the committee would have taken it up and would not have oversights it, then possibly in the committee proposal there would be a section on district attorneys. Is that correct?

Mr. Kilbourne I feel that there is a possibility. I can't speak for the committee on that, of course, but I would have urged it if it had occurred to me. I'll be very frank with you, it did not occur to me.

Mr. Lanier Mr. Kilbourne, don't you think that this amendment might get us into the same problem that we had with the Kelly, Deshotel amendment, in that since it doesn't specifically provide that "except as otherwise provided" in Section 2, that these things would be true? Don't you think that gets us into the same conflict that we had with that amendment?

Mr. Kilbourne The problem with the Kelly amendment, as far as I was concerned, was that it had something in there about the district attorneys representing, with the attorney general, all these civil suits, was the question Mr. Avant raised, and it was completely unworkable. I don't see any problem with having this simple language here in the constitution. I may be wrong, Mr. Lanier, I'm not an expert on it. It's never been in there and I presume that is the reason we just never thought to mention it in the article, but I feel that it probably should be in there. Like I say, I might not be able to answer all your questions satisfactorily and I certainly haven't given it a lot of thought until the amendment came up, the previous one that was withdrawn by Mr. Kelly.

Mr. Lanier To expand on the point brought out by Mr. Pugh, which quite frankly I thought was a good

one, is it not true that in the present Code of Criminal Procedure it provides that the assistant district attorneys shall have the same powers as the district attorney, as are set out in the Code of Criminal Procedure in Title 16 of the revised statutes.

Mr. Kilbourne That is I think just a procedural matter because certainly the assistant district attorney could not act otherwise than he was instructed by the district attorney.

Mr. Lanier Then, would it not be true that if we provide in the constitution that the district attorney shall be the representative of the state before the grand jury, that unless we put that identical language in the constitution, that that Code of Criminal Procedure provision would be unconstitutional?

Mr. Kilbourne I can't answer your question. I don't think that it would, Mr. Lanier, but I may be wrong.

Further Discussion

Mr. Tate Mr. Chairman, fellow delegates, I hesitate to differ with my good and sincere friend, Dick Kilbourne, but I call to your attention that before our committee, it never occurred to Mr. Kilbourne or the other representatives, that you needed to spell out in the constitution, the duties of the district attorney, nor did it occur to the framers of the Constitution of 1921, who let us operate for fifty years without any undue constitutional complications through spelling out unnecessary detail. May I also point out for instance, should we go back now and say the judge has the duty to decide every case brought before him, and so on, and so go? Shall we go back and say one thing and another? That's the first reason I'm against it. I think it is unnecessary. The second reason I'm against it, I'm afraid of it. I'm afraid of it at this hour of taking in something and putting it in the constitution saying and that Mr. Lanier has pointed out some of the problems. "A district attorney shall have charge and control of every criminal prosecution." That's what our statute says, but what if it's ever interpreted to mean, for instance, I'm not going to talk about what we talked about earlier, about the difference between the attorney generals and district attorneys, because they are both excellent officials, etc., but what if it for instance means a judge in a district can't say, "All cases ready for trial, I ask you to set them for trial within three months, or six months, or nine months" and the district attorney says, "I don't have to prosecute. I can hold [hold] overhead. I don't have to nol-pros. I can try it or not try it, like I want." I think he has the right to nol-pros, but I think you are going to open up problems we don't need to put in the constitution. Let the legislature worry with those. It's worked for fifty years. It's worked. It's unnecessary and I'm afraid that it is going to raise legal questions we can't conceive of, adopting it at this hour. Therefore, Mr. Chairman, I respectfully rise in opposition to this well intentioned amendment.

Questions

Mr. Anzalone Judge Tate, I can understand your saying that you did not think it was necessary to include in the constitution powers, duties and functions of the district attorney, but could I ask you, sir, in Section 31, why was it considered so necessary to exhibit in detail the powers, duties and functions of the clerks of court?

Mr. Tate In my opinion, perhaps, it is not as necessary because we continued the provisions of the Constitution of 1921. Perhaps we shouldn't have. I would say for instance, we didn't say on the legislators, each legislator, each Representative and Senator shall study each bill to vote honestly and conscientiously, etc., etc. There are certain obvious things you just don't want to

clutter the constitution with.

Mr. Anzalone Judge Tate, you know you are not answering my question, aren't you?

Mr. Tate I will, if my good friend, Ambrose Landry, thinks fit. We would consider an amendment to that provision if and when it comes.

Mr. Perez Judge, in line with the same question, every other office that I see here, you've got the attorney general, his duties set up. You've got the sheriff with his duties set up. The clerk of court with his duties set up. I just can't understand why it is that you would oppose just this one.

Mr. Tate All right. For instance, in the case of the attorney general, his duties were set up by way of limitation, as we well know. Who are the other officers? The sheriff?

Mr. Perez The sheriff and the clerk of court.

Mr. Tate It was to work out responsibility for law enforcement within the parish, to clarify any differences in tax collection, and so on. There was a reason, a reason in every instance.

Mr. Goldman Judge Tate, why does the district attorney have to be a constitutional officer to start with? Why does he have to be in the constitution?

Mr. Tate Because he always has been, I guess.

Mr. Goldman I mean is that the only answer?

Mr. Tate No, no. I think he is a very powerful officer that should be recognized but you have a not completely frivolous point, Mr. Goldman.

Mr. Stinson Judge Tate, you refer to the fact that this might interfere with the district judge ordering the district attorney to go to trial. Well, I didn't know the district judge had anything to do with the trials of the criminal docket. That's prepared, isn't it, by the district attorney. The only time the judge comes into the picture is if the defense counsel files some motion, they want to force a trial. The district judge doesn't have anything to do with the trials on the criminal docket, does he?

Mr. Tate In the long view ahead, I think the legislature should have the power to provide for some control of the criminal docket.

[Amendment withdrawn without objection.
Previous Question ordered on the Section.
Section passed: 109-3. Motion to reconsider tabled. Motion to revert to Morning Hour No. 6 adopted without objection.]

INTRODUCTION OF RESOLUTIONS [I Journal 369]

INTRODUCTION OF PROPOSALS [I Journal 369-370]

Announcements [I Journal 372]

Point of Information

Mr. Rayburn I wonder if there is anyway we could get kind of a rough idea of what time we plan to adjourn tomorrow. Some of us would like to make a few plans. I made some last week and I couldn't live up to my word, and I did it honestly and sincerely. I don't want to get caught in that trap again, if I can help it.

Mr. Henry Yes, sir. We want to keep you as honest and as sincere as possible, and honestly and sincerely I'll tell you, we've got about fourteen or fifteen amendments to these sections. If we follow as we've

35th Days Proceedings—August 23, 1973

been going, we'll have probably twice that many before we get through. So we will work until late tomorrow afternoon.

[An announcement to the audience follows.]

Friday, August 24, 1973

ROLL CALL

[*S. delegates present and a quorum.*]

PRAYER

Mr. Abraham Our Father, we thank You for all Your blessings. We ask Your guidance in our deliberations today. May our minds be pure, may our hearts be pure, and may we do things that are beneficial to the people of this state. Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

INTRODUCTION OF RESOLUTIONS

[*1 Journal 171*]

RESOLUTIONS ON SECOND READING AND REFERRAL

[*1 Journal 173-174*]

PROPOSALS ON SECOND READING AND REFERRAL

[*1 Journal 174*]

REPORTS OF COMMITTEES LYING OVER

[*1 Journal 174*]

UNFINISHED BUSINESS

THIRD READING AND FINAL PASSAGE

Mr. Poynter Committee Proposal No. 21, introduced by Delegate Dennis, Chairman on behalf of the Committee on Judiciary, and other Delegates, members of that committee, which is a substitute for Committee Proposal No. 6.

A proposal making provisions for the judiciary branch of government and necessary provisions with respect thereto.

The status of the proposal at this time is that the convention has adopted as amended Sections 1 through 28 of the proposal, save for Section 18 which deals with juvenile courts and their jurisdiction, which was passed over, and Section 20, dealing with preservation of evidence, which failed to pass.

The next section is Section 29. Defense of Criminal Prosecution; Removal.

Reading of the Section

Mr. Poynter "Section 29. No district attorney or assistant district attorney shall appear, plead or in any way defend or assist in defending any criminal prosecution or charge. A violation shall be cause for removal."

Explanation

Mr. Dennis Fellow delegates, Section 29 simply prohibits a district attorney or assistant district attorney from defending or appearing in any respect in the defense of a criminal case. This represents no substantial change except to simplify the language from the 1921 Constitution.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Velazquez], on page 11, line 25, immediately after "Section 29" and before the word "no" insert "(A)".

Amendment No. 2, on page 11, between lines 28 and 29, add the following: "(B). Any defendant in a criminal proceeding, the results of which may be imprisonment, with or without hard labor for a term exceeding six months (and the amendment is incorrect there. Strike out the words 'and for' and insert in lieu thereof 'and/or') and/or fine of five hundred dollars or more, shall have the right to retain counsel and if indigent shall, upon his request therefor, be appointed competent counsel for his defense. The legislature shall provide for a uniform system for securing such

counsel, including compensation."

Explanation

Mr. Velazquez Mr. Chairman, fellow delegates, I feel that basic to the overall concept of justice and basic to the American concept of justice for all, is the concept of a fair and adequate defense. In the case where the defendant is indigent, an additional problem arises. Can the poor, the blacks, and the outcasts of society receive adequate representation? I don't believe anyone here wants to railroad anyone to Angola, but the law itself is a complex mechanism. Often an ordinary citizen isn't capable of coping with it. The need for adequate counsel should extend beyond an attorney dragged into it. This preserves the rights of the accused and it protects an ordinary citizen who might be accused of a crime which he did not commit. Notice that there is no attempt here to delete Section 29 as written. This is an attempt to give uniformity to a situation where now there is no uniformity existing. It is an attempt to allow the legislature itself to provide for a uniform system of securing such counsel, including compensation. If there are no questions, I urge your passage of this amendment. Thank you.

Questions

Mr. Burns Mr. Velazquez, don't you think that should be under the Bill of Rights?

Mr. Velazquez No, sir. I believe it belongs here as a balance to show that in Louisiana we try to balance justice for all. We try to balance the prosecution against the defense. That's why I place it here, Mr. Burns.

Mr. Burns I agree with your purpose, but I think it should be under the Bill of Rights.

Mr. Velazquez I don't feel that that's an adequate reason to vote against it. I feel that if this is not the precise spot, the arrangements can be made through our Committee on...our technical committee that's going to handle this thing under the good judge over there.

Mr. Pugh I note in here that you indicate that a defendant has the right to retain counsel. Is there anything to prohibit him from doing that?

Mr. Velazquez If you go on to read, the key point to this is that I want to give the legislature the authority to provide for a uniform system. I think the need is for a uniform system. Knowing that particular thing...it should be stated.

Mr. Pugh Was there any reason that you require that counsel be appointed only if the prospective sentence would be in excess of six months?

Mr. Velazquez Yes, sir, there was. I'm trying to keep out peripheral cases.

Mr. Pugh Do you know that on June 12, 1972, the United States Supreme Court held that they were entitled to a lawyer for indigent cases as well as those where there were felonies?

Mr. Velazquez I didn't catch that complete statement.

Mr. Pugh The United States Supreme Court held on June 12, 1972 that they were entitled to counsel on misdemeanor cases as well as the others.

Mr. Velazquez I think that's wonderful.

Mr. Denney Mr. Velazquez, the only thing that bothers me about this is the last sentence says, "The legislature shall provide for a uniform system for securing such counsel, including compensation." Now don't you think that refers to the entire first sentence? The way it's written it appears to me

that the legislature shall provide for securing counsel, including compensation, for all defendants whether they are indigent or not. I'm sure that was not your intention, was it?

Mr. Velazquez No, it was not.

Mr. Denberry But do you agree that it might read that way?

Mr. Velazquez I would be very happy to put in a technical amendment such as you suggested.

Mr. Denberry Thank you.

Mr. Warren Mr. Velazquez, would you mind me being coauthor on that amendment with you without me having to come to the rostrum to speak on it? I agree with you one hundred percent.

Mr. Velazquez Thank you, Mrs. Warren. I thought that you were a coauthor, I thought you and Mr. Jack were supposed to be listed as coauthors on this particular piece of material.

Mr. Poynter That is correct, Mr. Velazquez.

Mr. Duval Tom, is it inherent in your amendment that the legislature might contemplate some type of public defender law?

Mr. Velazquez I never try to tell the legislature what to do. I feel that in their infinite wisdom they will provide for a uniform system of securing such counsel, including compensation. Public defender laws vary from area to area. There is no uniform type of public defender system. I personally approve of the concept of public defenders, but I don't think I should hamstring the legislature by telling them exactly how they should do it.

Mr. Newton Mr. Velazquez, did you know that your amendment does not give to indigents all the rights to which the Supreme Court of the United States says they are entitled, and did you know that if you will withdraw this amendment and provide for an indigent defender board, I'll support you?

Mr. Velazquez I think this is Louisiana and this is 1973. I don't think that this convention would pass an indigent defender board, so I think that the best thing we should do is give the legislature the authority to set a uniform system. If you, personally, want a public defender board of any type or another, go to your legislator and get him to introduce it. I will do what I can in New Orleans to get you some support for it. I do appreciate your bringing that concept up. Mr. Newton. I think it is one that should be brought up and should be openly discussed and openly debated. I'm sorry that I don't have the adequate background to bring up an indigent defender fund, the type that you are speaking of.

Mr. Weiss Delegate Velazquez, did you know that the proposed Bill of Rights Section 12 reads as follows: "At any stage of the... (this is in reference to the rights of the accused) at any of the stages of the proceedings, every person shall be entitled to assistance of the counsel of his choice, or appointed by the court in indigent cases, if charged with an offense punishable by imprisonment?"

Mr. Velazquez Mr. Weiss, when this convention finishes with that Bill of Rights Article, they are liable to bring back slavery.

Mr. Weiss Well, I think not, and I think your proposal is unnecessary at this time and should be in the Bill of Rights. We shouldn't clutter the constitution with that.

Mr. Velazquez Dr. Weiss, don't put me in a coffin.

Further Discussion

Mr. Jack Mr. Chairman and ladies and gentlemen, I'm a coauthor of this bill. When Mr. Velazquez first drew it, quite a while back, he asked me about it, would I coauthor it, and I told him I would be glad to. When we discussed it, I wanted to be sure it would not be a public defender because the concept of public defender is all right and fine for New Orleans and the big enough cities, but for most places, the district is not big enough. The same goes about any indigent defender board. Now this amendment purposely, I want you to get this, does not apply to misdemeanors. It applies, like it states, where the imprisonment, with or without hard labor, for a term exceeding six months and for a fine of five hundred dollars or more. What we are driving at here is to have the legislature provide for a uniform system for this appointed counsel, including the state paying them, in cases where there can be a jury trial. Now you've got to assume in this whole system of appointing lawyers to defend people, that if a man is innocent, it is very important that he be properly represented so he wouldn't be convicted if he is innocent. You cannot assume ahead of time that a man is guilty. The law reads just the opposite. Now, in the smaller districts, where there are only a few lawyers, with the situation where they are not even paid anything, it puts a terrific burden on them going to defend a lot of people and not being paid. I am not saying it will, but it could keep those people, and the innocent people maybe, from getting as full a defense as if they were paid counsel. That's just human nature. Now when you get to the misdemeanors, the Supreme Court, as someone asked, certainly has ruled, any lawyer that keeps up with it knows, that an indigent defendant is entitled to counsel. That is very easily taken care of. Like in Shreveport, they appoint one lawyer for the whole month for all of the indigent defendants in these misdemeanors and these city court type of cases. That is the misdemeanors under six months. Most of those people simply need legal advice, so that can be handled very simply. That is the problem, is with the cases where you could get over six months, where it would be a jury trial. This is an excellent amendment. It doesn't keep, later on to have a public defender or indigent defender board, if you later decide, the legislature, if they do. Thank you.

Further Discussion

Mr. Roy Mr. Chairman, delegates to the convention, I rise in opposition to this amendment. I am not, of course, at all opposed to what Mr. Velazquez is trying to accomplish but, number one, it is redundant because it should be covered in the Bill of Rights and it is covered specifically in the proposed Bill of Rights by Section 12, as Dr. Weiss pointed out. Now let me tell you two other things that's wrong with it. By its very wording, it implies that unless you are going to be sentenced to a term exceeding six months or a five hundred dollar fine, you may not be entitled to an attorney, even if you hire him yourself, because it says when you will get that, then you are entitled to retain counsel and if you can't pay for it, the court will appoint counsel for you. This of course implies that up until that time you may not be entitled to counsel, which of course would be contrary to just common sense and the laws of the United States, as well as this state at this time. The second thing it does, in my opinion, when it says that you are entitled to counsel if you may be sentenced to punishment, with or without hard labor, it necessarily speaks only then, or addresses itself only to relative felons, which are those crimes for which you may be sent to Angola. Because when you talk about with or without hard labor, you are automatically talking about a sentence which requires, at the judge's discretion, sentencing to the state penitentiary and just to the parish jail. So there are some crimes where you may be sentenced to the parish prison or the parish jail for two years and not to Angola and of course it would not cover that particular

area. Section 12 of the Bill of Rights covers this much better, in much better language, and I urge the rejection of this amendment as being out of place and poorly worded.

Questions

Mr. Flory Mr. Roy, your concern is not the fact that perhaps you couldn't qualify under this for appointment?

Mr. Roy I don't practice criminal law, Mr. Flory. I am not competent, if that is what you are talking about.

Mrs. Warren Mr. Roy, I disagree with that last statement. I think that you are competent and you are saying what is wrong with this amendment, and I agree with you. Mr. Velazquez is not an attorney. I think he did the best he could, being a lay person. I am wondering if you would help him put something together that you feel would be good in this case and let us coauthor it with you.

Mr. Roy Mrs. Warren, I would be happy to....

Mrs. Warren Thank you. Thank you.

Mr. Roy It's in Section 12 of the Bill of Rights and when the Bill of Rights comes up you make sure that you are up there saying what you're doing right now. Thank you.

[Previous Question ordered.]

Closing

Mr. Velazquez This is basic, this is a basic constitutional protection, giving everybody the right to adequate counsel. I am not going to go to any great extent. I am just going to say that we have some perfecting amendments coming along to knock out one or two slight errors that we have discussed in this, but I am going to go ahead and ask you for your support on this amendment. Thank you.

Questions

Mr. Alexander Mr. Velazquez, is it not true that there is a line in your amendment which states, "shall have right to retain counsel," which has reference to everybody and proves that Mr. Roy's interpretation was incorrect?

Mr. Velazquez Mr. Roy's interpretation was quite incorrect, but I don't want to get into personalities.

Mr. Alexander Well, I think we are trying to bring out the truth. Mr. Roy said that under your amendment, one who had the ability to retain counsel could not do so, and here it states directly that everyone has the right to retain counsel and, if indigent, then, you know, the conditions will prevail. Now the second question....yes.

Mr. Velazquez It's very early in the morning, you know, and Mr. Roy probably hasn't warmed up sufficiently to be able to read and understand what's here.

Mr. Alexander I see. Now the second question, Mr. Velazquez, is it not your aim to prevent indigents from possibly having a case end up in the Supreme Court that could have been settled right in the district court level somewhere, without going through all of these problems, et cetera, and something that we can do here in Louisiana rather than going to the Supreme Court, going to the federal court? Don't you agree?

Mr. Velazquez Reverend Alexander, you have made a very key point. You know, often the only reason people have to go all the way to the Supreme Court is because at the lowest level of government, some-

body doesn't want to do his job. Thank you.

[AMENDMENT 21 BY MR. VELAZQUEZ: 4-11-73. MR. VELAZQUEZ: 4-11-73. MR. VELAZQUEZ: 4-11-73.]

Amendments

Mr. Poynter Amendment No. 1 [Mr. Poynter], on page 11, between lines 28 and 29, insert the following:

"(B). Any defendant in a criminal proceeding, the punishment for which may be imprisonment, if indigent, shall have competent counsel appointed for his defense. The legislature shall provide for a uniform system for securing such counsel, including compensation."

I have added as a second amendment the same language you found on Amendment No. 1 on Delegate Velazquez's amendment, on page 11, line 25, after "Section 29" and before the word "no" insert "(A)."

Explanation

Mr. Pugh Fellow delegates, good morning. This amendment will accomplish the purposes of the last person who proposed an amendment. It will however, in my opinion, comply with what the law is today. It will require the appointment of competent counsel for the defense of any defendant in any criminal proceeding, the punishment for which might be imprisonment. That is what the United States Supreme Court stated on June 12, 1972, and it is that proposition that we, at the Bar, have followed since then. I know that there is some sentiment that language such as this could best be placed in the Bill of Rights. I have no quarrel with that proposition. I think the man had a good amendment. I think in this form it will accomplish his purposes and I submit it to you for your consideration.

Questions

Mr. Tapper I just wondered, will the effect of your amendment be that the state will have to appropriate the money for the attorneys representing indigent defendants?

Mr. Pugh No, I don't think that all legislative acts require the payment of monies from the state itself. Most of your local home rule complaints are that the legislature can require a parish to make certain payments.

Mr. Tapper Your amendment provides that the legislature shall provide for a uniform system for securing counsel, including compensation. To me that means that there would have to be an appropriation in the legislature. Right now, did you know that in many of the parishes we already have this set-up, and it is paid for out of local funds which comes out of fines and forfeitures?

Mr. Pugh The legislature can so provide. They can provide that such assistance shall have its payments made in that fashion. They may also be paid by court costs.

Mr. Tapper But isn't it a fact that your amendment makes it mandatory that they provide it? It doesn't say that they may provide it, it says they shall provide.

Mr. Pugh That's a mandatory word, yes.

Mr. Velazquez Aren't there any federal funds that are available to the states for this purpose, if the state had a stipulation to the effect that there would be a uniform system?

Mr. Pugh There are in existence some grants, but I don't believe we can assume that the present system of making grants for purposes such as this will outlive our constitution. I hope not.

Mr. Stagg Mr. Pugh, it has been suggested by some previous questions to Mr. Velazquez that this article

properly belongs in the section on Bill of Rights. Do you not consider that it more properly belongs in the section where we set out that the district attorney shall be the prosecutor and we ought to, in the same paragraph, provide from some form, some places for criminal defense, equal criminal defense, perhaps equal with that of the prosecution?

Mr. Pugh I think from a pure constitutional concept it might better be in the other section. I do know that I have heard so much criticism about the judiciary system, "they are talking about lawyers and judges, and no one else." Obviously, that's what you would have there. This, I think, allows a situation to exist where everybody has something in the judiciary article.

Further Discussion

Mr. Dennis Mr. Chairman, fellow delegates, I rise to oppose this amendment. Not the substance of it, but oppose considering it at this point. Mr. Pugh, himself, has even said, "I am the author of the amendment, considers that it should more properly go in the Bill of Rights Section. I agree with him and I think if we adopt this here, we will be doing something that will be detrimental to the progress of the entire convention because, at every point in this constitution we are drafting, it may affect fundamental individual rights, and if we stop and consider the rights that are to be affected at that point, we will be taking piecemeal all of the Bill of Rights sections before we get to it. Now the Bill of Rights Committee has considered this and if you will look at Section 12 of their draft, "rights of the accused", you will see that they have not only provided for this, but for other protections of accused. In fact, it goes much further than this amendment that Mr. Pugh is offering and I would like to just read it to you.

"When a person has been detained, he shall immediately be advised of his legal rights and the reason for his detention. In all criminal prosecutions the accused shall be precisely informed of the nature and cause of the accusation against him. At all stages of the proceedings every person shall be entitled to assistance of counsel of his choice, or appointed by the court in indigent cases, if charged with an offense punishable by imprisonment."

Now I'm not suggesting to you that this is better than what Mr. Pugh has offered or that it should be adopted in preference to it, but I am suggesting that the Bill of Rights Committee has considered more aspects of the problem of indigent defendants from the beginning of their arrest until they go into court. Since they have considered this fully, we should pay them the respect of waiting until their article comes before us next week and consider that matter at that time. I ask you to reject this amendment solely for the reason that it comes prematurely and it should be considered during the debate on the Bill of Rights Article.

Question

Mr. Abraham Isn't Style and Drafting going to take care of putting these particular sections in the article where they are supposed to go and where there are duplications, won't they call this to our attention?

Mr. Dennis Mr. Abraham, the Style and Drafting Committee already probably has more than it can handle and I don't think we should give it any more tasks, because it has a tremendous job ahead of it. If we can decide that something belongs in the Bill of Rights Article on the floor, I think we should put it there instead of sending it to Bill of Rights and say, you do it.

Further Discussion

Mr. Alexander Mr. Chairman and delegates, I'm a little frightened at this stage during the conven-

tion because of my fear that some of the delegates are saying now, wait until we get to the Bill of Rights. Wait until we debate that section and then when we get there and we find certain provisions there, they are going to say this should have been in some other section over which we have passed. This should be something else. I am concerned about the subterfuges. I am concerned about the attempts to end run this question, and I'm appealing to you to possibly cease and desist from that attitude. Now let me finally say that in the courts of New Orleans there is a kind of hodgepodge of laws and procedures relative to indigents. For example, there is no lack of the New Orleans Legal Assistance Program which is federally funded. But it is a civil program all together, it only handles civil matters. Then there is the Legal Aid Program which handles more or less criminal cases and in most instances a capital, or what used to be capital cases. Then there is the ROR or the Release on Recognizance Program and all of these operate more or less independently. There should be some kind of program in Louisiana to which the federal government would merge its program and possibly make it possible to defend all indigents from the misdemeanor level up to the capital case and there we would eliminate the possibility of crowding up the courts with all these appeals, with all of these attempts to circumvent the law and the guilty would be punished and the innocent, naturally, would not be punished.

I'm asking that you support the amendment and Style and Draft can place it in its proper place as this is not the proper place for it.

Further Discussion

Mr. Derbes Ladies and gentlemen of the convention, I would like to make a technical point here which I think is very important.

As I understand the Bill of Rights' Proposal that's being currently renegotiated, it says that an accused individual shall have, or shall be entitled to counsel. As I understand the Pugh Amendment which is being proposed, it says, "shall have competent counsel". This means as I understand it that a defendant in any criminal proceeding must have counsel. That goes... that runs the gamut from the minor misdemeanors in municipal and city courts to serious felonies, and what this effectively does, is it prohibits an individual from waiving counsel and entering a plea of guilty. Now I am in favor of a uniform system for appointed counsel. I am in favor of guaranteeing to every individual who is accused in a criminal proceeding, the right to counsel. But I am, also, in favor of providing that people who wish to waive counsel and not necessarily take the benefits of an appointed system may do so and unfortunately, although I first wanted to rise in support of the Pugh Amendment, I have to now oppose it because it says "early" "any defendant in a criminal proceeding shall have competent counsel appointed for his defense".

Questions

Mr. J. Jackson Jim, two points, one you say that it's mandatory, but doesn't it say "if indigent"? And secondly, the sentence that says that the legislature shall provide....

Mr. Derbes Well, wait a minute, can I answer the question?

Mr. J. Jackson Yes.

Mr. Derbes Look, Johnny, it says "any defendant in a criminal proceeding, the punishment for which may be imprisonment, if indigent shall have competent counsel appointed for his defense". Now a lot of people go into criminal court in minor matters who are indigent and who say to the court, "look I don't want counsel. I'm guilty." I understand my rights, I voluntarily, knowingly waive my rights". This is going to complicate what is

essentially a simple matter of administering justice.

Mr. J. Jackson Yes, but the last sentence says that "The legislature shall provide for a uniform system for securing such counsel, including compensation". Could not the legislature in terms of providing the unified system also provide for the right of a defendant to waive such counsel?

Mr. Derbes In my opinion as an attorney, I think there's a great amount of doubt. And I'm not trying to be an obstructionist here. What I'm trying to tell you is that a judge looking at this amendment, if this amendment becomes constitutional, could very easily say, "I cannot permit you to waive counsel. I must appoint counsel for you." I think that is a reasonable construction. And I think that would be terrible for the administration of the system of criminal justice. So I support the Bill of Rights Proposal, and I really support a unified system for appointment of counsel to indigents, but I can't support it as it's drawn.

Mr. Schmitt Could this problem be taken care of by changing the word "shall" to "may"? Could there be a subsequent amendment to that effect?

Mr. Derbes Well, it really should be more than that. It should be that we shall engage to competent counsel and may appoint application, or something like that and shall appoint application, therefore, be appointed counsel for his defense....

Mr. Schmitt Are you preparing an amendment to this effect at this time?

Mr. Derbes It just.... it caught me by surprise, and if somebody will prepare it, I will be glad to support it. But I have to oppose the amendment as it is drawn.

Further Discussion

Mr. Stagg Mr. Chairman, fellow delegates, I rise in support of this amendment and I'd like to explain to you my reasons. There is now in this state a uniform system of criminal justice. In each of the parishes of this state, you heard yesterday we have a well-paid system of prosecution with a district attorney and a number of assistant district attorneys in every parish prepared to prosecute for criminal violations.

Now all citizens, all delegates to this convention, particularly all lawyers and all judges and all district attorneys, are or ought to be interested in our system of criminal justice. I ask for your particular attention to what I think are the failures of our system of criminal justice. I believe that the defense of a criminal action ought to be on a par with the prosecution. In September of 1965, I was appointed by the court to defend one of four men charged with the capital crime of rape. I had never in twenty years of practice before that date ever defended a capital case. I had never engaged in the jury trial of a serious crime. Yet on September 17, 1965, I was launched into the middle of it. As a practical matter, I had to surrender the other thing I was doing in order to learn what I ought to do to try to save the life of the man I was charged with defending. I bought a lot of books on criminal defense. I bought books on the laws of arrest. I studied the records of previous trials in our parish and I filed every motion that I could think of on bill of particulars to quash the indictment, to quash the evidence, to move to sever my client from the other three. It took six years to dispose of the case. It took three weeks to pick a jury and to try the case. It took two trips to the Louisiana Supreme Court and one trip to the United States Supreme Court before the capital offense of rape and death sentence was finally reversed. I was not a defense counsel, but I was by our system charged with attempting to defend the man and to save his life if I could. My defense was not the

equal of the prosecution because of the nature of our system in this state of criminal justice.

Beginning with Gideon vs. Wainwright and Argersender vs. Florida, the United States Supreme Court has said to every state that men charged, and women charged, with crimes for which they have no counsel and for which they might face imprisonment, shall be punished by the state with a counsel. In many instances in our state that is an appointed counsel who may not be practiced in criminal defense as you know the district attorney is practiced in the art and the science of prosecution.

One of the speakers at the microphone said what do you do when a man says I waive my right of counsel. True, he can do so. But I hope that it would be an intelligent waiver, one where he was advised of what might happen to him if he waived his right of counsel, waived any defense he stood before the bar to be sentenced. If he had the advice of a practiced lawyer in the art of criminal defense, his waiver of those real rights would be an intelligent waiver. What we do now when a man is charged with a crime and is indigent and cannot hire a lawyer, we send him into the list, we send him into the battle, many times with an amateur defense counsel faced with a professional prosecutor. In this constitution, we ought to prevent that from happening to the degree that we can....

Before the adoption of the Pugh Amendment and let's put defense somehow on a par with the prosecution.

Further Discussion

Mr. Weiss Fellow delegates, I rise to oppose this floor amendment. I welcome the opportunity that we take the discussion of these vital issues to the floor, but not at this time until we reach the Bill of Rights.

The Bill of Rights after thirty days' study with five eloquent and vocal attorneys who are most reasonable, most understanding and most considerate, have with the remainder five members of the committee created what we think are a fine Bill of Rights. Now that any one of us agree with all of it by any means, but there are concerns as Reverend Alexander, Delegate Alexander and others, with intent and subterfuge and other matters which may remove from the individuals of this state their rights. There are several questions here which are most important and Delegate Roy has called to our attention repeatedly the use of the word "shall and may," what one word can do to an amendment. You speak now of removing this temporarily and substituting another word, "may." What about the word "competent"? All of these matters have come before the Bill of Rights' Committee. What is a competent counsel? Suppose it be the counsel of choice of both indigent or those who can well afford one in another section of the state? How long will justice be delayed until that competent counsel is engaged?

Other problems arise. What is a uniform system? A uniform system, perhaps could be defined as one which.... in which the parish would pay the fees for the indigent. Now are some parishes in a position where they can pay the large fees that would be necessary? And what would be an indigent case? How would that be defined? There are multiple complications in this floor amendment and Mr. Pugh himself has admitted that this could well go in the Bill of Rights Section. I would suggest if Mr. Pugh would, that he withdraw this amendment at this time and let us consider this in the section where it rightly belongs and not clutter this constitution with a great deal more verbiage than is necessary.

I first ask Mr. Pugh if he would withdraw this amendment. If no one follows me, Mr. Chairman, I then call the previous question, if it's in order.

[Previous Question ordered.]

Closing

Mr. Pugh I won't delay you on the vote. I just call your attention to the fact that the cases are legendary. This is a due process right, that the person has the right to knowingly, willingly, and intelligently waive this if he wants to. There is nothing wrong with the language as it now exists in this amendment under every constitutional case that I am aware of.

Thank you.

[Record vote ordered. Amendments rejected: 49-67. Motion to reconsider tabled. Previous Question ordered on the Section. Section passed: 115-4. Motion to reconsider failed.]

Reading of the Section

Mr. Poynter "Section 30; Sheriff; Duties, Tax Collector.

Section 30. In each parish a sheriff shall be elected for a term of four years. He shall be the chief law enforcement officer in the parish, except as otherwise provided by this constitution, and shall execute court orders and process. He shall be the collector of state and parish ad valorem taxes and such other taxes and licenses as provided by law."

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, this is the first section we will take up pertaining to the sheriff.

The sheriff, as you all know, performs three basic and very important functions in our parishes. First of all, he is the major or chief law enforcement officer in each parish. He is a tax collector, and he is the executive officer of the court, meaning that he serves orders of the court and enforces them.

The 1921 Constitution inadequately stated the duties of the sheriff. It only states that he is a tax collector. As we all know, the sheriff performs these other functions and these other functions are equally or even more important to the citizens in each parish. Therefore, the committee thought it best to clearly state these three basic duties of the sheriff in this section. Except for that change, that clarification of the sheriff's duties, there has been no substantive change from the 1921 Constitution.

Questions

Mr. Abraham Judge Dennis, in the committee deliberations, was any consideration or discussion held on whether or not you should include the language that he shall be the collector of the taxes, with the thought in mind that possibly this should be statutory and that would provide the flexibility that in case there might need to be a change in the system of collecting taxes in the future, they would not be tied down to the sheriff? There might be other means of collecting taxes other than the sheriff?

Mr. Dennis We discussed this problem generally. It was the basic feeling of the committee that since this has been in our constitutional law for so long and there is much statutory law and case law based upon the 1921 provision which grants the authority to the sheriff to collect certain types of taxes, that we should not take it out, but should continue it substantially as it is in the 1921 Constitution.

Mr. Duval Judge Dennis, just attempting to get some information. When you say the sheriff shall be chief law enforcement officer in the parish does that imply, or did the committee discuss whether he could supersede the police, the municipality, the police chief, for instance?

Mr. Dennis I think I am expressing the feelings of the committee when I say this. In the present

law, there is no statement at all as to how we would coordinate efforts of law enforcement agencies in the event of a major catastrophe or a major event requiring all the law enforcement agencies to come in. The legislature could do this, but it has not done that.

This does not attempt to spell it out in detail but simply establishes a policy that the sheriff will be the chief law enforcement officer and leaves up to the legislature, if it should have to do so, and we haven't had to do it in fifty years, if it should have to do so, to spell out in detail the procedures for law enforcement agencies in a parish.

Mr. Duval One other question, judge, you say that sheriffs shall be the tax collector for the parish. Would that imply sales taxes, also, rather than ad valorem, in addition to ad valorem taxes?

Mr. Dennis No. It clearly says he shall be the collector of state and parish ad valorem taxes and such other taxes and licenses as provided by law. So whatever is provided by law at the present time would continue until the legislature changed that.

Mr. Duval Do you mean where the collection.... it's a little unclear to me and it would imply that he could collect sales taxes cause that's a tax provided by law.

Mr. Dennis But the collection of sales taxes is provided by law, also. In other words, the legislature has said who will collect each particular sales tax in the sales tax acts. And that it is our intention, that whoever is designated there will continue to collect those taxes until the legislature changes it. We, by saying that these taxes and such other taxes and licenses as provided by law, I think we clearly stated that.

Mr. Duval So it is not your intention that the sheriff collect taxes that are otherwise provided now by statute to be collected by someone else.

Mr. Dennis That's right. Now I think our provision states that clearly.

Mr. Burns Judge, just to bring it out a little more clearly. Did we not discuss at length with reference to the sheriff being the chief law enforcement officer, that we definitely did not intend to keep out the state police or interfere with the city police chiefs or city police, but merely to, as you stated just now, that this would be a coordinating agency and not by any means diminish or interfere with the authority of the state police or the city police?

Mr. Dennis That's correct, Mr. Burns. Thank you very much.

Mr. Hayes Judge, does this prohibit anyone else from collecting taxes? Does it prohibit anyone else from collecting taxes in a parish?

Mr. Dennis No, it does say that the sheriff will be the ad valorem tax collector. Beyond that, the legislature could change it and appoint other people as tax collectors.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Casey, et al.], on page 12, between lines three and four insert the following:
"This section shall not apply to the parish of Orleans."

Explanation

Mr. Casey Mr. Chairman and delegates. Unfortunately, the historical difference that has existed between Orleans and the other sixty-three parishes in the state, under this new constitution is

creating some difficulties that...whereby we must under certain circumstances except the parish of Orleans. I would prefer not to use the parish of Orleans if that be possible...to use that wording. But unfortunately, we are unable through all the staff research that we've been able to develop on this, there's no other way of accomplishing this. If you'll note, under Section 30 first of all, the wording of the article says that a sheriff shall be elected for a term of four years. First of all, we have two sheriffs, a civil and a criminal sheriff. That's not as serious a problem, however, as the next two sentences which say that the sheriff shall be the chief law enforcement officer. Under our local charter, our home rule charter, the mayor is charged with that responsibility and he delegates that responsibility to the superintendent of police and we have as one of our delegates, a former superintendent of police who can certainly vouch for that.

The major and main problem that Section 30 creates for the parish of Orleans is in stating in the third sentence that the sheriff is the collector of state and parish ad valorem taxes and such other taxes and licenses as provided by law. We have in the parish of Orleans as a municipality, completely and wholly under the municipality, our own tax collecting system for all taxes. We have our own revenue department just as does the State of Louisiana. And that is the most urgent reason why we must absolutely except the parish of Orleans from Section 30 because at this time, neither sheriff, whether he be the civil or criminal sheriff, in anyway has anything to do whatsoever with the tax collection system in the parish of Orleans.

I would urge acceptance of this amendment.

Questions

Mr. Abraham Tom, would it be better language to say that the section would not apply where a home rule charter or something provided otherwise? That way you would not be spelling out a specific parish and in the future you may have other parishes under the same provision.

Mr. Casey Mack, if that were possible and after the proper research maybe that language could be developed, I would hate to affect other parishes, though. I think we would affect, possibly, the...let's say the parish of East Baton Rouge. Maybe the parish...the charter of the city of Lafayette. I hate to affect anybody else's municipality or parish. That's why I'm making an honest attempt just to handle the problems as simply as possible in the parish of Orleans.

Mr. Planchard It is my understanding that you are not opposed to the first part of this section, only the second sentence pertaining to the collection of the taxes.

Mr. Casey Well, in going through the three sentences I tried to point out the difficulty that we are confronted with. The most serious problem is certainly the last sentence and that's the entire tax collecting system in the city of New Orleans. The others affect us, but maybe to lesser degrees. But I would hate to completely put into a turmoil the law enforcement system in the city of New Orleans. We have enough problems as it is right now.

Further Discussion

Mr. Champagne Mr. Chairman, ladies and gentlemen, I shall be very brief. I had hoped when this convention gathered and these great minds of which I take no credit for, there would be some possible reason by which in this constitution, for the entire State of Louisiana, for all people, for all parishes, for the present and the past, would not have to signify the differences by raising red flags or whatever flags or whatever indications you would, and announce to all people by names of parishes, that this

parish is different from all the rest.

I agree with those among us who say there is a difference, and I am the first to admit that such is the case. But throughout this state there exists people who are not willing to live with the idea forever and see spelled out to them, that this difference does exist. For that reason, I would hope that there is enough ability in these one hundred and thirty-two delegates to find a means somehow, somewhere that we would not have to imply and list by names, individual parishes in this constitution. And for that reason, I have prepared an amendment which would say, except as otherwise provided in this constitution, refer it to Section 35, and those great minds would get together and somehow say there is a difference but we don't have to signify by mentioning any individual parish by name in this constitution.

Questions

Mr. Valdez Wouldn't you say it might make...don't you think you are making a mistake to assume that Section 35 is going to pass?

Mr. Champagne Mr. Valdez, there has been a number of reasons and people who have said that there shall be an attempt to destroy. If you can find a way, if you can find a way not to mention the parish of Orleans by name, but to simply say those conditions which existed or those differences which did exist in the constitution at the time of the adoption or some other way, sir, I guarantee you that I shall speak in favor of its adoption.

Mr. Valdez If everybody else has a horse and you've got a mule and somebody makes a law against mules, who's getting hurt?

Mr. Champagne Let me tell you that any mule or any horse can tell the difference including any jack.

Mr. Valdez You say so.

Mr. Dennis Mr. Champagne, are you saying, sir, that if we will say, except as otherwise provided here, and then in Section 35, we can provide for the Orleans' institutions of government, that you would not object to mentioning Orleans in Section 35. I'm just...this is for information cause this is a knotty problem that we wrestled with for several months. And if that's what you're saying, I would be agreeable to it. But if you're saying you can't mention Orleans at all anywhere, sir, that is an impossible task, I believe.

Mr. Champagne What I would say, sir, and we are fighting with this problem in Revenue and Finance in which we have great variations in all the parishes. But we have managed to not mention any parish by name in the final say, with one exception, which we are going to take out. But...if we....

[Quorum Call: 108 delegates present and a quorum.]

Further Discussion

Mr. Alexander Mr. Chairman, and delegates. I come to you at this time in a very peculiar way because I find myself along with the delegates from the city of New Orleans to be somewhat strange animals because we seem to be the exceptions.

Let me see if I can possibly talk with you as is said in the scriptures, let us reason together. I say reason together. Number one, the city of New Orleans and the parish of Orleans are the only parish and city in the State of Louisiana where the parish and the city are coextensive. Now that condition has existed in our state long before any of us is here, I think, were born. I know it was in the 1921 Constitution and I don't know how long before that. But there is no parish government in the city of New Orleans. There is

only one government. Now in all the other parishes, including Caddo, that I distinctly remember and even East Baton Rouge, there is the parish and a city government. New Orleans is the only city in the State of Louisiana which has a law enforcement group of more than fifteen hundred persons. Now I submit to you, ladies and gentlemen, that our condition is similar to that of a Wilt Chamberlain who wears a size 14 shoe and is seven feet two inches tall. He can't sleep in a normal bed. Now if you are going to compare us as I think I heard one delegate say yesterday, with East Feliciana or Cameron where the population is sixteen thousand, we just can't operate that way.

New Orleans Parish has both a criminal and a civil sheriff. The criminal sheriff has no law enforcement powers whatsoever outside of parish prison. The civil sheriff is not the tax collector. He handles civil matters only. We have a registrar of conveyances, a register of mortgages, three clerks, four clerks, five clerks of court. Now I submit to you, ladies and gentlemen, that, I'm willing to go along with the ideas of Mr. Champagne. I think his ideas are wonderful, that maybe we should not mention the city of New Orleans. But to disrupt and throw into chaos the whole legal and operational system of a parish and or city of six hundred thousand people, I don't think it's fair to those of us and to those people of the city of New Orleans. And I want you to understand this, that we are not just trying to be different. It's just that New Orleans has a larger population than the parishes and especially when these laws were enacted, the other parishes were small, the other cities were small in Louisiana while New Orleans was large because it's a seaport city.

I, therefore, appeal to you to adopt this language and then let's adopt this amendment and let's sit down with some of the people like Mr. Champagne and see if we can put something together that will permit New Orleans to operate normally just as we will permit other parishes to operate normally.

Thank you so much. Please support the amendment.

Further Discussion

Mr. Conroy While I sympathize with the position of the City of New Orleans, I oppose this amendment. I think that if exceptions are to be made, they should be made in a broad enough sense that other parishes could take advantage of them or the cities could take advantage of them if they need them. I don't see that New Orleans is that unique.

In this regard, I think either amendment is unnecessary if you have a home rule charter provision, you can say that that overrides the other provisions of the constitution as far as the designation of officers or elected officials or what their functions will be. And I do not see any reason to designate New Orleans as being different from the rest of the state in this particular section.

In further regard to that, if the system in Orleans Parish is good, why should all other parishes be able to adopt it? If it's bad, why should they want to continue it?

I urge your defeat of this amendment.

Questions

Mr. Bergeron Dave, who collects the taxes in your parish? Who is the tax collector in your parish?

Mr. Conroy In Jefferson Parish, the sheriff's.

Mr. Bergeron And who is the law enforcement officer in your parish?

Mr. Conroy The sheriff.

Mr. Bergeron Do you realize that this is the case in New Orleans parish?

Mr. Conroy Yes, and if it's a good system, I

think that Jefferson Parish should be entitled to adopt this same system, if it's a good system that Orleans has. Why single out one parish and say they are entitled to have a different system from any other parish?

Mr. Bergeron But you do realize that an amendment of this nature is necessary to allow the parish of Orleans to continue operating as it has operated?

Mr. Conroy No, I don't think an amendment of this kind is necessary. I think either in the Local and Parochial Government section or in Section 35 you can spell out that notwithstanding other provisions of this constitution, so forth and so on, will be true in Orleans. But it can be done in one place.

Mr. Dennerly Mr. Conroy, you suggested that the home rule charter provisions could govern this. Do you believe that the home rule provisions, which are from municipalities, would permit municipalities to collect parish taxes?

Mr. Conroy Mr. Dennerly, I think that the wording of the home rule charter provisions, in the Local and Parochial Government Section, could be broad enough to cover this problem.

Mr. Dennerly Well, I suggest to you then and do you not agree, that if those provisions are subsequently inserted, then the Style and Drafting can remove it from this section? If by chance...

Mr. Conroy I'm sorry, I can't hear you.

Mr. Dennerly I say, I suggest to you and I ask if you do not agree, that if provisions such as you speak of are contained in the home rule section, then Style and Drafting can remove this. But, on the other hand, if they are not so contained, would you not agree that this type of provision is necessary?

Mr. Conroy My point, Mr. Dennerly, is that it is in the area of local government, and the local and parochial government area, that we should address ourselves to the extent to which exception should be permitted to the other provisions of the constitution, dealing with all of these state officials, and not have, except for New Orleans, along with each one of these provisions as we go along.

Mr. Champagne Mr. Conroy, are you aware that there will be a subsequent amendment that this section shall not apply to any parish in which there may be a provision in the home rule charter to the contrary, which would allow not only the parish of Orleans to do just as they are doing now, but allow other parishes that possibility?

Mr. Conroy I was not aware of that amendment. But I think it's a far better way to handle it than the provision that's presently before us.

Further Discussion

Mrs. Zervigon Mr. Chairman and delegates to the Constitutional Convention, I rise to tell you something that you know already. But it isn't the first time it's happened and it will probably happen again. New Orleans is different, it's odd, it's peculiar. And what's more, the citizens of Orleans Parish like it that way. All throughout deliberations we've tried to save things in the parishes as they are and to provide for orderly change, should that change become necessary. Orleans hasn't got any justices of the peace, but we didn't vote against other people. Or we didn't speak against other people having justices of the peace. We haven't got a mayors' court. I didn't come up here and ask you to abolish everybody else's mayors' court, just to bring them into uniformity with Orleans. I think we need to look a little bit at this concept of uniformity. If

we go completely to the end with this concept of uniformity, we got to abolish the city of Monroe's school system. We got to abolish the city of Bogalusa's school system. Everybody else got parish school systems. Why should they be allowed to be different? We got to abolish the tax levy by the port of Lake Charles. All the other ports are funded differently. We can't let Lake Charles be any different. We got to abolish the five percent, the five-mill alimony tax in Jackson Parish. Every other parish has a four-mill alimony tax. Why can we let Jackson Parish be any different? Ladies and gentlemen I submit to you that uniformity is a false concept for us to follow all the way to the end. If anybody in this convention can prove to me that Richard Thompson is uniform in any way, shape or form with Boyssie Bollinger, I'll eat my project. If anybody can tell me that Ford Stinson and Chris Roy are uniform, I'll read my project. If anybody would go and tell the citizens of Orleans Parish and the citizens of Caldwel Parish that they are alike, the delegates I'd wouldn't be worth a nickel in either of those parishes. So I beg of you, don't ask us to change. Now we thought of trying to draw this amendment so that it said parishes over four hundred thousand. The problem with that is as Jefferson, as Caddo, as East Baton Rouge get to that level, we've changed them, and we're really not asking anybody else to change. We just want the right to remain as we are. We thought of saying in parishes, where the city is coterminous with the parish, the city is uniform. Baton Rouge is trying to become coterminous, over the long haul. It may take generations. They would find themselves in a spot where we had completely redefined the job of sheriff, and that isn't really what they are aiming for. They just want a unified government in that parish eventually. So it seems to me, the most straight forward way to handle this is to say Orleans Parish excepted. That's where the difference is. There's no use changing anybody else or pretending that we are affecting anybody else. Those officers who are covered in our home rule charter. Our home rule charter has not been amended by the people for twenty years. They routinely vote down amendments to our home rule charter because I believe they are afraid its going to get to the point like the '21 Constitution, where you pass amendment after amendment and each amendment breeds more amendments. So, when the delegates come up here and tell you, well just let them amend their own home rule charter to take care of this. They are asking you to do a very difficult thing to the city of New Orleans. So I ask you, let us remain peculiar. Let us remain as Reverend Alexander said a strange animal. It's not hurting you any, it's not affecting you any. But to change the duties of our sheriff so radically would affect the city, would radically affect the school board. I'll leave a parish tax, not a city tax now collected by the Department of Finance in New Orleans. I really don't think that that's what you came up here intending to do. I will yield to any questions.

Question

Mr. Weiss Delegate Zervigon, you make your point very well. Did you know that I agree with you certainly in the concept of uniformity and the difference between New Orleans and the rest of the state? However, I would like to ask, is this the way to do it? Particularly with the alternative floor amendment, which is proposed by Mr. Champagne. I see, and that is except as otherwise provided in this constitution and then write this in Section 38. Would you have any feelings one way or the other about that?

Mrs. Zervigon Dr. Weiss, I feel that the place to make an exception to a provision is in that provision itself, so that anyone reading the constitution knows clearly what section applies to what. I think we must do it....

Mr. Henry You have exceeded your time, Mrs.

Zervigon.

Further Discussion

Mr. Dennis Mr. Chairman, fellow delegates, we are getting into a problem that the Judicial Committee wrestled with long and hard. We started off with the idea that we would try to make the court system and all of the related officials in the state as uniform as possible. But we very early, you will notice, adopted the position that we were not going to force a change overnight in any parish. We weren't going to make East Baton Rouge Parish give up a family court or Caddo Parish give up a juvenile court or any parish give up a city court. But what we were going to do, instead, was to establish a basic system and then allow the legislature the power to change and work toward uniformity, where there were differences. We started off trying to do without seeing the word "Orleans" because there are some different institutions of government and many different courts in Orleans Parish. We didn't want to make them change overnight either. We found we just tied ourselves in knots in avoiding that little word "Orleans". So we backed up, finally after seven months of wrestling with the problem, you will notice in Section 35, we finally decided that the simplest, most honest and straightforward thing to do would be to backup and create an Orleans Parish exception. However, this is not necessarily a permanent exception. You will notice in Section 35, it allows for changes in the Orleans courts and other offices by the legislature with a referendum vote in the parish. Now you may or may not like the referendum vote, but at least it will allow for change without amending the constitution. When we get to that section, we can talk about whether there should be a referendum vote. But right now the problem is that there are two sheriffs in Orleans Parish. Their duties are different from those in the rest of the state. One of the sheriffs is a law enforcement officer. The other is not. I understand, all he does is take care of the jail. So I'm going to ask you to go along with Mr. Casey's amendment and accept Orleans here, because we are really dealing with substance at this point. If it's possible when we bill this into a House Style and Drafting Committee, if it's possible to say what we have done and not say Orleans as many times, I promise you as a member of that committee that we will work toward that end. But I think it would be much simpler at this point to go ahead and except Orleans from this provision. Then when we get to Section 35, if we can agree upon a reasonable way to allow Orleans Parish to continue their different institutions until changed by the legislature and/or by referendum or whatever way you decide. If we accomplish that goal perfectly enough in Section 35, then we can come back and take these exceptions out in other sections. But until we get there, let's at least give this assurance to Orleans Parish, that we are not overnight going to make them get rid of one of their sheriffs, take away law enforcement functions from their other departments and change everything overnight. So I ask you to put some faith in what the committee and the members of the committee have learned through seven months of wrestling with this problem and go along with Mr. Casey's amendment.

Vice Chairman Miller in the Chair

Further Discussion

Mr. J. Jackson Mrs. Acting Chairman, ladies and gentlemen of the convention, I rise in support of this amendment. I find myself really weighing the issues involved. As most of you recognize that when it came to the problem of New Orleans, I was one of the first to suggest about the uniformity throughout the state. As a person I admit to a large degree that there are and there is need for room for exception, as so ably pointed out by Mrs. Zervigon. I would suggest to you that this is a problem that we in New Orleans could, over a

period of time, attempt to resolve. This is a problem that we do not feel, at this point, of going to provide those problems of wanting to merge or wanting to consolidate in those opponents that who wants to not do it. I don't think it's going to provide out of segment of this convention, with the kinds of desired results that we want. For those reasons and by the reason pointed out by Mrs. Zervigon, Representative Casey and particularly Judge Dennis, I would ask that this convention will consider and give favorable adoption of this amendment.

Further Discussion

Mr. Tapper Madame Chairman, fellow delegates, I rise in support of the amendment. I'm not going to be too lengthy, although this is a very, very serious matter that we have before this morning, as most of the matters that we discuss here are. I've heard the words uniformly mentioned, the word equality and of course I agree with both. But ladies and gentlemen of this convention, to have uniformity merely for the sake of uniformity, and risk the loss of the entire document, to have uniformity merely for the sake of uniformity and change a system that has been successful for so many, many, many years, to have uniformity just to say that we are doing to the same thing in one parish as in another. I think we are kidding ourselves. I can't add too much to what Mrs. Zervigon said because we can take our special interest all over the state. And if we begin to do this, I will guarantee you one thing, this constitution will never be adopted by the people of this state. Now the choice is yours here. I think we are right at the turning point in our discussions and our deliberations. If you decide not to go with this amendment or not to do something that will continue the form of government, the type of operation that is in the City of Orleans today, then ladies and gentlemen, you will have defeated the constitution. Thank you.

Questions

Mr. Anzalone Mr. Tapper, all of this abolition of these useless jobs that we have been talking about for the past week. My sheriff is a civil sheriff, criminal sheriff and a tax collector. Don't you think we ought to carry this reorganization down into the parish as well as the state?

Mr. Tapper I don't know if I understand your question, Mr. Anzalone. Would you repeat it again?

Mr. Anzalone Yes, sir. I'm talking about merger and consolidation. Don't you think we should try this on the parish level as well as the state?

Mr. Tapper For the sake of merger, just as I said uniformity for the sake of uniformity, we shouldn't get into merger merely for the sake of merger. No, I don't believe you are correct. We should, if it will serve a useful purpose, and I believe the consolidation of state offices, the appointment of some state offices serves a useful purpose. But you are not serving a useful purpose if you do this to the type of government that you have in the city of New Orleans. We are not looking at a small parish here with just a few fifty, sixty, seventy thousand people. Mr. Anzalone, you know what we are talking about. I don't agree with you. I know your position; it's been very apparent throughout all of our deliberations on the Committee on Executive. You and I have differed and we will continue to differ.

Mr. Anzalone Mr. Tapper, do you know that I urge the adoption of this amendment for the people of New Orleans?

Mr. Tapper Thank you very much, Joe.

[Quorum call: 101 delegates present and a quorum.]

Mr. Burns Mr. Tapper, regardless of the individual delegates feeling about accepting the city of New Orleans, do you agree that at this particular time and under this particular article, that we have no alternative but to support this amendment?

Mr. Tapper I would hope so, Mr. Burns. I think you are correct.

Mr. Burns One more question. If we did not accept the city of New Orleans in this particular section, would it not throw the collection of taxes in the city until some other... in the future system be set up into a state of chaos?

Mr. Tapper Complete turmoil, yes sir, Mr. Burns, thank you.

Further Discussion

Mrs. Warren Madame Chairman and fellow delegates, it just appears that every time the name Orleans is mentioned it sounds like a dirty word. Orleans is not a dirty word. It might be a little bit different as someone stated. I couldn't put this any better than Mrs. Zervigon has put it. You are going to hear some other exceptions if things go like it has been going in our Natural Resources Committee. It has been suggested in our Natural Resources Committee that land assessed in the country would be assessed at the usage and then would be assessed different in the cities. So that means uniformity for uniformity's sake is not good. You have just a uniform... but if it doesn't fit, you're in a bad fix. So let's don't throw us into chaos.

[Previous question ordered. Amendment adopted: 104-15. Motion to reconsider tabled.]

Personal Privilege

Mr. LeBleu Madame Chairman and fellow delegates, I realize the problems that we are going to be faced with a situation that arose pertaining to the last amendment, not only for the parish of Orleans, but other parts of the state as well. I voted for it because I realize a lot of these problems. I think we should give more consideration to solving some of these problems in our committees, rather than by using the words except Orleans Parish or whoever it pertains to and for this particular reason. One of the big objections that I've heard to the present constitution is from people who dislike going to the polls and having to vote on amendments that pertain to a different part of the state. I don't know what this convention will finally decide on how the new constitution will be amended. If the convention decides that the amendment process will require a vote of the people statewide, when we provide these exceptions in the new constitution, we are going to be at the same problem that now exists in the old constitution. I just want to bring that to your attention. I wanted to question one of the speakers, the time ran out but I would ask you to maybe give this a little bit more thought. See if there is any possible way that various committees before they come up on the convention floor. Thank you.

Amendments

Mr. Poynter These amendments are sent up by Mr. Schmitt. They have been distributed, but there are some changes he's made.

Amendment No. 1. On page 12, between lines 3 and 4, insert the following: "This section shall not apply to any parish in which there may be a provision in a city or parish home rule charter or plan of government to the contrary."

Amendment No. 2. Strike out Amendment No. 1 proposed by Delegate Casey.

Explanation

Mr. Schmitt This is just a minor technical amendment. It's like so many others, I guess. The main thing this amendment does, it allows a chance for versatility in the future. I realize that this might be stepping on the toes of many of the sheriffs across the State of Louisiana. But I feel, in the constitution, there should be room for flexibility in the future. I don't believe that we should freeze into the constitution something that might not be adequate ten years, twenty years, thirty or forty years from now. We have seen the parish of Orleans has come forward with a special exception to the parish of Orleans. What happens, some time in the future when another parish wants to come forward? Will it be necessary, at that time, that there be a constitutional amendment? If it is necessary, it should require two-thirds vote of both Houses plus a referendum of the people. I feel we should have the flexibility built into our constitution, so that we shall not need amendments in the future. I realize this touches upon many of the parishes of the State of Louisiana. But this does allow the parishes the flexibility that they may need in the future. I don't see anything so disastrous about the sheriff being the person allowed to collect taxes in any particular parish in the State of Louisiana. What gives him such great qualifications that he has the ability to do this? I don't think this should be frozen into the constitution. I think that we should have the ability and capability to change these different forms of government, if the people want to change, but not having to go and get the permission of the rest of the State of Louisiana in order to do it. If the parish of West Baton Rouge or East Baton Rouge wishes to have their taxes collected in a different manner, I feel they should be the ones who have the right to decide this. I don't believe this should be an issue which must be decided by all the people of the State of Louisiana, because this doesn't relate to all the people of the State of Louisiana. This relates to those individual people. I feel this would grant the individual parishes the chance to modify and to change and to be responsive to the problems of the future.

Questions

Mrs. Brien Mr. Schmitt, I'm a little worried about that. Are you sure the home rule charter provides for this?

Mr. Schmitt Which home rule charter?

Mrs. Brien Well, you said in your amendment....

Mr. Schmitt Well, it's not necessary that they do provide for it. However, if they do want to provide for it, why should we prevent them from doing that in the constitution? If a parish up in North Louisiana wishes to have someone other than the sheriff collect the taxes, why shouldn't they be the ones to decide this? Why should we, right now, establish the method of collection of taxes for the next fifty or sixty or hundred years in the State of Louisiana, depending how long this constitution lasts.

Mr. Silverberg Delegate Schmitt, are you familiar with the length of time it took the committee that proposed the original section and proposal to arrive at it's conclusions?

Mr. Schmitt No, sir. I'm not familiar, but I presume it took a long time. I know we have been fighting Revenue, Finance and Taxation for a long time.

Mr. Silverberg Are you familiar with the fact that they worked on this proposal for seven months and they explored this type of proposal, this type of amendment to avoid the desanizing of the article?

Mr. Schmitt I know that that particular committee

had a lot of special interest groups on it, they had probably more. They did have at least one sheriff on there. Am I not correct?

Mr. Dennerly Mr. Schmitt, suppose there were a parish in which there were two municipalities, each of which had a home rule charter. One of those home rule charters provided for collection of taxes, for example, by the municipality. As I read your proposed amendment, this section shall not apply to any parish in which there may be a provision in a home rule charter to the contrary. Therefore, if either of these municipalities adopted a provision which called for the collection of taxes, then this section of the constitution would not apply to that parish. Is that correct?

Mr. Schmitt I'm willing to strike out city or parish and just may be a provision in a home rule charter or plan of government to the contrary.

Mr. Dennerly I beg your pardon. I didn't quite follow that.

Mr. Schmitt I said that I think it would be adequate to say that there may be a provision in a home rule charter or plan of government to the contrary.

Mr. Dennerly Now, do you believe that a home rule charter should govern parishes, governments, municipal home rule charter should govern the parish government?

Mr. Schmitt Well, presently it's my understanding that there are six or seven methods presently allowed for individual parish to set up its own home rule charter, if it wishes to do so. This is presently regulated through the statutes.

Further Discussion

Mr. De Blieux Madame Vice President and ladies and gentlemen of the convention, I support this amendment, because I believe that it does not do harm to the present provisions which you have, it will take care of the Orleans situation. It will take care of several other situations. It will particularly allow the flexibility in the future, if there should be some other area that wants to change their system. They will have to be changed by a vote of the people. It cannot be changed except for that. If you don't have a provision like this, it's going to require an amendment of the constitution. We will be right back in the local categories where we were before, where you had to have a vote of the people of the whole state in order for a local subdivision to make this change. I certainly think if you can go ahead and do it now, we will prevent all of these local amendments. Let's think about the future, not just think about the present, because I'm hoping that we will have a constitution that will last a whole lot longer than the one we are presently living under at this particular time. It will aid the New Orleans situation, it will take care of them. It will take care of any future consolidations that the local government might want in years and years to come. I've heard some talk about our own local government here in East Baton Rouge Parish. They're talking about that now possibly we will go to a parishwide system at some time in the future. And it might be there would be some suggested changes that could be made if this amendment is adopted. Otherwise, we might have to have a whole new amendment to the constitution, just for the parish of East Baton Rouge. I certainly ask you to vote for this amendment. So it will eliminate those constitutional amendments in the future.

Questions

Mr. Dennis Senator, how can you say that this will take care of New Orleans? It's my understanding that this will delete the amendment that Mr.

36th Days Proceedings—August 24, 1973

Casey just had adopted. It's also my understanding that New Orleans has no home rule charter, that their government provisions are in the constitution.

Mr. De Blieux Mr. Dennis, as I understand the situation, New Orleans is operating under a constitutional grant of authority or powers. So they have a local plan of government. Since it pertains to a local plan of government, I don't think it will affect them at all. That is, what I mean is, it will allow them to do what they are presently doing down there now and that is the whole purpose of the amendment. If you have some information to the contrary, then certainly I don't want to do any violence to the present New Orleans situation.

Mr. Dennis Well, my problem is, I don't know exactly what a home rule charter is going to be under the new constitution. Don't you think this term leaves something to be desired in how it's defined in present law as well as how it's going to be defined in the new constitution? Are you sure that it would include the Orleans....

Mr. De Blieux In my opinion, it does include the New Orleans area. It will permit them to continue their government, just as they have it now. Now if there's somebody that knows a plan of government in New Orleans and can tell me something to the contrary, I'd like to hear it. I'm just wondering and surprised why that this particular provision wasn't included at the time this section was drafted, because I certainly see...you've probably recognized that they had a different situation in Orleans Parish than the rest of the state.

Mr. Dennyery Senator De Blieux, are you aware that the home rule charter for the city of New Orleans provides only that the department of finance shall collect taxes, etc., receivable by the city or any of its offices? And for it to collect anything that may be receivable by the state or any public or private department or board not subject to the provisions of this charter, it requires authorization by law. So that the city of New Orleans has no right, at the present time, to collect these other taxes unless this provision remains in the constitution.

Mr. De Blieux But in other words, Mr. Dennyery, you think that this particular provision would not allow Orleans Parish to continue its existence as it is now? That is what I want to find out.

Mr. Dennyery If you are asking me a question, I will be glad to try to give you the answer. The amendment that you put in is talking purely about sheriffs. That is all that I am talking about. Obviously, a home rule provision will permit the city of New Orleans to remain under its home rule charter, but it will not remove from the constitution the provision that the sheriff shall be the tax collector.

Mr. De Blieux Well, we don't want to remove that provision that sheriffs... unless that a plan of government subsequently adopted would change that system.

Mr. Dennyery Well, I don't understand that it reads that way, Senator. The way I understand it reads is that any municipality which adopts a home rule charter will knock out the collection of parish taxes by the sheriff and I don't believe that is what you intend, but that is what it says.

Mr. De Blieux No, it says "unless this provision in the home rule charter to the contrary". Otherwise, they would still be the tax collector. That is what we want them to be.

Mr. Velazquez Senator, don't you think that it would be best to withdraw this particular amendment at this time and rewrite it to take care of some of these many significant objections that have been risen. Don't you think that would improve the

chances of your amendment passing if you were to request that Mr. our good friend, Schmitt would withdraw this amendment at this time for rewriting to take care of these many problems that seem to have arisen, unconsciously perhaps?

Mr. De Blieux Well, you might be right, Mr. Velazquez. Maybe it might be better that we just pass over this particular section and see if that can be done.

Mr. Velazquez Perhaps it might be better,.... would you not think it would be better to request a two minute recess so that Mr. Schmitt could go over this thing and knock out some of these obvious problems that otherwise would require us to go into an extended debate on this topic?

Mr. De Blieux I would like to get as good a provision as we possibly can come up with for this particular section and take care of the situation in New Orleans and so forth. I am hoping that we can. As far as I am concerned, that, of course, it is Mr. Schmitt's amendment. If he wants to withdraw it at this particular time and if the Madam Chairman will allow a two or three minute recess to put it in the proper form, it would be all right with me.

Mr. Velazquez Thank you.

Mr. De Blieux Madam Chairman, if there is no objection, I would just like to ask for about a three minute recess for that purpose.

[Amendments withdrawn.]

Recess

Chairman Henry in the Chair

[Quorum Call: 106 delegates present and a quorum.]

Amendment as Resubmitted

Mr. Poynter On page 12, between lines 3 and 4, insert the following: "This section shall not apply to any parish in which there may be provision in a parish home rule charter or plan of government to the contrary."

Further Discussion

Mr. Dennis Mr. Chairman I believe that it may have, but if this...I don't believe at any point in the debate it has been brought out that we are interfering here with more than just tax collection. Our provision is based on three main ideas. If the sheriff is going to be the law enforcement officer of the parish, he shall execute the orders of the court and enforce them and he shall collect ad valorem taxes. Now as I read this provision, it would open up a situation where a sheriff could come to the legislature and get a home rule charter saying that he doesn't have to execute the orders of the court or that he is not the law enforcement officer any more. I think that this is doing violence to a good proposal that we arrived at after much study and listening to sheriffs and other people involved in law enforcement and in court work. I think that if you put this exception in, you are doing violence to what I think should be a statewide policy. That is, that the sheriff should execute the orders of the state courts, and I strenuously object to doing violence to that policy because I think it is essential to the operation of the court system.

[Previous question ordered.]

Closing

Mr. Schmitt This amendment does not eliminate the prior amendment which related to the parish of Orleans. If that is the desire that you elimi-

nate the prior one, you may do so, so it doesn't really adversely affect the parish of Orleans. But what it does do is, it allows other parishes in the State of Louisiana to have the same chance, the same right that the parish of Orleans presently does. Furthermore, I don't think that it is a true statement that the sheriff can come to the legislature and get something passed in the form of a home rule charter, because a home rule charter must be approved by the people of the individual parish involved. I don't think that these were exactly correct statements; I believe that the people should be the ones with the right to decide in that the individual parishes should have the right to decide whether or not they desire to be under the present system or some forty or fifty years from now they should decide to be under a different system. I don't think that we should forever lock them in so that they don't have this right to change.

[Amendment rejected: 17-96. Motion to reconsider tabled. Previous Question ordered on the Section. Section passed: 120-1. Motion to reconsider tabled.]

Personal Privilege

Mr. Champagne Mr. Chairman, ladies and gentlemen, delegates all especially not excepted Orleans. I just want to make it abundantly clear that this happened to be the first test case brought to the convention's eyes in which a parish was specifically mentioned by name. As you noted, I voted for this section, and if you are willing to join me in telling my people that 132 delegates with all of their ability and intelligence and efforts was unable to present to the people of this great State of Louisiana a constitution which recognized differences among people and parishes but was unable to prevent us from listing those parishes by name whether they be Orleans, St. Landry, Lafayette or what, then I join you. I admit that with all that ability we were unable to do so, and I hope, I earnestly solicit your efforts in the continuation of this constitution to please come up and devise means whereby we can recognize differences without mentioning of names. I thank you.

Reading of the Section

[Motion to waive reading of Section 11 adopted without objection.]

Explanation

Mr. Dennis Mr. Chairman, and fellow delegates, this is the first section pertaining to the clerks of court, Section 31.

Under the present law the approval of the district judges is required before the clerk can appoint his deputies. The present section is rephrased to require the approval of the judges only with respect to minute clerks; these are the clerks who sit in the courtroom. Subsection B requiring uniform office hours for clerks of district courts is a new provision. Otherwise, the section is substantially the same as presently contained in the 1921 Constitution. If there are no questions, I ask for its adoption. I do have a... what I hope will be a noncontroversial amendment which I will offer after any others, Mr. Chairman.

Questions

Mr. Toomy Mr. Dennis, could you explain the reasoning for having a Subsection B, whereas on lines 10 and 11 you say "the clerk shall have such other duties and powers as may be prescribed by law"; that wouldn't cover the problem in Subsection B? Is it still necessary to enumerate here that the uniform office hours?

Mr. Dennis Well, I agree that the legislature could do that; however, it was the view of the committee that the legislature should be required

to establish statewide uniform office hours.

Mr. Singletary Judge Dennis, ... did you give an explanation for the requirement of the value of the judges for the hiring of deputies? If you did, I missed it.

Mr. Dennis The... this takes away from the judges the right to approve all deputies... it does continue the right to approve minute clerks. The reason for this is that these people actually work in the courtroom and help the judge run the court. If they are going to do that, it was the viewpoint of the committee that the judge should have something to say about who they are.

Mr. Singletary Well, wouldn't you say that this gives a minute clerk two bosses?

Mr. Dennis Well, Mr. Singletary, maybe I am not making myself clear. Section 67 of the 1921 Constitution said that, "the clerks of district courts may appoint with the approval of the district judges, deputies with such powers as shall be prescribed by law". That gave the judges the right to appoint the deputies. Now we are here saying that the judge has the approval only of the deputy who works in the courtroom. Yes, I guess it does give him two bosses, but the judge has got to have some authority over that person in the courtroom; otherwise he can't run his court.

Amendments

Mr. Poynter Amendment No. 1 [By Mr. Asseff]. On page 12, line 6, immediately after "31" and before "in", strike out "A". Amendment No. 2. On page 12, strike out lines 16 and 17.

Explanation

Mr. Asseff Mr. Chairman, delegates, I have no objection to a uniform law for clerks and I understand the reason why. I am not arguing that point. I simply feel that it has no place in a constitution. I would prefer leaving it to the legislature of Louisiana. I have heard many delegates come to the microphone and say: it is statutory; let's leave it to the legislature; let's trust them. Well, if you are going to trust them, let's continue to trust them. I simply feel that it is statutory. I have no objections to uniform laws. I have not seen this done to any other office. So, why pick on the other offices? I urge that you adopt the amendment and reject what is obviously statutory from the constitution.

Further Discussion

Mr. De Blieux Mr. Chairman, ladies and gentlemen, I rise in opposition to this amendment. I am going to make my remarks very short on it because I see Mr. Ambrose who knows a whole lot more about this than I do, but I can tell you at the present time, we have got all types of closing hours throughout the state for clerks of court. So as a general rule you don't know whether the clerk's office is going to be open when you get there or it is not going to be open. If you have a case it might prescribe on a Saturday or a Sunday. I don't know whether you have to go there and file a suit on a Saturday or it can be filed on a Monday, because you don't know whether or not the clerk of court's office is open on a Saturday or not. This amendment I think is good because we ought to have one system for the clerks throughout the state so everybody will know when they have to file their suits and when the clerk of court is going to be there. I ask you to vote against this amendment.

Questions

Mr. Stinson Mr. De Blieux, to be a little bit more explicit, and if you don't file it on the date that it is supposed to be, then you lose your right and the people suffer, don't they?

* * *

36th Days Proceedings—August 24, 1973

And, so I have talked to other members of the committee, and we unanimously, with one possible exception, are presenting this amendment to you to cure this peculiar situation. I ask the Clerk to read the amendment.

Amendment

Mr. Poynter Amendment No. 1 [By Mr. Dennis, et al.], on page 12, between lines 17 and 18, insert the following, "Paragraph C, notwithstanding any other provision of this constitution to the contrary, the clerk of court for Lafourche Parish shall be appointed by the delegates of the Constitutional Convention of 1973 from Lafourche Parish, provided, however, an incumbent shall not be eligible for appointment. But, he may retire at the same rate as a member of the Board of Commissioners of the Bayou Lafourche Fresh Water District. The clerk of court of said parish shall be the recorder of conveyances and mortgages and shall have no other duties."

If you are interested, your real friends that offered this up are Messrs. Bollinger, Lanier, and Silverberg, if you want to tuck that back.

Mr. Henry Are there any further amendments on the . . .

We are going to open the machine for co-authors.

Mr. A. Landry The only thing I can say is that Joe Silverberg and Walter Lanier, Jr. will not eat too well next week if this amendment passes. I can tell you that.

Mr. Dennis Mr. Chairman, in sympathy to Mr. Lanier and Mr. Silverberg, I withdraw the amendment.

[Previous Question ordered on the Section.
Section passed: 119-0. Motion to reconsider denied.]

Reading of the Section

Mr. Poynter Section 32. Coroner; Election; Term; Qualifications; Duties
Section 32. In each parish, a coroner shall be elected for a term of four years with such qualifications and duties as may be prescribed by law.

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, this is the section pertaining to the coroner. With certain changes this is the same provision that is in the present constitution. The changes are as follows: first of all, we have deleted the provisions requiring the coroner to be a physician if one is available. We have deleted the provision that he is ex-officio parish physician, and the provision that he shall fulfill the duties of the sheriff, pending filling of a vacancy. The reason we have made these changes is, in some of our parishes we have been unable to get physicians to perform the functions of coroners and have had to rely upon other persons. For example, in my parish our coroner is a psychologist. We could not get an M.D. to take the job.

Amendment

Mr. Poynter Amendment No. 1 [By Mr. Weiss, et al.].
On page 12, line 21, place a period "." after the word "years" and delete the remainder of line 21, and delete line 22 in its entirety, and insert in lieu thereof the following:
"He shall be a licensed physician and possess such other qualifications and perform such duties as are provided by law. The legislature may provide the qualifications, however, if no licensed physician is available for the office."

Explanation

Mr. Weiss Fellow delegates, this is a simple amendment which maintains the wording in the pre-

sent constitution, and greatly reduced, however, with reference to the office of coroner. I tell of you are familiar with the importance and the strength that a coroner holds. As a matter of fact, the coroner is the only man in the parish who can put the sheriff in jail. As you know, our governor was committed through a coroner. The coroner committed Governor Landry to prison. If you recall, this man is highly important, and he must have a great deal of technical ability. I will not spend your time unnecessarily except to mention a few examples of why a physician is needed. For example, we have now in medicine a forensic pathologist which does nothing but study cases which are involved in criminal activities. For example, a man who is not trained in anatomy would be unable to know ballistics and remove a missile or a bullet from a part of a body that enters a leg and ends up in the back. Or if someone is shot in the back and then the bullet is found in his side, these are significant ballistic medical points which should be taken care of by a physician and one who is well-trained to understand the matter. There are other instances of aggravated rape or murder which require microscopic examinations, technical medical examinations, which one other than a physician is neither qualified for nor should do. The inquest of the coroner himself, the coroner's inquest, is highly significant. I was amazed in a civil... in a run that we had for civil defense when we had a practice session and supposedly 100 people were killed in a certain area. When I asked, "Is a physician in charge of this civil defense practice exercise to have these bodies removed and brought to the morgue, the police would not move these bodies theoretically. And the reason is that the coroner must o.k. removal of a body. This is highly significant as to the point of entry or exit of a bullet. In other words, many technical aspects to assure proper facts being obtained in any judicial case rest in the hands of a coroner and a coroner's inquest. It is highly significant that they be a physician. The present constitution calls for it. The only objections are those areas where there is no coroner, and I understand there are three parishes in the state, and after three hours of study and approximately a week and a half on this particular amendment, I think I have finally come up with the answer and have several delegates who approve of it. And your copy indicates those who have gone along, co-sponsoring this, and that is that those areas where there is no licensed physician available, then the legislature will provide for this function in that given parish. I ask your adoption. I think it is a simple amendment to maintain a very, very important factor in qualification of coroners. We have qualified attorneys, or rather judges, who have had to be five years in the practice of law, and there is certainly very important reason to have your coroner a licensed physician, if you want justice practiced.

Questions

Mr. Roemer I have no quarrel or quibble with the intent, but the second sentence says the legislature may provide the qualifications, however, if no licensed physician is available for the office.

Mr. Weiss Right.

Mr. Roemer If two non-physicians run for the office, and one is elected, then I would say there would be no licensed physician available for the office. What do we do then?

Mr. Weiss I did not understand that. Would you repeat that last part?

Mr. Roemer If two non-physicians run for the office, one is elected; then we have no licensed physician available for the office. Then what happens?

Mr. Weiss That is correct. That is what the

legislature is to provide for. There is no licensed physician available and, therefore, the legislature prescribes that in that given parish, he may be other than a licensed physician. That is what the present constitution calls for.

Mr. Roemer But, what I am saying is, would you agree with the idea that your amendment does nothing if it allows non-physicians to run, only non-physicians run, and non-physicians wins. Then, what have we done?

Mr. Weiss Not at all, no, in those parishes where there are licensed physicians and they are available for office, they will be qualified for coroner. No one else will be. In those parishes where there are no licensed physicians available, then there are people who may run for office. And the legislature will provide for their qualifications.

Mr. Roemer But, what if no physician wants to run for the office? Then what have you got?

Mr. Weiss Then there is no physician available in that parish, and therefore the legislature will provide for the qualifications of that individual. I understand in some parishes, or in one, there is a sociologist. I do not think a sociologist should examine for a rape case. However, that sociologist, I believe, calls in a competent physician to help him, although he himself is the coroner.

Mr. Roemer But, my point, and I will end it here, Doctor, you understand the problem is, if there is only one physician in an area, he may or may not want to run for the office, he is going to get it by default, if he happens to want it.

Mr. Weiss No, no.

Mr. Roemer Well, who else can get it? If he wants to run for the office, and he is not elected by the people, yet he's the only physician available; then he gets it, and the people have no right to vote, in effect, the vote didn't mean anything.

Mr. Weiss He may refuse the office. If he has refused the office, he has not accepted.

Mr. Hayes Dr. Weiss, do we still have the coroner's inquest and the coroner's jury that you mentioned, I believe? Do we still have that?

Mr. Weiss A coroner's inquest, but I don't think they have a coroner's jury. No, they have a coroner's inquest.

Mr. Hayes The coroner can call in experts at his request and at state expense if he has to, right? ...if he is not a doctor, or he needs help or additional assistance.

Mr. Weiss It is my understanding, yes, he has that authority.

Mr. Pugh Doctor, under your amendment, you still contemplate that there must be an election, is that not correct?

Mr. Weiss Absolutely, they must be elected. They are parochial officers in a parish, and they must be elected for four years.

Mr. Pugh Even the legislature could not provide for an appointment?

Mr. Weiss No, it provides only for qualifications.

Mr. Pugh That is the way I read it.

Mr. Weiss Absolutely.

Mr. Brown Doctor, what concerns me is the fact that you might have the situation where no one qualifies. The legislature's role strictly deals

with qualifications of the man to get the job. It deals nothing with the legislature...the way I read it, it prohibits the legislature from setting up mechanics to pick a man if no one qualifies.

Mr. Weiss Now, what do they do if a judge does not qualify, may I ask you, Mr. Brown, or Delegate Brown?

Mr. Brown If no judge qualifies?

Mr. Weiss If no judge qualifies.

Mr. Brown For the job?

Mr. Weiss Right.

Mr. Brown That is a good question.

Mr. Weiss Well, then don't ask me that question, please.

Mr. Brown It is not a bad question, because in my own parish nobody qualified.

Mr. Weiss It is a bad question, because it won't happen, I assure you.

Mr. Brown Well, no one qualified in my parish in the last election, Doctor, so you are wrong; it does happen. What I'm saying to you is the way your amendment is drafted, there is no provision for the legislature to appoint someone or let someone else fill the office.

Mr. Weiss No, it does require that a coroner be elected from each parish.

Mr. Brown What if no one qualifies?

Mr. Weiss Well, I don't know. If judges don't qualify for office, what are we going to do?

Mr. Brown Let's talk about coroners now.

Mr. Weiss Well, let's talk about judges because we have the same situation here. We've only required the judges be attorneys for five years. I simply state that the coroner should be a licensed physician. I don't think your argument is valid, if you can't apply it to judges.

Mr. Brown I think we can.

[Previous Question ordered.]

Closing

Mr. Weiss Simply to answer the question, the hypothetical question, which I think is a poor one, the coroner who is presently in office will be maintained. So, I don't think there is any problem here. The laws we write are never perfect. There is always the exception and this is minitua. We're talking about law-enforcement in the city of New Orleans, in the city of Lake Charles, Monroe. We're talking about the state as a whole, which represents sixty-four parishes of which sixty-one have a coroner today who is a licensed physician. I think we should vote this amendment favorably, and I ask you to vote green, please.

Questions

Mr. Gravel Because I'm a coauthor I was going to ask you in view of the arguments that have been made which I think are valid, would you be willing to withdraw the amendment at this time to see if we can't prepare something that would meet a couple of the valid objections?

Mr. Weiss As I said, thank you, Delegate Gravel...

Mr. Henry Why don't we just go ahead and kill the amendment and pass the section and go to lunch.

Mr. Weiss No, I don't think it is wise to yield at this time, because the issues are three things: (1) we have an elected coronor which is in this, (2) that this coronor be a licensed physician, (3) that, where available, he always be a licensed physician; where not available, some provision is made and the legislature makes that provision. I think this is clear in this amendment, and I hope that you will vote it favorably. Anything else is simply, after a considerable period of study, I think, going to be difficult to satisfy everyone.

Personal Privilege

Mr. Gravel Personal privilege, Mr. Chairman, just a moment. I'd like to withdraw as an author of this amendment.

Questions

Mr. Weiss Mr. Gravel, you care to withdraw as cosponsor?

Mr. Gravel Yes, I do, because I think we need to straighten it out.

Mr. Weiss I think it is as well as can be done.

Mr. Jack This thing has been talked over so much it's dead. The clock's running. I'm reading to you from the qualification...on the constitution, and then I'm going to ask you a question. If the present law says the coroner of each parish shall be a doctor of medicine, regularly licensed to practice, and shall be ex-officio parish physician, now listen closely, provided this article shall not apply to any parish in which there is no regularly licensed physician who will accept the office. Why don't you withdraw your amendment, put it in line with that, move that we go to lunch, and when we get back, take your amendment up? I think it's going to be a dead duck unless you do.

Mr. Weiss I accept your suggestion and move that we move to lunch after answering Delegate Rayburn.

Personal Privilege

Mr. Rayburn Mr. Chairman, I just want to suggest that we not allow Delegate Gravel to remove his name and suggest that in the future he get Mr. Roy to read those things before he puts his name on them.

Mr. Henry Senator Rayburn, your point is well taken, and this is about the third time all of a sudden, we've come up here and wasted fifteen or twenty or thirty minutes on this sort of confusion. Then people either want to withdraw the amendments because they are improperly drawn, and they're ill-conceived and hurriedly done. The previous question has been ordered. Therefore, when the machine is opened as many of you as are in favor of the adoption of the amendment....

Mr. Weiss Mr. Chairman, a point of personal privilege. I am compelled to answer to your charges.

Mr. Henry We are on the previous question.

[Amendment rejected; 19-94. Motion to reconsider tabled.]

Personal Privilege

Mr. Weiss Before the motion for recess for lunch, I just want to answer a very significant point that our Chairman has brought to our attention. Believe me, I have worked on this darn amendment for two weeks and at least four hours, and I don't mean to involve Mr. Gravel or anyone else in my errors. He was simply trying to help me, and I could have gone to Mr. Roy and gotten the same mistake, according to these delegates. Mr. Chairman...

Mr. Henry Dr. Weiss, with the kind of help Mr.

Gravel gave you on this, you don't need no enemies.

Recess

[Quorum Call: 107 delegates present and a quorum.]

Personal Privilege

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, I would appreciate it very much if you will give me your kind attention on this issue of personal privilege that I would like to discuss briefly with you. Earl Long taught me a long time ago not to argue with the man who's got the microphone. I guess I should have learned my lesson. I want to admit that not only today but on other occasions, I have made some mistakes, and I have tried to correct them. I used to recite a little nursery rhyme to my children that went something like this, "There was a man from our town and he was wondrous wise. He jumped into the bramble bush, and he scratched out both his eyes; and when he found his eyes were out, with all his might and main he jumped back in the bramble bush and scratched them in again." Now perhaps, I'm in that position very often. I wish Senator Rayburn was here to hear me, but I understand that probably the third seed from the second olive had a little trouble with his dentures. He might not have been able to get back after lunch as quickly as most of us can. I've...I know I've made some mistakes. A lot of people would say I made a mistake when I supported Speaker Henry, in the background, for chairman. I don't think I did. A lot of people said I made a mistake when I just practically twisted poor old Governor Edwards' arm to help "Sixty" stay on as chairman of the Budget Committee. I don't think I made such a mistake. I've had a real problem though, trying to work with Chris, and the suggestion that has been made that he does my writing for me would ordinarily be o.k., except that Chris told me a while ago that he's spending all of his time writing briefs on applications for rehearing in the court of appeal. I've solved the problem of making the mistakes, and I want to thank the chairman, my good friend, and "Sixty" Rayburn. They won't happen again. Mr. Henry is going to lend me his ghost writer, Max Killen, and "Sixty" Rayburn is going to lend me one of his retired judges. So, I think from now on we will be able to avert the errors that I got you all involved in this morning by trying to get off an amendment that I thought was wrong. I really am being facetious. I didn't get enough laughs for me to realize whether you were taking it that way, I....

Mr. Henry I don't think they understood it. That's been the problem with this convention up to this point, you understand.

Mr. Gravel Seriously, though, I'll try to do better, but, please, please, don't charge poor Chris with my mistakes. He makes enough of his own.

Mr. Henry Mr. Gravel, of course, I don't think I have to say this; you are one of the finest semi-bald-headed men I know.

Mr. Gravel Mr. Chairman...

Mr. Henry No, I'm talking now. I listened to you. You listen to me for once in your life. As the Bard of Avon once said, "The false face must hide what the false heart doth know." Some people will believe that and some people won't. You and I know it's not exactly true, but if you will take your seat, we will get started with the afternoon festivities.

Mr. Gravel ...You were rather personal there. I want you to know that I got this bald head from being drug out of smoke-filled rooms by my heels.

Mr. Henry They've said about you since the fifties that you were far ahead of your times, and I think that was right. I hope that some of these things that are coming up now, that they'll say in the eighties that you were ahead of your time.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Weiss]. On page 12, line 21, place a period "." after the word "years" and delete the remainder of line 21, and delete line 22 in its entirety, and Insert in lieu thereof the following:

"He shall be a licensed physician and possess such other qualifications and perform such duties as are provided by law; however, the requirement that he be a licensed physician shall not apply to any parish in which there is no licensed physician who will accept the office."

Explanation

Mr. Weiss Mr. Chairman, fellow delegates, the previous floor amendment having been subjected to the constructive, collective criticism of this body and its members and having failed, at this time I now propose a revised floor amendment to Section 32 that should meet with everyone's approval. I hope it will now pass by virtue of its merits as discussed rather than on its author or previous cosponsors.

Questions

Mr. Jenkins Doctor, the thing that concerns me about it, suppose that there's only one licensed physician in an area who's willing to accept the job, but also suppose that for some reason or another, he's sort of an unsavory character. He might be someone with an alcohol problem. He might be someone who otherwise would be undesirable. Wouldn't this give him the sole claim to this office simply because he's the only licensed physician who's willing to take the job?

Mr. Weiss I think your point is well taken. However, I think the legislature has a way out and that the people, if they made the mistake of electing a drunk physician, then it was their fault. However, I know the story, in a Texas town, a man was coming through and in critical condition as a result of an accident. The emergency room said would you like to have our doctor or do you want us to send you elsewhere? He said well, of course I want your doctor. They said, well, he's drunk. However, he's better drunk as a physician than anywhere we can send you within a fifty mile radius.

Mr. Jenkins But, what I mean is in some rural areas, there may be only one or two or three licensed physicians in the area, only one of whom would be willing to take the office, and that person may be an unsavory character. Wouldn't this mean that the people would have no other choice? No one else could run other than that person.

Mr. Weiss No, I think they perhaps would have another choice by appealing to the legislature, refusing to elect that position, and requesting, as the last section points out, that no licensed physician if available, if no licensed physician is available, then the legislature may establish how this parish will select this coroner.

Mr. Perez Doctor, I'm in sympathy with the purpose of your amendment, but I want to be sure if we adopt something, it is correct. I'm trying to determine how it will be determined under our election process when this last clause would apply. However, the requirement that he be a licensed physician shall not apply to any parish in which there is no licensed physician who will accept the office. Now, when and where do we determine that there is no licensed physician who will accept the office under our election procedure?

Mr. Weiss Well, I think the process of applying for coroner, that is, registering, calls for qualifications; and if a man meets these qualifications, then he can run for office. If he doesn't then of course you do not have a qualified coroner in the sense of a licensed physician, and other law as determined by the legislature will therefore apply.

Mr. Perez The problem that I have is, is that there is a deadline for filing as a candidate for office. Until the time is past for the qualifications for candidates for office, you do not then know whether there is or is not. Once the time for qualification is past, no one else may qualify. As I'm saying, I'm in sympathy with your proposal, but I want to be sure that what we adopt is correct.

Mr. Weiss I think you're absolutely correct. Do you know how the present law applies in a situation like this?

Mr. Perez Yes, I would say that the present law, until such time as the qualification for a candidate for offices passes, you would not know whether, in fact, there was a candidate who was qualified. If you wait until after the time for qualification, then no one else can qualify. That's why I have a problem with your last clause.

Mr. Weiss This is no different than the present law is my appreciation.

This is no different according to Judge Dennis who feels that this too is a safe amendment at this point.

Mrs. Warren Dr. Weiss, I'm interested in this question for more than one reason. Could you tell me of any parish in the State of Louisiana that does not have a physician in their parish?

Mr. Weiss I understand there are three such parishes of the sixty-four that do not, at this time, have a licensed physician.

Mrs. Warren Would you tell me which parishes they are?

Mr. Weiss I don't know. Judge Dennis' is one, I believe Delegate Brown's is another, and I don't know. You'll have to ask the other parties, but those are two that I know of.

Mrs. Warren But that's something I'd like to know, not only for this amendment. Thank you.

Mr. Stinson You mean they don't have a licensed physician in Monroe? That's where Judge Dennis is from. Do they have any good lawyers over there?

Mr. Weiss According to Judge Dennis, I understand there is no licensed physician who would accept the position in Monroe.

Mrs. Warren Oh, well I mean, that's what I wanted to know. I wanted to know if we had a parish that didn't have a physician that could take care of the sick. That's what I wanted to know.

Mr. Weiss Who would not accept the position.

Mr. J. Jackson Dr. Weiss, as presently, in some parishes, the option is open that preferably I can see merits in your amendment about the physician. But at the same time as I appreciate it, I understand that coroners are allowed to hire certain staff, which could very well be a physician. Is it not true that in some parishes, the option is open where a person could either run if he is a physician or a lay person? That in most cases that a physician probably would win out in an election, but that it doesn't restrict it only to being a physician.

Mr. Weiss No, the present law requires a licensed physician. This law is no different than the present law. I think the important thing here is to

remember that one must be qualified to conduct a coroner's inquest. One must be qualified to remove a bullet from the body of a dead person and know where to find it. Also, one must be qualified to evaluate a situation at the time. Many times deaths may occur at two or three in the morning, the physician is on call, the coroner pronounces the individual dead and therefore is in a position to evaluate the coroner's cases, as we recognize them. This is highly important.

Mr. Roemer Doctor, I notice that in the amendment as written, it says "licensed physician". I'm not sure what that means. For instance, is a dentist a licensed physician?

Mr. Weiss This is legitimate criticism in your mind, but if you look in the dictionary, a physician is a practitioner of medicine. You qualify "a physician" with a dental physician or a veterinarian physician or the like.

Mr. Roemer So a veterinarian is a licensed physician, a dentist is a licensed physician. Correct?

Mr. Weiss No, a physician is a medical doctor, but you may qualify the term "physician" with the word "veterinary", "dental", or the like.

Mr. Roemer All right, look. Make an assumption that I'm not too bright, and you'll be ahead of the game. Explain it to me again. That is, what does your definition of licensed physician as used in this amendment mean? Would a dentist apply under your amendment?

Mr. Weiss No.

Mr. Roemer Okay, thank you.

Further Discussion

Mr. Jack Mr. Chairman and members, I'm against the amendment. It just won't work. The present law, it's true, does read that way like the amendment, but you could have, as someone stated, a situation where in a parish there were no doctors, or one doctor. Suppose there was just one. He might be the type of man, as someone said, an alcoholic. He could be incompetent. But more I'd be afraid of, he would want to be devoting his main part of this time to his own medical practice and make this coroner's salary and office secondary. Now I found, under the present system, in certain parishes, the coroner and all of them are doctors, spend very little time in these investigations. It wasn't very thorough. I found in Caddo where it was full-time, and they spend a lot of time at work. Now I don't know the answer, but this is very simple the way this reads in the material here, in the yellow sheet. In each parish, a coroner shall be elected for a term of four years, with such qualifications and duties as may be prescribed by law. The legislature has time to go into that. They can change it if the need be. Now you know this day and time, you don't have doctors, or country doctors, the doctors out in the country like you used to have. They move to other states. They want to be in the big cities. I'm not blaming them. But if this law might have been in the present constitution workable in '21, it's not workable today. Now I feel sorry for Dr. Weiss having worked so hard. He's a surgeon and he operated on his patient here before we went to dinner. He's been treating him since, but it looks to me like his patient has died. I hate to do it, Dr. Weiss, but I have to be against it and let the legislature get a new patient and go into all the treatment and straighten this thing out.

Questions

Mr. Weiss Delegate Jack, are you familiar with the resuscitative measures we physicians use today?

Mr. Jack I don't believe you can resuscitate this.

Mr. Weiss Well, I've called in every physician in the past two weeks, and I think that the merits of this speak on its own value. It's dangerous to get words to please everyone, particularly critical attorneys as you.

Mr. Jack No, it's not that, Dr. Weiss. It's a thing that has to be studied. Your wording is all right for what you're trying to do. I agree. I showed you the present constitution, but on further thought, I don't believe the present constitution takes care of it. The point is raised that if you have just one coroner he would... one physician, he would be the only one and he would be your coroner, even though he might not fit. It's not the bad situation and I think the legislature needs to study it. You've got it drafted fine. Chris Roy couldn't improve on the drafting.

[Previous Question ordered.]

Closing

Mr. Weiss Fellow delegates, we're discussing the Judiciary Article. Nothing is more important than justice. To have justice, one must have facts. These facts must be unbiased, untarnished, and presented by knowledgeable people. You attorneys and judges should know more than anyone else that it's necessary to have the facts before you can make a judgment. It's been said that one's judgment is no better than their information. I ask you to put in this constitution, that which has been since 1921, and perhaps before, and is not changed one iota in essence, in context or in writing from the present constitution, that which is so vital to our own self interest, and that is justice by determination of facts by individuals who can bring those facts before a grand jury or before a jury or whatever source of justice is being sought. The coroner can do this. I think the man should be trained. There are certainly exceptions to every rule. Let's not create a situation throughout the state that will impede justice.

Questions

Mr. Stinson Dr. Weiss, Mr. Jack got up and said suppose there is only one doctor and he's a drunkard and so forth. Don't you think Mr. Jack is very jealous that he wanted to keep in there that a judge would have to be a lawyer? He wouldn't want a non-lawyer being a judge and couldn't there be some drunk lawyers or maybe one drunk lawyer that would end up being a judge the same as possibly a drunk doctor would be a coroner? It's the same question, isn't it?

Mr. Weiss I think you are right, sir, and I believe in the past there has been a saying that there are more drunk... there are more old, drunk judges than there are old, drunk doctors or old drunks.

Mr. Derbes Dr. Weiss, have you ever heard the expression "sober as a doctor"?

Mr. Henry That's sort of a "loaded" question, Mr. Derbes.

Mr. Weiss You attorneys are taking me over the coals and I accept the responsibility, as a delegate to this convention. But I know one thing, that we people must stand up for our rights and the folks back home asked me to bring them a constitution they could understand. Believe me, sometimes I don't know what you fellows are talking about. I'm telling you now what I have to say, and I hope you'll vote green.

Mr. Dennis Yes, Doctor, do you know that despite your remarks I think you've made a real good effort to put this back in the same language, the same provision as it is in the present constitution and that I'm in sympathy with what you're doing. I'm

going to vote for your amendment.

Mr. Weiss Thank you, Mr. Chairman of the Judiciary Committee.

Mr. Duval Dr. Weiss, do you know that Justice Tate wants you to sing "Melancholy Baby"?

[Amendment adopted: 114-4. Motion to reconsider tabled. Previous Question ordered on the section. Section passed: 112-0. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter "Section 33. Vacancies. Section 33. When a vacancy occurs in the following offices, the duties of the office, until it is filled by election as provided by law, shall be assumed by: in the case of sheriff, the chief criminal deputy; district attorney, the first assistant; clerk of a district court, the chief deputy; coroner, the chief deputy. If there is no such person to assume the duties at the time of the vacancy, the governing authority or authorities of the parish or parishes concerned shall appoint a qualified person to assume the duties of the office until filled by election."

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, this is the section dealing with the filling of vacancies in several of the offices contained in the Judiciary Article. This represents a change in the constitutional provisions at present. We have deleted the power of the governor to fill the vacancies in the office of sheriff, district attorney, coroner and clerk of court. We have placed in the section a new provision providing that the chief assistant of these officers shall assume the duties of the office when the vacancy occurs, until an election is held. If there is no chief assistant, the governing authority or authorities of a parish or parishes concerned will temporarily fill the vacancy, until an election is held.

Questions

Mr. Brown Judge Dennis, there has been a number of sheriffs, and I don't say a great number, but in my own case, I've had a sheriff in one of my parishes that's gone to jail, my clerk of court up there, a couple of years ago, went to jail. In many instances, you're going to have the problem where the chief deputy is just as involved as the man involved himself. If you have corruption or theft, something of that matter, involved. So that being the case, what is the reasoning behind letting the chief deputy take over the position. I could see it if there was a death, but what about when there is an indictment or a conviction something of that line. You might have the chief deputy just as involved as it has happened on many, many instances around this state where there has been convictions of elected officials. Do you think that this gives a safeguard against something like this?

Mr. Dennis Mr. Brown, the committee, I think, had in mind a vacancy occurring because of natural causes. We didn't draft this article based on the idea that there would be many vacancies because of what you are mentioning now. We proceeded on this theory, that most vacancies will occur because of death or illness or something of this nature. For smooth operation and continued efficiency, it would be better for the chief assistant to take over until an election is called. An election should be called and will be called under other provisions within a six-month period, I believe.

Mr. Willis Judge Dennis, projecting Senator Brown's question a little further, don't we have the presumption of innocence in Louisiana? That a man is innocent until proved guilty beyond a reason-

able doubt by competent evidence?

Mr. Dennis I'm certain that we do now, and that that will be continued under whatever constitution we adopt.

Mr. Tobias Judge Dennis, I'm reading Section 33. You stated in an answer to Senator Brown's question that the election would be called within six months, but would refresh my memory where this provision is? I know we provided that for judges, but I don't see anything that we've adopted so far that would apply to other offices. As far as I read this, when a vacancy occurs in say, for example, the district attorneys office. If, for example, the district attorney was just reelected and then he resigned, you could be assumed that after his election, you could wind up with a district attorney who was not elected by the people. In other words, he's passing the office along to one of his colleagues, his first assistant. He would be in office for over five years, almost six years.

Mr. Dennis I believe you are correct, Mr. Tobias. I did have in mind specifically the judges provision. However, the convention adopted our thinking there, which is basically the idea that the governor will no longer fill these offices and that elections will be held within a very short period of time. So I think that somewhere else in this constitution, or the legislature by statute law, will follow this policy and will provide for elections to fill vacancies within a short time after the vacancy occurs.

Mr. Tobias Do you think that's permissible when we say that the . . . "when a vacancy occurs in the following offices, until filled by election as provided by law." I think it should be assumed that the legislature to specifically say that within six months that this office shall be called by election?

Mr. Dennis Yes, sir. "Until it is filled by election as provided by law." I think specifically authorizes the legislature to do exactly what I am talking about.

Vice Chairman Roy in the Chair

Personal Privilege

Mr. Asseff Mr. Chairman, delegates, I would not interrupt, except that I am gravely concerned about the constant reference by the delegates, over and over again, "leave it to Style and Drafting". When they know there has been an omission, when it is an obvious error which they concede, they say, "leave it to Style and Drafting". I am a member of the Committee on Style and Drafting. We have more than we can do. It is my opinion that it is your duty to put in each section and each article what you want there, and to be clear and specific. It is our duty only to attempt to catch errors, inconsistencies, overlapping and that type of thing. I, for one, favor making as few changes as possible just to lighten it up, but avoiding change that may be substantive in nature. You and you alone can make that determination. You have spoken, and whether I agree or disagree, I have no right to make any change that has even a slight chance of changing the meaning. Right now the committee has over two hundred and eighty amendments to consider to the Legislative Article. I urge you to please, when you catch an error either of omission or if it's an error of phraseology, to ask for a recess and correct it at that time. Otherwise, you might find our committee debating it for three hours, submitting it to you, and then you'll debate it for two or three hours. Our committee is very badly divided, six to five, on the approach that we should follow. So I urge you to do your duty and give us the duty as you want it to read. That will keep our duty at a minimum. I don't want to take a chance of changing your meaning, so I urge you, please, put it in

36th Days Proceedings—August 24, 1973

general, the district attorney, the coroner, the clerk of court and the other constitutional officers that we have in the judiciary section.

Questions

Mr. De Blieux Mr. Conino, do you know at the present time that just about all the coroners in the state of Louisiana work on a fee basis rather than upon a salary?

Mr. Conino No, I didn't.

Mr. De Blieux Well, I believe if you will check that out you will find that they are paid by fees rather than a straight salary and I believe if you put this particular provision there it would eliminate the possibility of going to a salary basis upon them. And I don't think it'd be good for us to put that amendment in there at this particular time since they are paid by fees rather than salaries. It might absolutely prohibit the legislature from ever changing it, even if the coroners wanted it changed.

Mr. Stinson I am wondering about the provision that their retirement will not be reduced while in their term of office. Suppose that something happens to the retirement fund and it should go broke. The state can then be called on to furnish all money necessary to bring it up so that it would not be diminished?

Mr. Conino Well, this retirement fund, it will be set-up by the legislature and it would be just like all the rest of the retirement funds no matter what they are, school teachers or bus drivers or whoever has a retirement system within the state.

Mr. Stinson Well, does that same provision cover all of them? It will not be diminished? I know after they start rejoining.... in joining it can't be reduced, but this is while they are attempting to earn it.

Mr. Conino Well this, this particular provision says salary or retirement benefits.

[Previous question withdrawn. Amendment adopted 8-21. Motion to reconsider tabled. Previous question ordered on the Section. Section passed 80-22. Motion to reconsider tabled.]

Reading of the Section

[Motion to waive reading of Section 37 adopted 8-22.]

Point of Order

Mr. Jack I think he ought to read it. You know somebody might not can read down here.

Mr. Roy Mr. Jack, we voted on it and it carried 80 to 20. You are out of order.

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, we have already alluded to this section several times in coming through this article. As I told you earlier, the basic theory of the committee is that we will not force any parish or any community to abolish or change their present court system or other local government offices overnight by this constitution. We think that the effects would be disastrous in those areas. Orleans Parish, as you know, has more situations which are peculiar or different in their parish pertaining to the courts, the clerks, the sheriffs, and other offices than any other parish. So we tried to write a uniform constitution and preserve their courts and other institutions in this section.

However, this will not maintain them in constitutional status as they are today. This section

provides that although they are retained, just as other peculiar courts throughout the state, or peculiar offices, that they can be changed in the future by the legislature with approval of a referendum in the parish. This provision is a product of many months of debate. It represents a compromise. We don't feel that it will compromise a principle because we have in the article established a uniform system of courts, from the district court on up and we have a lot of other parishes to maintain their courts and their offices which are different, subject to legislative action. But we are not doing anything that different for Orleans here. And we arrived, as I said, at this solution after struggling with the problem for many months. So we are now asking the convention to adopt this and to go along with some understanding of the difficult problem with which we were grappling.

Questions

Mr. Fontenot Judge Dennis, in Section 15 where we discussed and provided that the district, parish, city, family, and juvenile courts existing at the time of the adoption of the constitution are retained. Now, in that particular section, the legislature may abolish or merge these different courts and in this particular section the legislature can change them, plus a referendum in the parish. Do you think that New Orleans should be treated different as far as the people voting by referendum, and not the rest of the state?

Mr. Dennis Mr. Fontenot, I will try to answer you this way by giving you what I think was the consensus and the view of the committee. The committee started off trying to treat everybody the same, as I said earlier. However, because of the tradition and history in Orleans Parish, we wanted to continue those courts. Some of us wanted to submit it to a simple legislative vote to change, I admit that. However, the feeling was so strong because of the history in the past, there had been some instances in our history of punitive measures being practiced against the parish of Orleans, that they desired and asked for the added protection of a referendum for their people before their courts and their other offices could be changed by the legislature, and the committee granted that extra protection.

Mr. Fontenot But you do... would you admit that this is somewhat inconsistent that this parish or this area has a local referendum whereas the rest of the state does not have a local referendum to go along with the legislature, to be able to change these courts. Would you agree with that?

Mr. Dennis Well... it is different, but as has been pointed out before, Orleans is different and in the history of the state, there have been some instances in which punitive measures have been taken against Orleans because it was a big city and was not like the rest of the state. This is the same thing that caused these institutions to be placed in the constitution to begin with. And we of the committee felt like this was a reasonable compromise. It would not take amending the constitution to change this, but it would take a vote of the referendum of people, by the people in the parish of Orleans.

Mr. Roemer Could you refer to lines twenty-six through twenty-nine of that particular Section 35 that deals with the judicial expense fund of Orleans Parish. Is there any other judicial expense fund in the constitution?

Mr. Dennis I don't believe there is, Mr. Roemer.

Mr. Roemer I don't believe there is, either. I think we can clear that up.

Why is this one in there, No. 1....

Mr. Dennis Mr. Vesich says there is. I'll let

him answer for that later.

Mr. Roemer O.K. fine. Now, assuming that there is or there isn't, regardless, why do we have a two-thirds vote provision to protect it as is? What's so sacrosanct about it? What is the judicial expense fund? How much money does it amount to? Has it ever been audited by the legislative auditor in this state?

Mr. Dennis Well, you've asked me about three questions....

Mr. Roemer Well, let's take them one at a time. What is it, and how much is it?

Mr. Dennis First of all, I don't know how much it is.

Mr. Roemer Well, it is one million seven hundred and ninety-four million dollars....

Mr. Dennis I believe it is a fund which is similar to other funds that have been established by statutory law in other parishes, whereby extra filing fees are charged, and out of that court reporters and other expenses are paid.

However, you really have got me into details that I don't know fully, and I think there will be other speakers like Mr. Vesich who can explain in detail what the judicial expense fund consists of in Orleans Parish.

Mr. Roemer O.K. I'll defer my question. He is going to come speak on that particular section? Is that agreeable?

Mr. Velazquez On this referendum...on the referendum point. Didn't this convention vote down extending the referendum privilege to all the other parishes in the state? Wasn't that voted down by this convention?

Mr. Dennis I believe the provision we had requiring a referendum for changing judicial districts was deleted by the convention.

Mr. Velazquez So doesn't that present the point of view that most places in the state don't really want a referendum on issues of this type, wouldn't you say? They don't seem to want referendums on issues of any type, it would seem to me.

Mr. Dennis Well, I don't know why the members of the Convention voted that way. They may have felt that there was no need for that added protection outside of Orleans.

Mr. Velazquez Wouldn't you believe then that because some people don't want a referendum, the possibility is that it might be somebody who might, somewhere in this state, who might want a referendum?

Mr. Dennis Yes, I'll admit to that possibility.

Mr. Velazquez Thank you, very much, judge.

[Quorum Call: 101 delegates present and a quorum.]

Chairman Henry in the Chair

Personal Privilege

Mr. Anzalone Mr. Chairman, it would seem that the Balm which was presented to you by Mr. Flory has somewhat worked and, on behalf of the convention, I would like to thank Mr. Flory for his most thoughtful and appropriate gift.

Mr. Henry Mr. Anzalone, take your seat. You are completely out of order, as usual. You lose again.

Amendment

Mr. Poynter This is the last set passed out offered by Delegate Casey.

Amendment No. 1, on page 13, delete lines c through 29 both inclusive in their entirety and insert in lieu thereof the following:

"Section 35. Except for provisions relating to terms of office as provided elsewhere in this article and notwithstanding any other provision of this constitution to the contrary, the following courts and officers in Orleans Parish are continued subject to change by a vote of two-thirds of the elected members of each house of the legislature: The civil and criminal district courts, the city, municipal, traffic and juvenile courts, the clerks of the civil and criminal district courts, the civil and criminal sheriffs, the constables and the clerks of the first and second city courts, the register of conveyances and the recorder of mortgages."

Explanation

Mr. Casey Mr. Chairman, and delegates to the convention, unfortunately, as was pointed out in Section 30 in the section pertaining to sheriffs, New Orleans has some special problems and its own tax collecting system. Under Section 35 we see now also that we have a fairly elaborate, but very good and excellent court system with many specialized courts, and I think the judiciary committee indicated that by whatever vote they had on their committee, that they decided to permit us to retain basically that system that exists in the parish of Orleans today.

We have been discussing this section for many days now, trying to work out some of the problems that we had, trying to, if possible, maybe simplify Section 35 if that be the case. It was felt by the members from Orleans Parish on the Judiciary Committee that they wished to proceed with Section 35 as it was drafted and as it was presented to the committee. But, and I would like to have your attention on this but, I know that many of the delegates felt and were agreeable to the wishes of the members from Orleans Parish who sat on the Judiciary Committee that we have a very practical problem with Section 35 to this extent; that Section 35 as worded, as worded, would require not only a majority vote of the elected membership of each house, but also a referendum for us. For instance, to add another traffic judge if one became necessary, to add another civil district court judge if one became necessary, and even at this time, the judicial administrator in his recommendations has already indicated a need for additional judicial assistance in the parish of Orleans.

So, rather than saddle and lock into the parish of Orleans the necessity of having a referendum each time we make any change in our judicial system, I would hope that the membership of this convention would permit us to do it by a vote of two-thirds of the elected membership of each house.

Also, my amendment as drafted, deletes the reference to the judicial expense fund of the parish of Orleans which was retained by the committee but subject to a change by a two-thirds vote of the elected membership of each house. I personally honestly feel that the judicial expense fund, or other funds in other parishes, rightfully is statutory material, and I cannot dispute some of the hesitation that many of you had on that paragraph.

If there are any questions, I will be glad to yield.

Questions

Mr. Roemer Representative Casey, I want you to know, or maybe I should say, do you know that I am in sympathy with what you are trying to do, but I particularly - in regard to this judiciary expense fund - I applaud your taking it out. I think it should be out.

However, I question the two-thirds vote as you have in your provision, and you knew I was as a result of our huddle, I didn't know whether you knew or not that in Section 15 of this same article we fought that battle statewide, and we did away with the public referendum, but we kept a majority

vote of the legislature. You did know that, did you not? Isn't this a change from the rest of the state?

Mr. Casey It is definitely a change from the rest of the state, Mr. Roemer.

Mr. Roemer I see, why would Orleans require a two-thirds vote for such change and the rest of the state would not, Tom?

Mr. Casey Mr. Roemer, the political process is filled with negotiations, compromise, arbitration, discussion, etc. In an attempt to honestly work out the problems that existed on Section 35, I personally have no hesitation to rely on the judgment and prudence of the legislature in making its determination and ruling not only your judicial system but mine. It may be preferable that even yours should be protected by a two-thirds vote of the elected membership of each house, and if that's your wish, you would have my support. It would be preferable to many of the members of our delegation that we would have that protection, also. That's why it exists in here as drafted.

Mr. Roemer Well, I understand that point, but do you understand the point that I'm not worried so much about protection as I am the ability to change. And don't you agree that the two-thirds vote will make quite difficult any changes, even those necessary perhaps, by the city of Orleans or the parish of Orleans.

Mr. Casey Let's just go one step further. It's a much more turbulent issue on the parish of Orleans solely when you discuss, for instance, the very existence of civil courts as distinguished from criminal courts, which you in your area do not have that problem. The difference that exists in Orleans between the civil and criminal sheriff, which you do not have that problem. And other differences that may exist between, for instance, a clerk of court, the register of conveyances and recorder of mortgages. It's more controversial, it's more difficult, it's more political, to be very frank with you, and I would merely ask you, in your wisdom to abide by the wishes of the Orleans, or many members from Orleans parish, I can't say all of them, and I'm only speaking for myself right now, that you at least yield to our wish in this regard.

Mr. Roemer Well, I'll make three brief questions, one at a time.
Did you agree that the Orleans system is more complex than the rest of the state?

Mr. Casey Unfortunately, Mr. Roemer, it's much more complex. Our difficulties are compounded many times beyond possibly those existing, for instance, in Caddo Parish. It's a peculiar situation where, as Mrs. Zervigon said this morning, we're a different kind of animal and possibly if in your wisdom you see fit to give us this two-thirds vote, we would certainly appreciate it.

Mr. Roemer Can I take it your answer is yes to the question of complexity?

Mr. Casey I think I answered that question.

Mr. Roemer O.K. Would you also agree that any machinery that is more complex than its next door machinery is more apt to break down and would require some modification and changes over time.
Would you agree to that statement?

Mr. Casey There is no doubt about it, and I am the first to admit that twenty years from now maybe we ought to consolidate everything.

Mr. Roemer Well, then, aren't you freezing in, Tom, with a two-thirds vote, a piece of machinery that's complex and will break down and need modification?

That's my question.

Mr. Casey But we're still leaving that proposition to the legislature, Mr. Roemer, to correct a situation which creates difficulty in the city of New Orleans at a later date.

Mr. Fontenot Mr. Casey, I'm not exactly sure on what the make up of the legislature is. What percentage of the legislature is from the New Orleans metropolitan area?...or say Orleans Parish.

Mr. Casey Of the one hundred and five members in the House of Representatives, we have, let's say, fifteen full members and three additional people who have split districts that may represent parts of, let's say, St. Bernard Parish and Orleans Parish, part of Jefferson Parish and Orleans Parish, so let's say roughly, seventeen people.

Mr. Fontenot Close to a fifth, would you agree?

Mr. Casey Close to a fifth, but less than a fifth. Yes.

Mr. Fontenot In the Senate, the same thing.

Mr. Casey I would say proportionately it's approximately the same.

Mr. Toomy Mr. Casey, your amendment in the opening wordage, it says "except provisions relating to term of office as otherwise provided in this article." In the committee proposal they include term of office and qualifications, I believe. Is it your intention that the city of New Orleans would have different qualifications for similar offices than other people in the state?

Mr. Casey Well, we're accepting the provision relating to terms of offices because I think the convention has expressed its wishes very loudly to indicate that New Orleans judges should run for six year terms as your judges do and all the judges from the...all the district judges from throughout the state. So this merely clarifies the fact that they, too, have six year terms.

Mr. Toomy Some of the qualifications we also provided for up there, for instance for juvenile judges, and there are certain qualifications we provided for for all the judges. Are you making exceptions for the ones for New Orleans?

Mr. Casey I don't think we're making exceptions. The only exception we are making is the term of office because unless you feel that our judges should run again for twelve years, I would certainly accept that if you wish.

But I think the convention has decided otherwise.

Mr. Annette Tom, I can see the problem with trying to merge the New Orleans courts now or something like that, or trying to make them the same as the rest of the state in the constitution. But the only thing that bothers me is that in Section 15 that we've already approved, everywhere else in the state the legislature may abolish or merge trial courts of limited jurisdiction by majority vote. Why should this be different in Orleans Parish? Why is there a two-thirds vote needed? I don't understand.

Mr. Casey Mr. Annette, in my discussion and question and answer session with Mr. Roemer we had mentioned...discussed that. I know Mr. Roemer is against it, but I think it was brought out in that question and answer period that Mr. Roemer and I had that due to the complexities and controversy involved in these offices and courts in Orleans Parish, that it is not the usual type of situation that may exist in many other parishes. We have a great complexity in our court system, and it is different.

Further Discussion

Mr. Burson. Mr. Chairman, fellow delegates, I rise in support of Mr. Casey's amendment. The famous Justice of the United States Supreme Court, Justice Holmes, once said that a page of history is worth a volume of logic. This amendment deals with a historical problem. We cannot, it seems to me, ignore two hundred fifty or three hundred years of history in this state in which the city of New Orleans has developed as a unique governmental entity. And it seems to me we would be making a drastic mistake to attempt to ignore the reality of this situation.

I submit to you that if this were the best of all possible worlds, and everybody trusted everybody else, we could probably have come in here and convened this constitutional convention and left in a week and just adopted the model state constitution. But it's not that easy. We have to take into account special local problems. I address your attention, if you will, to the digest of the present law that was prepared for us in connection with this proposal. And if you will refer to that digest, you will find listed there a multitude of special constitutional provisions that exist in the present constitution establishing these various special courts and so on in the city of New Orleans. Now these constitutional provisions are there. We cannot just wish them away. And if we do not make some provision in the constitution that we are writing, then I submit to you we will have courts hanging there, with no root either in constitution or in law.

It seems to me that the provision by reference such as is contained in the Casey amendment is a realistic way to deal with the problem. Now Louisiana is not unique in this. I ordered a copy of the constitution of the state of Illinois when I became a delegate, because Illinois constitution is held out as the paragon of modern state constitutions in the reading I've done. And in the judicial section, I'm looking right now at a sentence which says, "Cook County, Chicago, and the area outside Chicago shall be separate units for the selection of circuit judges."

Then two pages later when they are talking about local government, they've got one way that the members of the Cook County Board are elected and then everybody else is elected a different way. In selecting sheriffs and other local officials, they do it one way in Cook County and they do it another way in all the rest of the state of Illinois.

So we're not alone in Louisiana in having to deal with the unique political history. And it seems to me that a short provision of this nature which permits these peculiar local institutions to maintain their operation until such time as the legislature can work out an orderly transition to what we hope will eventually in this state be a more uniform system of courts is a reasonable thing for this convention to do.

As far as the two-thirds vote, I can only point out that prior to this time, since all of these institutions for the most part are established by constitutional provision, it would have been necessary to obtain a change of the by a constitutional amendment. And a constitutional amendment under the present law requires a two-thirds majority vote in both houses of the legislature before it can be presented to the people. It seems to me that, in any case, we should adopt this provision and then if we want to change it, the two-thirds to a majority, you could consider another amendment to do it. As for myself, I would be in favor of it with the two-thirds provision.

Further Discussion

Mr. Juneau. Mr. Chairman and fellow delegates, I would certainly appreciate your attention on this matter, because I think it is very crucial and can be confusing. The history of this thing was this. I had filed an amendment to delete Section 35. I met with a lot of the people who were concerned with this problem and it was pointed out to me that that would cause problems for Orleans

Parish. I admit that. I have withdrawn the complete deletion of Section 35. We do not want to prejudice. We do not want to hurt or harm Orleans Parish. Mr. Casey's amendment is fine. I have an amendment which will follow his amendment which is identical in language with his amendment. Mr. Burson, it takes care of the problems you are talking about. But if you vote for Mr. Casey's amendment, what you are doing is establishing something that is unfair and unequal. More specifically, in my word, the only words, that's going to change in the two amendments are this, but it is important. Mr. Casey says that for Orleans Parish it will take a two-thirds vote, but for the other sixty-three parishes in this state and the rest of the people in the State of Louisiana, you don't get that super majority pool. You get a majority vote. I want someone to get up here and explain the logic of that. We have taken care of Orleans Parish. They have problems and we want to retain that. The language, which I said in the amendment which will follow, is identical...no change. It won't affect their courts, but it will put them on an equal par with the other sixty-three parishes. Some reference was made to the fact that Orleans is a different kind of animal. Well, I think the people in this state have two arms, two legs and one head. I cannot just wish, and I don't think you can justify, telling the people in Lafayette and Caddo and Ouachita Parish and Bossier Parish that in your parishes it only takes a majority, but in Orleans a two-thirds. I submit to you that we have taken care and have recognized the problem in Orleans Parish. We've done that, and rightly so. But I plead and implore you to reject this amendment. The next amendment that comes up will be the identical language with a majority vote, and I sincerely hope that you cast the vote which will be identical with the one I've just presented. We have made in this convention: that is, that all judges are on a six year term. I submit to you that the same principle should apply here. Thank you very much.

Further Discussion

Mr. Jack. Mr. Chairman, ladies and gentlemen, direct your attention to Section 15. Now in that section, that provided the legislature by a majority vote could abolish juvenile courts and city courts and other courts of lesser than district court jurisdiction by a simple majority of the legislature. In that "15" it had reference to "35" which is the New Orleans one, where in "35" it would take a referendum to abolish their courts I've talked about and other things. In "15" we deleted reference to "35" on two lines. Everybody would talk...say we're going to take care of the rest when we reach "15". Now, let's take care of it. In "15" you can abolish the city court and the juvenile court of Caddo Parish by a simple majority vote, and the same for the other five major courts and all those things of anywhere outside of Orleans Parish. Now, why should we pass the Casey amendment allowing New Orleans, in order to abolish theirs, it has to be two-thirds vote of the legislature. That is not fair. The way we well, it could go back to Section 15. You know how it is, trying to get sixty-seven or two-thirds of those voting and then go back to Section 15. You don't know how certain people are going to vote. No use putting your hand up, I'll answer it if I have time left. Oh, excuse me. Alright, now you have one hundred and five members of the house. New Orleans has nearly a fifth of them. Of two-thirds, if they get that through, it will be almost impossible to get two-thirds of both Houses of them. It would be very simple, maybe, if New Orleans, I'm not saying they make a deal, but I have heard of compromises yesterday and I have heard of deals and wheeling and dealing and compromising. I don't approve of that stuff. I think we ought to come up with a constitution that we think is the best, and we're going to compromise wheel or deal or make any deals. I'm going to do what I think's best. I think that what New Orleans

has, whether it's two-thirds or a majority, the rest of the state ought to have. I don't care what two hundred and fifty years of history, as somebody said, in some fancy poetry that was said. It's time New Orleans was governed by the same laws as the rest of the state. Now I understand that we have another amendment coming up. You just heard the Speaker tell you, that's going to cover all this, just like Mr. Casey's got, except it's going to take that two-thirds out and put in the word "majority". Then I think when New Orleans is whittled down to the same size as the rest of the parish, if they try to abolish the city court and juvenile court in Caddo Parish and the rest of the state, we'll have the help of those eighteen delegates or members of the House, down in New Orleans and those Senators, and we will have security. Frankly, if we don't defeat Mr. Casey's amendment and adopt Mr. Juneau's, taking the thing and making everybody have to have just a majority, I'm afraid what's going to happen to us. New Orleans may join some other and get the majority and throw out Caddo's juvenile court, Caddo's city courts, the rest of Monroe and the other places that have J. P.'s, juvenile courts and this three-tier court will go into existence. Now I say let's defeat that and move onto Mr. Juneau.

[Motion for Previous Question rejected: 26-77.]

Further Discussion

Mr. Tobias Mr. Chairman, fellow delegates, as I understand it, Mr. Juneau has the identical amendment as the one before us, except it provides "majority" in place of the words "two-thirds". What? Exactly what is holding up judicial reform in this state? Ten, twelve judges on the general district courts of the parish of Orleans...nothing else. There's justification for having a separate civil sheriff, a separate criminal sheriff, a separate clerk of the criminal district court, a separate clerk of the civil district court, a recorder of mortgages, a recorder of conveyances, but there is no justification for separation of those two courts, the civil and criminal district courts. They are the only people, who are standing in the way of judicial reform in this state...the only people and don't ever kid yourself.

Further Discussion

Mr. Schmitt I don't know what side Mr. Tobias is on in this amendment, but I don't favor this amendment. I think it's a bad amendment. The reason I think it's bad is because of the fact that I don't think that we should be treated any differently in the parish of Orleans than they are throughout the State of Louisiana. This does not mean the civil and criminal district courts, separation which presently exists. However, it does require a two-thirds vote in order to have it changed. I feel that it only should require a simple majority vote in order to have it changed. Why should the people of Orleans be given any different type of treatment than people from other parts of the State of Louisiana? I really feel that Mr. Casey's amendment is in actuality an application for the right of secession from Orleans from the State of Louisiana, because when Mr. Casey came forward, he feels that the things which benefit New Orleans, or allegedly benefit New Orleans, should be given greater protection than for other areas of the state when they feel certain things protect them. I don't feel that we should give any greater protection to the parish of Orleans than any other section of the state. I'm from Algiers, which is on the West Bank of the city of New Orleans. We were incorporated into the city of New Orleans many, many years ago. We have certainly been discriminated against by the Bank of the city of New Orleans. But we haven't asked for any special type of protection, to protect us from the East Bank of New Orleans. We have consistently tried to get along with the

people on the other side of the river. We have worked in this direction. It would be no more fair, in this situation, for us to have the right to secede from the parish of Orleans, as it is right now for the parish of Orleans to attempt to secede from the State of Louisiana. Discrimination in favor of the parish of Orleans is unfair to the rest of the state. Discrimination in favor of the parish of Orleans may or may not hinder judicial reform in the future. I don't know. But I do know that what's good for the goose is good for the gander. I do feel that the people in Orleans should be given the same rights and the same protection as the State of Louisiana. If you wish to make it two-thirds for the parish of Orleans, it should be two-thirds for the rest of the state. If you want a majority for the parish of Orleans, it should be a majority for the rest of the state. I think that this is just a question of simple fairness and equity to all the people of the State of Louisiana. There should be no discrimination. Our delegation has continually requested that we be treated the same as other parts of the state, when it was in areas which might allegedly hurt the city of New Orleans. Yet, when it comes to something which they believe may to some extent protect certain interests, they come forward and want to be treated differently. I don't think that's the way the ball game should be played. I believe we should be fair. I think we should defeat this amendment and go forward and pass the other amendment, which is the same except requiring a majority vote.

Questions

Mr. Landrum Mr. Schmitt, why is it that two days out of every year in the city of New Orleans there is the entire people of the State of Louisiana? More people visit New Orleans two days out of every year than the entire sixty-three parishes in the state.

Mr. Schmitt I guess Mardi Gras is a little bit better in Orleans than any other place. I don't know.

Mr. Landrum Why is it that if the railroads, if the ships in New Orleans, if airplanes stop flying in New Orleans, if they were stopped, why would the rest of the state be tied down, that they could not even do anything? One more question. Why is it that if the cattle that the gentlemen spoke about last week, what they needed in other parishes, that I voted along with about fencing and all of that, if those cattle would walk down the streets of New Orleans, why they would be killed in New Orleans and not in some other parish or in the country?

Mr. Schmitt Let me say that I know you didn't agree with the first secession, and I don't think you should agree with this one either.

Further Discussion

Mr. Duval Fellow delegates, in your seats and out of your seats, I rise, perhaps risking redundancy, merely to emphasize two points. I know that some of you intend to vote for the two-thirds amendment and then vote for the majority amendment. I urge you to vote against the two-thirds amendment and vote for the majority amendment for the following reasons: if the two-thirds amendment, Mr. Casey's amendment, is adopted, you will open a Pandora's box where every parish in the state...some of their representatives are going to introduce amendments wanting them to have a two-thirds...we are going to be beleaguered and plagued with other amendments. I suggest to you, if you reject this amendment and adopt the majority amendment, we will have uniformity in the state and I think express the will of this convention. A further reason is that you're being unfair to the people of New Orleans by allowing a two-thirds vote, because then the city of New Orleans can not effect necessary change because of an extraordinary vote required by

the legislature. You are being unfair to the citizens of New Orleans if you adopt the two-thirds provision. I want you to reject it and vote for the Jureado amendment. Thank you.

Further Discussion

Mr. J. Jackson. Mr. Chairman, ladies and gentlemen of the convention, I will be very brief. I think that a lot of delegates here have made up their minds about majority and two-thirds. However, I just want you to reflect, just briefly, about fifteen minutes, twenty minutes ago when Mrs. Jervison so ably talked about the various exceptions that we're going to have to possibly consider down the line. I would like to suggest to you as Chairman of the Subcommittee on the Affairs of New Orleans that most of the exceptions as related to New Orleans do not concern itself primarily of the cause of the problem, primarily with the courts or the judges, but has to do with the Sewage and Water Board, with the Union Passenger Terminal with the Board of Liquidation and with the Dock Board. A committee composed of four delegates on a subcommittee of New Orleans voted unanimously to not include that language within this constitution. We recognized that there would be places where that we would have to, because of New Orleans' situation. So I think that we have basically been fair, to a large degree, by taking out some of the real objectionable and unnecessary areas, but I think when we get into this area, this is something that you ought to consider. Thirdly, is that when we had our huddle up here, the only major objection, I think, Mr. Jack made some reference that if we could get the two-thirds vote, he said he wasn't considering it under Section 15, but if we could get it for all parish judges, I think now I would feel. I said I would have no objection, but the only objection that I have no objection in going back to Section 15. I would suggest to you that I think the most of you have your mind made up, but I just got up here to bring out those points to you. Thank you.

Further Discussion

Mr. Tapper. Mr. Chairman and fellow delegates, I rise in support of this amendment. I want to bring out one thing I think hasn't been brought out to you. Right now under the present constitution it requires a two-thirds vote to create a Judgeship. I think that this has been good over the years. I believe it should require less to abolish or consolidate one or more Judgeships. For that reason, most importantly, I ask you to adopt this amendment. In addition to that, I reiterate what I said this morning. If you didn't hear me, if you want to kill this constitution, then let's get into the section used. I don't want to do that. I don't think any one of us here wants to do that. I also agree with those who say that if this two-thirds is good for New Orleans, then it should be good for the rest of the state. I believe we should go ahead and adopt this amendment and then go back and reconsider the rest of the state and make that two-thirds too. When we are dealing with a judiciary, I think we should have a two-thirds vote of the legislature. Thank you.

Further Discussion

Mr. Vesich. Mr. Chairman and members of the convention, I have listened to the pros and cons on this amendment, and I think they have been debated quite a bit. I don't intend to take up too much of your time, except to call your attention one thing further that Mr. Tapper didn't say and no other speaker up here said, that under the present constitution, right now, a two-thirds vote of the legislature can increase the amount of judges in a judicial district. They can not only be increased, they can also be decreased. We, from New Orleans on the committee, wanted that protection, offered it to the people from the country, who were on

the committee, and did not want it. When you come up here and say we are trying to gain an advantage, that is not true. That's why New Orleans was put in a separate section by itself, because the country boys, who we call the country boys, did not want the referendum for their judges nor did they want the two-thirds vote. The majority of the Orleans delegation just went along with that on the committee. I don't see how you can say we are trying to get an advantage over you, when we would have been glad to vote for you, probably would still be if you all wanted to, but at the time you did not, Mr. Roemer, on that committee. The same thing with the twelve year terms, we offered the twelve year terms because some of the country boys wanted it, and when we turned around, we found out some of the country boys got mad and lost our own. It took us about four more votes that day to get the twelve year term back for New Orleans. We were in a position, we don't know what all of you want. We tried to satisfy most of you. We tried to satisfy the majority of you on the committee. Please don't say that we are taking unfair advantage, because it was offered and you didn't accept it. If you would have, we would all be in the same position. I ask you to please vote for this amendment. Mr. Speaker, I move the previous question.

Question

Mr. Nunez. Mr. Vesich, will you answer just one question? I will tell you before I ask you, I'll vote with you. Several days ago we were in Section 15; I tried an amendment to take care of the other courts in this state who were similarly situated, constitutionally created, but I tried to make it by the same as Orleans. In other words, we made the rest of the state comply with Orleans, make them the same, and make it very difficult to change if they want it changed, by a majority vote of the legislature and by a referendum. It was defeated and I think it was mainly defeated because many, almost all, of the Orleans delegation voted against it. Now you say you offer the opportunity; I don't particularly agree with you on that. My question is, I'm going to vote with you on two-thirds, but we would like to make the other courts in this state constitutionally created two-thirds also; would you help us to that?

Mr. Vesich. Sammy, had I been here the other day, I would have voted for your amendment. That's all I can tell you. It's just one of those days I didn't happen to be here.

[Previous Question ordered.]

Closing

Mr. Casey. Mr. Chairman and delegates, very briefly to the legal scholars in the convention, and I'm serious, I'm not being facetious at all. I would like to refer you just a moment to Section 15, Paragraph (A). Those of you who have this proposal, I would appreciate it if you would refer to that. That part of Section 15, Paragraph (A) pertaining to the change in courts by a majority vote of the legislature, as I understand it and I may be wrong, refers to this, that the legislature may abolish or merge trial courts of limited jurisdiction. My understanding of courts of limited jurisdiction are not courts of original jurisdiction, which are your district courts. So, please bear that in mind in voting on this two-thirds question that we have in our amendment. We do not have an advantage over the rest of the state because Section 15 (A) does not refer to your district courts. I submit to you, gentlemen, that the two-thirds that we are requesting in our amendment does not give us any greater advantage than any other parish, than any other court in the state.

Questions

Mr. Tobias. Mr. Casey, are you aware that that

particular sentence which you refer to changed the language to read that "the legislature may abolish or merge trial courts of limited or specialized jurisdiction?"

Mr. Casey Mr. Tobias, I would say specialized jurisdiction would be juvenile courts, city courts having jurisdiction under a thousand dollars, parish courts with jurisdiction under a thousand dollars, or family courts in East Baton Rouge Parish and courts of that type.

Mr. Abraham Tom, doesn't Section 15 (B) also say that "the judicial districts existing at the time of the adoption of this constitution are retained? The legislature, by a majority vote of the elected members in each House, with approval in a referendum in each district and parish affected, may establish, divide or merge judicial districts subject to the limitation of Section 21", so that takes care of the district courts.

Mr. Casey That's absolutely correct and I would submit to you that our district courts in New Orleans, criminal and civil, are similar to separate districts. The rest of the state has a referendum affecting their particular judicial districts.

Mr. Dennis Mr. Casey, I may have misunderstood you, but don't you recall we deleted referendum with regard to changing judicial districts?

Mr. Casey Judge Dennis, I don't recall it. Somebody just mentioned it as I left the microphone. If that occurred, that is quite possible.

Mr. Dennis So there are no referendums in this article anywhere.

Mr. Casey There may not be; apparently there are not. But I'm still referring to Section 15 (A), which refers only to courts of limited jurisdiction.

Mr. Juneau Tom, I'm a little confused. We have courts of limited jurisdiction throughout the southwestern part of the state. As I appreciate Section 15, that would only take a simple majority. In Orleans, according to your amendment, it would take a two-thirds in that case, so there is a distinction, is there not?

Mr. Casey There is certainly a distinction between our courts of original jurisdiction, which are civil and criminal district courts, where a two-thirds vote is required, whereas in Section 15 (A) my understanding of that article is that it refers only to courts of limited or specialized jurisdiction. Is that not correct?

Point of Order

Mr. Avant The point of order would be to clarify any confusion that may exist in anyone's mind, particularly mine, if my memory is wrong. I think we do have a referendum provision in this article. As it now stands with all amendments. When it comes to changing the lines of the judicial districts, I do not believe that was deleted. In response to what Judge Dennis stated a moment ago, I want to get a clarification on that. I'm sure that's the way it is; you still need a referendum in each district or parish affected if you are changing the lines of judicial districts.

Mr. Henry We are rapidly trying to find out so we can resolve your problem, Mr. Avant. I think you are correct.

Mr. Avant To be more specific on my point, Mr. Chairman, I think it was removed, and I asked if it was not removed from 15 (A) but maintained in 15 (B).

Mr. Henry Your point is well taken, sir. You are absolutely correct, Mr. Avant, as most always, sometime.

[The motion to reconsider is tabled.]

AMENDMENT

Mr. Foynter Amendments are being passed out at this time.

Amendment No. 1 [by Mr. Juneau]. On page 13, line 8, in Floor Amendment No. 1 proposed by Delegate Casey and adopted by the convention on August 24, in line 5, delete the word "two-thirds" and insert in lieu thereof the words "a majority".

Explanation

Mr. Juneau Mr. Chairman and fellow delegates, I won't take up much of your time, but there was apparently a lot of confusion about this matter. I won't rehash the matter but just to tell you what this does is change the word "two-thirds" to "majority". I respectfully submit to you what that is doing, is merely putting on par the other sixty-three parishes of the state with Orleans Parish. It hasn't affected their court system, and all we are doing is saying when you affect and make a change in your courts of limited jurisdiction, what you're going to do, is do that by majority vote just like the other sixty-three parishes will have to do it and which this convention voted on in Section 15; that's simply what it is. I think it's fair, it's equitable. Orleans Parish is protected, but it gives equality and it's consistent with the previous votes of this convention.

Questions

Mr. Champagne Mr. Juneau, do you agree with me that some of these delegates are voting for this two-thirds idea with the presumption that they are going to come back and change what we have done already? Don't you think they are just whistling in a lost hope? I mean, you know and I know, I think, that we are not going to go back and change that majority to a two-thirds on what we have done already.

Mr. Juneau My answer to that, Mr. Champagne, the wisdom of this convention has gone over Section 15 and let's don't fool ourselves; that's how it's going to stay.

Mr. Champagne That's correct. Now... Let me ask you one more question. Don't you think the scare tactics that I heard from that podium, that the people are going to reject this constitution, works in two ways? It works the other way too, you know. Can you imagine, sir, what might happen to some individual, who is determined to wreck this constitution, going through the state and saying, those folks in New Orleans can do it or require two-thirds, but our poor people in the country got to get a majority. Do you agree to that?

Mr. Juneau Mr. Champagne, my answer to that is that I think the people of Orleans and the people of all sixty-three parishes would be content if they knew that the provision equally applied with regard to merging the courts of limited jurisdiction. I, unquestionably, think the people feel that a majority is fair for everybody because they will know in Orleans Parish that we have not disturbed per se the system of courts that they now have.

Mr. Tapper Mr. Juneau, I just want to ask you if this is the same amendment you had before, was it redrafted to conform with the Casey amendment except for the majority?

Mr. Juneau My amendment, Mr. Tapper, is identical in language with Mr. Casey's amendment. It protects Orleans Parish, but it changes the words "two-thirds" to "majority".

Mr. Bel Mr. Juneau, didn't you have the oppor-

Juneau, under Section 15 to have a two-thirds vote.
[Continued]

Mr. Juneau I don't want a two-thirds vote, Mr. Bell.

Mr. Bell I had the opportunity, though, didn't you.

Mr. Juneau My answer to that, Mr. Bell, not only did I have it, but this whole convention had it, and this convention voted for a majority for the sixty-three parishes of this state.

Mr. Bell We felt in the committee, the recommendation, after many, many months of work, that it was agreeable to the people in the country the way they wanted it and the agreement was the way the city boys in the city of New Orleans had asked it to be passed.

Mr. Juneau The only answer I could tell you, Mr. Bell, I abide by the wishes of this convention. The wishes of the convention in Section 15 was to the effect that a majority would prevail. Now that we are at the appropriate section, I think the same would be applicable in Section 35.

Mrs. Warren Mr. Juneau, I'm a little bit disturbed that you would propose this amendment and then you say you don't want it. You are proposing this amendment and you say you didn't want a two-thirds? Or did I hear you right?

Mr. Juneau My amendment, Mrs. Warren, is to make it a majority, so obviously I oppose a two-thirds. I'm saying a majority.

Mr. Roy Mr. Juneau, in response to Mr. Champagne's comment, do you realize that I for one voted for Tom Casey's amendment and I am not about to vote to reopen Section 15.

Mr. Juneau I understand it after you said it, Mr. Roy.

Further Discussion

Mr. Abraham Ladies and gentlemen, I don't think this is a matter to be taken lightly. What we have done here, in effect, is set up a double standard. This is wrong. We recognize the fact that you must provide for these various offices in the city of New Orleans. We have done this by enumerating them, but to set up a double standard and say that in one instance it requires a majority vote and the other instance it requires a two-thirds vote, I think it's just dead wrong. I urge you to vote for the Juneau amendment. All we are doing here is making the legislature perform in a consistent manner throughout the state. What is wrong with the majority vote? I have heard many of you get up here and preach on this vote. "I believe in the majority; I believe in the majority rule." When it fits, you want it; when it doesn't fit, you don't want it. I don't want to go back and open up Section 15. We made a decision on that, I think we ought to leave it lay. I can not understand how this convention can on the one hand say we want a majority vote and for the very same thing on the other hand say we want a two-thirds vote. I ask you to adopt this Juneau amendment.

Personal Privilege

Mr. Burn Mr. Chairman and fellow delegates, regardless of the debate and the merits or the demerits with reference to New Orleans and the rest of the state, let me plead with you. Let's not bring up constantly the question on the floor of this convention about this situation might bring about the defeat of this constitution when it's brought before the people next year. I think if we continually mention that, we are going to make it an issue ourselves and not the people. I plead

with you as we argue this question. I'm not taking any sides at this time. Don't misunderstand me, but I just plead with you, let's not ourselves make it an issue. I'm afraid if we keep at it, we are going to get it in the minds of the people where it is going to be hard to erase when the time comes.

[Previous question referred: 4-10.
Amendment adopted. Previous Question
ordered on the section. Section passed:
113-3. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter "Section 36. Jurors; Qualifications; Exemptions
Section 36. The Supreme Court by rule shall provide for qualification and exemption of jurors."

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, Section 36 represents a change in our law. We have deleted the requirement that jurors be competent and intelligent. We have deleted the requirement that women cannot serve on juries unless they file a certificate requesting that they be allowed to serve. We have deleted the requirement of the number of jurors who must concur to render a verdict. The new part of this provision is that the Supreme Court shall provide for the qualification and exemption of jurors. The reason we adopted this is that exemptions from jury service have really become much too much of a political matter as handled in the legislature. Interest groups have gone to the legislature and have gotten exemptions from jury service so that now many of our most qualified citizens are exempted from jury service by law. We have created exemptions for all kinds of people. Therefore, the committee decided that a body less subject to lobbying pressures should decide upon the exemptions. If we don't do this, we are in danger of all of our better qualified citizens being exempted. We have placed this decision in the hands of the Supreme Court. Since the jury serves the court and is part of it, then judging qualifications is really a judicial matter. We feel this would be the most workable way to handle the problem of granting exemptions to persons for jury service.

Questions

Mr. Stinson Judge Dennis, by doing this aren't you putting the judiciary over the legislative branch? That's a legislative function not a judicial, isn't it?

Mr. Dennis No, as I just said, the committee felt it was a judicial function to decide upon exemptions. We are now faced with the crazy situation, I think, where a judge can't excuse a man who has got a one-man business and yet he has to excuse a volunteer fireman who may not have any real good reason to be excused. But by statute, he's excused, he's exempt.

Mr. Stinson In other words, you don't approve of the wisdom of the legislature then?

Mr. Dennis In this regard, I don't think it's been wisdom. I think it's been folly, because we have exempted by law, large groups of our most qualified people from jury service. This is my own personal opinion. I think it is not good for justice in our court. We are excluding people from jury service who, I think, represent the best qualities of our community, and I think they should serve on juries.

Mr. Kilbourne Judge Dennis, I just had a question in reading this article. The question, and this is for information, "whose qualifications shall be as provided in Section 6 of this article. I'm

a little bit confused. Maybe I'm just woozy. But is that correct?

Mr. Dennis: You're talking about in Section 37?

Mr. Kilbourne Yes, sir.

Mr. Dennis Well, we haven't reached that section yet, but that is a typographical error in Section 37. It should refer back to Section 36 instead of Section 6. We have a technical amendment to change that when we get to it. If there are no further questions, Mr. Chairman, I move for adoption of the section.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Pugh and Mr. Gravel]. On page 13, delete lines 31 and 32 both inclusive in their entirety, and insert in lieu thereof the following:

"Section 36. (A) A citizen of the state, who is (The amendment has been changed. Strike out the word 'residing' and insert in lieu thereof 'domiciled')... A citizen of the state, who is domiciled within the parish in which he is to serve as a juror and who has reached the age of majority, is eligible to serve as a juror. The legislature may provide additional qualifications.

(B) The Supreme Court by rule shall provide for exemption of jurors."

Explanation

Mr. A. Landry: Ladies and gentlemen of the convention, on yesterday I circulated an amendment on which fifty-two of my fellow delegates cosigned with me. It brought to my attention, however, that there might be a possibility that it would be wrong for the purpose of the amendment. So I have decided to go along with the Pugh, Gravel amendment, because this is more explicit. Now I think that for the non-lawyer delegates, I think I should explain to you the process of jury drawing so that you would understand it and see the problems that we, in the various parishes, have in selecting a jury. The composition of men or women for jury service. First, the amendment would do this. It would permit every person upon reaching the age of majority, to be eligible for jury service, which means not only male, but also female would be eligible; under the present constitution only males are eligible for jury service except the female can do it by an affidavit with the clerk. However, by statutes, the Louisiana Legislature has permitted women to serve on civil juries. Now in order to secure jurors, it is necessary for the jury commissioners to get up a list of individuals and if they are not selected, but it is taken from telephone books from lists of high schools giving the list of the names of persons who have reached the age of eighteen. You have to take it from the city directories. You have to take a list from, in the parish, from the city and rural directories, all the water meters in the parish, and also all of the registered voters of the parish, which means you have approximately fifteen to twenty thousand names in the large hospital. You cannot separate the women from the men and then, when you draw a criminal jury you must draw from all the names in the parish. I use the capsule type of drawing where the jury commissioners do not even know what name they are drawing. Only last week, in order to supplement the jury venire list, we had to draw over fourteen hundred names to put in six hundred and fifty names on the jury venire list, because of men cropping up. Now this would eliminate that situation. They would be eligible to serve both on criminal and civil juries. The legislature would set the qualifications. At the present time, the qualifications to serve as a juror under the present constitution code, that you must be citizen of the United States and have resided within the parish for at least one year; be at least age 21, of course that's been changed to

eighteen; three, be able to read, write and speak the English language; four, not be under interdiction or incapable or serving as a juror because of a mental or physical infirmity; and five, not be under indictment for a felony nor have been convicted of a felony for which the right must forever be foregone.

Now, that doesn't create a problem to qualification. What really creates the problem for jury service is the exemptions. If you look at the exemptions you will find that under the exemptions from jury service. They include, of course, the governor, the lieutenant governor, the state comptroller, the state treasurer, the secretary of state, superintendent of public education, their spouses and employees, the members of the senate and clerks of the legislature, the judges and active officers of the civil courts of this state. Two, any other public official if jury service would seriously interfere with the performance of his or her official duties. Three, attorneys at law, their legal secretaries and employees, peace officers, ministers of the gospel, physicians and dentists actively engaged in the practice of their profession. Four, teachers, pharmacists, pharmacists, members of paid and volunteer fire departments, and persons who are required to travel regularly and routinely in the course and scope of their employment. Five, persons who are afflicted with sickness or other physical infirmity would suffer serious detriment if required to serve as a juror. Five, persons who have served as grand or petit jurors in criminal cases or as trial jurors in civil cases during the preceding two years immediately preceding their selection for jury service.

When we omit all of these people, ladies and gentlemen, what do you have left to serve on the jury? Let me show you an example. There is no leeway under the present set-up to where a district judge, when he calls a venire for a criminal case, there is a woman operator for a one-man business. When that person comes into court and asks the court to excuse them for the simple reason that they would have to close their business for maybe a week or two in order to serve on the jury, the judge looks at the statutes and says, "It is sorry, I cannot excuse you. You know how difficult it will be a hardship on you and your family." Right afterwards, another person gets up and he walks over to the bar of the court, and he says, "Your honor, I'm a volunteer fireman and I would like to be excused." The judge, under the statutes, has to excuse him. If we continue the way that we are, we will have insurance groups, next time, is going to be the American Legion, the Veterans of Foreign Wars, and somebody else is going to be excused. We want to protect the accused in this state. We want to give them a jury. We want to give them a jury of their peers, ladies and gentlemen. If we change the teacher's crime under the present statutes, there might not be one school teacher that would be willing to serve on the jury and I think under the constitution you have a right to be judged by your peers. This does not permit it and I'm asking you that you vote this proposal in the constitution. If you are going to let me to serve on a jury that our accused can get a fair trial.

Questions

Mr. Kean Mr. Landry, your Subsection B which provides "the Supreme Court by rule shall provide for exemption of jurors." If the Supreme Court took no action with respect to the rule and someone had a death in the family and wanted to be excused by the district judge from serving on the jury, where would he go?

Mr. A. Landry I'm sure that this could be set by rule easily with the Supreme Court, Mr. Kean. It would provide for hardship cases which the statutes do not provide for at the present time.

Mr. Kean But at the present time, the district judges have the right to excuse, do they not?

Mr. A. Landry Under the statutes, yes sir, but they are limited.

Mr. Kean This would take away the right from the district judges to excuse in the absence of a rule by the Supreme Court.

Mr. A. Landry It would not, sir, because I am sure the Supreme Court is familiar with that situation and they would put that in their rule.

Mr. Deshotels Mr. Ambrose Landry, I'd like to first of all preface my question by saying I kind of feel like Willis and Gravel with that amendment that Gerald Weiss had. I was a coauthor on your amendment too, as you realize. My question is this. Why are you supporting now, a proposal that has partial qualifications in it? You suggest leaving the qualifications up to the legislature, yet you have a partial delineation of qualifications in the amendment. Why is that?

Mr. A. Landry Because of the fact that under the present statutes and the present constitution, women cannot serve on a jury except if they file an affidavit with the clerk. I personally feel that women should be eligible to serve on a jury.

Mr. Deshotels I agree with you on that. But my question is in reference to the phrase, "who is domiciled within the parish in which he is to serve as a juror". Why do you have that particular phrase in there?

Mr. A. Landry Because this tracks the old constitution and says you have to be a resident or domiciled in the parish.

Mr. Deshotels A resident or residing in the parish.

Mr. A. Landry That's correct. And sets the age and sets majority also. If you remember in November of 1972, there was a constitutional amendment on the ballot to provide women to serve on a jury. Of course you know what all amendments happened in November, 1972. People were just against amendments, period. But I think the women of the State of Louisiana certainly would like to have the opportunity, not only to serve on civil jury, but also on criminal jury. That was the reason for our amendment.

Mr. Deshotels What's the difference between re-siding and domiciled, Mr. Landry?

Mr. A. Landry Personally, I don't see much difference, Mr. Deshotels.

Mr. Deshotels Do you know what domiciled is?

Mr. A. Landry You could come into my parish if you want to and declare your domicile. Is that correct, Mr. Deshotels?

I don't see much difference between domiciled and residence.

Mr. Flory Mr. Landry, I'm a little confused too, as a coauthor of your original amendment. Isn't it true that the captain of a ship is supposed to be the last man to abandon the ship rather than the first man?

Mr. A. Landry We don't bend any ship.

Mr. Burson Mr. Landry, isn't it true that under Louisiana law, specifically the Louisiana Civil Code, that there is a whole section defining what domicile is and that this word would then have a legal meaning under those sections of the civil code?

Mr. A. Landry Not being experienced in the law, Mr. Burson, I would think you are probably correct, as you are an attorney.

Mr. Singletary Mr. Landry, do you see any problem in all of these various special interest or pressure groups trying to assert any influence on the Supreme Court instead of the legislature in the future, or do you think . . .

Mr. A. Landry I see a whole lot less problems with a man who is elected, or a group of people who is elected, for ten years than persons who are elected for four years.

[Previous Question ordered. Amendment adopted: 94-15. Motion to reconsider tabled.]

Vice Chairman Roy in the Chair

Amendment

Mr. Poynter The Stinson amendments. Amendment No. 1. On page 13, immediately below line 32, add the following paragraph:

"Notwithstanding any other provision of this constitution, no woman shall be drawn for jury service unless she shall have previously filed with the clerk of the district court a written declaration of her desire to be subject to such service."

Explanation

Mr. Stinson Mr. Chairman, members of the convention, it is with great seriousness that I introduce this amendment. It's a matter that through the years, at least the last three or four sessions that I was a member of the legislature, the same issue came up. The position I take today is the position that I took at that time. This amendment is not in any way to discriminate, is not in any way to state that the ladies of this state are not qualified to be jurors, but it does say that they have their choice. It's no different from saying that a school bus driver is exempt or a fireman is exempt, or a doctor, or so forth. There are many exemptions. As you know, the exemption that will be set up under the last amendment that was adopted is an exemption that you do not have to claim. You can waive it. When they call the person's name as a prospective juror, they have to claim the exemption. This is an exemption for the ladies of Louisiana, without them being required to leave their homes or jobs or wherever they may be, to go into court to claim the exemption. However, the right is given to any female that wishes to serve, to file the intention or desire with the clerk of court, which is in the present constitution. This merely tracks and places in this constitution that provision that was in the 1921 Constitution. I think it has worked well. For a short while, there was some question whether or not the females could serve and as a practicing attorney, I know that the great, great majority of those that were called went up and asked and begged to get off because they did not want to be forced to serve as a juror. There are many, many cases and it's getting worse, where jury service is more and more distasteful. It is bad for anyone to have to serve on a jury and pass on the destiny or life of some fellow citizen. I feel that that is a thing that our women should not be forced to do unless they wish and desire to do it. As I said before, I am not in any way discriminating against them, belittling them in any way. It says that if they want to, they have the right and they can do it. Now some groups, I'm sure, of the fairer sex will not agree with this, but if there was any way we could take an impartial poll, I would be willing to bet anything that the greater percentage of our female citizens of Louisiana would be in favor of this and not in favor of being forced to jury service. As you know, our cases, criminal cases, are being more involved and taking longer to try them. Some cases, thank goodness, in Louisiana have not gone on as long as in California and other places. But

36th Days Proceedings—August 24, 1973

it can be one, and two, and three weeks that a jury would on a case be sequestered. In other words, forced and required to stay together day and night during the duration of that trial. That is a burden that I don't think should be placed on the women of Louisiana. I would like to urge you, let's continue the provisions of the constitution that have worked, in my opinion, well and fairly since 1921.

I want to point out again that this is not denying anyone, anything. It is giving a freedom of choice, a choice to serve if you wish. I urge you to let's place this back in the constitution and leave it as it has been through the years. If there are any questions, I'll be happy to answer them.

Questions

Mr. Smith Mr. Stinson, aren't you for equal rights for women?

Mr. Stinson Yes sir, all women would have the same equal rights under this. Yes sir.

Mr. Smith Well, don't you think this discriminates against them?

Mr. Stinson What is that, sir?

Mr. Smith Don't you think it discriminates against the women, not allowing them to serve on juries if...

Mr. Stinson This is not denying them. This is preventing them from being discriminated against by being forced to when they don't want to.

Mr. Smith You're not mad at the women, are you?

Mr. Stinson No sir, I love the women. Always have and I hope I always will.

Mr. Hayes Mr. Stinson, do you know how this is handled in other states? Do ladies serve on jury duty in any other states that you know about?

Mr. Stinson To my best knowledge, in most of the states, now I could be wrong, I haven't researched it, I think they've had like we have where it's optional if they wish to qualify for that.

Mr. Hayes Do they serve in the federal system here in this state?

Mr. Stinson They do, yes.

Mr. Hayes They do serve on the federal courts?

Mr. Stinson Yes, sir.

Mr. Hayes They don't have the option.

Mr. Stinson No, sir.

Mr. Burns Mr. Stinson, you've stressed the inconvenience of ladies serving on juries. If they want equal rights, don't you think they ought to take the bitter along with the sweet?

Mr. Stinson No sir, I think they are too sweet to serve on the juries, in answer to your question.

Mr. Shannon Mr. Chairman, I believe we were ready to vote on this thirty minutes ago, and I think everyone knows how they are going to vote now. I move the previous question on the entire subject matter.

[Previous question ordered. Record vote ordered.]

Personal Privilege

Mrs. Brien Special privilege, Mr. Chairman. I just would like to ask everybody, do you believe

what was told the lady back there?

Mr. Roy Mrs. Brien, Mrs. Brien, the previous question has been ordered and there is no objection. I just don't think I can let you speak on it. If you want to oppose the previous question and want to speak, I can, but we'd better go on forward with this. Okay?

Personal Privilege

Mr. Stinson Mr. Chairman, in view of the fact that I believe in freedom of, especially the ladies, I'd like to answer the question. I think you can get in your argument by a question, please ma'am. I yield to the question.

Question

Mrs. Brien I'd like to ask you, do you believe what was told to Lady Macbeth? "Woman, thy name is frailty." So do you think we are too frail to act as jurors?

Mr. Stinson No ma'am, I thought what they told her was to go put her clothes on.

Closing

Mr. Stinson I'll imitate Mr. Jack. I won't take much time, but I would like to urge, as I said, I'm not being frivolous, I'm not belittling the ladies in any way. I'm giving them a freedom of choice. The different groups like to have their option as to whether they should serve or not, and under this, any lady that wants to serve can serve. It's been the law. We've debated in the legislature, and fortunately the wisdom of the legislature in the past has been to leave it as it is in the present constitution. So I urge you, let's vote here and give the ladies the freedom of choice because there are a lot of ladies that don't want to serve. Your wife, more than likely doesn't want to serve. If she wants to serve, let her go register and serve. Your daughters and different ones. This is a freedom of choice which I think nowadays most everyone has decided is very important. Don't put the burden on the ladies if they don't want it, but give them the right, they who wish to do so. I'd like to urge you to adopt this amendment. I say it's freedom of the ladies not in any way discriminating against them or doing away with their rights. They are certainly not frail enough... I'll tell you the last case I had, jury case, before they knew it I had four ladies on the jury and I accepted them. I won the case and they were good jurors. But still, I don't want to force it on those that do not want to. This is giving them the right and the privilege. In thanking you, I'd like to urge you to please vote favorably for this amendment.

[Amendment rejected: 10-102. Motion to reconsider tabled. Previous question ordered on the Section. Section passed: 110-2. Motion to reconsider tabled.]

Chairman Henry in the Chair

Mr. Henry I told Mr. Roy that wouldn't be a tie vote, but he wasn't certain and he wanted to get up here.

Reading of the Section

Mr. Poynter "Section 37. Grand Jury. Section 37. There shall be a grand jury or grand juries in each parish whose duties and responsibilities shall be provided by law and whose qualifications shall be as provided in Section 6 of this article. The secrecy of the proceedings, including the identity of the witnesses appearing, shall be provided for by law."

Explanation

Mr. Avant. Mr. Chairman, ladies and gentlemen of the convention, the purpose of this provision is to clarify the language of the present constitution to make it clear that more than one grand jury may be impaneled at the same time in a parish. There is a very good reason for that. I think before I continue with my explanation that I should read to you the present provision in the constitution on grand juries. I would like for Mr. LeBlau to pay particular attention as I read this.

"Article VII, Section 42 provides that a grand jury of twelve, one of whom shall constitute a quorum, and must concur to find an indictment shall be impaneled in each parish twice each year and shall remain in office until a succeeding grand jury shall have been impaneled, except in the parish of Cameron"—now, not Orleans—"in which at least one grand jury shall be impaneled each year. The district judges shall have authority to try at any time misdemeanors and when the jury is waived by the defendant, all cases not capital or necessarily punishable at hard labor, and to receive pleas of guilty in all cases less than capital."

Now this provision as it is drafted makes it clear that there may be more than one grand jury in a parish at a particular time because it has been the experience, and I know firsthand in this parish in the last three years, we have had two occasions when the grand jury had to consider a particular matter for several months on end, which prohibited the grand jury from attending to the regular matters that it would have been attending to during that period of time. So this does not necessarily provide that there will be more than one grand jury, but it leaves it up to the legislature in those particular cases where it is necessary, on occasions, that you have more than one grand jury, to provide a mechanism whereby that can be accomplished. Now no reference is made in this provision to the number of jurors who must serve on the grand jury removed is mention of those cases in which grand jury indictment is necessary. Also deleted is the term and time of the impanelment of grand juries, and such matters shall be as provided by law. Now new is the mandate to the legislature to provide for secrecy of the grand jury proceedings, including the identity of witnesses appearing before the grand jury. The present requirement that grand jury proceedings be secret is contained in the statutes. This provision having to do with the secrecy of the grand jury proceedings was raised to constitutional status and placed in this provision which the Judiciary Committee is suggesting to you to take care of what is, I respectfully submit to you, one of the greatest sources of injustice that occurs in this state, and can occur in this state. I'll tell you this, and I ask you to think about this when you consider this particular provision of this section. Any delegate to this convention, this is a hypothetical question, but any single delegate to this convention could go to his district attorney and tell that district attorney, "look, I know a crime that is being committed in this parish, but I, because of the people involved and the personalities involved, am not going to get on a white horse and go charging down the street and spread the news. But if you will subpoena me before the grand jury, I will tell you what I know, under oath." So he does that. The very next thing that happens in the paper, the radio, the television, is that Joe Doe has been subpoenaed before the grand jury. Immediately, in the minds of the vast majority of the public, Joe Doe is a crook. He is affected with a stigma that he will never be able to get off of his back. If you don't believe that that's true, you just sit down and think about it. So the purpose of this provision is to provide that the present secrecy of the grand jury proceedings, which is provided by statute, be placed in the constitution with the further qualification that the identity of witnesses who appear before that grand jury shall remain secret. The legislature shall provide a procedure by which that shall be done. Now obviously they won't remain a secret forever because when the

case is tried, when a grand jury indictment has been returned and witnesses are in court and testify, then the whole truth will come out. But the purpose of this provision is to prevent people being stigmatized, who are perfectly law-abiding and good citizens and only doing their duty as citizens, to lay before the proper authorities, evidence of crime that they have, and who are put in the public light as having been subpoenaed before a grand jury. It does cause a great deal of injustice, and this is the way to prohibit that injustice from occurring. I'll be happy to answer, now, any questions that anyone may have about this section.

Questions

Mr. Arnette. Mr. Avant, just a couple of technical questions. On line 5, shouldn't that be Section 36?

Mr. Avant. Yes. There is a technical amendment that will follow to correct that, Mr. Arnette.

Mr. Arnette. There is one other technical amendment that should be put in also. After the rest of the word "provided" in line 5, shouldn't it have "for" in there as "provided for" in Section 36 of this Article? Because the qualifications are not in Section 36, but merely provided for.

Mr. Avant. ... "for" in Section... I agree with you, yes sir.

Mr. Stinson. Mr. Avant, under the present law there can only be one grand jury at a time in any parish, isn't that correct?

Mr. Avant. That is correct.

Mr. Stinson. Now, the grand juries themselves are very independent, they can call themselves into session, can't they, they can investigate anything they want to. Now, if you have three or two... say two grand juries, suppose one of them is investigating me and the other one decides they want to investigate me on the same charge and this one no-bills me, and this one indicts me, what is going to happen?

Mr. Avant. Mr. Stinson, I don't think that is going to happen. I am concerned and the logic behind this provision was, those situations, which we had two occur in this parish in the last three years, are very serious matters, extremely serious matters, which required the grand jury to be in session investigating a particular matter for months on end. During which time the grand jury was unable to attend to the regular ordinary day-to-day business of the grand jury. We are not setting up the machinery in this provision, we are simply providing a mechanism whereby the legislature, in those unusual cases, can provide for special grand juries to consider special matters that, because of the public importance involved should be considered, must be considered, without disrupting the ordinary functions of the regular grand jury.

Mr. Stinson. But don't you think that there is a possibility that the district attorney... that they will have one grand jury and the district attorney goes there and he says, "my, those people are not going to indict anyone. I am going to draw me a second one and maybe I'll get more indictments. Don't you think that he is going to use it for that purpose?"

Mr. Avant. No, sir, I don't think it will be used for that purpose, and if it is, I think that such abuses can readily be corrected.

Mr. Burson. Two questions, Mr. Avant. First of all, don't you think that in the hypothetical situation that Mr. Stinson has posed that if one grand jury finds... returns a no-true bill that it would be double jeopardy then for anybody else to

36th Days Proceedings—August 24, 1973

come along and find a true bill on another grand jury. It seems to me that it would certainly be a good argument there.

Mr. Avant Mr. Burson, I am not overly experienced in the criminal law. I think that that is probably a result if you....a man who has much more experience in the criminal law than I do, feel that way, I wouldn't be in a position to argue with you.

Mr. Burson Secondly, with regard to your point about the secrecy of the identity of the witnesses. Well, there an additional motivation which you have not stated behind this, that is, to protect witnesses from possible coercion in certain cases?

Mr. Avant Yes, sir, that is an additional consideration.

Mr. Silverberg Jack, in regard to this same question about secrecy of witnesses, how far does this secrecy extend, would you get in a little detail on that?

Mr. Avant Mr. Silverberg, I think that it is of necessity must end when there is an indictment and a trial.

Mr. Silverberg I am speaking of prior to the time of indictment, talking about when the witness is first called or volunteers, when he approaches the grand jury room, is there such a thing as inhibiting the use of his name or her name prior to the proceedings?

Mr. Avant Those details were matters which we felt should best be left to the legislature under this constitutional mandate.

Mr. Perez Mr. Avant, in view of the provisions which we adopted in Section 36, which sets forth the specific qualifications of a juror and then the next sentence says, "the legislature may provide additional qualifications," and when we in Section 37 would say "whose qualifications shall be as provided in Section 36 of this article," don't you feel that there is a possibility that the interpretation could be that only those specifically set forth and not those which may be provided additionally by the legislature would be the qualifications of a grand juror?

Mr. Avant Would you repeat that, sir. I was unable to hear you. I have a slight hearing problem and then I had some distraction.

Mr. Perez In light of what was adopted in Section 36 which materially changed Section 36, wherein we have specific requirements or qualifications of a juror and then we refer later saying that "the legislature may provide additional qualifications." Because of the language in Section 37 which says "whose qualifications shall be provided in Section 36 of this article," isn't it possible that the courts might interpret the verbiage in Section 37 to mean that only those qualifications set out specifically in Section 36 would be the qualifications of a grand juror, and not the additional qualifications which the legislature may establish under the permissive provision in Section 36?

Mr. Avant No, sir, I don't think that it is susceptible to that interpretation. I think that it means that the qualifications for grand jurors and the qualifications for jurors will be the same.

Further Discussion

Mr. LeBlau Mr. Chairman, and fellow delegates, I just wanted to let you know as the reason Cameron was in the 1921 Constitution is an exception, was at that time the only way that people who lived in the north part of the parish could get to the south part of the parish where the courthouse is located was by a steamboat. Mr. Avant brought this to my attention, but it just goes to

show you that the committee has done a good job because just by changing the language of their proposal, compared with the 1921 Constitution, they still allow the Cameron grand juries to be impaneled in the same manner and to provide the same service and that is the point that I was trying to bring to you this morning. Thank you.

Personal Privilege

Mr. Tate Mr. Chairman, I rise to end any flattering questions about who sent me these flowers and a point of personal privilege. "Justice Tate, please place these on the tomb of our fourteen year terms. Be assured that we will always remember you for the results you have accomplished. Your Brothers on the Bench, Amen".

Amendments

Mr. Poynter Amendments sent up by Delegates Pugh and Perez.

Amendment No. 1. On page 14, line 3, insert the word "whose" and before the word "duties" after the word and punctuation "qualifications."

Amendment No. 2. On page 14, line 4, after the words "by law" and before the words "and whose" insert a period and delete the remainder of the line at the beginning of line 5, delete the following: "The portion of the word "vided in Section 6 of this Article."

Explanation

Mr. Pugh Mr. Chairman, fellow delegates, Mr. Perez and I suggest to you that the word "qualifications" should appear before the words "duties and responsibilities" in this Section and that they all be as provided by law, the balance of that sentence be deleted. We have previously changed Section 36 and in doing so, have provided a mandatory requirement that for qualifications of a juror the person be of the age of majority, that he be a citizen of the State of Louisiana, that he be domiciled within the parish in which he is called to serve as a juror. We are of the opinion as we go on and say, that they can make such additional qualifications, the legislature can, that there is a possibility of suggesting a limitation in 37, if we merely refer to 36. That the only qualifications for a grand juror are that he be of the age of majority, a citizen of Louisiana and domiciled in the parish. With this change, the legislature can, as it could in the previous section, add additional qualifications. We suggest the adoption of this amendment.

Question

Mr. Sandoz Mr. Pugh, the effect of your amendment would then permit the legislature to continue to grant the exemptions that we attempted to avoid in the previous section, would it not, sir?

Mr. Pugh No, sir, I never said a word about exemptions, I said qualifications and there is a distinction between the two. I haven't dealt with exemptions at all. However, in this amendment or my previous amendment.

[Previous amendments not received. Amendments adopted: 92-2. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendments sent up by Delegate Kean. Amendment No. 1. On page 14, line 6, after the partial word "ceeding" delete the remainder of the line.

Vice Chairman Casey in the Chair

Explanation

Mr. Kean Mr. Chairman, and fellow delegates,

this does not in my opinion make any substantive change in the sentence in question. The sentence in question, after the amendment would read "the secrecy of the proceedings shall be provided for by law". I offer the amendment because it seems to me that we, by the inclusion of this specific mandate, impose upon the legislature an impractical and impossible task of legislating to prohibit the identity of witnesses appearing before the grand jury without any guidelines as to what we mean. We are simply placing into the constitution an effort at statutory language without clarifying it to the extent that the legislature could carry out its assigned task. For example, up to the point in time, secrecy of the grand jury in Louisiana has always been legally legislated. If we leave in the sentence as amended, as I recommended by this amendment, we would be placing more in the constitution with respect to the secrecy of the grand jury than presently exists. Under those circumstances, it seems to me that if we mandate that the secrecy of the proceedings shall be provided for by law, then it's...no necessity for us to go further and mandate the legislature to do something which is impractical and impossible, in my opinion. First of all, what do we mean by, "including the identity of the witnesses appearing". Does that mean those who have been there, or does that mean those who are going, does that mean those who happen to be going to the courthouse, or just what is the meaning? In final analysis it seems to me, it raises the question of whether or not we are affecting a first amendment right. For those reasons, and since it does not affect the substance of the sentence, I ask that you support the amendment.

Further Discussion

Mr. Avant Mr. Chairman, ladies and gentlemen of the convention, I rise to oppose Mr. Kean's amendment. Mr. Kean is entirely correct when he says that there is nothing in the present constitution about the secrecy of grand jury proceedings. It is a creature of the statutes. But, the legislature has never seen fit to make any provision for the secrecy of the identity of witnesses who appear before a grand jury. The substance of the testimony is secret, that is true, but there is no protection insofar as the identity of the witnesses themselves who appear before that grand jury. I am not going to belabor this point because I think it is perfectly obvious to you. But you know, and I know, that if you were aware of criminal activities say in your parish or your city, that involved public officials or other people of prominence. You naturally would not, get out and spread talk like that on the street. But if you went to your district attorney and said, "look, there is something that the grand jury ought to know, there is something that you ought to know, I am a citizen, I want to do my duty, you subpoena me before that grand jury and I will tell you about it." The very next day wide notoriety is given to the fact that you have been subpoenaed before the grand jury and in the eyes of the public you are a bad man. You are a bad man, when in fact you are only doing your duty as a citizen. You will work for years to eliminate that stigma that is attached to you. As Mr. Burson pointed out that this also would provide for the protection of witnesses against being intimidated or harassed because they have appeared before the grand jury and testified with respect to criminal activity of which they have knowledge. I strongly urge the rejection of this amendment, and I will tell you this, and I am saying that any district attorney has ever done this, but if I was a district attorney and I wanted to get rid of my political enemies, I would keep them and their friends before that grand jury week in and week out, month in and month out until I had accomplished my purpose, when I knew full well, I knew full well that no grand jury would ever indict them. But I would have accomplished by purpose. You are all intelligent men and women, I think you get the

point, I ask you to reject this amendment.

Questions

Mr. Tobias Jack, I have this question. Do you believe that we could restrict the right of the press to report who goes in and out of the courthouse?

Mr. Avant Do I personally believe that it can be done?

Mr. Tobias Yes.

Mr. Avant Yes. ...constitutionally...are you talking about the grand jury or who goes in or out of the courthouse? Yes.

Mr. Lanier Mr. Avant, I have several questions I would like to ask you, but the first one is. "Are you aware of the fact that I support the committee proposal?"

Mr. Avant I was not aware of that until you told me, Mr. Lanier. Thank you very much.

Mr. Lanier But I would like to bring out a couple of points. Is it not a fact that under the public records law of the State of Louisiana that there has been jurisprudence which has held that the subpoenas of the grand jury are not matters of public record?

Mr. Avant I am not aware of that fact.

Mr. Lanier Is it not also a fact that under the present Code of Criminal Procedure that there is a provision that says that all matters pertaining to grand jury proceedings and secrets and cannot be revealed by those persons who have privilege to them?

Mr. Avant Yes, sir, I am aware of that.

Mr. Lanier Despite this, has it not been a fact that very often the names of people come out, regarding these investigations?

Mr. Avant In certain specific cases, most universally so.

Further Discussion

Mr. Burson Mr. Acting Chairman, fellow delegates, I know this is going to surprise some delegates that a law-and-order man would want to speak in favor of what I deem to be a very important private personal right. But I am against the amendment because I think that the language that Mr. Avant has advocated and apparently been successful in convincing the Judiciary Committee, should be included in its proposal is a tremendous step forward, and deserves constitutional status. Because I am not aware of any greater abuse of personal rights in the field of criminal law than the over-publication, whether by federal grand jury or state grand jury, of the identity of people who testify before a grand jury. Now we are all grown men and women here and we all read the newspapers. We all know that the federal constitution says that you are presumed to be innocent until proven guilty. Well, I am here to tell you today, as a man who has practiced both as a defense lawyer in criminal cases and as a prosecutor, that the only presumption on the part of anybody in the criminal courtroom is "the guy is guilty or he wouldn't be on trial". By the same token, the only presumption in the popular mind that attaches when they read that Representative so-and-so or Senator so-and-so went down to testify before the federal grand jury or the state grand jury that is investigating corruption in government is, "well, that guy must be involved in something or he wouldn't have to go down there to testify". Now if he is involved in something, the grand jury is going to find the true bill and he will be indicted, then everybody

is going to get a chance to know about it at the proper time. But if he is not, then it seems to me that it is no rank injustice as Mr. Avant pointed out for him to have this name spread all over every paper in the state, simply because he went to testify and do his duty as a citizen. Now, I am also very much aware that as a practical matter a good reporter is going to be outside that courthouse and certainly nobody can stop him from reporting who goes in and out. But there are many things in the law, there are many things in the Bill of Rights that we know we will never have perfectly, such as freedom of speech. We can't have perfect freedom of speech. But we should aim for as much as possible some degree of perfection in those areas where rights are truly important. I think that taking the history of the grand jury proceeding back from its origins in Great Britain, that it is the greatest weapon that we have today in the investigation of public corruption. I submit to you that the language of the committee proposal only furthers that aim by protecting the confidentiality of witnesses. It is also not unimportant to note, that there are cases where the identity of witnesses should be kept secret because you want to protect them from possible coercion. This is very important in cases where you may have one or two star witnesses who make your case. So I would urge you, for these reasons, to reject the amendment.

Questions

Mr. Vick Jack, I am sympathetic with your views, but do you really believe that this would pass muster under the First amendment, Freedom of Press?

Mr. Burson That thought occurred to me and this may be one of the many areas where highly privileged rights come into conflict. I wouldn't want to predict what the outcome of that would be.

Mrs. Zervigon Jack, I am in sympathy with you as well, but I am confused as to how the law passed by the legislature in compliance with this would read. Would it require that the district attorney maintain an unmarked car to go pick up people at their residences? I don't quite understand how it would...what the mechanics of it would be, how it would work.

Mr. Burson Well, I think, as Mr. Lanier has already pointed out in his question, the present law states that subpoenas for grand juries are not public records. You already have provisions in the present law that tend to do what this would do. But there may be other things that need to be done and more important than this. I think it is important enough to deserve constitutional status, and that is why I am for keeping it in there.

Further Discussion

Mr. Stinson Mr. Chairman, delegates, hearing this presentation, it seems to me like the main person has been overlooked and disregarded. We are worrying about the embarrassment of the fact that a person goes before a grand jury, but what about the poor defendant? Now, those of you that are no lawyers, this defendant, he doesn't even know he is being investigated and he is innocent from all contention. The first he knows is when they come out and arrest him and take him to jail. If he can't make bond and if he doesn't have the money, they keep him in jail. If he can't hire a lawyer, they are going to keep him there until he goes in court and then maybe they will appoint a lawyer. He has no way to protect himself. He doesn't know what is taking place. It is embarrassing him to be put in jail and he gets the publicity. But his life and his freedom is involved, not just the fact of embarrassment. Do you mean to say that if...Brother Stovall would go down before the grand jury, they wouldn't...people wouldn't come out and say, "well, they are going to put him in jail because he went down

there and stole money from the Baptist Church" or something like that. He is an honorable gentleman. They are not going to discriminate against him and criticize him because he went before the grand jury. But we have got to think of the defendant, the person whose rights are being involved. Now under this, if he can't hire a lawyer when he goes up for arraignment, then he will be furnished a lawyer. One lawyer mind you, the district attorney with his staff, his investigators, the police force, the sheriff's force, and everybody against this one lone defendant and his one lawyer that the court has appointed, and you mean to say that he has no right...he doesn't have investigators, he doesn't have any money and he doesn't have a right to know who said he was guilty of something. How can he build up a case if you don't know who is going to be the witnesses, if they are kept secret and brought into court and presented and how are you going to build up an alibi if he has an alibi? We have got to think of the right of the person who is being charged, the person who we say, "is innocent until proven guilty," but we take away all the mechanics for him to prove his innocence. There is nothing wrong with him knowing who said that he committed some crime. He should have the right to go...when they said harassment and go out and cause some trouble. Well, if you are going to be a witness to try to send someone to the penitentiary or to the electric chair, you should be man enough to say, "well, now I am the one, I am willing and I want to see justice and you should tell anyone what you know". I don't believe in secrecy like this. When there is secrecy of this type there is not justice. There is nothing wrong with it being made known and so you can see who is going to be against you, and question them. If that is justice, I hope I never get any injustice done to me.

Questions

Mr. Bollinger Mr. Stinson, as a defense attorney, are you obliged to give the prosecuting attorney the names of your witnesses?

Mr. Stinson No, we are not required to. Because my witnesses are not going to testify that any crime was committed. But his had all the investigation, he had the chance, he had the officials. I am glad you asked that Mr. Bollinger, I overlooked that. Can you imagine a district attorney, they say, well, he is supposed to be impartial, but can you imagine a district attorney if there are five witnesses at the scene of a shooting and two said that the defendant did it and three says he didn't. Who is going before the grand jury. The two that said he did it, the three are going there in most cases. The defendant has no way of knowing who was present until he goes to trial and he ask the two witnesses...you, sir, who else was there?" They say, "well, John, Tom and Joe". Well, they may be in California or you don't know where, it is too late to get a continuance, you have already started, you have no way of knowing...you, one lawyer and your poor defendant, with all the cards stacked against you. That is not justice and this is not, in any way. The only way to protect the defendant is, that the witness might be embarrassed. Well, I think that if he is a person responsible enough, there would be no embarrassment whatsoever. In justice of the defendant, I ask that you please, let's vote this amendment.

Further Discussion

Mr. Kilbourne Mr. Acting Chairman, fellow delegates, my friend, Mr. Stinson, has totally missed the purpose of the Committee Article. Now in the many years that I was a district attorney, I consistently refused to give...to make public the identity of witnesses, or of accused who were going to be investigated by the grand juries. I had some arguments with the local people on that very subject and I convinced them that I

was right. Now Mr. Stinson is talking about this poor accused person, this poor innocent person and that is one of the very persons that the provision is intended to protect. It so happens that these often are innocent persons investigated for criminal activity by grand juries. If he is innocent, as it happens often that he is, certainly it would be an injustice to him to publish the fact that he has been...he is being investigated by the grand jury or has been investigated by the grand jury and it would be a very serious injustice to him. I think that it is most important that these matters are kept secret. It facilitates the grand jury, which is merely an investigatory and accusatory body and not a trier of cases. It facilitates them, it protects the people, as Mr. Avant has pointed out. It protects the people from the stigma... that some would give to being called before a grand jury. I would like to remind Mr. Stinson and you delegates, this business about...an accused knowing who the witnesses are. Mr. Stinson is an experienced attorney and a good one, and he knows very well that under the sixth amendment to the Constitution of the United States, every person charged with a crime is entitled to be confronted by the witnesses for him and to have the right of compulsory process for his own witnesses. But remember this, a grand jury investigation is not a trial. I believe that it would be certainly in the public interest that these matters be kept as secret as possible until there is...now once there is an indictment, of course, it becomes a matter of public record and everybody is entitled to know about it, including the names of the witnesses. But what is bad, what is bad...and I have known district attorneys to do this, in which I always thought that they were wrong. They would give statements to the press about certain people who were going to be investigated by certain grand jury and I do not think that that ought to be permitted. I think that the committee's article would certainly help to prevent that kind of thing happening. Now you...all of you read...have seen the recent example of these things in the case of Vice-President Agnew. Now whatever you may think about Vice-President Agnew has nothing to do with the matter, but certainly it wasn't fair for a U.S. Attorney to give the publication, give the information to the press that Mr. Agnew was being investigated and what he was being investigated for and that was a grossly unfair thing and it would be grossly unfair to do that to anybody. That is what this committee proposal is attempting. Those are the kind of people that they are attempting to protect because in the public mind, it certainly is true...regardless of the innocence of anyone. Once the public finds out that he is being investigated, they immediately assume that he has done something wrong. Now you may think it sounds funny coming from a former prosecutor these words, but I feel strongly about this thing and I always have, and it has always been my policy. I hope you will vote down Mr. Kean's amendment.

[Continued on p. 37, in delegation present and in appendix.]

Further Discussion

Mr. Tapper Mr. Acting Chairman and ladies and gentlemen, I'll be very brief. I rise in support of the amendment. I don't think, as Mr. Vick said, that this could be enforceable in any way, shape, or form. The indictment of an individual in the eyes of the public of this state and throughout the nation is tantamount to guilt, whether or not he is acquitted at a trial. I'm very doubtful whether we should continue the antiquated system of the grand jury but if we're going to, at least let's allow those people who are being damaged or may be damaged by it, the opportunity to speak about what goes on there as much as someone who is in the grand jury and who has attempted to indict them. Ladies and gentlemen, I think that in addition to this, we should also require or authorize any person to have counsel with him when he

goes before the grand jury. I urge that you adopt this amendment, in order to protect the interest of the people in the state.

Questions

Mr. Stinson Mr. Tapper, you heard Mr. Kilbourne, and of course he was an exceptional district attorney, but he says that the district attorneys keep it secret as to who is going to be investigated. Well, isn't it a fact that the district attorney in Monroe was elected because his campaign promise was that he was going to investigate the mayor and city council and try to put them in the penitentiary. Isn't it a fact that here in Baton Rouge that the agriculture commissioner or those... I didn't see any secrecy about Mr. Pearce being before the grand jury and all. If that's secrecy, I would like to see some publicity sometime, wouldn't you?

Mr. Tapper I don't know the politics in Monroe, Mr. Stinson. If you say that happened, I've never doubted you before; however, my main interest is to protect the innocent, not the guilty.

Mr. Stinson Also, Mr. Kilbourne says the constitution says he will be confronted with the witness, but in that confrontation, when the jury has been selected and the man is put on the witness stand and there you are with no chance to investigate anything, isn't that so?

Mr. Tapper That's what I've been told, that sometimes, that little example you gave is true, Mr. Stinson. Sometimes those who are seeing it the other way don't appear before the grand jury. I move the previous question.

[Previous question asked. Answer pending. Amendment reread and rejected: 33-74. Motion to reconsider tabled.]

Amendments

Mr. Poynter Amendment No. 1, [by Mr. Perez, et al.], on page 14, line 2, between "Section 37" and the word "there" insert (A).

Amendment No. 2, on page 14, between lines 7 and 8, insert the following:
"B. Except as otherwise provided in this constitution, a district attorney, or his designated assistant, shall have charge of every criminal prosecution in his district, shall be the representative of the state in his district before the grand jury, and its legal advisor. He shall perform such other duties as may be provided by law."

Point of Order

Mr. Conroy Point of order, Mr. Chairman. This proposed amendment is to a section that deals... is entitled "Grand Jury", and except for one phrase in this amendment, deals with the duties of the district attorney. I raise the question as to whether this amendment is germane to the subject matter of the section.

Ruling of the Chair

Mr. Casey Mr. Conroy, I would have to rule the amendment is in order. As I understand, it refers to his duties in relation to the grand jury, and I would have to rule that the amendment...

Mr. Conroy It only partly deals with those duties. The charge of the prosecution in his district, of every prosecution in his district and the performance of other duties as may be provided by law. Those recitations have absolutely nothing to do with his functions before the grand jury. It does in part deal with his functions before the grand jury, but it certainly goes far beyond that.

Mr. Casey Mr. Conroy, there's certainly some merit to your objection, however, inasmuch as it

36th Days Proceedings—August 24, 1974

does refer to the grand jury, I must note that the amendment is in order.

Appeal From Ruling of the Chair

Mr. Conroy I will appeal the ruling because I think this will set a very bad precedent if by just referring the part of what's before the convention on a given section, we can then go far beyond it and tack a lot of other things into a given amendment, and I appeal the ruling of the chair.

Mr. Casey Mr. Conroy appeals the ruling of the chair that the amendment is germane.

Point of Information

Ms. Zervigon Mr. Chairman, would you have the Clerk read to us, the part that tells what sort of vote it takes to overrule a ruling of the chair.

Mr. Poynter It takes the same vote, Mrs. Zervigon, as it takes to suspend the rules. 67 votes or two-thirds present and voting, whichever is lesser.

[Previous question on order, second vote ordered.]

Motion Restated

Mr. Poynter Delegates Perez, Gravel and others have sent up floor amendments at this time to the section. Mr. Conroy rose on a point of order and inquired of the chair as to whether the amendments were germane, as required under the rules.

The chair ruled that the amendments were germane. Delegate Conroy appealed the ruling of the chair, therefore in accordance with the rules of this convention that require that appeals be affirmatively put, the vote will recur on the motion to sustain the chair.

Those of you who are in favor of sustaining the ruling of the chair will vote yes. Those opposed to the ruling of the chair, with Mr. Conroy, would vote no.

[Chair sustained the vote 42.]

Explanation

Mr. Perez Mr. Acting Chairman and delegates, if you will recall the question of the duties of the district attorney has twice before appeared on the floor of the convention and there were certain objections made and at the time the objections were made, the authors of these proposals withdrew the amendments and this is an attempt on the part of many delegates to satisfy all of the worthwhile objections, and still include within this article a host of the duties of the most important district offices in the state. I realize that we will be accused of coming in the back door, but the only reason that this is being done at this time is because of the fact that it was withdrawn earlier, it was never voted upon but was withdrawn earlier in order to attempt to satisfy the various objections. If you will follow the amendment with me, it would provide "except as otherwise provided in this constitution." The purpose of including that phrase is to make it possible for the attorney general, when he supercedes a district attorney, to have charge of criminal prosecutions. There was another objection raised that the original amendment which was submitted did not provide for a designated assistant to appear before a grand jury. That objection has now been satisfied. I submit to you that the duties of the clerk of court, the duties of the sheriff, have been included in the constitution, and that the district attorney of this state, as one of the most important officers on a district level, that his duties should be included. There have been many cases in which the question has been raised as to what the constitutional authority of a district attorney is, because he is referred to in the constitution and yet his duties are not covered, and on the

other hand, we would cover the duties and responsibilities of a clerk of court or of a sheriff. The only other officer whose duties were not set forth in this entire article were that of the coroner, but we did require that he be a doctor.

I submit to you that we should include in this article, a provision for the duties of a district attorney. I am satisfied that we have taken care of all the major objections, and I, as a member of Style and Drafting, would move to move this particular provision back where it should be at such time as Style and Drafting meets on this particular amendment, if it's adopted.

Chairman Henry in the Chair

Question

Mr. Anzalone Mr. Perez, if we do not give to the district attorneys of this state some constitutional authority, would it not be possible for a simple act of the legislature to leave us with one prosecuting attorney in the State of Louisiana, that being the attorney general?

Mr. Perez That's perfectly not only possible, but highly probably it could happen, and it could completely take away the whole theory of local law enforcement, instead of being on a statewide basis.

Further Discussion

Mr. Tate Mr. Chairman, fellow delegates, this is probably the last time I am going to address you, and you may have a sigh of relief, on any substantive issue. We are leaving the area of my expertise but I come to you right now and tell you once again at the last minute, by the back door, and with no reflections on anybody, we are met with an amendment which has implications beyond what seems immediately apparent. I want to point out to you that this is a continuing struggle on the issue that this convention, I think, equitably settled regarding the rights of local law enforcement and the potential expansion of state interest in law enforcement in the years ahead. I don't mean right now. With regard to the personalities involved, I want to say, I admire Attorney General Guste, but I don't know him well. I've met him five times. Some of the D.A.'s are my closest personal and political friends. My former law partner was a D.A. for eighteen years. I am not speaking against the D.A.'s. I am speaking for the future. For instance, we say that the attorney general's... the district attorney's powers aren't spelled out. Neither are the judges, you heard this yesterday. We went through this yesterday or the day before. Neither are the legislators. The district attorney, you know I know, is the most powerful individual officer in our state. He can affect more people, for good or for bad, than the governor can, on an individual basis, and it is as it should be, probably, because these district attorneys are a great and powerful office of local law enforcement, and there are very fine men filling it. But I do not want to say that we, in 1973, should freeze out patterns of law enforcement to what we think now is best.

For example, this says the district attorney shall be the representative of the state before the grand jury. Who knows in the years to come where they might not want a statewide grand jury going after organized crime, loan sharks, whatever you want to do, and who knows that we should not have, representing the state, the attorney general with special expertise and statewide resources. I am saying to you, I think right now, this is statutory material, this is the way it is regulated by statutes. I see no reason to change it right now but I am asking you to look ahead. Look ahead just the way we have thought this. Let's not freeze our ideas on twenty, thirty and forty years ahead. Let's let the future have a chance to explore other methods and better methods perhaps, in the newer situations that arise in the years to

come, and with that I probably am going to address you for the last time on any substantive issue.

Questions

Mr. Lanier Mr. Justice Tate, the thing that's concerning me right here is the relationship between the powers of being the chief administrative officer and the administrative powers that we have given to the Supreme Court in its relationship with the district attorney if we do not assign any duties or control over criminal prosecutions. In your opinion, if we do not provide that the district attorneys shall have charge of criminal prosecutions in his district and be the representative of the state, in your opinion, could the Supreme Court and the chief justice, through its either supervisory power or administrative power, either control the criminal docket or control the authority of the district attorney to enter non-pros?

Mr. Tate In my opinion, it could not control his authority to enter non-pros which is conferred on him by statute. In my opinion, if you will look at the procedural powers, they are subject to general law, to the law of the legislature. I'm willing to trust the legislature of the future. The legislature of the future may then his powers of non-pros should be limited. I don't think so. I think he should have unlimited carte blanche power. Now, with regard to docket, the legislature of the future may think that perhaps we should have some minimum time in which cases may be pending before they either non-pros or tried. I don't want to freeze into the constitution any interpretation that says a particular local officer could defeat a general law endeavoring to improve law enforcement in the trial in the administration of criminal justice. Is that in answer to your question?

Mr. Lanier Well, the point I'm getting to is not with reference to a statute that would be enacted. Let's assume the absence of statute, the absence of statute would the Supreme Court under its administrative authority have the power to control the criminal docket in the absence of a provision like this?

Mr. Tate If there were no statutes, and I point out to you, there is a statute, the court of criminal procedure...

Mr. Henry Justice Tate, you've exceeded your time. Justice Tate, I think it was evident that you were against the amendment.

[Mr. Henry for previous question, 19-8..]

Further Discussion

Mr. Kelly Mr. Chairman and members of the convention, we've seen similar amendments come before this body before, and I'll be real honest with you, and I say this very sincerely, I did not get disturbed about any of this in this convention until I saw some of the reaction concerning this little amendment right here. The Perez, Gravel amendment has tried to meet with every objection which was meted out before this convention yesterday to the amendment that myself and Mr. Deshotel's placed up here, which I admit was a bad amendment. Mr. Kilbourne came with an amendment and later pulled it down because of objection. Now let's analyze this thing. All it says is "except as otherwise provided in this constitution." That has got to be specifically referring to, I believe it was Section 27, where we're dealing with the powers and duties and responsibilities of the attorney general. It says that "the district attorney or his designated assistant will have charge of all criminal prosecutions in his district and shall represent them before the grand jury, and be its legal advisor." That traces the statutory language right down to the "T". It further leaves the flexi-

bility which says "he shall perform such other duties as may be provided by law." Now what concerns me, is we've got a constitutional office here so important as a district attorney's office, and I might add that I'm not an assistant district attorney, I am not a district attorney and have no ambitions of being one, but why, why are we so afraid to give such an important office such limited constitutional powers? This makes me wonder, and I did not worry until several speakers have shown so much concern about our district attorneys, our local government, let's put it on that basis, our local government, the right to have some powers and supervision over the law enforcement within their respective districts. I wish to remind you that I think that the advocates who are promoting the defeat of this are doing nothing but trying to come to a streamlined, centralized law enforcement program which will come to you straight out of Baton Rouge. I ask you to think about this. Think about how your own little community is operated. Think about how your district attorney operates. Is he doing a good job? I dare say most of them are. We have given the attorney general the extended power to even supersede district attorneys in cases where he has failed to carry out his duties, and once that court that he has cause to supersede. I heartily ask you to endorse this amendment. We need this amendment. We've got to protect the rights of local law enforcement, and I think this is the way we can do it, and yet at the same time we will not jeopardize the rights which have already been passed of the attorney general or those who advocate central law enforcement to come in and attend to something that a district attorney seems to have neglected.

Further Discussion

Mr. Jack Mr. Chairman, ladies and gentlemen, I rise to oppose this amendment. The reason I don't want this in here is the whole purpose of being able to draw a constitution here, don't be called on, except in exceptional cases, to offer amendments. I've said that before. This belongs in the statutes. The thing that bothers me with this, this is the statute and they put it in the constitution. Why, I don't know, but I know this, that in Louisiana, and the only state I know of that has this power, a district attorney is king, an emperor. A grand jury can indict people for felony, murder, anything, robbery, rape, mass killing, if they want to. I'm not saying whether they do it, if they want to, they can non-pros that indictment... means throw it out. All other states I've heard of, once the person is indicted for a felony, the district attorney cannot drop that case without permission of the court. In my opinion, if this is passed, the legislature decided they wanted to pass a law saying once an indictment was found, the district attorney could not non-pros it, throw it out himself, without the consent of the court, then you would have that situation. It would be unconstitutional and in violation of the constitution. The legislature passed such a law. Now that's one of the things that worries me. Judge Tate is worried about what may come up in the future and this is a serious thing what I have mentioned, and I've talked to people about it before. I don't see why, unless there is some reason, like I just said, a district attorney is not satisfied to operate on a statute just like this wording, so I say you should defeat the amendment.

Further Discussion

Mr. Dennis Mr. Chairman, fellow delegates, I rise in opposition to the amendment. As Mr. Conroy has pointed out, it has very little to do with grand juries, which is what this section is supposed to be about. Mr. Perez has admitted, quite frankly, it's coming in the back door. Mr. Kelly has admitted it is statutory language that they're

attempting to put in the constitution. I ask you why, if it's so badly needed, the district attorneys have not to my knowledge in the past fifty years, attempted to put this statutory language in the constitution and I want to point out to you that if we do put it in the constitution, it is freezing it. It means the legislature can't change it. Now, I don't know whether the law needs to be changed or not, but if you ever do want to think about, in the next fifty years, of allowing the court to have something to say about nol-prosses or if you ever, in the next fifty years, have a congested docket situation, you want to give the court a little more power to move criminal cases after they get into court, and I think a court should have at least something to say about a case after it gets into court, then I'm suggesting to you you won't be able to do it if you adopt this amendment and freeze the statutory rules in the constitution, so I ask you to vote down this amendment.

Further Discussion

Mr. Kilbourne Mr. Chairman, fellow delegates, now I want it understood, that as far as I'm concerned, and I'm one of the sponsors of this amendment, as far as I'm concerned there is no ulterior motive here. There is no back door tactics intended here. Yesterday, late yesterday afternoon, it seemed to come up late, but late yesterday afternoon when everybody was tired, I put an amendment in to try to take care of this situation. That amendment was prepared by some district attorneys, and so often happens, a defense lawyer found some serious defects in it. As you know, we went on with the section we were on and voted on it, so we got the defense lawyer very kindly, Mr. Gravel is one of the co-authors of the amendment and he assisted in getting those defects out. I don't really like to call your attention to what the present posture of this article on district attorneys is if we do not have this amendment. All we say here is that there shall be a district attorney and where he shall have resided, and that he may elect his assistants and other personnel. We don't even say that he shall have such duties as is prescribed by law. Now, as I said yesterday, this is a very serious omission in this article and I really do not know how it occurred.

Now, Justice Tate was on the Judicial Committee. Judge Dennis was the chairman of that committee, and I don't know whether they recollect or not, but I certainly don't recollect how this thing happened, but I certainly think it would be a very bad omission in this constitution to set in the judicial office like the district attorney's office and not even say "he shall have such duties as prescribed by law." Really, I'm just at a loss to understand the objection of Judge Tate and Judge Dennis to this amendment other than they say that "freeze it in the constitution" and "it certainly froze it." He said we didn't provide anything for the judges. Well, we certainly went to great detail to freeze the jurisdiction of the Supreme Court and of the court of appeal and the district judges in the constitution. I wouldn't imagine that Judge Dennis and Judge Tate would want to unfreeze that. I just simply don't understand it. Judge Tate said something about a state grand jury. I don't know what he was referring to. I've heard some allusion to that before, but I say, "heaven forbid." Now gentlemen, this is a most serious matter. I certainly apologize that it has had to come in this way, and I feel that it has been my error as much as anyone else's but I think the entire Judicial Committee just simply made a very serious oversight and it was certainly unintentional, I believe, as far as I know all of them, but certainly by the majority of them, and it certainly was an oversight on my part, and I certainly hope the convention will adopt this amendment and take care of what I feel is a most serious omission. Now, Mr. Jack has referred to....

Mr. Henry You've exceeded your time, Mr. Kilbourne,

I'm sorry

Further Discussion

Mr. Anzalone Ladies and gentlemen of the convention, Justice Tate spoke to you a few minutes ago, and almost wanted you to believe that of all the constitutional officers that we have provided thus far, they were only given their powers, duties, and functions by statutory law. I beg to differ with that statement. Mr. Justice, if you will look at Articles V, X, XI, and XII of the Judiciary Proposal, you will see constitutional authority for the judicial system. If you will look into the Executive Department Article you will see constitutional authority for each and every elected official, save one or two. Ladies and gentlemen, you must tell me to look to the future, I submit to you that what he is talking about is a change from what we have now. I submit to you that if this change is to come, then let the people decide whether they want this change or not. This is too important an issue, I believe, to leave to statutory law. They have said, "Oh, it's been this way for fifty years." I have a feeling the next few years are going to be a little bit different than the last fifty. I urge you to give constitutional authority to your district attorneys.

Further Discussion

Mr. Burson Mr. Chairman, fellow delegates, I want to begin my remarks by expressing my astonishment at the fact that two esteemed members of the judiciary, for whom I have the highest respect, could get up here and tell you that the duties of the district attorney don't deserve constitutional status when they told you three or four days ago that the Judges' Retirement System did deserve constitutional status. I spoke for them when they took that position, and my feeling are a little bit hurt that the power of the district attorney and local law enforcement are not as important in their view as the Judges' Retirement System, as far as constitutional status is concerned. That sticks me as a slight anomaly, I say the least. Now moreover, I think the cat is out of the bag on this debate, and again, I have the highest respect for the two judges who expressed their views on this, but I disagree totally with their views.

In Section 6B that we have adopted here, we said that the chief justice of the state Supreme Court is the chief administrative officer of the judicial system of the state, not subject to law as was said by an earlier speaker, but subject to rules adopted by the court. Now, I supported that power and I got up and spoke for it, because I believe in efficient judicial administration, but fellow delegates, I don't think that we ought to turn over the whole system of law, civil law, criminal law, and everything else to the Supreme Court. I believe we've given them about all they need to do, and you have heard both of the speakers that adverted to this, talk about the needs of the future to take over the decision as to whether a case should or should not be nol-prossed. Now, I submit to you, it is the function of the judiciary to conduct fair and impartial trials and decide on guilt or innocence when there is not a jury. It is not their function to decide whether or not a case should be prosecuted. You talk about a king; well, if you want a king, then you take that power away from an elected representative of the people and give to the same man who decides on guilt or innocence, the power to decide whether or not a case should be prosecuted at all.

The district attorney represents the people of the State of Louisiana in criminal prosecution, and I submit to you that if you're worried about an efficient criminal docket... in the Soviet Union, they have a very efficient criminal docket, and I suspect they get their cases to trial, probably within a month or two, but the only thing wrong is they don't have a locally elected official in charge of criminal prosecution. If you want to dehumanize the system of criminal prosecution

in this state, then you join hands with those that want a centralized law enforcement system and value efficiency above local control of rights and the cat's out of the bag. That is the way the opponents of this issue have phrased it. I submit to you, at the outside, that no one here will doubt, we've heard some people say, "he's the most powerful local official." Well, if he is, for godsdamn sakes, why don't we want to state in the constitution, the rudimentary functions that he performs when we've done that for the clerks of court and the sheriffs? It simply doesn't add up. I ask you in the strongest possible terms to support this amendment.

Further Discussion

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, I think this amendment is needed in the constitution. We have designated, for all practical purposes, in this constitution, that the district attorney be the chief officer representing the state within his district. With that designation, of necessity, we must give him the powers and duties, and the functions that go with that designation. Let me point out one thing to all of you at this time. Also in this constitution, we have provided, specially, that in all criminal cases that the appeals shall be only on the law and there are literally hundreds of cases on the books, wherein the Supreme Court of this state has held, that convictions of persons must be sustained if there is a mere scintilla of evidence upon which such conviction might be justified. This provision is necessary in the constitution in order that the district attorney can make the determination from the facts in the case as to whether or not prosecution should be conducted. He is charged with the responsibility of making the investigation, handling the grand jury, and reaching the final and ultimate conclusion as to which charges should be brought in the name of the State of Louisiana. Which criminal charges. Now let's boil this issue down to really what it is, and believe me, this is important. Do you want the district attorney to have the authority to determine which charges should be initiated in the district court where criminal offenses are involved, or do you want to leave that authority in some hazy state to the attorney general or to the judge? Somebody's got to exercise it. Somebody's got to exclusively exercise it, in order for the right to be properly exercised. That's a decision you've got to make. Whether or not a charge should be brought, whether the charge should be reduced, whether or not action should be taken in criminal cases, depending upon all of the facts is a determination which only the district attorney can make. I submit to you, that you will run into a dangerous situation in the future, and I fear more than Judge Tate does, the possibility that those who don't know the facts who don't know the case, will be trying to run the criminal section, and the criminal division of the court. I submit to you that the authority to handle prosecutions should be left constitutionally, with the district attorney. Thank you very much.

[Previous question ordered. Amendments adopted: 78-28. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Tapper], on page 14, between lines 7 and 8 add the following paragraph and insert Paragraph (C) there:

"At all stages of grand jury proceedings, anyone testifying in such proceedings shall have the right to the advice of counsel while testifying."

Explanation

Mr. Tapper Mr. Chairman and fellow delegates, this is exactly the same wording that is in the

proposal on the Bill of Rights. I feel, however, that it should go in with the grand jury and this will allow anyone who is testifying before the grand jury to have the advice of counsel if he so chooses.

I ask for your favorable support of this amendment.

Questions

Mr. Lennox Mr. Tapper, did you know that I think this is a good amendment?

Mr. Tapper Yes, sir, you told me that, Ed, thank you.

Mr. Arnette Mr. Tapper, do you realize that I will probably vote with you for the first time this week?

Mr. Tapper I knew you'd come around....

[Previous question ordered. Amendment adopted: 89-10. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendments sent up by Delegate Burson.

Amendment No. 1, on page 14, in Floor Amendment No. 2 proposed by Delegates Perez and others, at the end of line 3 after the word, "district", add the following:

"in which the district court has jurisdiction."

Explanation

Mr. Burson This is in the nature of a technical amendment. It was pointed out to us by some friends of the amendment that passed a while ago that read in its present form the amendment that was passed might lead to the interpretation that the district attorney could usurp the functions of prosecutors in city courts and this was not the intent of the amendment at all. This simply makes it plain that you say "in which the district court has jurisdiction."

Now it occurs to me immediately that some matters are the concurrent jurisdiction such as juvenile matters, but I think that that would be implicitly provided for, that if it's concurrent, of course, you could go with the district attorneys' power.

But we want here to make it very plain that we do not intend to give the D.A. any power with regard to prosecution of city ordinances and things like that.

Question

Mr. Perez Mr. Burson, isn't it true that as author of this amendment and others who are authors have agreed with this amendment.

Mr. Burson Yes, sir.

Further Discussion

Mr. Dennis Mr. Chairman, I believe we had better slow this thing down a little bit. I don't...it's just this amendment to Mr. Perez's amendment. It's hard to follow and I believe it may possibly, I hate to raise a question like this, but it may possibly take away the district attorneys authority to prosecute in city courts or...is that the purpose of it? And parish courts, also?

I'm going to have to oppose the amendment because I think we are, we may be....

[Amendment withdrawn.]

Personal Privilege

Mr. Champagne I was just wondering, is this what the people at home said that I'd have trouble

36th Days Proceedings—August 24, 1973

with the lawyers about?

Amendment

Mr. Poynter Amendments sent up, now we may not have quite enough copies yet to pass out to everybody but they are still running them and they will get them to you.

Amendment No. 1, on page 14, in Floor Amendment No. 2, proposed by Delegate Perez and others, on line 3, after the word, "prosecution", and before the word, "in", insert the following: "by the state".

Explanation

Mr. Burson Fellow delegates, first of all let me apologize for the untoward delay. I'm not as adroit as Shakespeare as Brother Willis, but I believe in Richard IV, there is a line in which somebody says the first thing when we do, when we take over the state, we'll kill all the lawyers. Any maybe those of you who are not lawyers feel that way right now.

But the purpose of this amendment is to take care of an objection that was raised to the early amendment that we passed to make it plain that we are referring in the district attorneys' powers only to state prosecutions and not to municipal or city prosecutions for violation of city ordinances. And so we are simply adding the words, after the word "prosecution", we add the words, "by the state", because all prosecutions handled by the district attorney would be styled State of Louisiana vs. so and so, and municipal or city prosecutions would be the city of New Orleans and so on vs. the defendant.

[Previous Question ordered. Amendment adopted: 97-0. Previous Question ordered on the Section. Section passed: 99-3. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter Section 38. Fees, Orleans Parish Section 38. The judges of the civil district court and the city courts of Orleans Parish shall set the fees for civil cases filed in their respective courts.

Explanation

Mr. Bel Ladies and gentlemen, Mr. Chairman and ladies and gentlemen of the convention, I didn't want my horns to get any longer than they are, I don't want them clipped. There will be an amendment coming to delete this section and which has approval. I'm the one that introduced it and I ask you to delete it.

Further Discussion

Mr. Dennis Mr. Chairman, if Mr. Bel is agreeable to its defeat, perhaps I could shorten the matter by simply moving for its defeat and moving the previous question.

[Section rejected: 4-97. Motion to reconsider tabled.]

Personal Privilege

Mr. Denberry Members of the convention, on Tuesday in connection with the portion of the proposal dealing with the judiciary commission which is Section 25, and you'll find on page 9, Mr. Pugh, Delegate Pugh introduced an amendment by putting the words, "nor elected public officials", on line 15.

I discussed this with Mr. Pugh and Mr. Pugh recognizes that the purpose of his amendment, although it was served, the amendment goes beyond that purpose for which he intended. He intended to exclude notaries public who by law have been declared to be public officials.

The way the amendment now reads, the way the section now reads, it would permit non-elected public officials who are lawyers appointed by the Louisiana Conference of Court of Appeal Judges' Association, to serve on the judiciary commission. I understand from Judge Dennis that this was never the intention of the Committee on the Judiciary and it was always their intention not to have any public officials on it.

It is, therefore, my desire to introduce an amendment which would, after the word "officials" delete the comma and insert the following: "other than notaries public", and delete Delegate Pugh's amendment.

Now Delegate Pugh has agreed to this. Unfortunately he is not here. In order to do this it is necessary for me to ask that the convention call from the table the motion by which Delegate Pugh's amendment was adopted on Tuesday. This, of course, will require eighty-eight votes. It is in the nature of a technical amendment, but I would very much appreciate your voting with me on this.

[Motion to reconsider Section 25.]

Point of Order

Mr. Nunez Could we define just the amendment or would it be open to any amendment. I didn't hear if he said that or not. I think....

Mr. Henry Senator Nunez, of course when we get back and reconsider, the whole thing would be fair game. I would think, though, that it would...we would have to do this sort of on an unwritten ladies' and gentlemen's agreement that this is the only purpose, and I am sure that's what Mr. Denberry has in mind. That would be the only purpose for which we are doing it, just to resolve this technical problem, sir.

Mr. Nunez Well my point was that if someone held... someone else, another delegate had a proposal or was against something, anyhow wanted to put something in there, is it open for that, also?

Mr. Henry Once we reconsider and open it up, it could be. I would certainly hope that no one would try that. But you're right, it could happen. I wouldn't think that it would.

Mr. Nunez I'm certainly not. I'm just bringing this to the attention....

Mr. Henry I know you're not, Senator, you just don't look like the type.

[Section 24 reconsidered without debate.]

Point of Information

Mr. Jack How much vote does it take them to get this off the table?

Mr. Henry He got it off with two-thirds of the membership with eighty-eight votes because there was no objection to it, sir.

Amendments

Mr. Poynter Amendments sent up by Delegate Denberry as follows:

Amendment No. 1, on page 9, line 15, delete amendment No. 1 proposed by Delegate Pugh and adopted by the convention on August 22, 1973.

Amendment No. 2, on page 9, line 15, after the word "officials", delete the comma and insert the following:

"other than notaries public."

Explanation

Mr. Denberry Well, what it does is remove the... it serves the purpose that Delegate Pugh wanted in order to avoid calling notaries public, public officials, and at the same time it leaves the status

of the language as originally proposed in order....

[Amendment adopted without objection.

*Question pursuant to Mr. G. Nelson to motion-
sider tabled.]*

Point of Order

Mr. Aschaff I have no objections either to reconsidering or to the approval, Mr. Chairman, but inasmuch as only sixty-seven votes is required for a quorum and eighty-eight votes to grant consent, don't you think it advisable that it should have been a record vote to show that he received the eighty-eight votes. That's my only question, sir.

Mr. Henry Well, there was no objection, don't you see. And it showed....the roll call before showed that there was substantially more than that here. Of course, under certain circumstances you may have been correct, but as someone once pointed out, no, you are probably right.

Personal Privilege

Mr. Thompson Mr. Chairman, fellow delegates, one of the delegates during the week referred to when something about alligators. I wanted to give her one to take home with her. Mrs. Warren, if you will come forward I believe I've got an alligator for you.

Personal Privilege

Mrs. Warren Mr. Thompson and fellow delegates, with the greatest of pleasure I receive this delegate.

I had a person say to me once, for you to stand what you are in you've got to have the hide like an alligator.

I said I believe I do, so thank you for this alligator.

Announcements

[1 Journal 186]

[Adjournment to 1:10 o'clock p.m.,
Tuesday, August 28, 1973.]

Tuesday, August 28, 1973

ROLL CALL

[No roll call reported]

PRAYER

Mr. Smith Gracious, Heavenly and Merciful Father, the Giver of every good and perfect gift, we worship Thee as a revealer of a good and perfect life. Guide and direct us this day. We thank Thee for Thy law and Thy mercy and Thy many blessings. Help us, O Father, today to walk humbly, to do justly and to love mercy. Be with us today as we deliberate. May everything done here be pleasing to Thee. May the words of our mouths and the meditations of our hearts be as you living in a time of flux and change, and because there may be differences even in different parts of our own state with regard to these problems. For example, in some parts of our state we have a separate, independent juvenile court. In most of the other parts of the state, however, the district judge who handles adult cases also doubles as the juvenile judge. In many places, the city judge is the main juvenile judge. So because of all of these differences, and the complexity and the sensitivity of these problems, we felt that this was something that the state had not really made up its mind on yet, and it was something that would change from time to time, and therefore, that we should let the legislature be free to fashion the best possible juvenile system for the state as the times demand. So for that reason, ladies and gentlemen, what is a very simple provision here which says the jurisdiction of a juvenile court shall be as provided by law, is really based upon much thought and discussion by the Judiciary Committee. We have decided, after all of that discussion, that this is a subject matter which should be left in the discretion of the legislature. So, we ask that you reject the amendments which would change this basic policy and adopt the committee's proposal as it is provided in Section 18. Mr. Chairman, if I have any questions, I will be happy to try to answer them.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

INTRODUCTION OF RESOLUTIONS

[I Journal 388]

RESOLUTIONS ON SECOND READING AND REFERRAL

[I Journal 388]

UNFINISHED BUSINESS

Mr. Poynter Committee Proposal No. 21, introduced by Delegate Dennis, is an amendment to the Committee of Judiciary and Delegates Avant, Bel, Bergeron, Burns, Deshotels, Drew, Gauthier, Kelly, Kilbourne, et al.

A substitute for Committee Proposal No. 6, a proposal making provisions for the judiciary branch of government, and necessary provisions with respect thereto.

The status of the proposal at this juncture is that the committee has adopted Sections 1 through 38 as amended, the entire proposal as amended, with the following exception: Section 18, dealing with juvenile courts and their jurisdiction was passed over, and in addition, Section 20, dealing with preservation of evidence, and Section 38, dealing with fees in Orleans Parish, failed to pass.

Mr. Henry Let's go back and pick up Section 18.

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, at this time I would like to explain to you the reasons behind the committee proposal relating to juvenile courts jurisdiction. The present constitution, the 1921 Constitution, contains several sections which are long and detailed, spelling out what a juvenile is, when he can be tried in juvenile court, when he can be tried in adult court, and many other detailed provisions. The committee proposal takes all of these provisions out of the constitution and leaves the matter up to the legislature. There are very good reasons for this action. This action was not taken quickly. It was a considered, deliberate move by the committee, and it is based upon the fact that today, in 1970, we are in a time of great ferment and change regarding how young people should be handled with regard to the criminal laws of our state. This is not only taking place in Louisiana, but all over the country. Our present juvenile courts are pretty much creatures of the early nineteen hundreds. Since that time, as you know, our society has undergone profound changes. Juvenile delinquency is on the increase every year. The family no longer has the control over juveniles that it used to have. We have had Supreme Court decisions in recent years which have required the states to change their procedures in the handling of juvenile cases. As a result of all of these influences on the handling of juvenile cases, and I guess as you would expect, the experts are in disagreement as to which way to go. We have people who don't think that fifteen-year-olds should be tried for murder and aggravated

rape, as they presently are under the 1921 Constitution. Yet on the other hand, we have people who think that they should be tried for more adult type crimes. We have people who think that a minor should be tried in a juvenile court, and we have people who think that a minor should be tried in a juvenile court and others who think that minors younger even than seventeen should not be handled in the juvenile system, but should be handled in the adult system. We have experts who have recommended that the courts be given the power to classify certain juveniles as incorrigibles, particularly where they have committed two or three very serious crimes, and transfer them to the adult criminal justice system. We have opposed to those experts, those who would not transfer any juvenile from the juvenile system to the adult system. Because of all of this contrary thought and opinion on juveniles, we are living in a time of flux and change, and because there may be differences even in different parts of our own state with regard to these problems. For example, in some parts of our state we have a separate, independent juvenile court. In most of the other parts of the state, however, the district judge who handles adult cases also doubles as the juvenile judge. In many places, the city judge is the main juvenile judge. So because of all of these differences, and the complexity and the sensitivity of these problems, we felt that this was something that the state had not really made up its mind on yet, and it was something that would change from time to time, and therefore, that we should let the legislature be free to fashion the best possible juvenile system for the state as the times demand. So for that reason, ladies and gentlemen, what is a very simple provision here which says the jurisdiction of a juvenile court shall be as provided by law, is really based upon much thought and discussion by the Judiciary Committee. We have decided, after all of that discussion, that this is a subject matter which should be left in the discretion of the legislature. So, we ask that you reject the amendments which would change this basic policy and adopt the committee's proposal as it is provided in Section 18. Mr. Chairman, if I have any questions, I will be happy to try to answer them.

Questions

Mr. O'Neill Judge Dennis, up to this point this Convention has allowed the legislature great latitude in many areas. Do you agree with that?

Mr. Dennis It has in some, and in others it hasn't, but I believe this is one in which we must leave it to the legislature rather than freeze in to the constitution a rule that may not fit every area of the state. It may not fit 1975; it may not even fit 1970.

Mr. O'Neill I agree with you, Judge Dennis, and I was just going to ask you if you believe that your committee proposal was consistent with the philosophy of allowing the legislature great latitude.

Mr. Dennis Yes, it is an expression of that philosophy.

Mr. Stovall Judge Dennis, did the recent session of the Louisiana Legislature deal with this question of juvenile delinquency?

Mr. Dennis Yes, it did, and you are probably more familiar with it than I am, Rev. Stovall.

Mr. Stovall You want this to be left to the legislature. Were you pleased with the way that they dealt with this at their recent session?

Mr. Dennis Rev. Stovall, as I said, you are probably more familiar with it than I am. I do not know the details of what they came up with. However, I know one thing: it would have been changed the next year if it wasn't a good rule, but if we take something which I consider to be very de-

licate and very complex and attempt to write a rule in this convention today, it may not be the best thing for our juveniles next year. I believe this is something we should leave to the good sound sense of the legislature and to the people who tell their legislators what they want in a juvenile court system.

Amendment

Mr. Poynter Amendments proposed by Mr. Johnny Jackson, Mrs. Warren, Mr. Roy, Mr. Pugh and Mr. Gravel.

Amendment No. 1, on page 6, delete lines 15 through 17, both inclusive in their entirety, and insert in lieu thereof the following: "Section 18: Juvenile courts; Family courts; Jurisdiction of all cases of desertion, or non-support of

(A). Except as otherwise herein provided, the juvenile courts or family courts shall have exclusive original jurisdiction of cases of the state in the interest of persons under eighteen years of age brought before the court as delinquent or neglected children. The court shall also have jurisdiction of children by either parent or non-support of a wife by her husband, and the adoption of children under eighteen years of age. The family courts shall have such additional jurisdiction as is possessed by the family courts in existence at the time this constitution is adopted or as otherwise provided by law.

(B). The legislature shall have the power to establish juvenile courts or family courts for any parish, or group of parishes, and designate the title and domain of the jurisdiction of the police jury or other governing authority in the parish to be affected. The jurisdiction of any family court established subsequent to the adoption of this constitution shall be the same as the jurisdiction vested in family courts in existence at the time of the adoption of this constitution.

(C). The district courts in the parish of Orleans and the several district courts in the other parishes of the state, however, shall have exclusive jurisdiction of the trial of all persons over the age of sixteen years who have been indicted by a grand jury for the offenses of murder, aggravated kidnapping, or aggravated rape committed within their respective jurisdictions."

Explanation

Mr. J. Jackson Mr. Chairman, ladies and gentlemen of the convention, first let me say that I appreciate and I extend my gratitude to you for allowing me to present this amendment for your consideration. Let me suggest to you that the promptness for this amendment comes particularly from the fact that as I look to the judiciary article, as proposed by the Committee on the Judiciary, that I saw that we had provided for one jurisdiction of the Supreme Court. We went even further to talk about what kinds of cases can be appealed to the Supreme Court. Secondly, I noticed that we had provided for the jurisdiction of the court of appeal. In also like fashion we provided for the types of cases that could be appealed to it. Thirdly, I saw that we had provided for the district courts and that we went further to provide for its jurisdiction and for the types of cases that it could hear. My concern became apparent when I noticed when we got to Section 18 that we did not provide in any form or fashion for the jurisdiction of the juvenile court. Let me suggest to you that when at least a third of the population is subject to civil or criminal prosecution, then we ought to provide in this constitution for the protection of not just juveniles, but really for the protection of the future of this state. I would like to bring to your attention that if you read Section 16, where it talks about the district courts, it says very clearly, unless otherwise provided, that the district court should have exclusive jurisdiction over all matters...over all civil and criminal

matters affecting the state. Now that's very broad. That says that, unlike the present constitution that did have some exceptions, that says very clearly that no matter what the legislature did that you still have a problem, because it clearly says in this section that district courts should handle all cases of civil and criminal matters. What I have attempted to do is to present to this convention an amendment, an amendment that I assume will probably become a working paper for you members of this convention to react to. But I feel strongly about this matter of whether we should provide constitutional protection for the courts that handle our youngsters, I think, and I will directly go into amendments, suggest to you that during the last session of the legislature, indicative of the kind of legislation that came out, that if we leave the committee proposal as such, I will suggest that you have a large degree of assuredness that you will probably see similar sorts of legislation coming out without any intensive study or any adherence or any recommendation, not only on the state level, but the national level.

Now the amendment. The present constitution provides for not only the jurisdiction of the juvenile court, it talks about the procedure. It talks about the process. It talks about the judges. It talks about the salary. It talks about certain courts that should have certain jurisdiction, where there is no juvenile court. Now what I have attempted to do by presenting this amendment to you...Mr. Chairman, I would ask...members of the Convention, I would ask that at least you hear the comments that I have to offer to you. I would like to direct your mind to this point, because I think this is a very vital issue. I would indulge on you to at least persevere with me for a couple of minutes more. What I have attempted to do is not to go into the lengthy details about the present constitution, but to point out the sorts of things, but to really spell out the jurisdiction, as in the present constitution, of the juvenile courts. The first thing that this amendment does is one establish that constitutionally the jurisdiction of the juvenile courts. Secondly, it raises it, it raises it to sixteen years, eighteen those cases which the juvenile court can hear, with the exception that youngsters sixteen years and older can be tried in criminal court for, as I have heard the comments concerning this article, certain heinous crimes like murder, armed robbery, aggravated rape. I want to suggest to you that the reason that we changed it from seventeen to eighteen is that there is a hiatus that exists presently in the constitution. Youngsters over seventeen years but not eighteen cannot be tried in juvenile court and they can only be tried in criminal court if they commit a crime. Delegate Newton brought it to my attention that you have youngsters who have not violated any state law but have been, let's say, disruptive to the family structure, who have run away from home, yet have not committed a state crime. Juvenile courts don't have jurisdiction and the only way that he can be held accountable is on the basis of the fact that he be charged with a crime. The second thing that we have done is that we have authorized the legislature to establish juvenile courts. The family courts provided that the governing authority of a particular parish says that they need it. Secondly, we have retained the present jurisdiction of the family court because when I first raised this amendment, it was suggested that I meet with the people from East Baton Rouge Parish, Caddo Parish and Orleans Parish to work out whatever differences that we may have. This is the kind of protection that they wanted for their courts. The third, Section C, really goes to the heart of the meat of this proposal, and which I expect, and has been raised in some of the opposition as to why we should have constitutional jurisdiction. I have attempted to address myself to those reservations by not saying capital crimes, because I think we have set the precedent by saying we don't want to make any refer-

37th Days Proceedings—August 28, 1973

ence to capital crimes because the Supreme Court may strike that down, which means that if a youngster committed murder, he couldn't be tried in criminal court. We have provided for the exception. I would suggest to you that this article, as drafted, this amendment as drafted, does provide us with a constitutional jurisdiction for juvenile court.

I want to suggest to you that the problem of the juvenile is an increasing problem. I grant that and I suggest to you that if you look at the statistics in my district, it would indicate that. I am not foreign to this problem, but I think when we talk about a large segment of the population of this state, and we're talking about people who are going to eventually have to operate and work and live in this state, and we don't provide those kinds of constitutional protection and we leave it up to the legislature, I want to suggest to you it is going to be a matter of political and emotional whims. I want to also finally say to you that if you read the district court proposal you will find that when your youngster goes to criminal court, under the judiciary proposal, for let's say, murder, then he has a record that follows him for the rest of his life, regardless if he commits the enumerated crimes that we put in the exceptions. He is going to be subject. I am not suggesting that youngsters are so matured that the infallibility of their young nature, that they wouldn't violate some sort of state law. It could be a misdemeanor. But are we prepared at this point to leave it up to the legislature to say whether they are going to go to criminal court, or they going to be tried as a juvenile? I suggest to you that is the main issue confronting us, particularly in Paragraph C. Mr. Chairman, I yield to any questions.

Questions

Mr. Abraham Johnny, in Paragraph A the first two sentences are very explicit and concise. It tells exactly what the jurisdiction is. But the third sentence I find rather confusing, where you say, "The family court shall have such additional jurisdiction as possessed by the family courts in existence at the time this constitution is adopted or as otherwise provided by law." I am wondering if that particular language is actually necessary, if you can't accomplish what you want by simply saying that the juvenile family court shall have such other jurisdiction as provided by law. Why do we need to refer to the present courts?

Mr. J. Jackson Mr. Abraham, this was an amendment that I accepted authored by Mr. Pugh of Shreveport. His contention was that we ought to allow the legislature some authority to expand the jurisdiction of juvenile court if such be the case.

Mr. Abraham Well, I am not quarreling with that phase of it, but I am questioning why do we need to say, "such additional jurisdiction as possessed by the family courts in existence at the time of the adoption of this constitution"? Why can't you simply say that the juvenile or family court shall have such additional jurisdiction as otherwise provided by law? That gives the legislature the flexibility it needs.

Mr. J. Jackson That was one of the arguments presented to me and one of the suggestions offered by Mr. Kean who said that he wanted to make it perfectly clear that the legislature could not in any form or fashion reduce the present jurisdiction that their family court in the parish of East Baton Rouge has. That was his suggestion to the amendments as originally drafted to provide him what he felt was the, you know, protection. Let me also add that if you look in the present constitution there are about four or five pages that deal, one with the Parish Court of Orleans, one with the Parish Juvenile Court of Caddo Parish, and with East Baton Rouge Parish, plus the district court. What we have attempted to do in the

manner of, following and drafting the four pages of lengthy writings into what you see here, so that I would suggest that it may appear, but we have tried and we have talked with the lawyers in terms of the concerns had by other parishes, this was the language that they said to me that would satisfy them.

Mr. Abraham I would assume then, by the same reason, you feel that this second sentence in Paragraph B is necessary also then? I don't see the necessity for the second sentence in Paragraph B.

Mr. J. Jackson Well, let me talk about Paragraph B. I wanted to talk to the judges of New Orleans and I talked to a civil judge. It is anticipated that New Orleans might move to a family court structure. What we attempted to do is to say that to bring some uniformity, because you don't want to have one family court with one jurisdiction and then you have another family court that has less jurisdiction. The second sentence in Paragraph B is designed to provide some uniformity in terms of jurisdiction among the family courts.

Mr. Burns Mr. Jackson, do I understand your amendment increases the juvenile age from seventeen to eighteen?

Mr. J. Jackson Right, Mr. Burns, and if you let me explain the rationale for that, it's because...

Mr. Burns Excuse me a minute, but just answer my question first. It does increase it from seventeen to eighteen.

Mr. J. Jackson Right.

Mr. Burns Do you realize, I mean do you know, that most of the experts in this field that appeared before the Judiciary Committee, that not one recommended increasing the juvenile age, but most are confining their studies or concentrating their studies on what to do about those below the age of seventeen?

Mr. J. Jackson My only response is my previous response to a point brought out by Delegate Newton and brought out by some judges that talked to. Let me also suggest to you that Judge Dennis has said very clearly that there is still disagreement among the experts as to what, you know, juvenile courts should be. I'm suggesting that all we are attempting to do is provide a workable amendment to allow for...to fill that vacuum that exists between seventeen and eighteen who the youngster is not charged with a criminal crime.

Mr. Duval Johnny, I think I know your intent in Paragraph C. I just want to make sure I understand it. When you say exclusive jurisdiction over the trial of all persons over the age of sixteen years, do you mean anybody who has reached his sixteenth birthday or anybody who is seventeen?

Mr. J. Jackson Those who have made sixteen and above.

Mr. Duval I see. Now also, in the way this is drafted, "the district courts in the parish of Orleans and the several district courts in the other parishes of the state", why not just say the district courts in the parishes of the state? What is the purpose of putting Orleans in there?

Mr. J. Jackson Mr. Duval, let me suggest to you this was an amendment presented by Mr. Gravel. I know your concern about the exception. What we wanted to make sure was that, as you know, this convention has gone on record as recognizing the separation of the courts in the parish of Orleans and that there was already a precedent for that. I agree with you it could go that way but in that we have established, we didn't think that it made that much difference.

Further Discussion

Mr. Herbes Ladies and gentlemen, I don't know how much you care about your children or your neighbor's children, or the children of the people in your community, but if you have any consideration for them at all, you will listen to the speakers on this point. I don't think you gave Mr. Jackson a very great deal of attention, although I do think his point is well taken. I happen to be opposed to his amendment for reasons that I will set out now, but I would urge you to at least give this topic some careful attention because it very richly deserves that attention. Let me explain to you quite briefly, for those of you who may not know, the function of juvenile court. One of the principal functions of juvenile court is to adjudicate violations of the law, violations of both state and local laws, committed by children under the jurisdictional age. The trial is held by a judge sitting without a jury. In some instances, the judge serves as both prosecutor and judge. In other instances, there is district attorney. The Arizona case decided by the United States Supreme Court in 1964, stated in the interest of [...], accorded to juveniles certain limited due process rights, but to date, juveniles are not accorded the broad spectrum of due process rights available to adults in criminal court proceedings. This amendment presupposes a number of things.

First it presupposes that you are willing to raise the jurisdictional age for juvenile court jurisdiction to eighteen in this state. It has never been eighteen in this state. It has always been seventeen, at least in my historical perspective. Secondly, it also presupposes that you are willing to raise the jurisdictional age for capital crimes from fifteen, in criminal district court, to seventeen. The way it works now, if you are a juvenile charged with murder, aggravated rape, or attempted aggravated rape, and you are over the age of fifteen, you are tried in criminal district court. If you are under the age of fifteen, you are tried in juvenile court. The mandatory trial in criminal district court is required by constitutional provisions. Now to lend a little bit of credibility to this particular discussion, let me say that I have been an assistant district attorney in juvenile court for three and a half years. Before that, I worked as defense counsel in juvenile court for a local agency of the poverty program. So I've seen this from both sides of the coin. Finally, I have been appointed and have served on the Commission for the Revision of Juvenile Laws and for the Production of the Juvenile Code. I'd like to make the following points with you. First, I believe that a juvenile who is seventeen years of age, almost uniformly, is aware of and can be held accountable for his violations of the law. I see no reason, in the name of uniformity, in the name of filling in gaps, or bringing this in line with the voting age, to increase the jurisdictional age for juvenile court. I think seventeen is fine. Secondly, this amendment prohibits any waiver system, which has worked well in other states and has yet to be tried in this state, where jurisdiction over juveniles of a certain age, ordinarily subject to the juvenile court, could be waived in favor of a criminal district court where a juvenile would have full due process rights. Thirdly, this amendment prohibits any selective treatment of certain crimes. In Orleans Parish, for example, we have had a great increase in recent years in the crimes of armed robbery and simple robbery. It may very well be that some legislature in the future will declare that the crime of armed robbery committed by a person over sixteen should be tried in criminal district court. This would not be possible under the amendment. Finally, or I should say, moreover, the problems . . .

Finally, I'd like to point out a couple of stylistic problems in the amendment. First of all, the reference in the first paragraph to the word "eighteen" seems to indicate that the person is

eighteen at the time he is handled in juvenile court. The present provisions of law say that the person is subject to the jurisdiction of the juvenile court if he is eighteen at the time of the commission of the offense. The first paragraph makes no such reference. I guess I've just about run out of time. I want to point out to you the fact. . .

Further Discussion

Mr. Jack Mr. Chairman and ladies and gentlemen, I rise in opposition to this amendment. I support Section 18. Ladies and gentlemen, I want to mention this, if you will listen to me a minute. No speaker, since we've started today, has been shown any respect when he has been talking. Now I'm trying to be pleasant. This is a serious subject, it's a serious subject, very serious. You're not listening to any speaker up here. Now if you don't want to hear these speakers, just hold your hands up, and let's just quit and vote on these things. You are still talking. Now I'm going to ask for time out, Mr. Chairman, and ask you to get some order here. If I'm allowed to speak with a time out, then I'm not going to speak on it. But I'm getting to where my temper is showing because people talk when everybody is speaking up here. Right in front of me, two rows over, you know you are, you are still talking. Now I'm going to ask for some order, Mr. Chairman.

I want to make it clear. I'm not talking just about listening to me. You may not learn anything from me, if somebody wants to make a joke of it. I'll always be there.

Now I'm going to give you several reasons why this amendment is not in the ends of justice. Today, and I've got children and grandchildren, and I want to protect those children from injuries or death from other children that rob people and hurt people. Now I'm a parent. The jurisdictional juvenile age is seventeen. This constitutional amendment raises it to eighteen. That doesn't make logical sense when you consider that we pretty much all agree that when you are eighteen, you are a grown man, you should vote, you should have a long time ago. I haven't been in the legislature since 1964, and I recognize that today with know-how, education, and more ways of learning different things and communication, a person eighteen is in as good a position to function as a grown person, as a person used to be at twenty-one. Now by the same token, do you think that in two seconds a person becomes grown? You are moving the juvenile age with this constitutional amendment from under seventeen to just under eighteen. You are saying you are a juvenile under eighteen. You might miss being grown by two seconds. It don't occur that suddenly. Now another thing, under the present law, if you send a juvenile to an institution, he cannot be there after he is twenty-one. That's because he was grown under that old law. Today, this holding is going to be, you send him to an institution in a bad enough case, then he can't be kept there after he is eighteen. Now when that comes about, if you pass this amendment, here is the ridiculous situation you can get into. You have a juvenile go out one evening of his birthday robbing some people and shoot them. They don't die, so he can't be tried under this business in this amendment of murder, for being over sixteen. Suppose he shoots them two seconds, let's just say that we can prove it, two seconds before he is eighteen. He would be tried, they didn't die, they are ruined for life; it might be your little boy that's in the place where the holdup is. You would have then, you could try him as a juvenile for that armed robbery, shooting the people that didn't die, but you could not punish him because you can no longer punish a juvenile under the present law when he becomes twenty-one. He has to be turned loose if he's in an institution. Twenty-one was set because he is grown, so the same logic, it's going to be, you have to turn him loose under the law now that's coming up if you adopt this when he is eighteen because eighteen you are now grown. That would be ridiculous. Now let me tell

37th Days Proceedings—August 28, 1973

you. You ought to leave this up to the legislature. It's hard to change the constitution; it's going to even be harder. These crimes like armed robbery, armed robbery, my friends, is the first cousin of murder, and you better believe it. I've handled many a criminal case. I've talked to people numerous at Angola. C. I. Some have employed me; most don't have the money or didn't, but I've made checks with them over a period of fifteen years. I wished I'd started sooner on certain subjects, one of which I should ask them the charge was armed robbery. I would ask them if the man or woman you were robbing, now get this, would not give you the money and you told them you were going to shoot them unless they gave you the money. Suppose they said, "I won't give it to you", would you shoot them? You'll never guess the answer. They said "I don't know".

Now this is not to hurt any poor little children. This is to protect the public. You may have to, and leave it to the legislature for these aids, this jurisdiction, you may have to find with the number of robberies committed by people under seventeen, even more under eighteen, that the legislature will have to create some type of punishment for those that's different than now.

Further Discussion

Mr. Burson Mr. Chairman, fellow delegates, I rise in opposition to this amendment and in favor of the committee proposal. I don't do so because I think we have a perfect system of juvenile justice under the present law far from it. I recognize the many faults in the present system of dealing with juveniles and I think that our juvenile correctional institutions, such as the one at Scottsbluff, are by and large a disgrace. But, excluding juveniles from the jurisdiction of the law, this amendment proposes does nothing to correct the faults with the present juvenile corrections system. What it does do, in my view, is expose the public at large, the law-abiding public which I make no apologies for speaking on behalf of, to increased danger from serious juvenile crimes. Now why do I say this? All right, there are two primary areas where I have seen this happen. First of all is in the area of armed robbery. Now I have seen recent cases in the jurisdiction that I work in, where adults are charged with robberies but sent fifteen and sixteen year old kids in to do the actual robbing and to wield the pistol because they knew that if these kids got caught, that they would be subject only to juvenile jurisdiction. As Mr. Jack pointed out to you, under the present law, when that child is no longer a juvenile and he's been charged with juvenile delinquency, you've got to let him go. All right, and you are just as dead when the fifteen or sixteen year old pulls the trigger in an armed robbery as you are if the man is twenty or thirty-one years old. The victim is just as dead, I promise you.

The second area where this is of extreme concern is in the area of the schools. Now we have had, in recent years, all over the United States of America, an unfortunate rising tide of trouble of a serious nature in our schools. I handled a case this past year which I thought had one of the most absurd results that I've ever seen, if you want to know what we're talking about in juvenile jurisdiction. It was a case of a fight at a school which resulted in the stabbing to death of a visitor to that school. The boy who started the fight was guilty, unquestionably, of aggravated assault, and the jury so found him. He happened to be eighteen years old, so he was sentenced to five years in Angola. The boy who was seventeen years old who committed the stabbing, because the grand jury had indicted him only for manslaughter and not for murder, was subject to the jurisdiction of the juvenile court, was charged with juvenile delinquency, which is all he would be charged with under the law, and for reasons known only to him, was given a probated sentence by the judge. I submit to you that that is the kind of thing that outrages every decent, law-abiding citizen in this state. Now the average man and woman who watches

our deliberations on television at night or reads about us in the newspaper really doesn't care that much whether the legislature meets sixty days or ninety days every year, or whether or not we have six statewide elected officials or seven. But every one of them cares a great deal about anything that we do to hamper the system of criminal law. I promise you that. I'm saying to you that I don't see anything in this amendment that corrects the many things that we all know are wrong with our system of juvenile corrections. But I see a great deal which would greatly hamper the prosecution and the execution of our criminal legal system. I see no warrant, on the one hand, for continuing to argue that juveniles are more and more responsible and smokable and smokable and therefore we should lower the voting age from twenty-one to eighteen, which I think was good, but then to turn around, on the other hand, and say that, well, today's juveniles aren't as responsible for criminal acts as those of twenty years ago and we ought to raise the age of juvenile responsibility for murder from fifteen to sixteen. The two arguments are obviously contradictory. It does not make sense. I ask you, in the name of both criminal law enforcement and reform of juveniles, juvenile laws, to let this committee proposal and leave this matter where it belongs, in the hands of the legislature, where the legislature can adjust, change this jurisdiction to meet changing conditions. I see no warrant for putting this in the constitution, but if we do put it in, then I ask you to look at Article VII, Section 52, in the book on your desk, and you will see that under the present constitution the juvenile age limit is seventeen years of age, and that juveniles who commit capital crimes, if they are fifteen years of age or older, are subject to the ordinary jurisdiction in the district courts. Certainly if we are going to put that in the constitution, let's not dilute it. Let's put it in there the way it is. Frankly, I don't think it belongs there at all and I ask you to support the committee proposal.

Question

Mr. Abraham Jack, all the discussion so far has been with reference to the age of a juvenile. Let's forget about the age and eliminate that right. The question I have is do we need to spell out the jurisdiction of your juvenile and family courts in the constitution, or do we not? What should the jurisdiction be? Should we have juvenile courts and family courts? Forget about the age, this is the question I need to have answered.

Mr. Burson Well, I think that the committee proposal says that you will have juvenile courts. It simply leaves the spelling out to the jurisdiction to the legislature. We haven't spelled out the jurisdiction of the district courts with the detail that this amendment proposes, or the Supreme Court, nor the court of appeal. So I don't see why we ought to go into all this detail for juvenile courts.

Further Discussion

Mr. Planchard Mr. Chairman, fellow delegates, it seems as though I should get a little bit further down the list to speak because everyone wants to steal my thunder. But let me state at the outset that I am strictly for a juvenile court system. I think it has worked well in the past, and I think it can work well in the future. But I am opposed to the amendment as it is written and for the obvious reasons, some of which have already been pointed out. In the "A" part of Section 18, of the amendment, the reference to the age of eighteen years is being set out, and it is being locked into the constitution. That means, in effect, if we ever decide that the eighteen years of age is too old, then we cannot go back and change it unless we have a constitutional amendment. If nothing else, the age for the jurisdiction, age can be left out. Who is to say a juvenile is a juvenile at fifteen, sixteen, seventeen, or

eighteen? We all know that some are still juveniles at twenty-one, but why set a definite age. It has caused us problems and it will cause us problems in the future. This definitely should be left to the legislature to determine, from time to time, what a juvenile is. But it seems to me we are going down two roads. We are thinking of the rights of the individual. We are considering a non-discrimination article as to race, color, sex, and age, if I remember correctly. It's not too far removed in legal theory to someday say that you are discriminating because of age in this particular article, and rightfully so, because you are having two different ages only because of age. Now as to the "(B)" part, it says exactly the same thing as the proposed amendment by the section on the judiciary. The only thing is it takes a lot more words to say the same thing. So definitely we can use Section 18 of the previous constitution and it simply does the job, but with fewer words. As to "(C)" part, it seems to me that here again we are trying to set out definite crimes whereby we're going to transfer the jurisdiction from a juvenile court to the district court, but only in these exclusionary crimes. Here again, who is to say what are the most heinous crimes. If you've watched the legislature in the past few years when they discuss these various crimes, some people definitely believe that an armed robbery is just as bad as murder or aggravated assault. Why should we limit it to just these crimes? Here again, if we leave it to the legislature, then they can determine from time to time what are the most heinous crimes and where we need the deterrent. Lastly but not least, it seems as though we are concerned here with the rights of a juvenile. But we are not so concerned with the correlative obligations and duties of the juvenile, and rightfully so. This can be left to the legislature. Thank you very much.

Further Discussion

Mrs. Warren Mr. Chairman and fellow delegates, a few days ago I had an article placed on your desk, and I hope you have it now. I would like to refer you to the second chapter, beginning with line 16. This is where a young woman was on a committee in San Francisco composed largely of city officials that dealt with delinquent and state dependent and neglected children. She said, and I quote, "I soon learned," she says, "that all the committee members did was sit around and tell horror stories about juvenile courts and detention homes and doing nothing about it." I say to you that I'm not an expert in the field of writing these proposals, and I'm not just speaking for the juvenile children in Orleans Parish. I'm speaking about juveniles all over the State of Louisiana. There has been much talk about crime. You can't walk the streets, death, murder. Rightly so, we have a right to be concerned. But I'd also like to read to you a couple of lines taken from Crime and Delinquency, the National Council on Crime and Delinquency. It reads like this: it says, "Young people are rebelling against the hypocrisy of a society that sets certain values and then lives up to the opposite. Down at the end of it it says, 'The blame for the failure to reduce crime has been placed on cultural juveniles rather than the society that devises the strategy and carries it out'." I'd like to quote something else to you taken from this book. It says, "Yes folks, we all know it's easier and politically more profitable to crack the whip than it is to talk courageous, good sense, especially when talking sense is liable to cost money or change institutions." I want you to think about that. I don't want you to come right now; I'd just like to read to you a little while because I don't have all that expertise that some of the rest of them have here. But I want to ask you a question, and I want to make another statement before I go into this that was taken from a report in 1965 that described juvenile crime as a "disease", and said it should be treated like any other contagious disease. It's catching, folks. This is

why we are having it all over our nation today. If you reached a child from a drowning pool, would you just leave him there and not give him artificial respiration? Or if your child had tuberculosis, wouldn't you put him in a sanitarium so he could be treated? What would you do? These are some of the things that I would like for you to think about today. Our Chairman has said that we wouldn't be long, and so I'm going to cut my remarks short. But you are the judge and you are the jury. I'm going to rest my case with you in the interest of these children. I want us to come up with something in this constitution other than "provided by law" by the legislature because the legislature has been sitting constantly every year since 1964. Our juvenile situation has not changed towards betterment, it has gotten worse. I think this is the time that all of us can do something about something that the legislature would do something for our children. I support this amendment, and if you vote it down, I hope that we can come back with something else that you will accept that will say a little bit more than "the legislature will provide," because it has provided very little so far. Thank you.

Further Discussion

Mr. Burns Mr. Chairman and fellow delegates, as the previous speaker has said very properly, said, this is a very, very important amendment as far as law enforcement in the State of Louisiana is concerned, particularly for the future. As Judge Dennis told you, on the Judiciary Committee, I imagine we spent as much time hearing experts and witnesses, both juveniles and judges, from all over the state, particularly in the New Orleans area, experts who have made this their field from outside of the state. I can tell you in all truthfulness that not one of those men, either juvenile judges or these experts, researchers, mentioned or even intimated the idea of increasing the age of juveniles from seventeen to eighteen. On the other hand, most of them were concerned as to what to do with the law violators, the juveniles who were under seventeen. Statistics and studies showed that juveniles from fifteen and sixteen years old were many, many very serious law violators in the field of mass murders, rapes, and kidnapping. So I earnestly suggest to you that whether you see fit to put an article in the constitution or not dealing with juveniles and juvenile court, under no consideration let us write into the constitution increasing the age of a juvenile from seventeen to eighteen. Do you realize that when you do that, you are putting a juvenile within a few minutes of the age of a voter? It's very, very close to the age for a distant future, there will be a major. I think if anything, and I'm not suggesting it at this time, but if we're going to change it in any respect, we should lower it instead of increasing it. I know that you, from time to time all too recently and practically every day, read of the number of crimes committed throughout the United States, and unfortunately in our state, where you see the names of the accused and then they'll say "and four or five juveniles". They don't give their names and the law enforcement gets the name of the juvenile that's been arrested, accused with a crime. But it is very interesting to note that they may name two that are eighteen, or nineteen, or twenty years old and they'll say "and three or four juveniles". It is something that we should seriously consider ourselves with because this is a problem or a situation that is increasing in its importance and in its danger to our law enforcement program in this state. I'd just like to give you this personal reference to show you what I mean. I mean, from 1960, from 1936 to 1960, that's twenty-four years, I did not have one case, not one juvenile charged with murder, or with rape, or with aggravated kidnapping. Yet in the thirteen years that have ensued since that time, and particularly I'd say in the last three years, it's gotten to be a very serious problem. Juveniles fifteen, fourteen, sixteen years old not

to be engaged singly, but to work in groups or gangs to where it's gotten to be one of the most serious menaces to our law-abiding citizens, to our everyday citizens. In some places, they are even afraid to go out on the streets, particularly at night, because of the way the gangs parading around neighborhoods committing different acts of violence and committing different sorts of crimes. So I suggest to you, without taking any more of your time, ladies and gentlemen, that we defeat this amendment, because this committee did put in an awful lot of serious discussion and hearing these witnesses, and came to the conclusion that this juvenile program had no place in the constitution. It should be left to the legislature because it's an ever changing program. It's an ever changing situation. It's an ever changing danger that we are confronted with, and to lock this in the constitution, when five years from now we may have an even worse situation than we have. I think it's going to make it a lot harder for the law enforcement officers and the public-at-large to cope with.

Further Discussion

Mr. Gravel Mr. Chairman and ladies and gentlemen of the convention, I speak in support of the amendment, although I do believe there may be a possibility that some technical change may be required. For example, in Section ("C"), the reference should have been to criminal district courts in Orleans because under the other provisions of the constitution that we have recommended, we have recognized the difference between the criminal courts and the civil courts there. I just want to leave one or two thoughts with you, though, in connection with this proposed amendment. You know it always concerns me greatly when there is a great to-do made about the seventeen year old child or the sixteen year old child who has committed what appears to be a serious antisocial offense. Much is made of such an offense. Much is made in the newspaper because such children, generally neglected children, do not have had educational opportunities, no opportunities to regulate their own social behavior have fallen, more or less, by the wayside and have committed offenses, from time to time. But it seems to me that we make an unfair judgment when we hold that kind of people, those children who have not had the advantages of proper training and education, to a higher degree of culpability than we do the hired assassin, or the criminal who is a major criminal and who has been that all of his life. I think that in this particular provision, that this constitution can very adequately provide for the most serious offenses, and permit the jurisdiction of the several district courts throughout the State of Louisiana to be exercised in those cases where murder, aggravated rape, and aggravated kidnapping are the offenses. But in other instances, the culpability of the minor child, the child under eighteen years of age, can and must be determined by a system of justice that's not tied in to the kind of system that is applicable only to major criminals and the hardened criminals. I strongly urge that you give consideration to the necessity for our making a valid distinction between the kinds of criminals that we have in the state, and the ages, of course, of those who are charged with offenses against the state. I'll yield to a question, Mr. Chairman.

Questions

Mr. Fulco Mr. Gravel, we just lowered the age of an adult from twenty-one to eighteen, didn't we?

Mr. Gravel That's correct, yes sir.

Mr. Fulco Now, a juvenile, now, can be two minutes, and I agree with Wellborn Jack, not always, but certainly during this case; and a juvenile, now, can be two minutes under eighteen years of age, which is now considered an adult level, and still be considered a juvenile, a juvenile

two minutes before he becomes an adult. Isn't that right?

Mr. Gravel That's correct.

Mr. Fulco Now do you think it's fair to make a juvenile, almost eighteen years of age?

Mr. Gravel Yes, I do. I think we've got to

Mr. Fulco A juvenile, Mr. Gravel? Go right ahead, I'm sorry.

Mr. Gravel May I answer your question?

Mr. Fulco Yes, please explain.

Mr. Gravel I think that we have drawn the line between minors, or juveniles, and adults. That line is eighteen, and we may as well abide by it, Mr. Fulco. That's what I think we've done, and I think we've got to maintain some regularity and harmony in our concepts with respect to age. Since we have placed that line of demarcation, so to speak, in the constitution, that we should give attention to it and be guided by it.

Mr. Fulco In other words, in this age and time, we are making a juvenile, within two minutes, an adult, because he's going to be two minutes lacking of eighteen?

Mr. Gravel Yes, Mr. Fulco. A man is seventeen until he gets to be eighteen. We can make it within one second if you want to.

Mr. Fulco Yes, okay. One second, he immediately becomes an adult where he used to be . . .

Mr. Gravel How are you going to stop that from happening, Mr. Fulco?

Mr. Fulco By lowering the age of a juvenile, not increasing it to eighteen.

Further Discussion

Mr. Stovall Mr. Chairman, ladies and gentlemen of the convention, may I suggest to you that we live in an adult world, and that, as adults, we have not done a very good job of providing the kind of society in which our children and young people can mature into adults whose lives are fulfilled and who develop the right kind of society. In fact, we've done a terrible job, and I think the time has come when we should look at some of the things that have brought about the kind of situation we have at the present time. My point is simply this. Because we do live in an adult world, we should spell out the rights of young people in the constitution, and guarantee to them the maximum protection. Now the next point I want to make is that a very high percentage of our juveniles come from broken homes, from poverty, from unemployment, and from all of these social conditions. I think that the adult community has a responsibility to take these factors into consideration in dealing with their particular needs. The point that we are dealing with in this amendment is this, that family and juvenile courts have expertise and resources and special ways of dealing with young people that enables them to think not in terms of incarceration, but rather to think in terms of rehabilitation. I submit to you that it is this consideration that should encourage us to vote for this amendment. We live at a time when the fields of psychology and psychiatry, of counseling and sociology have been developed, that we have great resources to help young people. What I am pleading for at this time is that we provide the kind of basic framework in which these resources can be made available to young people who find themselves in conflict with the law. I submit to you the thing that "Pappy" Triche said to us time and time again, that the legislature makes its decisions on the basis of emotions and politics; and what we need in dealing with our young people is not emotions

and politics, but it is objective concern. Finally, I would like to say that the Supreme Court Justice of the State of Louisiana, the Honorable Joe Sanders, won a reputation and rendered a great service as judge of the family court here in East Baton Rouge Parish. He rendered a great service because he dealt with family and juvenile problems in a very humane way, and he did it at the same time with the law. I therefore encourage you for these reasons, to give approval to this amendment. Thank you.

Further Discussion

Mr. Dennis Mr. Chairman, fellow delegates, I rise to ask you to vote against this amendment, even if you agree with part of it. Because, the amendment does essentially two things. First of all, it tells us who a juvenile is. Who are these people that are going to be treated outside of the regular court system? I recognize that some of you may vitally feel that that should be spelled out in the constitution. The committee did not feel this. Even if you feel that way, I'm going to ask you to vote against the amendment because there is more to it than just the juvenile amendment goes on to spell out the structure of juvenile courts. It does things which are in violence to the rest of the committee proposal. I don't think that the authors know some of the things they are about to do to the court structure in this amendment. For example, did you know that if you adopt this amendment the legislature can establish a special district for a juvenile court including one, two, three, five, ten, fifteen or sixty-four parishes? Because, it says it can establish a juvenile court in any parish or any group of parishes. It might even take one of the parishes in my judicial district which contains two parishes and put it in a special juvenile court district and leave the other parish outside of it. Second, it messes up at the time the jurisdiction of a family court, because it says that the jurisdiction of any family court established after this constitution will be the same as that of the family court existing at the present time. Third, this is not clear but I think it could be interpreted to mean that the district courts do not have juvenile jurisdiction any more. That only special juvenile courts will have juvenile jurisdiction. This would be disastrous in north Louisiana and other areas of the state where we don't have specialized courts...where we depend on our district judges to perform both the function of the juvenile judge and the district court judge. Ladies and gentlemen, it is not necessary to do this violence to the committee proposal, to bring about the concerned type of handling of juvenile cases that Rev. Stovall and others say they want, because the committee proposal itself contemplates that juveniles will be handled in a special court, in a special proceeding. It doesn't say much about it but there's a lot of thought behind that silence. We left free, for the courts to do a lot of these things themselves and the legislature to spell out the rest of it. The committee proposal as it is presently written allows juvenile divisions of the present district courts and of parish courts that are now established or to be established in the future. In these divisions you can have social workers and other professional help attached. You can run these divisions without jury trials. You can run them informally, such as the juvenile courts are presently run. You can run them with flexible disposition to meet the needs of the child. You can run them with even a specialized judge if you want...if your district court wants to assign all of the juvenile cases to one judge, one division of that court. He can be a specialized judge. I happen to think that a judge is a better judge for hearing all kinds of cases, but if your district doesn't believe that and wants to have one man handling just juvenile work because he's real good at it, you can do that under the committee proposal. The committee proposal is not at all in conflict with the juvenile court philosophy.

It allows new approaches and new measures to be taken as this philosophy is refined and becomes more sophisticated. So, I'd ask you ladies and gentlemen, even if you do feel that we ought to put an age limit or some definition of a juvenile in the constitution, let's vote against this amendment because it does much more than that and does violence to the basic committee's proposition or court structure. Let's vote this down and I'm sure there will be other amendments doing the same things individually that you may want done. So, I ask you to vote against this amendment.

[Previous question ordered.]

Closing

Mr. J. Jackson Mr. Chairman, ladies and gentlemen of the convention, as Judge Dennis says, there is nothing...and I want to suggest to you...as with every article that came before this convention, there is nothing sacred about a committee's proposal. Now, I recognize that there are some legitimate arguments, technical arguments, against this amendment, and I will attempt to address myself to them, but there are other arguments that I got to react to. I had intended on withdrawing this amendment to provide...to address myself to those technical amendments, but I understand from the Chairman I couldn't probably address myself to some of the arguments that have been presented against here. I think that if you're against the jurisdiction of juveniles in the constitution then you ought to just say so. You ought not come up here talking about heinous crimes because we made for the exceptions of heinous crimes. If you're against a juvenile court system then say so. Let's not muddle the issue with heinous crimes, because as you say, what's more heinous than murder, aggravated rape...what's more heinous than that? One delegate has suggested that if you're two seconds before 18, you're in trouble. You're not at maturity probably. I'm not going to disagree. I want to suggest to you that that lies with 17, 16, 15, and 14. The argument against this amendment and concept, and I'm not talking about technical arguments or arguments what I consider are valid, but some of the arguments are that, you know, we're raising the age of maturity. I want to suggest to you that what you do with a 17 year-old, who is not eligible under the present juvenile jurisdiction and unless you charge him with a crime, he can't go to the criminal court. What are you going to do with the runaway? I want to suggest to you that you can look up some statistics which say that runaways have committed murder, runaways have been involved in certain crimes and if they did do it, this provision did provide and does provide, that they can be brought before the criminal court. I want to suggest to you that some of the arguments that I've heard here today, and you're right, and maybe I oughtn't be, but I am very concerned about this amendment, on something that we are able to work out. I want to suggest to you that under the present committee proposal "as provided by law" that could be a city ordinance. Are you willing to allow each parish, each city, to pass laws governing the behavior of juveniles? I don't think you want that. I want to suggest to you that the problem of juvenile delinquency is not going to be solved by this amendment...it's going to be solved by the state putting some money and willing and ready to change some of the institutions. It's not going to be solved by the legislature passing more laws. It's going to be solved by the legislature passing laws in terms of reform, in terms of cost. I think that if you've got some valid concerns about this amendment, let's deal with them, but if you're against the jurisdiction, say so. If you're against...one argument is that we could set up parish courts or numerous courts between various parishes. This amendment specifically says that in order for that to happen you must have a petition presented by the governing authority of that parish. Those who are for home rule would believe that. The legislature couldn't

37th Days Proceedings—August 28, 1973

say "there shall be a juvenile court for the parish of Cameron, Calcasieu, as such." The governing authority has got to present that petition. I want to suggest to you about...in New Orleans we have talked about moving from a juvenile court situation to a family court situation and that's the only reason why certain language in here is allowing for the legislature to expand the jurisdiction. Someone said, "Well, the jurisdiction...we're going to freeze in the jurisdiction." How can that be when the language clearly says "the legislature shall have the authority to expand the jurisdiction?" I think everybody has made up their mind how they feel about the problem of juveniles. I'm suggesting to you that problem can't be solved in this convention. That's a problem of statute. But, the manner in which they will be handled is a constitutional problem, as with all the courts of the state, the legislature create or establish a constitutional jurisdiction? I don't know if we can. Mr. Chairman, I close.

[Previous vote ordered. Amendment rejected: 54-54. Motion to reconsider failed.]

Amendment

Mr. Poynter Amendments sent up by Delegate Gravel.

Amendment No. 1, on page 6, line 17, change the period to a semicolon and add the following: "provided, however, that the juvenile courts, including district courts in parish and city courts when sitting as ex officio juvenile courts, shall have exclusive original jurisdiction of all offenses committed by persons under the age of 17, except that the criminal district courts in the parish of Orleans and the several district courts in the other parishes of the state shall have exclusive original jurisdiction of persons who, at the time of the commission of the offense, are over the age of 15 years and who have been indicted by a grand jury for the offenses of murder, aggravated kidnapping or aggravated rape committed within their respective jurisdictions."

Explanation

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, this amendment, in effect, retains in the proposed new constitution similar provisions which are in the present constitution. I believe that by the insertion of this amendment into the judiciary article that we substantially, and hopefully, have met most of the objections of those who have opposed the amendment previously introduced by Mr. Jackson, myself and several others. All this does is to repose in the juvenile courts and the ex officio juvenile courts, jurisdiction over persons who are 17 years of age and under that, except, however, in capital offenses that are particularly stated here in this amendment, that is, offenses which are presently capital offenses, then the district courts throughout the state and the criminal district courts in Orleans have exclusive original jurisdiction. It seems to me that this provision is essential and I urge the passage of the amendment.

[Previous question ordered. Amendment rejected: 51-54. Motion to reconsider.]

Motion

Mr. Derbes I wanted to make a motion and I was standing before Mr. Jackson was, but you've already recognized him. I wanted to move to reconsider the vote and lay the motion on the table.

Mr. Henry Well, all he's done is move to reconsider the vote and you may move to table the motion to reconsider. Mr. Derbes.

Point of Information

Mr. Tapper Is it debatable?

Mr. Henry The motion was made to reconsider the vote and then to table the motion to reconsider which is not debatable.

Point of Information

Mr. Tapper Is there any place in the constitution in the judiciary, thus far, that we've adopted that gives district courts in parishes that do not have juvenile courts, jurisdiction...

Mr. Henry You're not asking me for a procedural rule or a ruling on the procedure there. Mr. Tapper, and I think you're getting a little far afield, there, with all due respect, sir.

[Previous vote ordered.]

Point of Information

Mr. Derbes I just want you to explain the vote as it stands. Mr. Chairman. Perhaps, you were prepared to do so. I'd just like to ask you to do so.

Mr. Henry Well, now, I'd be happy to explain this, but it's high time and, Mr. Derbes, I'm sure you're familiar with the rules of procedure of this convention, but it's high time that I don't have to stand up here and explain every such motion like this that's made. Now, what has happened is that these amendments have not passed because there were 53 yeases and 53 noes. Mr. Jackson, wanting another shot at the amendments, has moved that we reconsider the vote. When he made that motion, Mr. Derbes moved to table the motion to reconsider, so that we'd put an end to the debate and put an end to the consideration of these amendments.

[Motion to table adopted: 54-53.]

Further Discussion

Mr. [J.] Jackson Ladies and gentlemen of the convention, it has become very obvious to me that the will of the convention has prevailed, but I am somewhat contented in the fact that it was half yes and half no. I want to suggest to you that this is a very serious problem, contrary to the way the committee proposal is drafted. I want to suggest to you again that the committee proposal says that every violation of civil, criminal law, that a person must be tried in district court. If you prepare to suggest that youngsters, who do not commit the enumerated crimes as suggested in both of the amendments, go before a criminal court to have his record exposed to the public, to follow him for the rest of his natural life and with the possibility, if convicted, probably have a problem in terms of restoration of his citizenship, then I suggest that you adopt the committee proposal. I think that, and it beguiles me to kind of understand, how we can take a third of the population, the young people of our state, and go under the present constitution which the last legislature operated on and not afford them that kind of protection. We're not talking about protection for those who commit murders because we've made those kinds of exceptions. We're talking about those youngsters who may commit a prank, who are not very cognizant of the consequences of their act, that does not result in murder and I'm suggesting to you, I'm an attorney, but I'm suggesting to you that the legislature is very political. We are, and I don't divorce myself of it. We're very emotional, and just let one other sensational crime occur, then you're going to have another outcry. But, you see, the outcry is almost like a big front, because the legislature has that power under the present constitution to bring any youngster who committed a "heinous crime" (they've got that power already. When you heard all of the clamor in the legislature prior to this matter being considered by this convention, you were really hearing a lot of people who were concerned

about the problem, but they had the powers and that's how they redress it. The only reason why it was declared unconstitutional as I understand it is that it didn't take into consideration the powers of the family courts, and that they attempted to legislate jurisdiction which would constitutionally...available. I'm taking this time because, and I guess I'm really pushing the issue, and I guess that the convention is split, so that means there might be some hope. I'm prepared to offer an amendment that says what Mr. Gravel has said and to answer Mr. Tapper's objection that district courts or city courts that function as juvenile courts are hereby retained. I will suggest to you that this is going to be possibly my last attempt to bring this problem before you, but I really want to say that you look at the judiciary proposal, and if someone can convince me that it doesn't say, no matter whether you've violated a heinous law or a state misdemeanor, that you're not subject to go to district court. If someone can convince me of that, then maybe some of the objections and strong feelings that I have about this could be removed.

Amendment

Mr. Poynter These are the Pugh amendments, now co-authored by Delegates Kean and Avant.

Amendment No. 1, on page 6, delete lines 16 and 17 both inclusive in their entirety and insert in lieu thereof the following:

"Section 18. The juvenile and family courts shall have such jurisdiction as the legislature shall provide by law."

Explanation

Mr. Kean Mr. Chairman, fellow delegates, the parish of East Baton Rouge has a family court which is in some respects different from juvenile courts and has different jurisdiction. This amendment would simply make it clear that Section 18 is applicable to the family court as well as to the juvenile court and that the juvenile and family courts would have such jurisdiction as the legislature shall provide by law. I think it's more in the nature of a technical amendment and we feel it's necessary in order to protect the jurisdiction of the present family court in the parish of East Baton Rouge.

Questions

Mr. Tobias Mr. Kean, Mr. Jackson pointed up a problem that Judge Tate and I are coming with an amendment to clear up. It's a potential problem. In Section 18, even under your amendment, it says "the jurisdiction of a juvenile court shall be as provided by law." Yours would add a family court to that, as I understand it. That is correct?

Mr. Kean Yes.

Mr. Tobias O.K. In Section 16 that this convention has adopted it provides "unless otherwise authorized by this constitution, a district court shall have original jurisdiction in all civil and criminal matters". Then it says, it shall have exclusive original jurisdiction of felony cases. Now, under what Mr. Jackson's argument would be he would say that the district would have to have exclusive jurisdiction of all felony cases, including juvenile offenses. Do you see a possible hiatus there? In other words, do you not think that in your amendment you would want to add something to the effect, "notwithstanding any provision of this constitution to the contrary, the jurisdiction of a juvenile court shall be as...juvenile family court...shall be as provided by law"?

Mr. Kean I would think that the amendment as proposed would give the legislature the right to provide for that jurisdiction and therefore it would carry with it the implication that "notwithstanding any other provision".

Mr. A. Jackson Mr. Kean, are you aware of the fact that in the last session of the legislature of this state that there was introduced several pieces of legislation that would have effectively destroyed the entire juvenile court system in this state as well as the family court in Baton Rouge?

Mr. Kean I was not aware that that legislation would have affected the constitutional family court jurisdiction in Baton Rouge, because the jurisdiction of the family court in Baton Rouge is constitutional, and relates itself primarily to family matters....

Mr. A. Jackson Well, let me rephrase my question...what I am really asking is that if we had not had the jurisdiction of the juvenile court spelled out in the present constitution that the legislature would have effectively destroyed the juvenile court system?

Mr. Kean That is correct.

Mr. A. Jackson And then is it not true sir, that your amendment, as it is presently drawn, would not prevent the effective destruction of the juvenile court system by future pieces of legislation that might be motivated by the emotions of the day?

Mr. Kean My amendment would give to the legislature the right to fix the jurisdiction of these courts. I recognize in making and offering the amendment that it would have that effect, but if we don't have the amendment, I don't know what the jurisdiction of the family court of East Baton Rouge would be.

Mr. A. Jackson I agree with you, sir, but are you aware of the fact that there...that the original legislation introduced by...in the last session of the legislature attempted to destroy what you're trying to protect?

Mr. Kean I'm aware that there was legislation in the last session of the legislature which would have effected the jurisdiction of juvenile courts and I am aware of the fact that if this amendment is adopted the legislature would have that right, but my point is that if I don't put the words "family court" in here then I don't know what the jurisdiction of the family court in Baton Rouge would be, because it's now constitutional. I presume the purpose of the committee in taking those constitutional, jurisdictional areas out of the constitution was to reduce the size of the constitution and give flexibility to the legislature to deal with the problem and I have no objection to that approach.

[Previous question ordered. Amendment adopted. 40-20. Motion to reconsider tabled.]

Amendment

Mr. Poynter The first set of amendments is by Delegates Tate and Tobias.

"On page 6, line 16 in the language added by Convention Floor Amendment No. 1, proposed by Delegate Pugh and adopted by the convention today, immediately after the number "18" and before the word "jurisdiction" delete the word "The" and insert in lieu thereof the following: "Notwithstanding any provision of this article to the contrary, the".

Explanation

Mr. Tate Mr. Chairman, fellow delegates, Mr. Jackson raised a possible technical problem that grew up when we took the juvenile court jurisdiction out of the constitution and when we provided that exclusive jurisdiction of felony cases shall be in the district court. I think there is no intent to say that the legislature could not provide for juvenile jurisdiction despite the fact

37th Days Proceedings—August 28, 1973

that the act might have constituted a felony. Therefore, I believe it's in the nature of a technical amendment to Section 18, to add in front of it, "notwithstanding any other provision of this article to the contrary"; then you go on and say, "the jurisdiction of a juvenile court shall be as provided by law". Jurisdiction, whatever the Kean amendment is. In other words, there is no intent to deprive the legislature of the authority to create a status of juvenile misdemeanants, juvenile delinquents, who, despite the fact that they commit what would be a felony if they are an adult, can be tried by a juvenile court system, whether they are thirteen, fourteen, fifteen, sixteen and so on. Therefore, I open myself up to questions.

Questions

Mr. Perez Judge, so that we'll be informed when we vote on this amendment, what are the provisions in this particular article which would be in conflict with the authority of the legislature to deal with juvenile courts?

Mr. Tate As a matter of interpretation, it would be this: we added, in connection with providing the exclusive jurisdiction of district court, we added, it shall have exclusive jurisdiction of felony cases. Now, it would provide no harm in the present constitution where under Section 52 of Article VII we provide for juvenile jurisdiction. But, as a matter of interpretation, it could be argued that when we provided that district court shall have exclusive jurisdiction of felony cases and that we merely let the legislature describe and set up juvenile courts, it could be argued that we have deprived them of the jurisdiction to take into jurisdiction of felony cases from the district court. Does that answer the question, Mr. Perez?

Mr. Perez Very satisfactorily, sir. Thank you.

Mr. Tate Thank you.

Mr. De Blieux Judge Tate, I'm just wondering, in view of your amendment, if it might not be better to state that in spite of the provisions of Section 15, I think it's Section 15 that we have reference to providing for the jurisdiction of the court, that the legislature may provide for juvenile...

Mr. Tate I would have no objection to say if Section 16, or whatever it is of this article...

Mr. De Blieux Sixteen, that's right, sixteen, Section 16.

I just made that suggestion. I think that it might be a better exclusive remedy for juvenile cases.

[Previous question ordered. Amendment adopted: 101-0.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Gravel], on page 6, line 16, immediately after the words, "provide by law" added by Convention Floor Amendment No. 1 proposed by Mr. Pugh, et al and adopted by the Convention on today, change the period "." to a semicolon ";" and add the following: "Juvenile courts shall have exclusive original jurisdiction of all offenses committed by persons under the age of seventeen, except that the criminal district courts in the Parish of Orleans and the several district courts in the other parishes of the state shall have exclusive original jurisdiction of persons who at the time of the commission of the offense are over the age of fifteen years and who have been indicted by a grand jury for the offenses of murder, aggravated kidnapping, armed robbery, or aggravated rape committed within their respective jurisdictions."

Point of Order

Mr. O'Neill For a point of order, Mr. Chairman. Aren't these the same amendments that we just considered, just a few times back?

Mr. Gravel I believe they are the same amendments. The difference in them, as I appreciate it from looking at the amendment, Mr. O'Neill.

Is that correct, Mr. Gravel?

Mr. Gravel Yes, that is correct, Mr. Chairman. I do want to apologize to the convention because there has been some problem about getting these amendments prepared and presented to you, and I realize that it does produce a great deal of difficulty. However, I'd like to state to the delegates that there has been some question at the time that the previous amendment was submitted to you, about whether or not there would be any objection to inserting, as one of the offenses which would lie within the exclusive jurisdiction of the district court, the crime of armed robbery. It was not contained in the prior amendment, and for that reason, at least two of the delegates told me that they were going to oppose the proposed amendment. In order, hopefully, to try to get their support for this amendment, I have included that offense in the amendment now presented to you. Now, ladies and gentlemen, I honestly believe that it's essential that we make this provision in the constitution. These are the four most serious offenses known to the law of Louisiana, and there is no question but that we are going to vest in the criminal district courts throughout the state of Louisiana jurisdiction with respect to these offenses, insofar as they involve persons fifteen years of age or over. That's in the present constitution. But, in other situations, offenses involving juveniles should be considered by the juvenile courts. It should be so stated in the constitution. I respectfully urge that you support this amendment.

Questions

Mr. Duval Camille, I notice you placed an additional crime of armed robbery in here, but I was wondering about the crime of aggravated arson. Isn't that one of the most serious crimes in Louisiana?

Mr. Gravel If I'm not mistaken, the maximum penalty for aggravated arson is twenty years, which is similar to manslaughter, and it does not carry with it...

Mr. Duval Well, it must have been amended. I had thought that the penalty was far more severe than that.

Mr. Gravel My recollection is that it is twenty years, and it would equate with the offense of manslaughter.

Mr. Duval I'm talking about when they arrest... People in the edifice that arson is taking place.

Mr. Gravel That's what would make it aggravated arson.

Mr. Duval That's right. Well, I think it's more than that; I think it's life, death.

Mr. Gravel Well, I may be wrong.

Mr. Conroy Mr. Gravel, the other day we spent a great deal of time debating about the jurisdiction of the courts in Orleans Parish, and I want to make sure that this amendment doesn't in any way backdoor something that we dealt with there. This vests an exclusive jurisdiction in the criminal district court in Orleans. Would that preclude the legislature later from changing the court setup in Orleans Parish to abolish the criminal district court?

Mr. Gravel I think what we have done, Mr. Conroy, is to maintain the dual court system in Orleans.

Mr. Conroy You have maintained it in effect, but the action that the convention took the other day authorized the legislature to change that. Would this preclude the legislature, is this intended to preclude the legislature, from changing that present setup that exists in Orleans Parish?

Mr. Gravel I don't think that this has to do with that problem, because I think that might have to be changed in the future if there was some change of jurisdiction under the constitution, from that that is presently allowed to the courts in Orleans. I don't think that's the issue here at all, Mr. Conroy.

Mr. Tapper Mr. Gravel, it confuses me. A while ago you had changed your amendment to provide that in the parishes there are no juvenile courts, that we'd be protected. The wording was changed so that you said that where district courts had ex officio juvenile authority that these courts would have the jurisdiction over the juveniles. In this amendment, you've left it out. Was that an oversight?

Mr. Gravel It was an oversight. I see that it is, and I should have left it in there.

Mr. Tapper I'm wondering if you would withdraw it momentarily and put that back in.

Mr. Gravel I'll do that; I surely hate to take the time to do it, but I think you are correct, Mr. Tapper, and it is an oversight. I should be in there. In other words, my intention was that, to provide that with respect to juvenile courts, as well as ex officio juvenile courts, that they would have exclusive jurisdiction.

Mr. Tapper Well, in addition to that, you don't have anything in here about aggravated battery. In other words, one of these juveniles could bash your head in and you could be a vegetable, and then the district court couldn't handle you; you still go to the juvenile court. I don't understand why you left that out. Let's say attempted aggravated rape or attempted murder, you don't think they should be in there also?

Mr. Gravel Well, if those are all going to be included, there is no use to have this provision at all, Mr. Tapper.

Mr. Segura That was my exact question. I was just going to ask you to withdraw it and put that provision in, please, sir.

Mr. Gravel Mr. Chairman, I'd like to do that. I hadn't noticed that, and I probably gave the staff the wrong copy to work from. But, what I do want to do is to withdraw it in order that I can make, can insert, after juvenile courts "and those district, parish and city courts, when serving as ex officio juvenile courts". That is my intention.

Mr. Henry Of course, if this body agrees, you are hereby welcome to do that, but we've got to get to some point in time this afternoon, it would appear to me, that we do something here.

Mr. Gravel I wonder if I could have, at least to get this properly before the convention, I would ask for unanimous consent of the convention to permit the amendment to read as it did in the prior amendment. I don't have the exact words before me, but I don't want to make any mistake on it, but it was my intention that that same language be inserted in this amendment, Mr. Chairman. If there's no objection, I'd like to have it done.

[Amendment withdrawn and reintroduced with correction.]

Amendment

Mr. Poynter "Juvenile courts," and you wanted to add this language, and correct me if I'm wrong, Mr. Gravel, "including district courts and parish and city courts when sitting as ex officio juvenile courts."

Is that correct, sir?

Mr. Gravel That is correct.

Mr. Poynter "Shall have exclusive original jurisdiction" etc., as the amendment is before you on your desk. "Juvenile courts," insert the clause, "including district courts and parish and city courts when sitting as ex officio juvenile courts, shall have exclusive original jurisdiction" etc., as the amendment was previously read and is before you.

Mr. Gravel That is correct.

Questions

Mr. Fontenot Mr. Gravel, isn't it true that for a crime of armed robbery you do not need an indictment by a grand jury? ...to be prosecuted for it? Couldn't the D.A. file a bill of information?

Mr. Gravel Under present law, that's correct, yes.

Mr. Fontenot So, under this provision here, there is a possibility that it depends on whether the D.A. files a bill of information or you are indicted by a grand jury, which court you will go into. Is that correct?

Mr. Gravel That's correct, yes, sir. I designed it.

Mr. Tobias Mr. Gravel, would you be willing to accept an amendment to change the language that says "except that the criminal district courts in the parish of Orleans" to change that to read "a criminal district court in the", beg your pardon, "a district court in the parish of Orleans having criminal jurisdiction"?

Mr. Gravel I'd have no objection to that at all, Mr. Tobias.

Mr. Tobias Would you amend yours? Otherwise, I can't support...

Mr. Gravel Well, I don't believe the Chairman is going to put up with my withdrawing this and amending it again, but I would be willing to agree that in the event this amendment passes, that I would support an amendment that would to that. I would hope that the others would too.

Mr. Lanier Mr. Gravel, you indicated that you put in this language, providing for indictment by the grand jury for armed robbery, designedly. What is your design?

Mr. Gravel That a grand jury indictment would be required in cases involving these offenses and this category of people before the court would have jurisdiction.

Mr. Lanier Well, wouldn't that then leave us in the situation that, if the district attorney filed a bill of information for armed robbery, that there would be no jurisdiction?

Mr. Gravel In other words, the grand jury would have to indict for armed robbery for a person over the age of fifteen years and under the age of eighteen.

Mr. Lanier Well, if the district attorney is authorized to file this either by bill of information or indictment, why would you want to make that difference?

37th Days Proceedings—August 28, 1973

Mr. Gravel Because of the category of potential defendants that we are dealing with, because we are dealing with children in this particular kind of situation, serious crimes involving children. For another reason, too, I'm hopeful that in the Bill of Rights, when it comes up, that the grand jury will be required, that prosecutions will be required or permitted only in instances where grand jury indictments are returned in felonies necessarily punishable by imprisonment at hard labor.

Mr. Lanier Well, suppose the provision that you are hopeful of getting in the Bill of Rights does not prevail and the present law is retained, wouldn't this lead us to a rather anomalous situation here?

Mr. Gravel No, Mr. Lanier, what I'm saying is, is that before a district court would have jurisdiction over this category of children for the offense of armed robbery, that the grand jury would have to indict. The grand jury would be the body that would bring the charge and not the district attorney on a bill of information.

Mr. Lanier But wouldn't that lead us in the situation where actually the district attorney would have the power to determine the jurisdiction of the juvenile court, because he could elect to either do it on a bill of information or take it before the grand jury?

Mr. Gravel That's absolutely correct.

Mr. Derbes Mr. Gravel, among other things, and I think this is a serious problem among other changes in the present system that your amendment occasions, it seems to me that it is entirely triggered upon indictment by the grand jury rather than commission of the offense. Isn't that correct?

Mr. Gravel It is triggered on both of them.

Mr. Derbes No, no, a person can commit the offense of armed robbery for which he may not necessarily be entitled to a grand jury indictment and yet not subject to the jurisdiction of the criminal district court until and unless he is indicted by a grand jury.

Mr. Gravel I think I've made that about as clear as I could.

Mr. Derbes Yes, I understand that, and I wanted to go ahead from that point and say, which court would have jurisdiction over his pretrial detention? In other words, if a juvenile who had allegedly committed, at the age of sixteen, the crime of murder, he could not be detained in a maximum security facility until he was indicted by a grand jury. Isn't that correct?

Mr. Gravel I think that would definitely be the consequence of this, and that's what the procedure, I think, should be followed. He can, the minor or the child, can be detained, but there is no reason to detain anybody in a maximum security situation, at least until there is an indictment for this serious offense, in my opinion.

Further Discussion

Mr. Jack Mr. Chairman, ladies and gentlemen, this amendment I am against. This is a perfect horrible example of the very thing we should guard against. This has error upon error. We don't have time to legislate. That's the legislature's business. We are supposed to put in this constitutional things that are not going to be flexible and need change. This thing now is getting very, very peculiar. They've added here the armed robbery, as well as I can tell from the oral edition, but of course, if that's against a juvenile over a certain age, it must be by a grand jury indictment. The district attorney couldn't file a bill

of information against him. Yet he could on a regular case. Now, that is just not well thought out. I again mention to you some people get tired and don't want to speak when they keep hammering away trying to get through some kind of amendment. That's how those who were in favor of electing different officials finally got beaten, because the other side kept hammering away with it. I firmly believe the proper thing for the protection of the juvenile, for the protection of other people and everybody as a whole, we ought to leave this legislative matter up to the legislature, where they can change it if they make a mistake. This is the only constitution we've had since 1921, if we get it adopted. So, I say put in these things that are not highly controversial, that are not going to be needed to change a year afterwards. Now, this amendment is not curing anything. I don't know why Mr. Gravel is so hep on wanting to put something in here on it. We have been lifelong friends. I can't understand why he keeps lowering it. He changes, he's even... I made a talk about the great number of armed robberies, so he's included that. That don't cure anything. This matter is a purely legislative matter. Let's kill this bill. Let's get along. I hate to talk as much as I do. I've asked other people at times, who are voting against this, to come talk; they don't like to. Somebody has got to do it. This bill is worse, or as bad as, the other amendment. Thank you, and you should vote against this amendment.

Questions

Mr. Stovall Mr. Jack, if you object to defining the duties of the juvenile court, why didn't you object to defining the duties of the Supreme Court?

Mr. Jack What did you say? I didn't hear you, there is so much noise ...

Mr. Stovall If you objected to defining the duties of ...

Mr. Jack Come whisper it to me, and I've got 20-20 hearing. It's the noise. Come confide in me; you're not going to agree with me, so I don't know why you asked.

Mr. Henry Why don't you all, if you are going to whisper back and forth to one another...

Mr. Stovall If you objected to defining the duties of the juvenile court, why didn't you object to defining the duties of the Supreme Court and the other courts?

Mr. Jack Because, they are not the subject. The question he asked me, which I don't think is pertinent, but I'll answer it, says why didn't I object to defining the duties of other courts. I think it's an entirely different thing. This is a flexible matter which I've tried to explain. I don't think, Reverend, you've listened to me. Everybody's got a right to his opinion. You've got a right to not listen to me. All I was asking for earlier was for quiet, for those who did. Now, you're not going to be changed by my talking. I just tell you that's my opinion, that I think it's a legislative matter. I thought the others were constitutional matters.

Mr. Womack Mr. Jack, in the case of a juvenile that needed to be put in maximum security for his own good, under this, you couldn't do that to him, could you, until it went before a grand jury?

Mr. Jack I don't know what this amendment would provide for. It that would be to state that the juvenile, over the age of fifteen years and who has been indicted by a grand jury for the offenses of murder, etc...

Motion

Mr. Gravel Mr. Chairman...I believe that the Chair will be happy to hear a motion to withdraw the proposed amendment.

Section passed: 46-1. Motion to reconsider tabled.]

Personal Privilege

[Amendment withdrawn. Previous Question ordered on the Section. Section passed: 46-1. Amendment to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Avant]. On page 5, between lines 28 and 29, insert the following: "Section 15.1. City Court Judges; Terms A judge of a city court shall be elected for the same term as a district court judge"

Explanation

Mr. Avant Mr. Chairman, fellow delegates, under Article VII, Section 51, I might add that every city in the state of over five thousand population has a city court. I don't know how many that is, but it's a substantial number. Every city court judge in the state has a six year term except the two in Baton Rouge and the judge of the Second City Court in New Orleans who have four year terms. This is simply a provision to make the terms of city court judges equal and uniform throughout the state, make them six years which is the same term that a district court judge has and which will be the same term that a parish court judge has under the provision providing for parish courts. It is simple, I think, I hope that's an adequate explanation. I ask your favorable vote on the amendment.

Point of Information

Mr. Munson I wanted to ask you a question, Mr. Chairman. I believe the convention has already adopted Section 15. Is this a new section, since it's numbered Section 15.1?

Mr. Henry It would be a new section, yes sir.

Mr. Avant I would hope, Mr. Munson, that it would be renumbered, perhaps I don't know if that falls within the prerogative of Style and Drafting, but it would be more appropriate at that point in the article rather than tagging it on the end.

Question

Mr. Brown Mr. Avant, did you say that all other judges in the state are six years? Are you sure about that? Like in Winnfield, there's a city judge. That's four years. I can think of a bunch of smaller towns that just have four year terms.

Mr. Avant Well, I'll read the article, Mr. Brown. It's Article VII, Section 51, Subsection D, and it talks about city judges, compensation, election term. "The compensation of the judges shall be fixed by the legislature", etc. Now, the judge of said courts now in office, the City of Baton Rouge excepted, shall remain in office until the thirty-first day of December 1954, and every six years thereafter, said judges shall be elected at the election for representatives in Congress. I am informed that the two in Baton Rouge and the second city court in New Orleans are the only four year city judges in the state. If they have one in Winnfield, I don't know about it; nobody had ever told me that before, and I don't see how you could under the provisions of this article. I feel that whether you do have one more that is should be equal and uniform throughout the state.

[Previous Question ordered. Record vote ordered. Amendment adopted: 88-22. Previous Question ordered on the Section.]

Mr. Burson Fellow delegates, I rise on personal privilege just to make a point which I would have to make now, I think, in order for what I intend to do later to make any sense. I don't want to waste the time of this convention by fighting a battle that has already been fought or by trying to introduce amendments in the guise of new sections. But, it seems to me that we made a mistake Saturday, when we were all tired and in haste, when we adopted the right to counsel before the grand jury without explaining in any way, shape, or form, how that newly created right was to be exercised, who was to have it, and whether or not, for instance, the state would be required to provide everybody who testified before a grand jury with counsel, which, I think a little bit of reflection would quickly lead you to the conclusion, would either bankrupt all of our local governmental institutions that have to provide this counsel, or would lead to the obliteration of the grand jury as an institution. However, the Bill of Rights Section dealing with the grand jury sets out a right of the accused to counsel while testifying before the grand jury, with which I have no argument at all. I am saving what amendments I do have to present until such time as we reach that point in the Bill of Rights. I merely get up on point of personal privilege, so that when I present those amendments later, I would not be laid open to the obvious question, "why didn't you do it while we were still on the section where we adopted this measure?"

Point of Information

Mr. O'Neill What is the disposition of Section 20 dealing with fees? I believe it's the section we passed over.

Mr. Poynter There are two sections that failed to pass. Section 20 which had to do with preservation of evidence, failed to pass, receiving, as best I remember, about thirty-seven votes.

Section 38, Mr. O'Neill failed to pass on Friday, receiving very few votes. Section 38 having dealt with the fees in Orleans Parish.

Personal Privilege

Mr. Jack Mr. Chairman and members, I'm greatly grieved at the amendment that was passed late last week just before adjournment. I voted against that amendment which reads, "at all stages of grand jury proceedings, anyone testifying in such proceedings shall have the right to the advice of counsel while testifying".

Point of Order

Mr. Gravel Under the guise of being apparently aggrieved, for one reason or another, Mr. Jack is trying to argue, reargue a matter that has been considered disposed of by the convention, and I suggest, Mr. Chairman, that he's out of order.

Mr. Jack Mr. Chairman, may I state...

Mr. Henry Mr. Jack, would you let me rule on this first? Turn the front mike off, will you please? Now, this is getting to the point of being ridiculous. It doesn't make any difference whether you call what Mr. Jack is saying personal privilege or speaking for or against the proposal. If I had recognized him for further discussion, he could have spoken for or against the proposal. This is incorporated in what he is saying in his feelings apparently about this proposal. He's allowed a great deal of latitude and we're going to continue to allow a great deal of latitude, and Mr. Jack, you may now proceed.

Personal Privilege

Wednesday, August 29, 1973

ROLL CALL

PRAYER

Mr. Bergeron: Almighty God, we ask from Thee that You would lead us in this time of turmoil, that You would guide our hearts and enlighten our minds so that we may write a document which is just for all people in the State of Louisiana; a document which does not discriminate which is helpful and clear; a document that is good for all people of the state. Oh God, lead our hearts so that we may still have all our feelings and do justice to the office from which we are elected.

We pray to you, God, amen.

We pray to you, God, amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

RESOLUTIONS ON SECOND READING AND REFERRAL

[*Journal*: 196]

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Poynter Committee Proposal No. 25 introduced by Delegate Alphonse Jackson, Chairman of the Committee on Bill of Rights and Elections which is a substitute for Committee Proposal No. 2, also by Delegate Jackson, Chairman on behalf of the Committee on Bill of Rights and Elections, a proposal to provide a preamble and a declaration of rights to the constitution.

Of course the status of Committee Proposal No. 25 is the convention has adopted the preamble to the proposed article setting forth the bill or declaration of rights and now has under consideration Section 1 of that Declaration of Bill of Rights.

Reading of the Section

Mr. Poynter "Section 1. Origin and Purpose of
Government

Section 1. All government of right originates with the people. It is founded on their will alone and is instituted to protect the rights of the individual and for the good of the whole. Its only legitimate ends are to secure justice for all, preserve peace and promote and protect the rights, happiness and general welfare of the people.

The rights enumerated in this article are inalienable and shall be preserved inviolate."

Explanation

Mrs. Dunlap Mr. Chairman and delegates to the Constitutional Convention, this section is designed to set the tune and tone of the entire Declaration of Rights. A government based on the rights and freedoms of the individual originates with the people. One of the purposes of this type of government is to establish and protect the basic rights of the people with their best interests at heart.

With this goal in mind, I believe we, the committee, have delivered to you an excellent document specifically stating the rights you shall and shall not have. Those rights, those freedoms, those privileges that guarantee a free and equal person in the State of Louisiana.

I ask you to let's get on with our business this morning, let's pass this section as is, and get onto something more juicy, namely, Section 3. And I'll be back then.

Questions

Mr. Lanier Mrs. Dunlap, I am concerned about the words, "inalienable and inviolate." I assume these

will not be construed to mean that you cannot waive these rights.

Mrs. Dunlap I would think so.

Mr. Lanier: In other words, your intent by saying that "these rights are inalienable and shall be preserved inviolate" does not mean that say, you could not waive your right to a trial by jury, or your right to an attorney. These are rights if done the proper way, you can waive.

Mrs. Dunlap This section, you know, this type of language prevents state action.

Mr. Lanier To waive an individual right.

Mrs. Dunlap Well, to take them away from you.

Mr. Lanier: Right, but it does not preclude an individual under the proper circumstances to waive his own rights?

Mrs. Dunlap Right.

Mr. Lanier O.K.

Amendment

Mr. Poynter Amendment No. 1 [20 M.C. 10000-10001],
on page 1, line 30, immediately after the word and
the punctuation "peace", and before the partial
word, "half heart of happiness", delete the words
and punctuation "and promote and protect the rights,
and insert in lieu thereof the following:
"Protect the rights, and promote the".

Explanation

Ms. Zervigon Mr. Acting Chairman and delegates, this is not an amendment that goes contrary to the purpose of the Bill of Rights Committee in writing this section. This is amendment to clarify what is here. I spoke to the Chairman and he has no objection to this clarifying amendment and I urge its adoption.

[Previous question ordered. Amendment adopted without objection.]

Mr. Poynter We have, of course, the Perez amendment here at this time. It's before you on the desk.

Is there a delegate that wishes to coauthor that amendment with Delegate Perez that's distributed on your desk at this time?...and wants to offer it in his behalf?

Mr. O'Neill Mr. Chairman, I don't agree with the amendment but I think out of courtesy to Mr. Perez, perhaps we should defer action on this section and wait until a reasonable time. If he gets here, fine. If not, well, then, we can go on.

[Motion to defer action on draft adopted: 46-40.]

Reading of the Section

Mr. Poynter "Section 2. Due Process of Law.
Section 2. No person shall be deprived of life,
liberty, property or other rights without sub-
stantive and procedural due process of law."

Explanation

Mr. Vick Mr. Chairman and fellow delegates, Section 2 of the Declaration of Rights is substantially the same as the section in the Constitution of 1921. It adds only two words, "other", and "procedural", and deletes the expropriation of property that will be dealt with in another section.

We're dealing, perhaps, with the shortest section that has appeared before this convention so far. It's the essence of simplicity, but it is steeped in historical tradition, having been derived from the Magna Carta and was out in our con-

stitution by our founding....that is the Federal Constitution by our founding fathers and has been in the Louisiana Constitution from its inception.

The question for the non-lawyers in the convention is, I am sure, what does "due process" mean? It means in two words, "fundamental fairness." In two words....fundamental fairness sums up the concept of due process. It is basically a concept of restraint on the government versus the individual citizen.

When the conduct of government tends to infringe on due process, the Supreme Court of the United States has historically used the following yardstick to measure that infringement. Does the conduct in question violate those fundamental principles of justice which lie at the base of all of our civil and political institutions? Due process involves both substantive and procedural rights in both civil and criminal law. For example, a civil servant faced with suspension or dismissal is entitled to substantive due process; that is, he or she cannot be dismissed from his or her employment without cause, that is without reason or arbitrarily. Fairness demands that no one shall be stripped of their employment without procedural due process, for example: (1) a specification of the charges, (2) an opportunity to prepare a defense, (3) a hearing before an impartial tribunal (4) the right to counsel, (5) fair and full hearing, (6) a confrontation and cross-examination and a decision supported by the weight of evidence introduced before the tribunal.

Criminal due process of a substantive nature involves those individual sections that we are going to be getting to shortly. But the most classic and obvious are those that everyone has been raised with from, I dare say, grade school, and that is the First Amendment, freedom of religion; freedom of the press; freedom of speech, etc. Those are substantive rights.

The procedural rights give you the right to enforce those, to raise those before an appropriate tribunal. This section, as I have said, is in substantial conference with the provision in the Constitution of 1921.

And Mr. Chairman, if there are any questions, I will be happy to yield.

Questions

Mr. Denberry Delegate Vick, I'm sorry, but I did not quite understand your definition of substantive due process and I would like....if possible, would you repeat that definition, specifically the example you gave?

Mr. Vick The example, Mr. Denberry, I thought would be most meaningful to the convention, was one of employment by Civil Service, and the example of substantive due process that I used is that a civil servant cannot be discharged....a civil servant faced with suspension or dismissal is entitled to substantive due process, that is, he or she cannot be dismissed without cause.

Mr. Denberry Well, now Mr. Vick, let me ask you this question. Under the present Civil Service Law, and presumably it will remain roughly the same....

I say, under the present civil service law, and I presume it will remain the same, a probationary employee, one who has not secured permanent employment in the civil service as a classified employee, may be removed without cause. Now, if substantive due process means what you say it is....it does....then I conceive that the language, "substantive and procedural," should not be included in here. Would you agree?

Mr. Vick No, I wouldn't, necessarily, I would assume that a probationary period is a very short one and would be an exception. And it is also one that I would assume the civil servant, probationary civil servant, has acquiesced in.

Mr. Denberry Well, in other words, you mean if you

take a job knowing that you can be fired without cause, then you no longer have any substantive due process to require cause to be fired.

Let me get to the real point, Mr. Vick. What was the reason for adding to the present constitution the words, "substantive and procedural"? Why would not due process of law itself be sufficient under the various definitions which already have been given?

Mr. Vick Mr. Denberry, I don't think PAR's analysis has been given wide distribution. But I saw a draft and I thought it was a fair statement. We are doing nothing more than reflecting the current status of the law.

With the burgeoning bureaucracy in the country, and with administrative law becoming an everyday occurrence, procedural due process is perhaps as important as substantive due process, if not more so.

That's why.

Mr. Denberry I would not argue with that point. But I say if you have due process, that would automatically include substantive and procedural due process.

It's conceivable that a court at sometime in the future, will determine that there is a third type of due process which we may know nothing about at the present moment. That would, therefore, be automatically excluded under our constitution.

Mr. Vick No, sir, it would not. It most certainly would not.

You will notice, if you will read it carefully, it says "other".

Mr. Denberry I understand that but it says "without substantive and procedural due process of law".

My question is, sir, if there is another type of due process inclusio unius exclusio alterius, and therefore you would be without that. Am I correct?

Mr. Vick Well, that's your interpretation, Mr. Denberry. As we tried to follow Judge Tate's admonition and write this for the future. And your suggestion is, perhaps, well taken. I think this would cover it. It may not.

Mr. Abraham Mr. Vick, I was like Mr. Denberry, concerned about the words, "substantive and procedural," and you gave the example of a civil servant.

The question I would have, is there any way that the words "substantive and procedural due process" could be construed to apply to other people other than civil service?...could it be construed to apply to regular employees or anything like that?

Mr. Vick You mean in the private sector, Mr. Abraham?

Mr. Abraham Yes.

Mr. Vick No, this is strictly state action.

Mr. Pugh Sir, are you suggesting by the language that you are using here that no one would be deprived, even temporarily, of any of their property without these procedural due process requirements?

Mr. Vick Even temporarily.

Mr. Pugh Even temporarily?

Mr. Vick Well, Mr. Pugh, if you could give me a better....if you could be just a little more explicit, perhaps, I could answer the question. I can't answer the question based on that vague hypothesis.

Mr. Pugh Well, on June 12, 1972, the United States Supreme Court in the cases Fuentes and Parham both held that there could be no taking without their first having been a hearing to determine the right to take. I ask you whether or not it's contemplated

38th Days Proceedings—August 29, 1973

as you understand it that there will be no taking in Louisiana without there first having been afforded a right to a hearing.

Mr. Vick You are discussing expropriation.

Mr. Pugh No, sir, I most certainly am not.

Mr. Vick Well, I'm sorry, Mr. Pugh, I couldn't really hear you all that well. If you'd restate it.

Mr. Pugh I'm asking you whether or not, in your opinion, this section as drafted will comply with the procedural due process requirements as laid down by the United States Supreme Court in Fuentes and Pugham.

Mr. Vick I do not know, Mr. Pugh.

Mr. Pugh I ask you whether or not it wouldn't be appropriate between the words "without" and "substantive" to place the language, "there being first afforded both substantial and procedural due process of law." If, as you have stated, that your intention is that there be no taking until after there is a hearing.

Mr. Vick Well, Mr. Pugh, you can propose your amendment. However, you realize, of course, that throughout, as a constitutional student, that whatever is reasonable usually passes muster. But in any event, you are most certainly at liberty to propose an amendment and I'll be happy to discuss it with you.

Mr. Pugh Thank you.

Mr. Jack Mr. Vick, I have an amendment like you are requesting Mr. Pugh about.

Mr. Vick I didn't request it.

Mr. Jack All right. Well, talking to him. Now, as I understand it the Constitution of the United States on this due process reads substantially if not exactly, "No person shall be deprived of life, liberty or property except by due process of law."

Now, I don't know where you dug up this other "rights without substantive procedural due process of law," but don't you know that under the Supreme Court of the United States decisions on due process of law, they've held that you have procedural rights. The right to counsel is one, the right to bond, a reduction of excessive bond. Those are procedural things. The right, if you are an indigent defendant to get a full transcript. That was the Illinois case.

Now, is it your intent to go way beyond the Supreme Court, but first go beyond the United States Constitution due process of law clause, as interpreted by the Supreme Court of the United States?

Mr. Vick The answer is unequivocally no.

Mr. Jack And I would...how come you use all this additional mumbo jumbo that you can't explain to us.

Mr. Vick Because, Mr. Jack, we wanted to spell it out in unequivocal terms that citizens of this state are entitled to both substantive and procedural due process. And that's the only reason why. There was no subterfuge involved. I agree with you, the annotations are very clear that due process implies both, but we wanted to make it infinitely and specifically clear. And we are trying to do what you are trying to do and that is look a bit into the future.

To do what Mr. Denny suggested, perhaps anticipate that some other rights might be considered under this at some future time.

Mr. Jack What I am talking...well, why are you saying other rights if you don't have in mind some-

thing else besides the...

Mr. Vick Well, Mr. Jack, I think one could conceivably consider this office as another right. It's most certainly, I don't think, a property right. I don't think it's a right of liberty. I don't think it's a right of life. I think this, you seeking this office is another right, for example.

Mr. Jack Look, if you are using the word in the constitution here, "or other rights," what other rights are you talking about?

Mr. Vick We're trying to follow Judge Tate's admonition, Mr. Jack, and look into the future. That was the point for putting other rights in there.

Mr. Jack Then you don't know what you are talking about if you don't know what other rights. Isn't that correct?

Mr. Vick That's a rather unfair....

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Pugh], on page 2, line 4, after the word "without" and before the word "substantive", insert the following, "there first being afforded both".

Explanation

Mr. Pugh I would like to compliment the committee first on the fine choice of language which was used by them in their proposed section. I had brought to their attention earlier, my feelings that there should be added to that section the language "there being first afforded both". It is one thing to give someone substantive and procedural rights. It is entirely another thing to give them those rights at a time when they are meaningful, and that is, at a time before there is any taking of this life, liberty or property. I therefore suggest to you that we amend this section to provide that there first be afforded these rights before there is a taking. I ask you for your favorable consideration of the amendment.

Questions

Mr. Drew Mr. Pugh, if your amendment is adopted, wouldn't that abolish the right of the highway department to deposit funds in court and take money and go ahead with their work?

Mr. Pugh Unless you qualified the constitution to provide for a taking by the highway department in cases concerned with expropriation first, it would. I have no objection to the procedure whereby the highway department takes and pays later.

Mr. Drew You have no objection, but you are prohibiting it under your amendment.

Mr. Pugh I don't think so. You can qualify that whether...in any way you want to....

Mr. Drew But it would have to be qualified later. If your amendment is adopted, that procedure is abolished, is it not?

Mr. Pugh That is correct.

Mr. Drew All right.

Mr. Pugh Also the procedure would be abolished, where you can take anything you want to and talk about it later, any of these rights.

Mr. Lanier Mr. Pugh, I would assume that your language is not intended to apply to the exercise by the state or its authorized subdivisions of the riparian servitude for the building of levees.

Mr. Pugh No, it isn't.

Mr. Jack: Mr. Pugh, could he that where it is about after rights, without first, what is that word?

Mr. Pugh: "without there being first afforded, both substantive and procedural due process of law".

Mr. Jack: All right, what about a case where a policeman looks like he has done something terrible, you are not going to be able to even suspend him until you have had a full hearing, is that right?

Mr. Pugh: You'll have to have a hearing, yes.

Mr. Jack: It may last three or four months, that's right, isn't it?

Mr. Pugh: That is right.

Mr. Jack: All the time he is going to be staying there, and it may be some horrible corrupt thing that he ought to be suspended about.

Mr. Pugh: Well, now if you are talking about suspended in the instance of whether or not they could take any pay away from him, I'd say they could suspend him, but pay him, but they couldn't take him off the force and not pay him until he had a right to a hearing. Nor do I think he should be removed from the force.

Mr. Jack: This is all new. We don't have any decision. This is all going beyond the United States Constitution, is it not?

Mr. Pugh: No, it is not.

Mr. Jack: Do you find this stuff in the United States Constitution?

Mr. Pugh: I find this to be the manner in which the United States has been in....Constitution has been interpreted, I find this not to be the manner in which our courts have interpreted our constitution.

Mr. Jack: Well, how have they been suspending policemen with, before the hearing in bad cases, how have they suspended other people, and people... you are an administration man, they have suspended public officials that have been indicted. What about that, that was before a hearing?

Mr. Pugh: What have they taken away from the man? If they suspend him, what have they taken away from him?

Mr. Jack: They have taken away his reputation as being able to carry out the duties of that office, for one thing.

Mr. Pugh: Therefore, you think he ought to have a hearing first, is that correct?

Mr. Jack: No. Not if it's bad enough. Just like a policeman, suppose he is accused of giving tips to bank robbers and things. That is so serious, I think he ought to be suspended and then the hearing held. Would this keep them from suspending him?

Mr. Pugh: I suggest to you, Mr. Jack, that this will not prohibit the suspension of a policeman as you are concerned.

Mr. Jack: Well, I just don't agree with you and I think you are all wrong. Thank you.

Mr. Arnette: Mr. Pugh, this is a very simple question, but I wish everyone would listen to it. What would happen in the case where a policeman would see someone robbing, say a liquor store, an armed robbery, and the guy is fleeing and he arrests him. Well, under your amendment he couldn't arrest him and deprive him of his liberty unless he had a hearing first.

Mr. Pugh: No, that is not correct.

Mr. Arnette: What is that, Mr. Pugh?

Mr. Pugh: This man hadn't been deprived of anything at that point.

Mr. Arnette: He didn't deprive him of anything when he puts him in jail? He deprived him of his liberty; he can't go anywhere.

Mr. Pugh: All right, what....I am sorry, I shouldn't ask you a question. I suggest to you that the phrase "substantive and procedural due process of law" requires a hearing at some time.

Mr. Arnette: Well, you said thought he couldn't he had to have a hearing before he was deprived of his liberty.

Mr. Pugh: That is correct.

Mr. Arnette: ...and if this man killed forty people, you would have to have a hearing before you could put him in jail. I think it is a very bad amendment, Mr. Pugh.

Mr. Alexander: Mr. Pugh, is not your amendment designed, and as it is arranged, want to prevent law enforcement officers from arresting anybody or prevent that person from being convicted because there are laws in other sections of the constitution under statutory laws that take care of criminal activity?

Mr. Pugh: I don't think statutory laws could supersede the constitution. I certainly would suggest that provisions relative to locking people up will at some point be in the constitution, maybe in the Bill of Rights.

Mr. Alexander: But there is nothing here designed to prevent anybody from being arrested and locked up, isn't that correct?

Mr. Pugh: That is correct.

Further Discussion

Mr. Denney: I rise in opposition to this amendment, because the amendment would not be thought out, except that it avoids....it overlooks, let us say, the entire Civil Service system in the State of Louisiana and the various municipalities which have Civil Service systems. Under the present law, and hopefully under the new constitution, the appointing authority may discharge or suspend a man without a hearing. Then the man is entitled to a hearing, but if we put this amendment in, we would require a hearing before the dismissal or suspension of a public employee. Now, I can conceive of the situation where a man is literally caught with his hand in the till. Certainly, that man should be immediately suspended or discharged. Now, if he wants to have a hearing subsequently, he will be entitled to this. But to prohibit him from having, to prohibit the state from dismissing a man or suspending him, if he is found to be completely incompetent or he is found to be crooked or something like that, I think would be a terrible thing. I also talk against it on the basis of Mr. Drew's question. I think the language as proposed by this amendment would prohibit the present quick-taking statute of the highway department. I think that would be a very bad thing for the operation of the state; therefore, I respectfully request that you vote against this amendment.

[Amendment withdrawn.]

Amendment

Mr. Poynter: Amendment No. 1 [by Mr. Jack]. On page 2, line 3, at the end of the line, immediately after the word "liberty" delete the comma "," and insert in lieu thereof the word "or".

Amendment No. 2. On page 2, line 4, immediately after the word "property" and the comma "," delete the remainder of the line and insert in lieu there-

of the words "except by . . .

[Amendment withdrawn.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Thistlethwaite, et al.]. On page 2, delete lines 2 through 5, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 2. No person shall be deprived of life, liberty, property, or other rights without due process of law, nor be denied the equal protection of the laws. No law shall discriminate against a person in the exercise of his rights. Private property shall not be taken or damaged nor shall vested rights be divested, except for a public purpose and after just and adequate compensation."

Mr. Thistlethwaite Mr. Chairman, and fellow delegates, I am keynoting the amendment. First, there was a technical typing error, we deleted the title, but we neglected to type in the new revised title, which would require a technical amendment. . . after "Due Process of Law" in the title: "Equal Protection; Right to Property". We neglected to type in the revised title, although we removed the title. After "Due Process" put a semicolon ";" and delete "of law". Add "Equal Protection; Right to Property".

[Amendment withdrawn and resubmitted with corrections.]

Amendment

Mr. Poynter Ok, Mr. Thistlethwaite, you want to reoffer them in the form that you have them here?

What he has done is simply change his amendment so that the quoted material would begin with a title reading:

Right to Property" Due Process; Equal Protection; Right to Property"

Just simply added a title and the text stays the same:

"Section 2. No person shall be deprived", etc.

Point of Order

Mr. Jenkins Point of order, Mr. Chairman. I would like to suggest to the Chair that this amendment is not germane to the section. Separate sections of this article deal with property rights and equal protection of the laws, and this seems to deal with subjects not covered in this particular section under consideration.

Ruling of the Chair

Mr. Casey Mr. Jenkins, I appreciate your point. I had already observed the possibility that this objection might come up. I've tried to make a determination in advance, and I will have to rule that the amendment is germane, since it does contain basically the subject matter already contained in Section 2, plus additional subject matter. So the Chair rules that the amendment is germane.

Give Mr. Thistlethwaite a chance to explain the amendment, first.

Mr. Thistlethwaite, please explain.

Explanation

Mr. Thistlethwaite Well, first I want to apologize both to the committee and the huddle down here for coming in late with this. After my initial efforts on the Preamble, I had decided to go with the committee language in Section 2 and delete this proposed Section 2. However, there are a number of expert lawyers in the convention who disagree. They tell me that this Section 2 which, although I am the lead author, I did not personally draft in toto, is probably the best piece of constitutional writing that has come up yet. I am not capable in background to make that claim. My amendment adequately and completely for constitu-

tional purposes, takes care of due process of law, and although not germane because of the rule, I will hopefully substitute for both Sections 3 and 4 when we get to that part of the committee's proposal. Mr. Staggs and Justice Tate have suggested that I go ahead and offer this to the convention as a superior way of handling this part of the Bill of Rights so that we do not go into new and untraveled fields and so that we have behind us generations of jurisprudence and support. I would therefore like to ask that Delegate Staggs follow me and support from a legal standpoint the propositions offered in this amendment.

Questions

Mr. Avant Mr. Thistlethwaite, isn't it a fact that what you have done in this amendment is you have kind of balled together into one section about four sections, or at least three sections of the committee proposal?

Mr. Thistlethwaite Well, what the committee did was come up with three or four sections, with which some of us working elsewhere in the state had come up with this one. We did not take the committee's sections and boil them down; we came up with this separately and are now offering it.

Mr. Avant Now, the question that I asked you, I want to make sure that I understand what the intent is. In the committee's proposal dealing with the power of eminent domain or the power of the government to take private property, it states as does yours, "that private property shall not be taken except for a public purpose". But I notice you did not incorporate the language that they had, "the issue of whether the contemplated purpose be public and necessary shall be a judicial question and determined as such without regard to any legislative assertion". Now, was it your deliberate intent to eliminate that particular provision?

Mr. Thistlethwaite Mr. Avant, I am told that a "a public purpose" would include in all adjudication of the question; the question of necessity is built into the public purpose.

Mr. Avant Are you aware of the fact that the pipeline industry in this state has secured legislation which says that a pipeline is a public purpose and that the courts have held that they do not go behind that even though in truth, and in fact, some pipelines which...for which private property is expropriated is not for a public purpose, but for that particular company. Are you aware of that?

Mr. Thistlethwaite I have been told that. Mr. Avant, I have been told that that question has never been taken to its ultimate in the courts.

Mr. Avant Are you aware of the fact that that is probably why, since it has never been taken to its ultimate in the courts, that this particular provision was included in this draft?

Mr. Jenkins Mr. Thistlethwaite, under the committee proposal there is a prohibition against government expropriating and taking over business enterprises so that the government in our state would never own the means of production. But your proposal has left this out, hasn't it; wouldn't it allow government owned enterprises to take over existing private enterprises?

Mr. Thistlethwaite Mr. Jenkins, for public purposes, I don't think that a private business enterprise is a public purpose.

Mr. Jenkins Well, aren't you aware of the Thibodaux case in which the city of Thibodaux attempted to expropriate the Louisiana Power and Light Company there, and the courts held that they had the authority to, although they never were

able to because they didn't have the money. But the courts have already ruled that under law, without this change that the committee has made, that that would be possible.

Mr. Thistlethwaite Well, do you think that your verbiage would have any effect on that either way?

Mr. Jenkins Mr. Chairman, Mr. Thistlethwaite may not be aware that I can't answer questions.... Another question I had, Mr. Thistlethwaite, with regard to a trial by jury to determine the amount of compensation. That of course, that right has been denied our citizens since 1948, even though in federal cases the U. S. Constitution says that people are entitled to a right to a trial by jury. Why is it that your proposal does not grant to our people the right to trial by jury to determine the amount of compensation in expropriation cases?

Mr. Thistlethwaite Well, Mr. Jenkins, the right to a trial by jury belongs in other sections rather than the Bill of Rights which states basic premises. I think we could write all sorts of details into this Bill of Rights if you want to go into that area.

Mr. Jenkins But, don't you know that the right to trial by jury is in the Seventh Amendment to the U.S. Constitution? It must be a pretty basic right.

Mr. Thistlethwaite Yes, but I don't know that it belongs in a private property, also, in addition. I think the committee has got that elsewhere.

Mr. Shannon Mr. Thistlethwaite, will you explain to me at the end of your proposal here: "after just and adequate compensation"? What do you mean by that?

Mr. Thistlethwaite Well, Mr. Shannon, I am told that that is in the present law, and that "just and adequate compensation" has been well tested in courts, and it means just that, "just and adequate compensation". I don't know how you could spell out "just and adequate compensation" any further than that.

Mr. Shannon Well, that is what I am trying to find out. Under your amendment how can that be attained? What procedure?

Mr. Thistlethwaite Well, the committee goes further and goes on to "that the owner shall be compensated to the full extent of his loss", etc. and I am told that is a most difficult problem and would create more problems than if it were left out.

Mr. Shannon Well, under this right here, the highway department could not take any property, until after it had gone all the way through court, and build a highway. Is that right? They would have to go through court, if necessary, unless the property owner agreed to the price that they offered. They would have to go through court and a just compensation be derived through the courts, before they could proceed with the highway?

Mr. Thistlethwaite Mr. Shannon, that is the way it is now. The highway department offers property owners what they consider reasonable amounts of money for property, and if the owner does not accept it, they end up in court.

Mr. Shannon Well, doesn't the present constitution though make a provision "except as otherwise provided in this constitution", which you do not have here?

Mr. Thistlethwaite Well, I am told that this is not needed. This thing has been kicked around by a lot of people for several months and it ended up like this, and it is considered by people who are much more qualified than I am to judge on constitutional matters, that this is sufficiently complete and ample protection without going into

dangerous details. That is all I can tell you, Mr. Shannon; it may not be an adequate answer.

[Quorum Call: 108 delegates present
and a few more.]

Further Discussion

Mr. Staggs Mr. Chairman, and fellow delegates, I have been in the position of being somewhat interested in hearing the comments by the Chairman of the Bill of Rights Committee and the members of his committee who have expressed themselves at this microphone since yesterday afternoon. I guess the best way of saying it is with extreme pride of authorship of their committee's report. This has followed the same kind of comments at this microphone, in turn given by Senator Blair for his committee, Judge Dennis for his committee, and the same is true for the members of the Committee on the Executive Branch. Each of us came initially to this microphone, expressing ourselves about the nature of the work which we had placed before the convention, and without the slightest compunction all of the well thought out provisions which we had carefully tailored, that all adhered together, the sections one by one, was dependent on others. It was all drawn as a unit in each of these cases, and the convention proceeded to work its will on each of these previous three sections without any regard to the feelings of the members who had drawn it. The same kind of conversation is being held at this microphone today, and yesterday, by the new committee which is now before the convention. They have in page 2, from lines 2 through 30...or 2 through 29....in twenty-six lines they have drawn due process, right to dignity and right to property, and have spelled it out in fulsome detail. The purpose of this amendment is to more tightly draw those same rights in seven lines of well thought out language, which I consider to be productive of and protective of those same rights, without writing out twenty-seven lines, each line of which can produce a new line of cases in the jurisprudence interpreting what this convention meant by these words or these lines or these thoughts.

You wondered yesterday, perhaps as I did, when there was a discussion on the lines in the Preamble which state that "there shall be"...."promote the health, safety, education and welfare of the people". Each of you is familiar with the line of United States Supreme Court decisions that would fill a bookshelf, all of which are interpretations of the "welfare clause" of the United States Constitution, and based on a very few words in that constitution, literally hundreds of cases have been decided. The same is nonetheless true of the Louisiana Constitution, and each word and each phrase, and yes, each clause, will be our courts be subjected to interpretation by the courts. If you read the 1921 Constitution where it states that "the property of a person shall not be taken or damaged except for public purposes and after just and adequate compensation is paid", I submit to you that in fifty years of jurisprudence, it is extremely rare to find a case where a citizen of this state has been deprived of his property by an unseen government, not with feelings for his rights or his rights to own property. That language is repeated in the Thistlethwaite amendment. It states very plainly that private property shall not be taken or damaged except for a public purpose, which may be tested by the court as to whether a purpose is public or not, and after just and adequate compensation is paid. This covers all of the rights spelled out by the committee in lines 14 through 29. We need to write a short constitution, but not so short as to deprive rights already owned by the people of this state. But we don't need to spell out in considerable detail those rights which are already accepted as principles of law in this state.

Mr. Chairman, I urge the adoption of the amendment, and I thank the convention for its attention.

Further Discussion

Mr. O'Neill Fellow delegates, if you'll read the amendment, it says that "on page 2, delete lines 2 through 5". I suggest to you that it would not delete lines 2 through 5, but would in its entirety delete the whole page. I think that's the purpose of the amendment---to delete Section 2, Section 3 and Section 4. Don't be misled by what it says. You know it's very interesting that before this committee was even set down to work that most of these amendments were drawn. I think it's ill-appropriate and ill-advised to present amendments that were done in such a way. I think that we must consider what this committee has done, and even though we may not personally agree with every minor point, I think they should be discussed. I have noted that there are twenty-four substantive changes between this amendment and the three sections which it would propose to delete twenty-four differences. These wouldn't even be discussed. I suggest to you that on property that every point needs to be discussed. This would have the old constitution, "public purpose", where the state has been raped and private individuals have been raped time and time again. I suggest to you that it mentions nothing about discrimination against the sexes, against the races, or against anyone else. It simply says "equal protection of the law". I also suggest to you that it deletes substantive procedural due process, and that this is something, I think, we were ready to pass on just a little while ago. I think it's hasty to bring up amendments which are ill-advised and ill-conceived. It's time that we listen to the committee, listen to their proposals, and vote with the business of the convention, and kill amendments which propose not to discuss the sections on their merit, but which propose to kill the entire thing.

Thank you.

Further Discussion

Mr. Newton Mr. Chairman, ladies and gentlemen of the convention, I rise in opposition to this amendment. I think that if this is passed, then we are going to see that the rights of the citizens of this state are being taken away. I think that the committee proposal, while some of you may not agree with all of it, it at least provides an orderly way to proceed. We can...by taking it up section by section, have the benefit of the debate and particularly the thoughts of the members of the committee who have been studying this problem for six months or eight months now. I think that we need to have a short constitution, but I think that when we are talking about the rights of the people, the basic rights that the state cannot take from us, then we have to spell it out and be very careful in doing it. This business about expropriation of property, and... this is the type of thing that needs some full discussion. Right now in this state, the Levee Boards can take property between the rivers and the levees for the assessed value of the property and they don't call it expropriation; they call it appropriation, and so this is allowable under the present constitution. Now the language that is put in here by this committee would prohibit this type of taking, and it has worked some serious hardships on the citizens of this state, and it is time for that sort of thing to stop. I urge you to defeat this amendment; let's proceed in an orderly manner and have the benefit of the thoughts of the members of the committee and the full debate of the full convention. Thank you.

Further Discussion

Mr. Womack Mr. Acting Chairman, and fellow delegates, this is one of the cases that I don't know what I am for, and I am going to tell you one of the reasons that I say that. Under the wording of this amendment, I don't know what "after just and due compensation" is; I don't know what it is in the proposal that is proposed by the committee. If "after just compensation" means that the highway

department can be stopped from filing an expropriation suit, and posting their appraisal value on the land in the books, and go ahead with the suit, and that they shall halt construction until after the court has taken final action on the just compensation, then we are going to cost the taxpayers of this state untold millions of dollars in added cost in construction work and stopping of contracts. I think this is a case where we may need to hold up and go very, very slow rather than take a chance on the wording that we put into this constitution, tie down progress in the State of Louisiana to the extent that we are going to pay very, very dearly for it, and this is one thing that I would like the constitutional attorneys of this convention to take a very close look at and be sure that while we are going through the legal process, that we are not going to stop construction and force the taxpayers into an excessive cost of operation. Thank you.

Further Discussion

Mr. A. Jackson Mr. Vice Chairman, ladies and gentlemen, I am a delegate to this Constitutional convention, I rise in opposition to the present floor amendment before you. I do so, because I think that in all fairness to the members of this great deliberative body that this amendment precludes your giving full consideration to some very vital concerns that will affect the lives of Louisianians for a long, long time. This amendment that is before you, emasculates three vital sections that ought to be considered by this convention. Whether or not we are going to afford equal protection for all citizens of this state ought to be considered fully and completely and separately by this convention. Whether or not we are going to provide, in this constitution, for the protection and the right to own and dispose of property ought to be given full consideration by this convention. I submit that the amendment make some attempt to deal with some of the individual rights that I have suggested that we ought to consider, but I also hasten to add that the language that is contained in this amendment is very weak. Ladies and gentlemen, you know that the state is being taken in this state, without giving the owner full consideration. You know that. You know that there is not a strong, equal protection clause anywhere in this country for individual citizens and to protect their rights, and you know that that ought to be considered. There are certain basic and fundamental rights that are being denied by the draftsmanship of this amendment. I think in all fairness to the people who are assembled here, you ought to give full consideration to the fact that there ought to be a strong equal protection clause in this constitution, that every citizen ought to know that his property rights are being provided for and being protected, that we ought to provide for citizens, an orderly process by which their rights can be protected. So, in due deference to the authors of this amendment, but in greater deference to the individual rights of the people of this state, I would ask that you would defeat this amendment and give full consideration to the propositions that are contained in Sections 2, 3 and 4 of the Declaration of Rights Article before you. I urge you defeat this amendment. Mr. Chairman, if there are no other speakers, I call for the question on this amendment.

[Unrecorded dissent not entered. Arollal vote indicated. Question Call: 112 delegates present and a quorum. Amendment re-rejected: 34-79. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [to Mr. Womack]. On page 2, delete lines 3 through 5 both inclusive in their entirety and insert in lieu thereof the following:

"Section 2. No person should be deprived of

life, liberty, or property, except by due process of law. Except as otherwise provided in this constitution, private property shall not be taken or damaged except for public purposes and after just and adequate compensation is paid."

Explanation

Mr. Perez Mr. Chairman and ladies and gentlemen of this convention, I would hope and again I say, I would hope that you would listen, please, to me attentively as to what I'm about to say. I would like to relate to you an experience, which we had in our parish during the last flood stages, and ask you how I would have solved my problem under the proposed provision in Section 2. We were confronted, in the middle of the nighttime, with a levee failure which threatened the lives and property of thousands of people. Under the present provisions of the constitution, levee districts have the right to appropriate property for levee purposes. This right has been in existence ever since the beginning of this great state of ours. The members of our governing authority of our levee districts met immediately upon the spot, appropriated the lands necessary for the building of a new levee and within several hours we were building a new levee to protect the lives and property of our people. I submit to you, that under the amendment which has been submitted by the committee, which requires not only substantive but procedural due process of law, that it would require the filing of a suit, the trial of a case, and a judgement before any such action would have been taken. Do you know what would have happened to our community under those circumstances? We would have been drowned out. Now I know that the word has been passed down, let's delete 2 and 3. Rights provisions unchanged, but for God's sake let's think of what we are doing. I say to you, if you adopt this provision, as it is, that what you are doing is putting every community fronting on the Mississippi River, wherever else you have levee protection, in jeopardy. I would ask you to adopt the provision, which I suggested, which is exactly the same provision now in our 1921 Constitution, which has been interpreted by the courts time and time and time again, and where all lawyers generally know what that particular subject matter means. I again say, please, think of what you are doing. Realize what you are doing. Let's just don't go down the line like a bunch of blind sheep and submit to the people of this state a document with provisions such as this one in it. Yes, Mr. Roy, I'll yield.

Questions

Mr. Roy Mr. Perez, I'm sure you are aware of the sheep in wolf's clothing. . . . You are aware of Aesop's fable about the sheep in wolf's clothing; are you not? Are you aware of the old fable about the wolf dressed as a sheep?

Mr. Perez Yes, sir. I certainly am, but I can guarantee you what I'm talking about is a wolf and not in sheep's clothing.

Mr. Roy Why don't you address your catastrophic argument you've made to Section 4, when we get there, and not try to delete 2 and 3 which deal with basic rights of people, Mr. Perez?

Mr. Perez I'll give you that answer, sir. First of all, I'm addressing myself to 2, because 2 requires procedural due process of law, and under procedural due process of law, it requires the filing of the suit and a trial of the case and a judgment. I say to you under those circumstances, we will drown out thousands of people.

Mr. Roy And 4 is a specific provision dealing with expropriation, is it not, Mr. Perez?

Mr. Perez Unless this provision is taken out of Section 2, I don't care what you have in 4, it will not be cured.

Mr. Roy Don't you believe, Mr. Perez, that if this body in its wisdom chooses to deal specifically with expropriation, that it would supersede any other general provision in the constitution?

Mr. Perez When this provision requires procedural due process of law, you are not going to get around it, no, sir.

Mr. Roy How much do you pay those people those properties you appropriate without benefit of due process of law?

Mr. Perez They are paid fair market value in about ninety-eight percent of the cases.

Mr. Roy Doesn't the constitution provide that they shall not be paid in excess of assessed value, Mr. Perez?

Mr. Perez That's correct, but under both the federal laws and the Uniform Relocation Assistance Act, our people are well taken care of and I see that they are.

Mr. Roy Well, the whole point is that maybe there is no other benevolent people like you in the rest of the state, and the people need protection from them.

Mr. Perez I suggest to you the protection they need, is that their lives and their property be protected with adequate levees and not allow the whole areas to be flooded under some guise of having to have procedural due process of law.

Mr. Gravel Mr. Perez, essentially all that you are really saying, is that you personally are opposed to procedural due process of law as a constitutional right, isn't that correct?

Mr. Perez I'm opposed under these circumstances, yes, sir, because there are times when the rights of the public, generally, must be preserved against the procedural right of an individual. Yes, sir, I am.

Mr. Gravel Second question is, that there is no doubt in your mind, but that procedural due process does permit summary proceedings by a court, isn't that correct?

Mr. Perez Summary proceedings under those circumstances, sir, would have done nobody any good. My entire community, thousands of people, would have been flooded out if we hadn't moved immediately. I don't mean two days later or three days later, I mean immediately.

Mr. Gravel You're confusing time with due process, aren't you, Mr. Perez?

Mr. Perez No, sir. I'm talking about procedural due process of law, which requires a filing of a suit and a rendering of a judgment, after trial. All I'm suggesting is that we do is to say, "except as otherwise provided in this constitution", and we'll get to that when the time comes to discuss this levee problem.

Mr. Guarisco Mr. Perez, what you are saying is that it's proper, if you find it proper, to suspend rights under the constitution, whenever you so desire, is that right?

Mr. Perez Your question as far as I'm concerned means absolutely nothing, so let's get to specifics.

Mr. Champagne Mr. Perez, don't you agree that these people that have this property realize that at some day they may be called upon, and in buying that property, in acquiring that property, they are aware of the responsibilities they have to their fellowmen? Do you not agree, sir?

Mr. Perez As I've said, the conditions upon which

they acquired that property, was that it was subjected to the servitude for the building of these levees, and that the remainder of their property is not worth one thin dime, unless they have that levee protection. And unless we can provide for immediate levee protection, under emergency situations, then the remainder of that property isn't worth anything.

Mr. Champagne Mr. Perez, do you also agree, that possibly people who have not experienced the ravages of the flood of '27, like you and I did, are unaware of the possibilities of this thing?

Mr. Perez I would like to have had these delegates here, with me when I had this flood fight down in my parish. I guarantee you there wouldn't be a red light on that board for the amendment that I'm proposing.

Mr. Champagne Mr. Perez, I'm sure you have heard from your area, when a Frenchman wants to emphasize a point of significance, he says, "I do this for you, come hell or high water". Have you heard that, sir?

Mr. Perez I can guarantee you, if we don't pass this amendment and if we keep what we have, we're going to have an awful lot of high water.

Mr. Lebleu Mr. Perez, under the present expropriation laws, does the levee board... if the levee board determines that a levee needs to be constructed or repaired, does that expropriate just enough property to build that levee, or does it expropriate....

Mr. Perez The only property that is taken is that which is actually needed for levee purposes, and we have no right to take anymore. Again, I will emphasize to you that all persons are paid fair market value in ninety-eight percent of the cases.

Mr. Lebleu What I was really getting at, Mr. Perez, would the levee board expropriate that property say, between the levee and the river, which would take away the man's privilege of riparian rights?

Mr. Perez That takes absolutely nothing away from him, except that the property is subjected to certain servitudes under our civil code.

Mr. Lanier Mr. Perez, is it not true, that the right to use property immediately adjacent to navigable streams by the state, to build levees for the protection of the people who live behind these levees? Isn't it true, that this is a servitude in favor of the state, that has been in our law ever since Louisiana was a colony?

Mr. Perez That's what I explained a little earlier, that this servitude has existed from the very beginning of the history of this state, and that it has always been recognized. Now, we would provide that we have to have this procedural due process, which is going to end up flooding out many thousands of people before it is all over with.

Mr. Lanier Isn't it also true, that under the jurisprudence of the Supreme Court of the State of Louisiana and the Supreme Court of the United States, that this use of this property to build levees is not a taking, but is in fact, the exercise of a servitude?

Mr. Perez That is correct, because of the fact when the property was divested from a sovereign when it was originally acquired out of either the United States or the state, it was subjected to that servitude and still is. The problem we have, with respect to this particular provision, is that it would require these various procedures to be followed before the property was taken and therefore, would put us in a position where we would be flooded out before we could go ahead and get a judgment.

Mr. Vick Mr. Perez, you are a lawyer, are you not?

Mr. Perez Yes, I am.

Mr. Vick All right, fine. Now there are presumably at least two provisions known to you as a lawyer, and well recognized in the law, that would preempt these. One, I believe, is an act of necessity, is it not? That would have allowed to pick up the cause and fill in the law.

Mr. Perez Would you tell me where, or show me where, this act of necessity comes in, an absolute prohibition against proceeding, unless you follow the procedural due process of law. I believe in reading the words, not conjuring up in my mind, that maybe some court would hold because I had an emergency, I had the right to do something. No, sir, we are writing a constitution. Let's get it in proper form.

Mr. Vick Very well. The other provision that would have allowed you to do what you did, was the police power of the state.

Mr. Perez No, sir. The due process clause in our constitution is an exercise of that police power, and when we put in a prohibition against the taking of property until you have had procedural due process, that is all a part of the police power. We cannot go beyond what will be in this new document.

Mr. Vick But you really believe, and want this convention to believe, that under the "act of necessity" doctrine, one of the most extraordinary procedures, reserved for this kind of emergency, that you could not have done what you did.

Mr. Perez Where is this doctrine in our constitution? Would you please show it to me?

Mr. Vick In writing, no, it's in the Federal Constitution.

Mr. Newton Mr. Perez, I'm in sympathy with your problem, but doesn't your amendment go further than just the problem that you're addressing yourself to? Doesn't it also strike out "or other rights" and doesn't it also strike out "without substantive and procedural due process of law"?

Mr. Perez What I have done, is to take the provision in the present constitution, because of the fact that there have been many, many cases which interpret what this provision means. Yes, I knocked out "other rights", because I have no idea what "or other rights" means.

Mr. Pugh Mr. Perez, I believe your quarrel is with the words "substantive and procedural"?

Mr. Perez Yes, sir, it is. Also, there should be a clause saying, "except as otherwise provided in this constitution", so that when we get around to the problem of levees and the right to take, we will be able to take care of it at that time....

Mr. Pugh I would not have withdrawn my amendment to this section, had I had the phrase "except as otherwise provided in the constitution". I'm not in doubt about that. The words "substantive and procedural", suggest that somebody is going to decide the procedural manner in which a person's life, liberty or property is taken, is that not correct?

Mr. Perez Yes, sir.

Mr. Pugh Is it not a fact that this committee has contemplated in Section 4, a procedural manner for taking this property that concerns you?

Mr. Perez Well, that still will put the levee districts in a position where you do have the requirement for the filing of a suit and the filing

of these various procedural requirements, which is exactly what I'm talking about.

Mr. Dugh. Are you telling me again, is it not a fact, that somewhere we got to talk about substantive and procedural rights? Somebody has got to decide what those are, is that not correct?

Mr. Perez. As I read Section 2, when you say "without substantive and procedural due process", procedural process requires the filing of a suit and the rendition of a judgment after trial.

Further Discussion

Mr. Stovall. Mr. Chairman, members of the convention, I think that Mr. Perez has raised a legitimate concern for our consideration. I don't think that any of us here in this convention would want to pass a constitution that would not make it very clear that persons in that kind of situation would have the opportunity to deal with them expeditiously. At the same time, the other value is an adequate recognition of the due process of law. In order to make sure that Mr. Perez's concern is dealt with adequately, I make motion that we pass over Section 2 until after we have dealt with Section 4. Quite obviously the reason for this is, that in Section 4 hopefully we can have adequate provisions there to guarantee Mr. Perez's concern.

[Motion to pass over Section 2 rejected: 26-42.]

Further Discussion

Mr. Burson. Mr. Acting Chairman, ladies and gentlemen of the convention, I rise in support of the amendment. I am, frankly, disturbed by the tenor of the debate thus far on this article. When everyone was making their declaration of position on the committee early yesterday, I had a few general thoughts raised but this time, I have preferred to keep them to myself because I thought we were going to engage in a debate on the merits of each amendment and each proposition as we had done everywhere else, but it seems to me that the tenor of some of the questions and answers, until this point, seems to imply that any time someone introduces an amendment to any of the sections of the Bill of Rights, that he is against human liberty. Now I reject that. I think that we have got to consider each one of these proposed Bill of Rights Articles, the same way that we have every other thing that we have considered heretofore, and will consider after. I don't think what this committee has done is perfect. I don't think it's altogether bad. I like a lot of it, but I think when delegates raise legitimate objections, that we ought to consider them on the merits and not purely on emotionalism. Now the main point that I wanted to raise with regard to this particular amendment is, that under the Fourteenth Amendment to the United States Constitution at the present time it says, "nor shall any state deprive any person of life, liberty or property without due process of law". In this case, as in many, many other of these sections that we will consider on the Bill of Rights, although not all by any manner of means, the United States Supreme Court has applied the Federal Bill of Rights to the states. Now here, it's not the Federal Bill of Rights, the Fourteenth Amendment applies particularly to the states, and its guarantee of equal protection of the laws and due process of law. Now, I am going to get up when that article comes up, and speak in favor of having an equal protection clause in our State Constitution, for a lot of different reasons. I am in favor of having a due process clause in our State Constitution, for a lot of reasons. I share Mr. Perez's concern about exactly what substantive and procedural due process means. If any of you are familiar with the constitutional history of this country, you know that the United States Supreme Court in the 1910-1939 era, roughly, before they had terms with the New Deal, went in and abrogated a lot of state legislation, such as

child labor laws, and other humane laws, on the grounds of substantive due process. The history of substantive due process as a constitutional principle in United States constitutional jurisprudence is very dubious, and I just wonder what we mean when we use that term here. I don't think we mean that, but I don't know what we mean. Whereas under Mr. Perez's Amendment, which tracks basically the language that has been in the State Constitution, I think I do know what we mean, because we've got a lot of cases that say what we mean. I think due process means due process, and it does mean procedural due process within the limits that we define in our constitution, and it does mean substantive due process. If that has meaning insofar as the United States Constitution guarantees it to us. I think before we start using new words to define new rights that nobody else has ever defined, that somebody owes it to us to get up here and tell us what they mean. I share Mr. Perez's concern that I would like to refer to have it in plain English where I know what it means, rather than to trust to some future court to define it in a way that I hope it will turn out all right. I would like to conclude by suggesting to you, that before we sit down here to adopt a lot of rights that we don't know what they mean, and a lot of rights that no other state has in its constitution, and a lot of rights that go far beyond the rights guaranteed in the United States Constitution, that we should consider whether or not in our hearts, that this is what this is what those who elected us here to do. In my own case, I'm going to have some amendments, later on, that I think address themselves to some changes that go far beyond what the present law is in the area of criminal procedure. I think in the area of due process, if I were in Mr. Perez's shoes and had had the experience that he had with this levee situation, I, too, would be concerned as what does procedural due process mean. As far as the right that somebody introduced into the discussion about a right of necessity, I know of no case concerning that right anywhere, and I challenge anyone to get up here and read me a provision that says anything about it. I would urge you to stick with something that we know what it means in the law.

Further Discussion

Mr. A. Jackson. Mr. Chairman, ladies and gentlemen, I rise in opposition to this amendment, with full knowledge of the problem raised by Delegate Perez, by way of this amendment and by way of his discussion before you. I want to say to you very quickly, but emphatically, that this problem was discussed. We considered precisely the problem raised by this amendment and by the delegate. I would point out to you that in Section 4 of the proposed Declaration of Rights Article, that the committee has provided for this eventuality, that the committee has provided for, and allows, for quick-taking. So there is no need for us to raise undue concern about whether or not this committee is going to protect the lives of individuals. Certainly we're going to protect them, certainly we're going to provide for them. If you read Section 4 carefully, we have provided for this. We have heard arguments raised relative to what we mean by due process. What do we mean by substantive and procedural due process? Ladies and gentlemen, I'm not a lawyer but I have been around enough lawyers to know that when you talk about procedural and substantive due process, that you talk about being reasonable. Is it reasonable for us to not allow for a section or for a governmental agency or authority to capitalize the people? Of course not. There is no logic and no valid argument to make when you use the fact that we have called for a process, that we have called for the protection of the rights of individuals by affording them due process. Let's get to the central question. The central question is whether or not we're going to afford the citizens of this state a basic individual right, that's the central question. Now certainly we are concerned about the problem raised by Mr. Perez, and that's why we have dealt with it, but I tell

you, that in this state today that the lives of thousands of people are being affected. Last year in this state, we affected the lives of a hundred thousand, one hundred thousand students in the schools of this state. We affected them because we did not have a strong provision, which provides for procedural and substantive due process, as it relates to the rights of students. We have to be concerned about this. Thousands of jobs are being taken and being affected, because we don't provide for this and because we don't adhere to it. I would ask that we would consider the central question. The question is, whether or not we are going to afford this protection to the citizens. It is not reasonable for anybody to preclude a governmental authority from acting in the interest of people. It's reasonable for the police jury in Plaquemines Parish to act, and they did act. We have not prevented that, and we have not abridged that.

Questions

Mr. Perez Would you point to me in Section 4, the quick-taking provision to which you refer?

Mr. A. Jackson I'll come back there and I'll do so, sir.

Mr. Perez Well, I would like all of the members, all of the delegates to this convention to have the benefit of your answer. In addition, I ask you the question, Lines 27 through 30, state "the issue of whether the contemplated purpose be public and necessary shall be a judicial question and determined as such, without regard to any legislative assertion". I again ask you, how then can we have a quick-taking, when the defendant has a right to raise the question as to whether or not the contemplated purpose be public and necessary, which requires a full trial on the merits to determine that issue?

Mr. A. Jackson I think that that acts in the interest of the people. I think this provides precisely for what you want.

Mr. Perez My question was directed to how can there be a quick-taking, how can we cope with the situation which I presented to this convention today, under your Section 4?

Mr. A. Jackson I think it's clearly provided, **Mr. Perez**.

Further Discussion

Mr. Jenkins Mr. Chairman, delegates to the convention, it's a bit unfair and certainly very difficult to attempt to jump around and start explaining sections before we get to them, when a presentation would be made at the appropriate time fully explaining the section. For that reason, I'm not going to attempt to fully explain Section 4 at this time because later on I hope to make a presentation on it that I think will explain and answer all your questions. But in regard to the specific question raised by Mr. Perez, quick-taking is allowed under Section 4, lines 18, 19, and 20. Property shall not be taken or damaged except for a public and necessary purpose and with just compensation paid to the owner or into court for his benefit. The omission in that sentence of the word "previously", before "paid", "previously paid", or any such word such as "first paid", the omission of that word allows quick-taking statutes to be enacted. Many other states say "first paid" or "previously paid". They do not allow quick-taking statutes. We would allow a quick-taking statute under this. Now Mr. Perez raises the question of whether or not there would have to be some judicial determination in advance. If he looks at his own proposal, he says that private property shall not be taken or damaged except for public purposes. When will that be determined? After just and adequate compensation is paid, after, he says. The problem is that Mr. Perez's proposal is this. He is saying that he wants to attack the

word "procedural" in Section 2. If he wants to do that, he ought to propose an amendment and take out "procedural". I think the real intent is to get in the second sentence of this section. "Except as otherwise provided in this constitution, private property shall not be taken, etc." His effect of this would be to negate Section 4. Section 4 provides some tremendous advances in our property law. It would give the people some protection for a change in the seizure property. There is very little protection at present. That will be explained at the appropriate time. Mr. Perez has raised the question of flooding and flooding levee purposes. Certainly all of us are concerned about that situation. But Section 4 provides for that eventuality. I wish you would note that fact. Section 4 provides for the question Mr. Perez has raised with regard to flooding, and it does this in the second sentence, where it says that the right to property is subject to the reasonable exercise of the police power." That is a term of order, police power. It means the regulatory power of the state, just as the police power allows a fire inspector to enter your building and remove the premises or to direct you to do certain things, this would allow local governments to enter and make certain preparations against flooding. Now, if the property were to be permanently taken, in such instance, then, of course, you would have to go to court later. But in the mean-time, you could be regulating it to whatever purpose the local government chose. There is no conflict there. But even if there were, even if there were, the place for Mr. Perez to make his changes is in Section 4, not here. If he wants to provide for the right of appropriation as opposed to expropriation, he should do it in Section 4. If he wants to change Section 2 to take out "procedural", he should have an amendment saying take out "procedural". But he shouldn't have this second sentence in there attempting to preempt Section 4 by his statement of how property can be taken. To adopt Mr. Perez's statement is to say this, that since 1921, under our current constitution, we have learned nothing about the abuses of government, of private property rights. It says, in effect, you don't need to worry about your trials, you determine compensation, you don't need to worry about the amount that's going to be paid to people when their property is taken, you don't need to worry about take-over of businesses, as we've prevented in Section 4. So I urge the rejection of this amendment.

Further Discussion

Mr. Sutherland Mr. Acting Chairman, fellow delegates, Mr. Perez and I do not always agree, but in this instance I rise to support his amendment. We have a provision in our present constitution which has been in effect for some fifty years, and has been interpreted by the courts of this state, and has an established meaning. The change in the constitution puts in some new wording which has not, necessarily, which has not been interpreted and will not necessarily mean the things that the authors propose for it to mean. I do not believe in change for change sake. We have heard it said here that other provisions of this Bill of Rights can take effect. From past experience, we don't know whether these future sections of the Bill of Rights will be adopted or not. We don't know whether they will be adopted in the manner in which they have been proposed. This is unfortunate because we've had to adopt this constitution in a section by section basis. Sometimes we don't know until it's all over whether or not we've covered the points we want to cover. Mr. Perez's amendment does say, "except as otherwise provided in this constitution" and he also provides, or it can be provided, that in future sections you can take care of these points that you want to make. Mr. Perez is not alone in the damage to his levees. It happened in Orleans Parish too, just above where I live. The Orleans Levee Board's money is going to go come in and build a levee there, behind the existing levee,

so that we would not be faced with a possible flooding in our area. I am concerned; I share his concern in this instance, because they did not go through a proceeding before they started to build that setback levee. They went ahead and did it and then went into court to determine what was proper compensation for it. I think that this should be given serious consideration, ladies and gentlemen, before you change an established procedure. Thank you.

Questions

Mr. Lanier Mr. Sutherland, have you had a chance to review the comments under the Bill of Rights proposal that was sent to us by letter dated June 22, 1973?

Mr. Sutherland I'm not sure, Mr. Lanier. I've read a lot of it.

Mr. Lanier In the comment on page 5, thereof, it says as follows: "The term 'taking' is to apply to both expropriation and appropriation", so that appropriation would no longer have a special status in Louisiana law. Would that indicate to you that it is the intent of Section 4 to do away with the riparian servitude?

Mr. Sutherland It would certainly appear to, Mr. Lanier.

Mr. O'Neill Mr. Sutherland, I understand that Mr. Jack has an amendment which would delete "procedural" out of this sentence. Would you agree that this, perhaps, is the amendment that we should be debating right now rather than this one which strikes at Section 4?

Mr. Sutherland Well, I don't know, Mr. O'Neill whether it would or not. I do think that we are going to have to worry about this thing section by section. I would prefer to see this section as the amendment proposes. That's why I'm supporting it.

[*quorum call: 104 delegates present and a quorum.*]

Further Discussion

Mr. Guarisco I know a lot of delegates here are not lawyers, so I think I want to try to explain... we are two sections ahead of ourselves, but I think I should try to explain basically what Mr. Perez is talking about in his amendment, in as far as levee servitudes are concerned.

In Louisiana, we have a unique status insofar as the law of expropriation is concerned. One, we have what's called expropriation, and we have a unique animal in this state called appropriation. Now, what's the difference? In expropriation, I think everyone here is familiar with that. Expropriation is the exercise, the right of eminent domain to take property and pay just compensation for that property. Now is it paid? Well, if the people can't agree between the condemning agency and the landowner, then they go to court, have appraisals, and they make a determination of what fair market value is. That's fair. Just remember, expropriation is harsh because it takes your property, but at least you get paid for it. Now, in appropriation, the state, through its police power, can take your property to build a levee, and they do not have to pay fair market value. In fact, there's no law that they have to pay anything but a gratuity. What Mr. Sutherland just said is absolutely incorrect. He said we took the property for the levee and then we went to court to determine compensation. That's not true. You can't determine compensation because there is no provision for it. What they pay you, is the previous years assessed evaluation. I'll give you a good example, went to Judge Tate's court, incidentally. I represented some people who lost seven and a half acres of land, sixteen feet deep, with plant cane on top of it. You know what they got paid? Sixty something dollars. Now, you think that's fair and

adequate compensation? All we want to do is to take appropriation out of the law and put it in the same status as expropriation; whereas the people who lose their land for levee purposes are paid fair market value like everybody else. The cost is shifted to the public, just like the cost is shifted insofar as roads, highways, bridges, ferries and come what may. Now, the historical reason for this was simply that way but you had large plantations and they said, "Well, these large plantations have thousands and thousands of acres and they were riparian, which means they were next to the water, and they ought to give up their own land to protect their own land." But it's not that way anymore. We have many, many small landowners—small farmers, who can ill-afford to give up their property and not be compensated for it. Now Mr. Perez's argument, the answer to his argument as far as emergency situations is exactly what Mr. Jenkins said in that Section 4, irrespective of what Section 4 says, irrespective of what Section 2 says, the right is subject to the reasonable exercise of the police power. The police power of the state or the police power of the levee district, in that instance that takes the property, can be used to take the land for levee servitudes for an emergency. Then, you go into court, as Mr. Sutherland said, and determine compensation. But right now, you can't determine compensation because there is none to be given. I'll yield to any questions.

Questions

Mr. De Blieux Mr. Guarisco, do you know that the Legislature changed the law with reference to compensation for levee purposes, about two years ago? Now, they get paid a fair market value for that property.

Mr. Guarisco I don't know that to be true, but even if it isn't true, I think we should have it in the constitution where the legislature can't change it back to the other way, if such was done.

Mr. De Blieux Well, it's now the law insofar as the statutes are concerned.

Mr. Jenkins Mr. Guarisco, wouldn't all of Mr. Perez's objections be satisfied if one thing and one thing alone were done in Section 4, and that would be that we provided that in the case of flood prevention and control, quick-taking would specifically be granted? Wouldn't that satisfy every objection and argument that Mr. Perez has raised?

Mr. Guarisco I don't think it's necessary, but that could very well be, yes.

Further Discussion

Mr. Alexander Mr. Chairman and delegates, I had hoped that possibly I would pass, but I think there are a few pertinent facts that I would like to remind you of at this time, facts with which I'm sure you are already familiar. Number one, I think it should be pointed out to you at this time that the incidence of floods in this state is an annual affair. But we have not had a serious flood comparing to the magnitude of the flood of 1973, since 1927. That has been 46 years ago. Almost daily, especially right across the street from Plaquemines Parish, in Orleans Parish, the federal government, school boards, the city of New Orleans are expropriating property of poor people. When I say poor people, middle class people, people who own a little ten thousand dollar house, twenty thousand dollar house, thirty thousand dollar house. A delegate has mentioned the fact that the result of the provision or the Bill of Rights section, as now proposed, would be to place a tax burden on the people of Louisiana. We'll say to you, that three million, six hundred thousand people may be better able to bear a burden than one or two poor individuals. Let me give you this example. I was just involved in a case where the city of New Orleans took the property of a little

church and gave them forty-two thousand dollars. Right now, until this point, they have spent eighty-seven thousand dollars trying to replace that building. Now what is happening, am I'm not speaking about just the levee board, because levees constitute, or levee expropriations constitute a small, very small percentage of the property that's taken all over the state annually. Very, very small. In Orleans Parish, we have urban renewal and we have modern cities. I dare say that they have it in Shreveport, or you will have it in Monroe, Lake Charles, etc. Now what happens to this small individual? His property is assessed at fifteen thousand dollars, and maybe that assessment was made three or four years ago. So they may give him twenty thousand dollars for his property, but because of the rising cost of building materials, etc., to replace the same building in another section of the city or anywhere else, for that matter, it may cost him fifty thousand dollars. That is the major problem, and that is the thing that we are hoping to remedy. I think that's the question that has not been addressed in this discussion, and that's why I want to understand before you vote, because there must be improvements. Remember, the Due Process Article, there was a Due Process Article in the old constitution, in Article 1, Section 2, which almost said the same thing. All this section is doing here is improving on the old thing, and the people sent us here to improve on the whole constitution, and that's exactly what we are doing. I'm asking that you will vote against this amendment. Thank you.

Further Discussion

Mr. Roy Ladies and gentlemen of the convention, and Acting Chairman, I didn't want to get up yet because I'm getting up in a little while on another section. I just feel that Mr. Perez's attempt here, to instill fear in threats of flood and what have you, is a charade. It's not correct. It's inaccurate, and it's premature. I'm not concerned so much right now that he does not have some problem that in his mind cannot be worked out later on. I am concerned with the fact that in my judgment, this is nothing more than an attempt to scuttle this entire Bill of Rights, this entire Declaration of Rights, that we have spent so many months on. I'm going to tell you that throughout this Bill of Rights there is one silver lining that goes. There is a silver thread that runs from the beginning of this Bill of Rights or Declaration of Rights to the end. That silver thread is the individual, and no one is going to make me, as a member of that committee, back off of our attempt to protect every individual in this state. Section 4 is captioned, "Right to Property". It presupposes that we are dealing with people who have something, with the "haves" of this state. We have made it our business that when you take from a "have", you are going to pay him what is due. What is due? Well, in the past fifty years, what Mr. Sutherland said about the courts having been interpreting the expropriation article is safe and sound and we don't have to worry about it in the future. That begs the question. For fifty years, people have been denied adequate compensation when their property was taken. They are still doing it. A right-of-way agent goes to a person's land, goes through it, and evaluates the value of the taking at five thousand dollars. Later on, the state files a lawsuit and expropriates it. Fine, we do know that you have to have the right of expropriation. Then, when the case goes to court, the poor landowner knows that his property is worth fifteen thousand dollars. He gets an attorney, the attorney has to charge him a percentage of the difference over the amount that the state offered. The landowner comes out with ten thousand dollars, let's say, when he should have gotten fifteen from the beginning. We have provided for that in the future, because when we say that our courts now will be able to give to the landowners to the extent of the loss, we're going to allow the courts to be more flexible. Take, for instance, a little man and wife who have

got a store, and have worked and saved for fifty years, attached to their house. They have five thousand dollars in wood. It's a little piece of lot. The state comes and expropriates it and gives them the mere five thousand dollars. Sends a man and woman to look for a new place to live, that they can purchase for five thousand dollars, and a new business that they can't engage in because they have nothing left. Is that fair? Now we have sought to take care of that. Now, Mr. Perez's amendment is just not kosher. It's not right to try to emasculate the rest of this document, which deals with the right of an individual by giving a harem-scarem argument about the levees in his parish. There is nothing that prevents the police power of the state from attaching or filing a suit immediately and getting a court order signed attaching whatever property is necessary for the riparian owner. Mr. Perez knows, and Justice Tate will probably tell you, if you go ask him, that the riparian right of the state, of the servitude that it has along rivers, gives it the absolute right to take in the public interest, and that public emergency always under the police power of the state have permitted the state to take action when due process would otherwise be required. Section 4 deals with that, but if Mr. Perez is really worried about Section 4, well, then let's deal with Section 4 when we get there. Let's not get scared and running wild. We have tried to protect the little man, the big man, the individual in this particular Bill of Rights and in these two sections. I urge you to defeat the amendment, and then if it properly comes up in Section 4, reconsider it. If you're not sure that Section 4 does not give Mr. Perez the protection that he claims he needs. Thank you.

Questions

Mr. O'Neill Mr. Roy, have you noticed that the greatest proponents of this amendment all seem to be what we call "local government people"?

Mr. Roy I've gathered that, Mr. O'Neill. I don't make any... you know. I just really don't know. I know Mr. Perez is with local government.

Mr. O'Neill Well, you've raised the issue of a charade, and that's the point that I wanted to get at. Maybe they're after something more than what it seems.

Mr. Roy I think the charade is Mr. Perez trying to scare people to death with flood control when he knows good and well that the police power of the state has the right to take action to protect and defend itself in emergencies. I think he knows that better than anyone else. He may not like it, but he knows it.

Further Discussion

Mr. Avant I rise to oppose, fellow delegates, Mr. Perez's amendment. I don't say that Mr. Perez does not have a problem which may, at the proper time, require the attention of the delegates to this convention with the time to solve that problem. It is in Section 4, when you get to the section dealing with the power of eminent domain, or the right to take private property for public purposes. We're not dealing with that right now. We are dealing with the right of due process of law. But if you adopt this amendment, when we get to Section 4, we're going to be told, "Well, we can just delete Section 4 because we've already taken care of that problem." Now let me disabuse you of one impression that you may have gained. You may sound dramatic to speak of levees breaking and people drowning and it is dramatic. It may sound dramatic to speak of taking property for the public good to build highways and other public works. But let me tell you something, that's not what we're talking about, exclusively. We are talking about the right of private corporations to take your property for so-called "public purposes." That's why we want to go back and put

into this constitution this provision that has a well interpreted and understood meaning in the jurisprudence. You know what that meaning is? It means that if a private corporation goes to the legislature and through the lobbying process can get them to vote for such and such a purpose is a public purpose. The Supreme Court has said the courts will not look behind that. That's what we mean, and that's what we're talking about. Every pipeline is a public purpose, in law, whether it is a public purpose in fact, or not. I had a case where a major oil company expropriated my client's property to build a pipeline from one of their refineries to one of their distribution systems on the Eastern seaboard that had absolutely no public purpose connected with the people of the State of Louisiana. That's what we're talking about, and what they don't want, is this little last three lines in Section 4, which says, "The issue of whether the contemplated purpose be public and necessary shall be a judicial question and determined as such without regard to any legislative assertion." Under the present state of the law in this state, if the legislature, in its wisdom, decides that roller skating rinks are a public purpose, they can take your property for a roller skating rink and you can't question it in court. That's what we're talking about. Make no mistake about it. Let's get to the question of expropriation of property and the right of eminent domain when we get to the section dealing with that. But let's don't go back and put this well interpreted provision of the Constitution into this section dealing with due process of law, so that when we get to Section 4, we will hear, "Well, we've already covered that. Let's just delete Section 4."

Further Discussion

Mr. J. Jackson Ladies and gentlemen of the convention, I'll be very brief because I think that the opponents of this amendment, particularly Mr. Avant, as usual before I get up here, somebody really brings out the point and crystallizes it. But I'd like to state and raise my comments to some of the arguments. Once it has been mentioned the words "substantial" and "procedural" are very ambiguous. My suggestion is that if it's ambiguous, we've been operating under those terms, either in the constitution or in the statutes for some time. I want to talk about the issue of flood protection. I just feel that Section 4, as been mentioned, provides those persons, provides all of us, cause I think we all are concerned about flood protection. Section 4 provides us with the opportunity to deal with it. People have made reference back to the flood of '27, I want to suggest to you that I personally experienced the flood or the hurricane known . . . as the result of Hurricane Betsy. On the matter of levee protection, as such, I think, I'm not a farmer, but it's my appreciation, spending some time in St. James Parish, up around there, that when you talk about the levee areas and the land that's around the river, you are basically talking about the most fertile part, or the most fertile lands that are available to farmers, cattle raisers, and persons involving agriculture. In the past, there has been some abuse under the present constitution whereby these lands have been taken without one, due process, and secondly, without just compensation. It's my understanding just recently, on the threat flood threat this we had, that levee districts and levee boards are just like the highway department. They can project, over a period of three years, the need for levee protection. So that the question of expedition, I think it's a relevant question, but at the same time, you can project, particularly with the assistance of the United States Corps of Engineers, what's going to be the various flood levels or flood stages that are anticipated, or put, or any turn in terms of a body of water. Which means that it gives you a little time, it gives the levee board ample time to begin the negotiations for particular properties. I would also say that, in effect, that the constitution provides that government must provide for the general welfare of

the citizens of the State of Louisiana, would provide you with a vehicle whereby, if it became utterly necessary for someone, or some police jury, or parish jury, police jury or government body to expropriate a certain piece of land because of the immediate danger of a flood, then that will provide a means by which you can do it. I would seriously ask this convention to reject the amendments and deal with this question of flood protection, deal with the question of due process . . . the question of just compensation in Section 4, as presented by the committee. I urge adoption. Mr. Chairman, if there are no more speakers behind me, I move the previous question. Well, I withdraw it, Mr. Chairman.

Mr. Perez In order that we may properly divide the issues, I ask that the amendment, that I be allowed to make a technical amendment to the amendment which would provide that the first sentence would be Amendment No. 1, the second sentence, Amendment No. 2.

[Motion for withdrawal amendment adopted: 93-11. Amendment withdrawn and re-submitted with correction.]

Amendment

Mr. Poynter On page 2, delete lines 3 through 5, both inclusive, in their entirety and insert in lieu thereof the following: "Section 2", and the first sentence only.

Then, Amendment No. 2. Add the following after the words added by the language added by Amendment No. 1, and then add this second sentence.

So it would be drawn in such a way that the question then, and I presume Mr. Perez would call for a division of the question, and you would be able to divide and vote separately on the amendment.

Further Discussion

Mr. Gravel Mr. Chairman, and ladies and gentlemen of the convention, I speak in opposition to the amendments by Mr. Perez. The first amendment would, of course, seek to delete the language that has been prepared by the committee and that has been recommended by the committee, and would, of course, eliminate from that language the requirement that substantive and procedural due process be accorded to every person in the protection of his rights. Now, ladies and gentlemen, the suggestion that Mr. Perez made with regard to the flood situation in Plaquemines Parish is just absolutely not appropriate, in my judgment, as an argument in support of his contention. This process that has been held many times has been compiled with in cases where, because of certain exigencies or necessities, the courts have granted immediately, and without hearing, mandatory restraining orders or mandatory injunctions. I don't think that Mr. Perez would have a great deal of difficulty getting some judge to sign a temporary restraining order or a temporary mandatory injunction in Plaquemines Parish in the case of an emergency. Matter of fact, I don't think he's had much trouble getting them to sign them in cases when they weren't an emergency. Now, I submit to you . . .

Mr. Casey Just a minute, Mr. Gravel, as Chairman of the Convention, I would suggest that the remark is out of order. I would suggest that any remarks by all delegates be on the subject matter with no personal references whatsoever.

Further Discussion

Mr. Gravel Well, I didn't mean that as a personal reference. I'm talking about him as a lawyer or any other lawyer that presents a judge, whether it be Mr. Perez, or me, or Mr. Roy, or anybody else, a meritorious position for a temporary restraining order, in cases where emergencies do not exist. What I'm saying, and I want to make this point clear, is that the problem that Mr. Perez

presents and poses just is not one that violates the concept of due process. Now every lawyer, I think, knows that. What we are trying to do, and what the committee is trying to do in this proposal, is to make sure that the rights of every individual are fully protected and that both substantively and procedurally the courts will have to act before those rights are deprived from that individual. This is just the fullest possible expression that can be made.

Mr. Chairman, ladies and gentlemen of the convention, we've done a state in the legislative article for the legislators and elected officials. In the executive article we've done a lot for the executive officials and for the governor. In the judiciary article we've taken care of judges and district attorneys and coroners and sheriffs and assessors and others. Now it's time, as someone has previously noted, to take care of the people, to protect the rights of the people against arbitrary, capricious, and unreasonable action by local governing authorities, by state governing authorities, and by the federal government. It is time for us to start that process in a Bill of Rights, not a Bill of Rights such as the one that was contained in the 1921 Constitution that didn't even provide for an equal protection clause for the citizens of this state, but a Bill of Rights that is full and fair and equitable and just for all of the citizens of the state of Louisiana. I submit to you, ladies and gentlemen, that there is going to be, and I'm not accusing Mr. Perez personally of doing it, but there is going to be a planned, systematic effort to try to chip away at the rights away this block of rights that has been confected and composed by a committee that has heard hundreds of witnesses that have worked with the staff for hours and days, weeks and months, and there is going to be an effort to try to undo what I believe, the great basic article I submit to you, that at the outset, on these principles that mean so much to the people of the state of Louisiana, to all people, that we don't permit this process of erosion and chipping away to start now, because if it starts now, we are going to see a flood of changes that will take away from the people those rights that this article, I think, guarantees them. I strongly urge that you oppose the amendment. As far as the second amendment, Amendment 2, now that that matter has been divided is concerned, that argument, if any, can and should be made under Section 4. It's confusing to bring it up now, and I suggest to you that it should and must be defeated. It's not ... It's not going to be laid aside so it can't be considered under Section 4, but it certainly does not belong to be considered here. Let's support the action of this committee, and I urge you to defeat the amendment.

Further Discussion

Mr. Drew Mr. Chairman, ladies and gentlemen of the convention, I certainly would never take issue with the member of any committee in supporting their committee proposals, and I do not do it at this time. But I certainly take issue with the attitude that has developed in this committee proposal that we are dealing with a perfect proposal that should never be amended. Let me remind the members of this committee because a few of them have taken the attitude that we are talking about the Ten Commandments, not a proposal prepared by a few human beings. What I violently take issue with is the questions and the remarks made during the debate on this section that every amendment offer has some sinister motive. It's strange that these sinister motives didn't appear on the other three sections, but all of a sudden, if you do not agree with this committee proposal, there is some sinister motive in your amendment. I violently take issue with that statement. Mr. Roy is going to tell you how, and apparently he must have made a survey of the State of Louisiana, the little man was deprived of the value of his property. Let me tell some of you something that didn't go into Mr. Roy's statistics. In the parish of Webster, when I-20 came through there, the landowners that

were crossed and had their land taken by this right-of-way were paid on an average of a thousand dollars an acre, and ladies and gentlemen, let me tell you, there was not and has not been one acre of farmland in the parish of Webster since its beginning that ever sold for a thousand dollars an acre, and it's not selling for a thousand dollars an acre today. So, don't you buy the fact that our courts are depriving the people of their just rights. They have their just rights. I am not going into a lot of detail about this amendment. I am going to support both amendments because I think it's good. I think it says what should be said and nothing more. You'd better stop and think awhile. This is serious business, this Bill of Rights, and you'd better see if you can find out what rights are as they are used in the committee proposals. They say they are rights guaranteed by the constitution. Are they rights granted by the legislature? What are rights? How far does the mere word "rights" go when you're talking about them in this connotation? Now they have told you time and time again from this podium that everything is going to be cured in Section 4. Ladies and gentlemen, if we adopt Section 4 as written, we may as well go home. Because, in my humble opinion, I think it is the most abuse that I have ever seen, and when we are talking about personal rights, you get up here and it's like talking about motherhood. But gentlemen, Section 4 does not remedy this. The things that have been told you about Section 4 have been primarily taken out of context, and you can't take a section, a portion of a section, and say this remedies the whole thing. You have to take the section in the context in which it is written. My primary purpose was not to discuss the amendments that were offered, but to remind you, ladies and gentlemen, that this proposal was submitted by human beings and can be improved upon. Thank you.

Questions

Mr. Burson Mr. Drew, as a lawyer with many years of experience, are you aware of any other use of the term "substantive due process" in American law, other than its use during the 1920's and 30's to strike down state laws on minimum wages and child labor and other progressive legislation?

Mr. Drew I would have to agree with that statement, Mr. Burson, and I think the use of the terms "substantive" and "procedural" in the committee proposal is absolutely useless and should not be in there.

Mr. Roy Mr. Drew, isn't it a fact that I-10 was a federal project?

Mr. Drew That is correct.

Mr. Ro The citizens of Webster Parish got compensated adequately because once again the federal government had to do it. Isn't that...

Mr. Drew The federal government had nothing to do with it. The entire right-of-way was acquired through the state courts of the State of Louisiana.

Mr. Roy Don't you know that the federal highway program provides that they will even pay for movement of some new or more owners or some owner whose house they expropriated, Mr. Drew?

Mr. Drew I'm not talking about moving houses. I'm talking about open farmland, Mr. Roy.

Mr. Roy Isn't it a fact...

Further Discussion

Mr. Champagne Mr. Chairman, ladies and gentlemen, delegates to this convention, we have here one of the most serious times in this convention, and I come before you in support of the amendment, not because it is sponsored by Mr. Perez, as some of

you attempt to insinuate, or not because I am necessarily in opposition to what the committee has composed, put before us. But I am in support... Neither am I in support of the amendment simply because it deals with the constitution of 1921, because I am an advocate of change. But I am not prepared, I am not prepared, and the people who sent me here are not prepared, to go forward with changes which the people who appeared on this podium were not able to explain to you just what they meant. We asked them, "What do you mean by other rights without substantive and procedural?" They said, "Well, we don't know, but possibly some rights in the future." While I am for change, I am not ready, and I cannot justify change which is unexplainable to me or the people who sent me here. For that reason, I support, as much as I can, the amendment that is before us, and I would do so if I were the only person who would do so.

Questions

Mr. Roy Mr. Champagne, I don't want to argue and all that because I see it may be getting out of hand, but do you realize that about twenty-five years ago the vote was called a privilege and people had the privilege of voting? Do you remember when people spoke about the privilege to vote?

Mr. Champagne I understand that, Mr. Roy.

Mr. Roy Do you agree that it is a right in this day and time?

Mr. Champagne That it is a right? Yes, it is.

Mr. Roy Now, don't you agree then that "other rights" can mean those things which today may be privileges may later, because of the value of them, be determined by a court to be a right that must be accorded due process before being removed from the individual just like the vote was?

Mr. Champagne Mr. Roy, if by your questions you would insinuate in the least that I would be against those rights, you know as well as I do that you're wrong, sir.

Mr. Roy I didn't insinuate that. I said, "Twenty-five years ago, didn't people speak of the vote as a privilege and not a right?"

Mr. Champagne I would imagine so. I wasn't here at that time.

Mr. Roy Didn't it later metamorphose, or because of feelings change into a right, and wouldn't the court twenty-five years ago have had to say that we can deny you the privilege of voting without due process of law because it is not a right, but now it would have to say we would have to grant it to you?

Mr. Champagne Mr. Roy, the thing that bothers me is that none of these rights, possible rights, things about which we knew nothing about, were explained to us. We only say we're taking care of something, and I might by further explanation of your question state that I know of nothing in the national constitution that implies that either, but we have certainly got the right to vote.

Mr. Roy Because it became a right after having been a privilege, isn't that true?

Mr. Champagne I would imagine that it became a right after interpretation in which they found no difficulty in interpreting it in language similar to this.

Mr. Roy And perhaps in the future a court could decide that what is presently a privilege, for instance a job privilege, may in the future be a right that would be one of those other rights we are talking about. Wouldn't that be true?

Mr. Champagne Mr. Roy, I have complete faith in the courts, in the legislature and all branches of government.

Mr. Roy So do I. That's why we let the courts decide.

Mr. Willis Mr. Champagne, we are merely playing on words here. A privilege is a right. Isn't that correct? It doesn't reach maturity to the extent that it becomes a right. Isn't that correct?

Mr. Champagne Correct.

Mr. Willis Now, pray tell me, if this decade of men who presented this proposal say it is perfect, how is it come they can't tell what it means as for "other rights"? They cannot define it with fastidious precision.

Mr. Champagne I think because they are a little too futuristic in their writings at this time.

[Previous question ordered.]

Closing

Mr. Perez Mr. Chairman and ladies and gentlemen of this convention, I think that we have gone around and around on many subject matters which have no real bearing on the amendment before us. I heard, for instance, Mr. Guarisco talking about some poor farmer who can't get compensation as a result of a levee, probably an enlargement. I don't think he probably knows the difference between an enlargement and a levee setback, but those are subject matters which we will get into when we get into the levee proposal. But, let me assure you, as a person who has been involved in levee problems over these many years, we do compensate our people adequately and fairly for their property taken. In addition to that, no levee is ever moved unless the United States Corp of Engineers comes to the local levee district and says it must be moved. Let's don't be bogged down by this idea that some local governmental officials have some ulterior motives. I can assure you that that is not correct... I would also call your attention that one of the opponents of this particular amendment has said that we have got to take care of the people, and that is exactly what I am trying to do with this amendment, is to take care of thousands of people and the property of thousands of people to make it possible for the emergency removal of levees in order to protect the lives of thousands of people. Let me suggest to you that all that we will be doing if you adopt the first amendment will be to delete the words "or other rights" and the words "without substantive and procedural due process of law".

It must be moved. Let's don't be bogged down by this idea that some local governmental officials have some ulterior motives. I can assure you that that is not correct... I would also call your attention that one of the opponents of this particular amendment has said that we have got to take care of the people, and that is exactly what I am trying to do with this amendment, is to take care of thousands of people and the property of thousands of people to make it possible for the emergency removal of levees in order to protect the lives of thousands of people. Let me suggest to you that all that we will be doing if you adopt the first amendment will be to delete the words "or other rights" and the words "without substantive and procedural due process of law". I ask you who is trying to pull what over whose eyes? I submit to you, ladies and gentlemen, that if we adopt the first amendment, which I have offered, that is, the first sentence which says that "no person shall be deprived of life, liberty or property except by due process of law." If that sentence so that we can take it up in Section 4 to meet the objections posed by many of the persons who claim that we are getting into the territory of Section 4. I therefore, urge you to adopt Amendment No. 1. I answered many, many questions when I was up here before. I think that we have discussed this subject matter ad nauseam, and I will not yield to the question for that reason.

[Division of question ordered. Amendment

No. 1 reread. Record vote ordered.

Amendment No. 1 adopted: 60-51. Motion

reconsider tabled. Rules Suspended and Amendment No. 2 withdrawn.]

Personal Privilege

Mr. A. Jackson Mr. Chairman, ladies and gentlemen, I simply rise for a brief moment to assure the members of this constitutional convention that while we have had exuberance expressed by members of the Bill of Rights and Elections Committee, I hope that I can convey to you that there has never been any intention on the part of any member of this committee to even suggest that we ought not to debate, that we ought not to accept amendments, that we ought not to consider the valid judgment and wisdom of members of this constitutional convention. I think it is important, as chairman of this committee, that I say this because I have heard it expressed about two times, and it grieves me very much for members to feel, by way of the questions and by way of the strong feelings that have been discussed, that there is some intention or some conspiracy or plot to prevent members of this convention from giving full attention to the very important decisions that are being made. Secondly, I heard someone express the feeling that the members of this committee felt that we were perfect. No mortal is perfect. No human being, a part of this constitutional convention can ever say that they have reached a degree of perfection that cannot be improved upon by the collected genius and wisdom of this convention. I wanted to say to you out of the fullness and deepness of my respect for all of the people of this convention, no matter what your persuasions are, that I respect your opinion, that the members of this committee respect your opinion, and that we intend, and that as far as I can do anything about it, we will give full attention and honor the wisdom and judgment of all of the people who offer suggestions to these proposals that we have presented by way of sections and by way of this Declaration of Rights Article.

[Previous Question ordered on the Section. Section passed: 109-1. Motion to reconsider tabled.]

Recess

[Quorum Call: 102 delegates present and a quorum. Motion to revert to Section 1 adopted.]

Amendment

Mr. Poynter What we have before you are the two Lanier amendments and what Mr. Lanier has done, rather than voting separately on two amendments, he has requested a technical amendment to be added to his first amendment which would consolidate the two of them. So you have one set of amendments which read, Amendment No. 1 *[by Mr. Lanier]*, on page 1, line 32, after the word "inalienable" and before the word "and" insert the following "by the state". He has made, as Amendment No. 2 to the same set of amendments, the other Lanier amendment which adds the same language. Amendment No. 1 on your sheet now becomes Amendment No. 2, on page 2, line 1, after the word "inviolable" add the words "by the state".

Explanation

Mr. Lanier Mr. Chairman, fellow delegates, as you will recall, during the discussion of this section, the question was brought up as to whether or not the terms "inalienable" and "inviolable" was intended to mean that an individual could not intelligently waive a certain right under circumstances as prescribed by law. For example, in many circumstances in court, a defendant may wish to intelligently waive his right to a trial by jury, and prefer to be tried by the judge. In order to make it absolutely clear that what we're talking about here is that these rights cannot be violated by the state, I've added in these two amendments to clarify

fy this point. With this amendment, it became unnecessary to have Mr. Arnette's amendment, and I have been authorized by the chairman of the committee to advise you that the committee has no objection to these amendments, so I think it's a pretty clear thing and I would move the adoption, Mr. Chairman.

Questions

Ms. Zervigon Mr. Lanier, in Section 1, the final sentence would then read, if your amendments were accepted, if I'm correct, "the right to enumerate in this article are inalienable by the state and shall be preserved inviolate by the state?"

Mr. Lanier Yes, ma'am.

Ms. Zervigon What is the phrase, "the right to enumerate in this article are inalienable by the state", mean? Does that mean the state cannot alienate the rights of the people?

Mr. Lanier The state is incapable of alienating, surrendering or transferring these rights. I had these words looked up in the dictionary to make sure of their meaning, and if we didn't make it clear that it was intended to apply to the state, it could be construed to mean that an individual could not waive these rights intelligently under certain circumstances which would cause a great deal of problem with some of the other rights that we're going to be dealing with later on.

Ms. Zervigon Then, when you continue and say, "and shall be preserved inviolate by the state", that puts the duty on the state to make these rights...to have these rights preserved inviolate?

Mr. Lanier That is correct.

Ms. Zervigon Thank you.

Mr. Jenkins Walter, the thing that occurs to me, in our consideration of this Bill of Rights and other Bill of Rights, is the fact that we're dealing in this Bill of Rights with state action. We're talking about preventing the state from abridging certain rights. We're not dealing with individuals abridging one another's rights. That's dealt with in our criminal law. Isn't it really unnecessary to say that these rights are inalienable by the state, since that's what this whole Bill of Rights is about, what the state may or may not do?

Mr. Lanier Quite frankly, Mr. Jenkins, it's my feeling that this language is unclear as it presently exists, and some of my fellow delegates feel the same way and that's why I was constrained to put this language in to make it absolutely clear about which we speak.

Mr. Singletary Mr. Lanier, under your amendment, could individuals alienate their rights while the state could not?

Mr. Lanier Yes, if they do it intelligently and in the manner prescribed by law. I think the waiver of trial by jury is a classic example of that.

Mr. Pugh How did you define inalienable?

Mr. Lanier Inalienable, in Webster's Seventh New Collegiate Dictionary, means incapable of being alienated, surrendered, or transferred.

[Previous question ordered on entire subject matter. Amendment adopted: 122-0. Motion to reconsider tabled. Section passed: 119-0. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter "Section 3. Right to Individual Dignity. Section 3. No person shall be denied the

equal protection of the laws nor shall any law discriminate against a person in the exercise of rights on account of birth, race, age, sex, social origin, physical condition, or political or religious ideas. Slavery and involuntary servitude are prohibited, except in the latter case as a punishment for crime".

Explanation

Mr. Roy May it please this honorable convention. More than two thousand years ago, in book four of "The Politics", the world's greatest philosopher, Aristotle said, "if liberty and equality, as is thought by some, are chiefly to be found in democracy, it will be best attained when all persons alike, share in the government to the utmost". Notice, Aristotle did not state, "When all like persons", but "when all persons alike share". For eighteen hundred years man anguished, suffered, fought, and was oppressed by sovereigns, until 1789, a group of daring, intelligent, and mostly God-fearing men, met in Philadelphia, and concocted a document which said, "that all men were born equal and endowed by their creator with inalienable rights", among which was the pursuit of happiness. Yet, as idealistic as this group was, still to adopt the constitution of the United States of America, certain men were referred to as chattels, and thus arose the three-fifths clause. Others, women and children were never considered as having basic rights except those specifically granted. Seventy-odd years later, this great nation was locked in a Civil War testing the validity of the doctrine of slavery, acquiesced in the constitution of the United States of America. This war resulted in the Fourteenth Amendment which gave equal protection to all men. Nevertheless, still certain segments of the population remained unequal even with respect to basic democratic rights, such as suffrage, until the early 1900's when the Nineteenth Amendment to the United States Constitution was adopted. Still there remains the invidious discrimination for unequal protection of the laws in our great state. Today, I ask you to consider this idea or notion of discrimination. Not as some intellectual far-out foreigner, but as a young Louisianian, born, nurtured, reared, and educated by our schools. Not as a sanctimonious know-it-all, but as an honest, dedicated man who, but for his Cajun accent, has never felt the pains of discrimination, and who abhors arbitrary standards of all discrimination. Nor am I too proud to tell you that only last night, for the first time in years, I fell on my knees to ask guidance of a divine wisdom, much greater than mine, to fully explain this great section.

What do I ask? Only that you treat, and really read and consider what we have written, that no person will be denied the equal protection of the laws of this state, or subject to the whim or caprice of state law or conduct, because of birth, race, age, sex, social origin, or physical condition. In layman's language, this section simply means, that if a person is denied the equal protection of, or is discriminated against, by state law or conduct, based on arbitrary standards, that law will be stricken down. It does not mean that no law may be enacted which treats these categories equally, but that all laws must be reasonable with respect to any discrimination imposed upon any person of this great state. Legally, it merely shifts to the state, the burden of proving that if a law or policy is discriminatory with respect to any of these categories, the state must prove that the basis for the discrimination is founded on reason. Are we asking so much of this state? Is it wrong to say that if you, the state, choose to discriminate against me, there must be a reasonable basis upon which the discrimination lies? We think not. You may inquire, does there exist a need for specifically setting forth these classes as we have done? We believe there is, for two main reasons. First, the federal courts have failed to apply the Fourteenth Amendment to all of these classes. Thus, millions have been, are now, and will continue to be denied equal protection of our laws. Second, we

believe that our great state should lead our own citizens to a body politic in which we recognize the sacredness of the individual without the necessity of federal intervention, and that our great courts should interpret our new ideals of equal protection. Surely there will be questions of interpretation which will necessarily follow this section, and all sections and articles of this new constitution, but our courts will interpret our state constitution. We're on the threshold, finally, of forging an instrument which, for our citizens, may result in all persons sharing alike in liberty and equality of this democracy, as Aristotle stated. Let us not fumble this great opportunity to fulfill that ideal. Let us adopt this section in toto. We have lived with this section for five to six months. If you have any questions, I certainly will be happy to answer them.

Questions

Mr. Munson Mr. Roy, I assume you had this epistle placed on our desk from the Yale University Law School.

Mr. Roy Which one? There are two, Mr. Munson? I have one...

Mr. Munson It's addressed to you.

Mr. Roy Yes, sir, I did.

Mr. Munson Do you realize that I, and I believe some others, could really care less what the Yale University Law School thinks about the Equal Rights Amendment, or any other subject matter, for that matter?

Mr. Roy I agree with that, Mr. Munson. I'm not saying that I think you're right, in making that statement, but I put this letter out because the opposition to this amendment voiced by some female groups, was that the Yale Journal specifically raised all kinds of horrible issues that could arise, and that was the reason I wrote the Yale Law School and for no other reason. I'm not trying to influence you by any Yale thinking. I'm trying to influence you by my thinking, as a Louisianian.

Mr. Rayburn Mr. Roy, I can thoroughly understand where it says "no person shall be denied the equal protection of the laws, nor shall any law discriminate against a person in the exercise of rights on account of birth, race, age". We have in this state a law that says "you cannot be a law enforcement officer if you are over the age of thirty-five". What effect would this language have on that? We also have a, more or less, I don't really know whether it's a law or not, where if you're over fifty-five, you can't work for the highway department, where you're out there mowing the grass, where your age might be detrimental to you. What effect will this language have on those provisions that we now operate under in this state?

Mr. Roy Senator Rayburn, it'll have none unless the provision or the law is unreasonable and arbitrarily discriminates. Now, let me go one step further. J. Edgar Hoover, of course, was the chief law enforcement officer in the United States for many, many years, would not have been eligible to serve as a police chief, but in my opinion, a thirty age may be discriminatory. I don't know, but it would have...it would simply shift, Senator Rayburn, the burden of proof from the individual when he shows that he is discriminated against because of an age factor that has nothing to do with the job. It would simply shift the burden to the state to show that that age factor was a legitimate consideration, and if it showed it, then the law, of course, would be constitutional.

Mr. Rayburn Would that mean, Mr. Roy, and I don't see any of those "if's" you just spoke about in this language I've just read here, would that mean that if I'm forty-five years old and I'd like to

38th Days Proceedings—August 29, 1973

be a state policeman, I would not hire me a lawyer and go to court to see whether or not I'm capable of fulfilling that position.

Mr. Roy: No, sir, Senator Rayburn, it doesn't necessarily mean that, but certainly you would have the right to at least try. You know everybody has the right to bring a lawsuit, but I would think that an age limit of forty-five to become a state trooper is a reasonable exercise of the legislative power and would not be stricken as unconstitutional.

Mr. Rayburn: What about a person that, say, was over sixty-five? Would they be acceptable for state employment where now they have a rule that if you're over sixty-five you're not acceptable?

Mr. Roy: No, sir, I don't think they would be. By the same token, I don't think that people who are over fifty, if the state passed a law and said anybody fifty or older can't work, I don't think that would be constitutional.

Mr. Rayburn: What about where we just passed earlier, where a judge has got to have mandatory retirement at seventy? Could he come back in and get a lawyer and go to court and say he wanted to serve until he was eighty?

Mr. Roy: No, sir, for two reasons. When the judge takes the position, or runs for the position, he runs with the tacit contractual agreement that he will abide by rules. Secondly, retirement systems are basically fundamentally correct, and as long as the age factor is not a discriminatory one, that is unreasonable, he certainly would be bound by it.

Mr. Rayburn: **Mr. Roy:** I'm not an attorney, but I have learned a little in my travels in life, and I'm reading here where it says, "no person shall", and I don't see anything about if he entered into an agreement or knew something was this way or that way. It says, "no person shall". I've always been taught that the word "shall" was mandatory, legally speaking.

Mr. Roy: No, Senator Rayburn, that, of course, refers to "no state action shall deprive a person", that "no person shall." In any event that your theory is defeated because a person may waive the right to jury trial and everything else and plead guilty to a crime. Certainly if you followed your logic, you couldn't do that. You may waive certain constitutional rights.

Mr. Burns: **Mr. Roy:** Most of my questions were answered in your discussion in answer to Senator Rayburn's question, which brings me down to asking you, why was age included in this?

Mr. Roy: Age was included for one primary reason, **Mr. Burns:** We are concerned with individuals in the state. If you will be bothered by you personally, but if you all will bother to read the situation of the elderly in this book that was put out by the state, you will be appalled at their circumstances. We merely say this, **Mr. Burns:** That every citizen is entitled to be discriminated against, on a reasonable basis. Age is not a reasonable basis unless the legislature or the state shows that it is a fair consideration. Suppose, fifteen years from now, the legislature says no person may work for the state who is fifty years of age or older. I think that we should have some protection so that the courts may look into it and decide whether that is reasonable or not.

Mr. Burns: Let me ask a question, a hypothetical question, just to see if I understand how it would work in certain instances. Let's leave the state out of it. Suppose a big old overgrown country boy, or city boy either, say fourteen years old, would go to a person and apply for employment, and he said...

Mr. Roy: Go to a person or the state?

Mr. Burns: No, to a private individual.

Mr. Roy: This deals with state action, **Mr. Burns:** I'm not going to be caught in the other trap.

Mr. Burns: In other words, if someone is applying for private employment, just a matter.

Mr. Roy: No, sir. State action always.

Mr. Burns: Then as I take it, the question that I'm going to ask, maybe is covered by your answer to Senator Rayburn's question with reference to highway cops and so forth. Would this section have any bearing or effect on our present child labor laws?

Mr. Roy: No, sir, **Mr. Burns:** You know full well that the idea of the state in dealing with persons in the police power of the state is paramount even to that of parents, and it does not affect the minority age. It deals only with adult age, majority? That's where it deals.

Mr. Roemer: Chris, would you address yourself to the problem of the enumeration of these rights, so-called, versus the cutting off at line nine and just "the exercise of rights." Why do we have to enumerate these various rights?

Mr. Roy: We feel that we have to enumerate these various rights because we think that our citizens are entitled to have our court protect them in the future. It's been too many times that even the Supreme Court of the United States has dodged the issue with respect to equal protection. We want to make sure that our justices can clearly understand that when you're going to discriminate, when the state will discriminate against a person for one of these categories, then the state must show a reasonable basis for it. We consider that even for the physical condition. Why should there be a law that prevents a physically handicapped person who's a computer genius from working for the state of Louisiana, because he's crippled and can't walk? That's the reason why we consider those categories, we don't want the courts to be confused anymore.

Mr. Roemer: Alright, but then would you go further and address yourself to the dangers, having once enumerated certain conditions, of not enumerating others. There's no mention here of mental capacity, you could go on and on with various dots and dots.

Mr. Roy: There's no problem there, **Buddy:** because we say "no person shall be denied the equal protection of the laws, nor shall any law discriminate against a person." Now, we specifically list categories that we feel very strongly about, that need to be given some addressing to. We have not excluded that a person, other than one of these, may be denied the equal protection of the laws in the first sentence.

Mr. Roemer: But Chris, don't you think that we run the danger of setting up two classes of enumerations? One mentioned in the constitution, and another brought before the courts and the court would say, "well, this is not in the constitution", then all of a sudden this is a second-class kind of condition, whether it be mental capacity or whatever we're talking about. Why mention them at all? Why not put them all in one class? That is "the rights of man", and treat them as one.

Mr. Roy: Well, first of all, we considered all that, **Buddy:** I just told you why. Because the courts, historically, have said that we don't understand what the Fourteenth Amendment tried to tell us and we're trying to make it specific with respect to these particular categories. That doesn't limit it to those. It just says, "for these in particular", if you discriminate, you've got to show a reasonable basis for the discrimination.

[Rules Suspended to allow additional time]

Mr. Roemer In pursuing, Chris, these enumerated distinctions that you have here, would you explain to us why you have "birth" and then "social origin"? I'm not sure what...

Mr. Roy I'll be happy to, Buddy. Let me answer you further, because I just thought of the other reason why we enumerated. You see, ladies and gentlemen of the convention, if you're going to just not state the category, then a person who claims discrimination on a basis of any one of these things later on, has the burden of showing that he is in a class that is being discriminated against without that class having been specifically named. Once we name the class, the burden is not on that individual to prove that he is of a class against whom discrimination is being applied, but he simply goes into court, says I am discriminated against, I do fit into this category, and it shifts the burden of proof to the state to show the reasonable basis for the discrimination. Now, let me answer your question.

Mr. Roemer Wait a minute. You just raised another one, Chris. You will admit that those people who are not in classes enumerated here, will still have that same burden. You haven't protected them at all, have you?

Mr. Roy That, to the extent that you're talking about, that we haven't enumerated, that's correct. They have the burden of proving two things. The discrimination against them in whatever class they happen to be, and the fact that there is no reasonable basis for it, but we've outlined such broad categories here, that it appears to me that there would be few people who have not been contemplated who would have the double burden that you seek to impose on everybody, Mr. Roemer. Now, let me answer your question about birth. We mention birth because, in the past the state has discriminated against legitimate and illegitimate children with respect to aid to dependent children. We felt that we wanted that clearly understood, that in certain categories, whether you're legitimate or illegitimate, should not allow state discriminatory practices against you.

Mr. Roemer What about social origin?

Mr. Roy Social origin speaks for itself.

Mr. Abraham Chris, what would be the effect of this age limit on the juvenile laws? Aren't we discriminating against a nineteen year old by giving the fourteen year old preferential treatment?

Mr. Roy No. We always give minors preferential treatment, Mr. Abraham. In fact, the juvenile courts is a concept that preferentially treats minors, but...

Mr. Abraham But, won't this point knock that out?

Mr. Roy No, it won't, because the state always maintains the right under the police power to deal with minors for their best interest.

Mr. Schmitt There's one thing I don't understand with reference to this restriction on age. What happens in a situation, as an example, on Revenue, Finance and Taxation, we are attempting to create benefits for people who are sixty-five years of age or older, greater than those who are under this age. Now, it seems to me, by the passage of this section, you will not allow us to do that. You will prevent us from granting people any type of preferential treatment due to their age, and it just seems to me to be adverse to the interest of this special group of people.

Mr. Roy It is absolutely not. As long as you treat the category, and there's a reasonable basis for it, you may do so.

Mr. Schmitt What's the reasonable basis of the magic age of sixty-five?

Mr. Roy For instance, income tax is discriminatory to the extent that on the basis of the amount of money you earn that you can be taxed at different rates, and there can be certain provisions made for certain people who have certain special categories. There is nothing wrong with a reasonable law passed which does not arbitrarily discriminate.

Mr. Schmitt But, is this in the Federal Constitution, that you can't discriminate against a person based upon age?

Mr. Roy No, Mr. Schmitt, we're trying to write a Louisiana State Constitution...

Mr. Schmitt Well then, you can't use a federal example then, if it's not in the Federal Constitution - your basic premise. Is that correct?

Mr. Roy No, the Federal Constitution of equal protection is the same as this, only we have specified some of the categories.

Mr. Schmitt But you have put age in here...

Further Discussion

Mr. De Blieux Mr. Chairman and ladies and gentlemen, I rise in support of the section as it is now except for one small objection. I have an amendment prepared for that and that is I would just like to eliminate the word "age" out of this section.

I want to compliment the committee that drafted this particular section of our constitution. I think it's a step in the right direction and something that we have needed for many, many years. I think we are past the age of discriminatory practices based upon race, creed, sex or color, previous condition of servitude or whatsoever. I think it is about time that we get into the twentieth century, for the rest of the country and the rest of the states of our union.

And I ask you when my amendment comes up to only delete the word "age" out of there. And my particular reason for that is because we do have a lot of laws based upon age and it's a reasonable basis and classification. Now, for instance, I know that we are coming up in the Revenue and Taxation with a provision to give an extra homestead exemption to those in excess of sixty-five years of age. If we leave this particular provision in the constitution, I think it can be attacked by those under sixty-five on the basis that they have been discriminated against.

And for that particular reason I ask you to adopt this section with my amendment deleting the word "age", because we do have ages in our statutes in a lot of respects. I am for the.....section as it is written except for that particular provision.

Questions

Mr. Avant Senator De Blieux, as I understand you stated that you are for the section as it is written if we just take one word out and that is "age".

Mr. De Blieux That's right. The rest of it I can agree with wholeheartedly.

Mr. Avant And you stated, also, that your reason for that was because we had many laws on the books where classifications, based upon age, were in the law.

Mr. De Blieux That I thought were reasonable, yes.

Mr. Avant That you thought were reasonable. Do you not also agree, though, that there could be other laws where....there were classifications, based on these various criteria contained in this section that would be reasonable. And to give you

38th Days Proceedings—August 29, 1973

an outstanding example, a law which provided that a bus driver had to be able to see and could not be blind would be a reasonable law, wouldn't it?

Mr. De Blieux Mr. Avant, I don't see any other classifications that could create as much unreasonableness as the one that I have named. I feel like....

Mr. Avant We have one in here on physical condition, do we not?

Mr. De Blieux That's right. Their physical condition, that I think that in that particular case where the individual has to be able to prove that he was able to do the job....

Mr. Avant All right, now. Don't you think that a lot of this discussion that we are fixing to get into, and a lot of the heat that we may generate here, could be eliminated if we simply added three words to line 8 of this section so that it will read, in part, "nor shall any law unreasonably, arbitrarily, or capriciously discriminate against a person in the exercise of his rights on account of these various criteria?"

Mr. De Blieux That might be true except that I think it would open the gate to a lot of discrimination, which we are not seeking, based upon those three words.

Mr. Avant Even though the law, the constitution, specifically said you couldn't do it unreasonably, arbitrarily or capriciously, you could still do it, in your opinion.

Mr. De Blieux I think that much discrimination we.... was not reasonable.

Further Discussion

Miss Perkins Thank you.

Mr. Chairman, ladies and gentlemen of this convention, I rise in opposition to the committee proposal. This decision was a hard one to make and I was one that was long thought out. It has been said that a woman preaching is like a dog walking on its hind legs....can't do it well, but you're surprised to see it done at all.

Seriously speaking, I would like to preface my comments with this, that I have the utmost respect for the ladies of this convention and each and every lady present in this audience. I do not wish to discredit them or their cause in any manner. However, I do feel that I am proud to be a woman and that I represent all women, all women who have taken initiative and taken a stand each and every lady present in this convention hall today. You have taken initiative and you have taken a position and for that you have my utmost respect. And I hope that whether you agree with my position or not, you will at least give me similar respect because I, too, have taken a position.

I would like to point out that I was elected to this convention to represent individuals. I was elected by individuals, not just women, even though women composed a part of the group that elected me to the convention. I, personally, am an individualist, not a women's libist, even though I certainly agree with the goals of women libists. I voted early in this convention to mandatorily force women to serve on jury duty. I did this after much consideration because, as you know, today, as the law prior to this stood, they could serve upon putting in written request.

But I felt that it was a citizen's duty and that the defendant had a right to a cross-section of members that served on the jury that tried him. Therefore, I voted against the privilege that had previously been granted to them.

I rise in opposition to this particular amendment and I humbly beseech you to listen to the reasons why. First of all, let's consider carefully the probable effects of the provision. If we have certain labor laws which discriminate, if you may, by providing a privilege for women. It puts them in

a more favorable position in which they work. Of grave concern are the laws affecting family law such as the rights and obligations between spouses. First, there is a duty to the husband to support his family which includes his wife....we could possibly be eliminating the criminal neglect statute. In addition, women are given alimony, alimony pendente lite between the time of separation and the time of divorce, and this alimony is set at the standard on which she is accustomed to being supported by her husband.

If we adopt this position, we could lower the standard by which she currently receives alimony. Alimony after divorce would probably be eliminated totally because we would be putting a total mutual support provision in our constitution. Right now, under law, the mother of those children is entitled custody of those children unless she is proven unfit, which is a very hard burden to carry. Besides, we will be taking this from our mothers. We will be giving the fathers an equal opportunity to receive the custody of those children.

Finally, the financial responsibilities of two spouses, two parties that have been joined in marriage. Right now, most of those financial responsibilities fall on the husband. We will be eliminating the privileges that have been given women. Right now a woman's income from her separate property is her separate estate, but yet a man's income from his separate property....is community property.

I would like to close with this. The reason that I oppose this amendment is, I think federal law has taken care to see to it that there will be no discrimination on job opportunity because of sex.... Those inequities that we have in Louisiana law can be remedied by legislature.

Ladies, you have the rights. Don't give away the privileges to those ladies that are less fortunate or less educated. Thank you.

Further Discussion

Mr. Rayburn Mr. Acting Chairman, fellow delegates, I want to apologize for causing a little confusion a few moments ago. I had attempted on three different occasions to get recognized for the floor. I thought I made it real plain. Maybe I didn't. I have no quarrel with the presiding officer. He has a tremendous job to do, particularly with me and you, and certainly I have no quarrel with him.

There was a few things that I did want an answer about and I was unable to get it, that's provided in this particular section. About half the things that we've done since we've been here had provisos to the extent if you were a judge, it was mandatory retirement at seventy-five....seventy, I'm sorry. If you pass this, Judge Tate, you'd take an oath to uphold the constitution of our great state and you'd never have to retire as long as you are breathing, because they can't discriminate against you.

We also passed a bill that said to be a D.A. you had to be a lawyer, had to practice law so long. If you pass this amendment in its....this section in its present language, that would not hold. We have in this state a law that says to be a police officer, you can't be over thirty-five. Well, that would hold.

We have a proposal that was submitted by my committee that said those that are over sixty-five are going to get a few special benefits. The veterans of this state are going to get special consideration. In my opinion, this language null and voids all of that, because you would be discriminating against you and I, if we didn't qualify in accordance with those provisions.

I had hoped to offer an amendment which would simply say "except as otherwise provided in this constitution" in the event that particular section would pass. I can see, here and now, a field day for the lawyers of this state if you had passed Section 3 with the language and its contents as they are before us this moment. It's a bird's nest to the ground for 'em. Just look at it. There's not one thing that nobody could do that somebody else couldn't say "they are discriminating against

me". They've got physical handicapped in here. I'm one of the best friends they've ever had. We've got some judges in our great state that's seen fit to say "I'll paint his fist" that he held the brush with, he's unable to paint. Couldn't paint no more. Well, I don't believe you could discriminate against him. He could hold it in his left hand. He might not paint as good, but he could still rub it up and down. There is some bad, bad language here, real, real bad in my opinion. And I think it needs a long, hard look at it because you are going far beyond anything that's been done as far as I know in this state, if you adopt this language in its present form. You are really contradicting what half of what we've done here. And if you will think back a little, you'll know I am telling the truth, and I don't think you want to do that.

If you are going to adopt this section, I think you should say, "as provided in this constitution", and not put on provision in there where you've got to have mandatory retirement at a certain age, you've got to practice law so long before you can do this, or you've got to do this or the other before you qualify. I can see with this particular language where you could be tied up for some six months if somebody didn't want to hire me because I am a pipefitter or if I wanted to go to the medical association and say "I got an honorary degree and I want to practice medicine." We'd just go 'round and 'round and you good attorneys would have a good field day, and I'd probably need a job when you got through with me. I just think that this language contained in Section 3 is a little too broad. I think it needs a little more defining, and I hope that some of the amendments that will be forthcoming, I'm sure, will define it.

Further Discussion

Mrs. Warren Mr. Chairman, ladies and gentlemen, delegates, the first thing I would like to take issue with, and it's really not personal. Miss Perkins mentioned something about the lady being a preacher....she couldn't do a good job so you'd have to leave it to the man. I'm going to mention one statement and I'm going to ask her to ask any minister in here about it, because I'm going to try to tell her. I want her to ask, and all of you to ask Reverend Stovall, or anybody, who Deborah was.

She mentioned another thing about support status. It's all right to have support status if the law is going to carry this status out. If we really had that, we wouldn't have as many children on welfare rolls because their living fathers would provide the things that they need according to their means. But this is just hopes. This is not true.

I have here a staff memo number....August 24, No. 53 and in it mentions "maternal authority upon disappearance of father". And I want you to listen at it. Here it says "an acquired mother who contracts a second marriage, to have consent of family meeting to preserve superintendence of her children". Even though the father has left his child and a mother is going to find somebody else that is going to take this responsibility, she has to have a meeting.

Get back to the next step. A wife cannot appear in court without authority of her husband, although she is a public merchant or possessor her property separate from her husband. I want to speed on over a little bit further and turn over to where it says "a man or woman over twenty-one years of age has authority to borrow money, contract debts for her separate benefits, and to grant mortgages on her separate property, when duly authorized by her husband". That's her properties they are talking about.

"A child remains under authority of his father and mother until the majority of emancipation. In cases of differences between the parents, the authority of the father prevails". Does that tell you that a mother has all that right over a child that she has given pain and delivered?

Take a listen at this. "The husband who is a minor can authorize his wife to appear in court

whether she is a minor or of full age". See how much authority goes to now. We are not asking you to give us anything that we don't deserve. I had a little pamphlet put on your desks. I hope you'll read, "An End to Discriminations." I think you ought to read it. These are some of the things that we are thinking about trying to bring out, so you can think about it.

As my closing, and I feel by consent, I'm going to tell you a little story and it goes like this. It's a barnyard story many people on a farm are really familiar with. All the cattle and the chickens and the ducks got together and they were playing. So the sheep and the cows and things, they had a fight. So the dog says "Why don't you go and take it before the city council?" So surely the poor cow goes up to the city council just as fast as she could go. When she got to the door and opened it, she didn't see anything but ducks. When she got back to the barnyard, they asked her, "What was the matter?" She said, "No, I didn't." She said, "When I looked in that council, I knew I didn't have a chance."

I'm saying this, I want you to give us a chance. I don't want it to be this way. I'm not one that is speaking for myself, but I'm speaking for women. All I want is justice. And if I was going on what my husband wanted, he wants what's right. But what he wanted, if he didn't want justice, I wouldn't be here for it. So let's give justice. Thank you.

Further Discussion

Mr. Burson Mr. Acting Chairman and fellow delegates, I rise to discuss the proposal, to share with you a few ideas that I have that might be relevant to your consideration. First of all let me make it plain that I am and have always been an advocate of equal protection of the law. I think it is one of the noblest constitutional principles in our law. I would like to point out to you that under the federal constitutional jurisprudence which defines equal protection of the laws, a general standard would be that all those similarly situated must be treated alike.

Now, this does not mean, however, under the federal jurisprudence, that there cannot be classification. But when the state classifies in a manner that discriminates against a person or a group of persons, under the federal jurisprudence, the state has the burden of showing first of all that the classification that it uses bears a legitimate or reasonable relationship to the purpose of the law and that that purpose is a legitimate public purpose, and secondly, it must show that the system of classification does not violate constitutionally protected rights. So I submit to you that Mr. Roy dealt with the problem in the discussion and introduced the idea that the state intended that the state should bear the burden if it discriminates. I may be wrong, but it is my opinion that the state bears that burden at the present time under the federal constitution. This does not mean that we do not need an equal protection clause in our state constitution. We do need it. I certainly hope that we adopt one whatever form it is in. We need one for more mundane reasons that have been discussed at the platform thus far. Let me give you a practical example with which I am familiar through discussion with a brother lawyer. There was a law passed in the legislature which differentiated between the rights of used car dealers and new car dealers with regard to the application of consumer credit law that was passed in Louisiana recently. Now, this lawyer went to court representing the used car dealers and said, "Well, for goodness sake, there is no justification for treating us differently. We both sell cars. We are similarly situated. And the court said, 'Well, that's too bad, but we don't have an equal protection of the laws clause in our state constitution.' I think that it is a very good protection of the laws clause, not only for the noble aims that have been discussed up here so far today, but for many more mundane, everyday reasons that we encounter in the law.

The question that seems to be at issue, really,

in the discussion is what approach will we take to adopting an equal protection? I think it really boils down to a philosophical difference, whether we take an approach of enumerating these rights, or a more conservative approach of allowing an organic development of the term, "equal protection of the law." Now we all know that in the federal constitution, when they wrote the fourteenth amendment and said that "the state shall not deny equal protection of the laws", they did not have in mind such things as reapportionment or even, indeed, desegregation of schools, and so on. But the federal courts have embraced all of these...as I started to say, the federal courts have taken the term, "equal protection of the laws," and developed it organically on a case by case basis. My own personal, philosophical approach and predilection would be that that is the best way to proceed. But as in many other matters, I am not sure that I am right.

I would point out that Mr. Roemer raised a very interesting point and one worthy of some thought, that by listing certain enumerated rights, you may be risking the interpretation later that you are leaving others out. And I certainly don't think that's what's intended. The statement made in the debate thus far that there is no basis for distinguishing on birth bothers me somewhat, because I believe Justice Tate has the authority of an opinion that was upheld by the U. S. Supreme Court saying that in our estate and succession laws, there was a legitimate basis for our distinguishing between legitimate and illegitimate children....the rationale being the preservation of stability in society which, after all, has a value.

Also, I would point out, finally, that when we say we shall not discriminate on political ideas, we may leave it open that we are telling school boards, for instance, that they've got to hire a man who is an avowed anarchist, which I don't think they would have to do under the present law....

Further Discussion

Mr. Landrum Mr. Acting Chairman, fellow delegates, my personal views on this particular article, and particularly the area dealing with sex, I believe that our economy is wrecked, because of female employment. Now that's my personal views, but being practical in the society in which we live, there are many of our females who are working and they need some protection. I noticed the applause behind one of the speakers. I really wonder, sometimes, why is it so bad for the word "sex" to be mentioned in the constitution, as giving a woman equal protection? If you don't want to put it there, it is an indication that you don't want a way to get her out. You want a way to not to really give a woman equal protection under the law. I believe that men out of fear, and I will say that again, out of fear. Men fear women and that's why they get to the place that they don't want to live with women equal rights. A man and I don't have to fear a female. I don't believe no man has to fear females because I believe most females will always want to identify themselves as females. They will want a man to recognize them as females, but when they think of the social life in which we live, when they got to work, and all of the ladies will not marry as someone made mention awhile ago. Every woman will not get a husband, but now because she doesn't have a husband that means she has still got to work. If she is going to work, why should she be paid less than another person doing the same type of work? Someone made mention about the handicapped. More than a hundred thousand of our young men are handicapped. Not because it was their desire to leave from home, but because of obedience to this country, go to work, they are handicapped. They have returned back home handicapped and they should not be denied a job because of this handicap. They should not be denied access to buildings because of handicap. We have to recognize what we are living in. We are living in a world with all kinds of people. I believe that God has put enough here on this earth, for all kinds of people, rich people, poor people, black people, white,

crippled, all kinds and until we learn to respect all people. I think we are going to find ourselves talking the same talk that was being talked a hundred years ago. If I have one more minute, Mr. Chairman? I wish that we would try to do what we can here and stop putting so much burden on the legislature. In a few months most of us will be through. You don't have to worry about running for office....But some of you in the legislature will have to run, that's why their decisions are different than what yours should be here....

[with a small group of delegates]
[Whispering, I heard a few more.]

Further Discussion

Mr. Jack Mr. Chairman, ladies and gentlemen, and particularly, Mr. Chairman, I don't believe you can get people quiet, what we need is seat belts without buzzers, and that may hold the people in them. I don't know. I'm going to try this time to talk a little on this.

We are dealing, apparently, with the question on the assumption that certain people, groups, classifications are being discriminated against. I cannot agree that all of these have, I don't know how you can spell it out in this constitution. As I understand the law, our state legislature can pass any law, unless they are prohibited by our constitution. There are more people satisfied as they are, married and single, men and women. God made men. God made men. I don't know that anybody ought to try to make them into one person, that's called I don't know what. The legislature can handle this matter. All we really need here for Section 3, is these words, "no person shall be denied the equal protection of the law." That keeps from being discriminated against. If they are discriminated against, the legislature meets each year and they should be the one to make it illegal to discriminate against a certain thing. The legislature can list them. Let's just take a question of whether or not banks discriminate against ladies. They do not, go to any bank and you will find way more lady employees than you will men, that's a well known thing. If there are areas of discrimination, let the legislature take it up. Just take that sentence I read to you for Section 3, "Right to Individual Dignity". I want to point out that this world of people are satisfied like it is. You are discriminating against those people if you pass this, this can wreck the civil code. The civil code is a fine book that says for certain things for women, certain for men. Now don't blame the people who wrote the civil code, the Lord made a woman different from a man and thank goodness He did. It was so that the enjoyment of the race would be here and would survive and populate itself, and I'm happy with this thing. My wife is happy with me under the laws we have. I like to work. I make the living in my family. She spends most of the money, she does a good job of it. She could get, if I wasn't a proper husband, she could draw alimony. I think that's fair, under this she could not. The laws provide if I'm hurt in an accident, my wife is hurt, my wife gets all of hers as her separate property, mine goes into the community. Suppose there's serious injuries to both, she got a hundred thousand and I did, mine is community, hers is separate. If we left each other regardless of whose fault.... If I'm crazy enough, I could have a hundred thousand around where they could get at it, she would get half of mine, and I would get none of hers. She would get a hundred fifty thousand and I would get fifty thousand, I'm satisfied with that. Now, a lot of the people that want all of this are people that are misfits and dissatisfied. All the vast majority of the happy marriages, the happy single people, the happy girls, the happy boys, and the young people, they are not asking for all of this thing to wreck the laws that govern them. I say to you, if you go one step further than the first sentence that reads, "no person shall be denied equal protection of the laws", then the other one should simply go on after that and state, "nor shall any law discriminate against a

person in the exercise of rights on account of race, or religious ideas", leave out the other... I haven't finished, if I have any time. You cannot point out any discrimination against people that are listed here, except in the past there has been discrimination against race and that has been removed. There's been and always will, may be discrimination against religion. If you are going to leave any in, leave just those two... I think the first is the first sentence.

Mr. Casey: Reverend Landrum, why do you rise?

(Questions)

Mr. Landrum: Mr. Chairman, I would like for Mr. Jack to explain the word "misfit".

Mr. Casey: Well, he has exceeded his time, I'm sorry. Reverend Landrum, possibly you can ask him privately.

Mr. Landrum: No, Mr. Chairman, he didn't say it privately.

Mr. Casey: I'm sorry, I realize he didn't....

Mr. Landrum: That statement wasn't made privately, he has made it openly and I think he should clarify it openly.

Mr. Casey: The rules of the convention are at this time, that a speaker is limited to five minutes and I have no alternative but to call time on him, Reverend Landrum. If at a later time, through other questions and other speakers we wish to clarify the point, that can be done.

Why do you rise, Mr. Jack?

Mr. Jack: I'm glad to explain anything I said and you gave Chris Roy four extra minutes, I ask that they give me time enough to explain what I think a misfit is.

The term "misfit" has several definitions. The term I'm using it in, is a misfit is a person that does not fit into the orderly proceedings and particularly in with the majority of the people and their feelings. A misfit also, the simple example, is like a shoe on shoes. Now, each of you should not take personal offense at anything I've said, just see if the shoe fits you, that's all you need to do. Thank you.

Mr. Landrum: Mr. Jack, now a misfit... what you really mean, I misfit being here, every black person in here....

Mr. Jack, some years ago, isn't it true, when you and many others used to get on the floor of the House and talk about "nigger this and nigger that" that is what you are really referring to when you say about misfit, am I right?

Mr. Jack: No, that is not and I ought to.... I'm answering your question, I ought to call you right now what that is, that's not true....

Mr. Casey: Gentlemen, gentlemen, turn off the mikes.... Gentlemen, you're out of order, both of you. Time is up.

Mr. Kean, why do you rise, sir?

Recess

[Quorum Call: 107 delegates present and a quorum.]

Further Discussion

Mr. J. Jackson: Mr. Chairman, ladies and gentlemen of the convention, I am of the opinion that Section 3 will do as happened, bring out the true nature of some of our feelings. I believe and originally I had gotten up here to address myself to the comment, but I think that that matter has been amply dealt with and I would ask, Mr. Chairman, that we move to dealing with the amendments that are being proposed before the House.

[Mr. J. Jackson: Section 3, Amendment 1, 2, 3 adopted: 75-24.]

Amendment

Mr. Poynter: Amendment No. 1 [by Mr. Juneau]. On page 2, delete lines 6 through 12, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 3. Equal Protection of the Law
Section 3. No person shall be denied equal protection of the laws."

Explanation

Mr. Juneau: Mr. Chairman, and fellow delegates, in the past during the proposals which have been before you on the Bill of Rights Committee, I have attempted on each vote to take the issues as they appear, at the request of the committee and I think that's appropriate, but I think now we have reached one of those issues in Section 3. I personally take serious issue with the provisions of Section 3 as it's written. To me the real blood and guts issue of this convention or one of the true blood and guts issues; what we have to have to deal with at this time, I know of no more important or emotional issue than the one that's presented in Section 3. I think it's appropriate to discuss what we have now in the State of Louisiana, nowhere, nowhere, in our present constitution is there an equal protection clause. The committee section provides for such a clause and I agree with that language, I think it's needed, and I think it's necessary. It's at that point when I cease to agree with the committee. This is the problem that's created when the committee went on, it provided for an equal protection clause. As you will know as the proposals you have before you, it goes on to provide that nor shall there be any law discriminating against a person in the exercise of his rights on account of both race, age, sex, social origin, physical origin, or political or religious ideas. I submit to you that we ought to examine that language. It means to me that you cannot enact a law which makes a distinction between persons of different ages, to me means children, middle age or elderly persons, to me, serious questions are raised. If you wanted to provide legislation which would give benefits to the elderly alone in this state - to me, serious questions are raised if you did not give to the children the same laws and provisions which you gave to their parents. Some may say that this is not a correct interpretation. They say we can have reasonable classifications. My simple answer to that is, it doesn't say that to me. When you are writing a constitution, you better be clear and you better state exactly what you mean. Let's talk about the additional language. Let's talk about that one word in the section which has received as much attention as anything that we have faced thus far, and without biting on the word, the word in the provision is "sex". To me the insertion of this one word in our constitution would prohibit any law, any law that would distinguish between a man and a woman. Each of you should have received from the staff a summary of the provisions of the Louisiana Civil Code, which show where distinction is made between man and wife. I implore you to look at those provisions and look at them closely. If you want to wipe out all of those provisions, then you would favor the proposal of the committee. On the other hand, if you agree with many of us that some of those provisions are good provisions, then I submit that you should vote for the amendment. Let me get a little more specific, Article 160 of the Louisiana Civil Code provides that a wife who does not have sufficient means for her support, can get alimony from her husband; personally want to retain that right for the women of the State of Louisiana. I have been lobbied and lobbied hard and the argument or one of the arguments I have heard for the inclusion of that particular provision has been, under the Louisiana law a man can sell the community property without the consent of his wife. I think the point

is well-taken, the problem might should be corrected, but the problem is that's a statutory provision and can be cured by a simple act of the legislature. I submit to you, let's don't try to cure all of those isolated problems by a sweeping constitutional provision. What you would be doing, would be destroying all of the rights that may be given preferential treatment in this state historically or otherwise to the women. In closing and to get specifically with regard to the amendment I have before you which was read, very simply provides, that no person shall be denied equal protection of the law. Let me tell you in closing that the United States Constitution in Amendment Fourteen provides that no state shall make or enforce any law which would deny to any person, without its jurisdiction, the equal protection of the laws and that's all it says. I submit to you that we have lived well and lived long under the provision of the United States Constitution since 1868. We know what it does, and we know what it means. My amendment is simply the same thing as the Federal Constitution. What I am asking you to do is to adopt a provision which is equally applicable to all people be they women, be they men, black, white, Protestant, Jew, redneck, or Cajun. What I am asking for you is equality as established under the law with no ambiguity with no constructions as to what is reasonable, arbitrary or otherwise. I submit to you that we do not have such a provision in our law. I submit to you it's a provision which should be enacted into law and I plead for your favorable consideration. I will yield to questions, Mr. Chairman.

Questions

Mr. Lanier Mr. Juneau, you've indicated in your argument that you feel the committee proposal as presently drawn will do violence to some of our statutory law, is that correct?

Mr. Juneau Yes, that's absolutely correct, sir.

Mr. Lanier What in your opinion would be the effect of the committee proposal on the law in the State of Louisiana, I think it's Code Article 2318, that says that: "A father is responsible for the torts of his minor children".

Mr. Juneau I would seriously doubt that that provision would be in effect, if you would pass the committee proposal.

Mr. Lanier What in your opinion would be the effect of the committee proposal on the law that says that "the father is the administrator of the estate of his minor children"?

Mr. Juneau I think we would be left in the situation of having a fifty, fifty vote on who is the administrator of the estate, Mr. Lanier, it would, frankly, leave it up in the air as what it would do.

Mr. Lanier In your opinion, what effect would the committee proposal have on the rights of minors with reference to contracting and handling their own affairs and personal liability?

Mr. Juneau My own personal opinion would be that it would void any distinctions in that regard and they would have that capacity.

Mrs. Zervigon Mr. Juneau, I'm interested in the intention behind what you are suggesting because it seems to me that's going to make a great deal of difference later on. It's your intention to leave intact laws which do discriminate between men and women?

Mr. Juneau It's my intent, Mrs. Zervigon, to provide for men and women both equal protection laws, but in those cases where a reasonable classification can be drawn, I don't want to do violence to that kind of law, I don't want to prohibit that.

Mrs. Zervigon Well, on one of Mr. Lanier's ex-

amples, for example, that requires that the father be the administrator of the estate of the minor child, should the father be a man who can't count high enough to count his fingers and toes and the mother be a person who is experienced in math, that law would still stand under your amendment, that's your intention?

Mr. Juneau My intention would be, Mrs. Zervigon, that the problem, if you're concerned with that problem, could very easily be solved by simple legislative act. It could make detailed provisions in the event the father was unable to serve as administrator. I just don't think we ought to be inflexible enough to put that binding kind of authority in a constitution. I recognize, I have had personal cases where that kind of situation has come up and it's been a problem, but I think that would be a matter that could properly address itself to a legislative act, and I see no reason why it could not.

Mrs. Zervigon But you do favor the legislature being able to discriminate on the basis of race or religion or sex.... it's supposing that nobody came and asked for one of those laws to be overturned.

Mr. Juneau If there is a reasonable basis for that conclusion, yes, Ma'am.

Mrs. Zervigon Thank you.

Mr. Roy Mr. Juneau, I'm a little confused as to your background on case histories, are you familiar with Reed vs. Reed, a United States Supreme Court case involving the issue of whether a male or female would be favored in Iowa as the administrator of an estate?

Mr. Juneau I've read the case, yes.

Mr. Roy Do you know that that case was decided by the United States Supreme Court and it said that "a state law which arbitrarily says that a male is favored as the administrator over the estate of a child over a female of equal rank is unconstitutional and a deprivation of equal protection of the laws"?

Mr. Juneau Where is that, Mr. Roy, and in further answer to the question as I said, if something of that nature is unconstitutional, if it is a problem, it can simply be corrected by legislature.

Mr. Roy No, it can't, don't you understand that the issue is that the law which says that is on its face unconstitutional because it should be on the basis what is the best interest of the minor and not whether it is a male or female who serves as his administrator.

Mr. Juneau My answer to your question is, Mr. Roy, you are left with one or two alternatives. You are left, if you want a sweeping provision as you would have in the committee proposal, abolishing any distinction whatsoever hereafter, with regard to sex, or do you want to have, as we have in the Federal Constitution, a provision with regard to equal protection of the laws. I think that's... if I'm left with that choice, I would take the latter we've lived with since the 1800's.

Mr. Roy I don't think that is what we will do, but in any event, do you realize that if the Twenty-seventh Amendment to the United States Constitution a proposed amendment is passed, that all of your problems about changing the code articles will descend upon this state once again?

Mr. Juneau I'm aware of that, and I'm aware what the vote was in the Louisiana legislature on the amendment you talked about in the last session...

Mr. Roy I understand, but if it is passed and it has been adopted by thirty states and needs only seven more, we won't be able to put our heads in

the sand and say we're not going to abide by it, will we?

Mr. Juneau Mr. Roy, I'm not trying to stick my head in the sand. If I was, I certainly wouldn't have filed this amendment. I can assure you that.

Mr. Roy Isn't the notion of alimony, Mr. Juneau, reciprocal by virtue of the contract of marriage, and the husband owes support to the wife, as well as the wife to the husband?

Mr. Juneau I think that under the provisions of Civil Code Article 160, it makes it very clear what the implicit right a woman has and the presumption she has under the Louisiana law. I think, Mr. Roy, in further answer to your question, if you were to pass the proposal as you have it, I think it would amount to a complete annihilation of that presumption a woman now has under Louisiana law.

Mr. Roy You don't think that when the parties enter into a voluntary contract of marriage governed by the state which says that their reciprocal rights of support, that it is binding on both, is that your comment to this delegation?

Mr. Juneau You are talking about the matrimony rights or alimony rights?

Mr. Roy The contractual rights which flow from marriage, a wife does owe, can owe support and alimony to a husband who is necessitous of the circumstances and unable to care for himself, don't you realize that, Mr. Juneau?

Mr. Juneau I realize that, Mr. Roy, and the point I'm making to you that under the provisions of the Civil Code, though, it makes it very clear that the explicit and additional rights of a woman are set forth in statutory law. I think we would put into contest the effect of that provision. I might further answer your question, Mr. Roy, it troubles me greatly if a man and woman were married at age twenty-four, both college graduates, and they made the determination between the two of them that the man would work and the woman would raise the children, she would not work for twenty-four, twenty-five years and at some later date she would run the risk of not being able to draw alimony, that concerns me greatly.

Mr. Roy Do you think that any law that would be passed that said when spouses contract marriage, that they owe mutual duties of support, that that would be unreasonable?

Mr. Juneau I don't think, Mr. Roy, we are talking about you projecting into the future, what a future legislative act would provide.

Mr. Roy No, what a future court would say, would a court say that where two parties contract a marriage knowing full well they owe reciprocal duties of support or alimony, that that would be an unreasonable contractual obligation flowing from the marriage.

Mr. Juneau I know of no provision in the Louisiana Civil Code, Mr. Roy, that applies to a husband, identical or similar to the provisions of Article 160 of the Louisiana Civil Code which provides for the alimony rights of a woman.

Mr. Roy Do you realize that the constitution that The Supreme Court of the United States didn't bother to interpret the Fourteenth Amendment as given equal protection to all citizens until 1954 and that in 1896, Plessy v. Ferguson, the United States Supreme Court said that separate but equal facilities were O.K. Wasn't it only in 1954 that in Brown vs. Kansas that the U. S. Supreme Court finder said the Fourteenth Amendment grants to all persons equal protection of the law?

Mr. Juneau I'm going to answer your question this way, Mr. Roy, you are trying to lead me down that

perpetual path of drawing me into the issue of right and wrong with regard to separate and equal. You know full well that I have no intentions, no feelings whatsoever with regard to destroying the right of the black person to this issue. I submit to you that I think that the Federal Constitution is fully and abundantly clear on equal protection laws. We all in this state know the effect that it applies to all people and it's not a matter of racial discussion, not withholding....

Further Discussion

Mr. Arnette I most definitely agree with what the committee has done here and their intention, but I do question the way they have done it. I think Mr. Juneau's amendment is a good one and I would like to point out several reasons why. First, there are several things wrong in the enumeration that the committee has made. They say that no law shall discriminate because of...well let's go through a couple of examples -- age, this would prevent any law that would benefit, old age benefits, old age pensions, or voting rights...you could vote when you are born, it would prevent people from.... it would prevent laws that say a minor cannot alienate his immovable property. This is an incredible law that is trying to be proposed here by the committee, I can't even name all of the consequences of it. Second, say birth for another example, what exactly do they mean. Mr. Roy said that it meant that you can't discriminate between legitimate and illegitimate children. I think it's the state's right and duty that it should have laws that discriminate against legitimate and illegitimate, and this has been recognized by the U.S. Supreme Court for the simple reason that we want to promote family unity, we want to encourage marriages. We want to discourage illegitimate children. I think this has been recognized by the U.S. Supreme Court and it's a valid right. The next thing, it says social origin, I don't know what this means, does that mean nobility or if someone is a duke or lord or member of the country club; I really don't know what this means, nobody has actually explained it to me. Physical condition is another example, I don't propose any state law discriminating against anyone who is not physically able, but what about benefits that are proposed in laws. The Louisiana Disability Benefit Laws, things like this, this would prevent having laws that benefit disabled persons. I think we need to think about this, the gravity of the situation of what this committee has proposed. The next thing, I don't think the classes they have designed go far enough, just sitting there in a few minutes, I could think of several classes; I will give you a few examples. First of all, education, we have laws in this state that discriminate against people that don't have as much education as others, for example in the civil service, you can't take certain civil service exams unless you have a college degree say, maybe this class ought to be protected. Should a person ought to have a college education before they can take a civil service exam? I don't know, maybe so, maybe not, maybe this class ought to be listed as protected. Another one, intelligence, we don't say that a person should be prevented from being discriminated against on account of intelligence, for example, voting rights. We don't have any literacy test for voting rights, maybe that's the way it ought to be, but I think we ought to maybe list this class as another protected class. How about sexual beliefs, homosexuals, you are not protecting them in any way whatsoever, maybe they ought to be listed as a class? How about economic status, we are not protecting say the wealthy or the poor or anything like this, that's another class that maybe should be listed in here....These are other classes that perhaps should be listed, no, not at this time. I'll tell you one thing that I don't like about the committee's proposal and this is probably my main objection to it, it does list classes. A long time ago it was said by someone, this is government for the people, by the people and I think that's what it ought to be, govern-

35th Days Proceedings—August 29, 1973

ment by the people and for the people. I don't think it ought to be for this class and that class, and some other class. I think all people ought to be equal, they ought to all be listed in there as equal. It's time that we quit listing people as a class, it's time we quit thinking of people as black or white, or male or female or anything else. Mr. Juneau's amendment does this, it says no person, it goes further than anything the committee ever proposed, it says that no person, everybody is equal. This is what we want to attain, I think, no person should be denied equal protection of the laws. I think this is the result we want to reach, and I think the committee has gone about it the wrong way, that's why I definitely support his amendment. I yield to any questions now.

Questions

Mr. Stinson With reference to the ages, isn't it a fact that it would be questionable whether there could be any minimum ages as to marriages for minors, any law as to prohibiting minors going into a place where liquor is sold and also requirements on driver's licenses?

Mr. Arnette You are exactly right, Mr. Stinson. We couldn't regulate anything that would list age in it at all.

Mr. Stinson Now, on physical condition don't you see possibly you couldn't ever arrest anyone for DWI, his physical condition because he had been drinking alcohol?

Mr. Arnette Well I think maybe that's a little far-fetched, but I think you might be right about it.

Further Discussion

Mrs. Dunlap Mr. Chairman and delegates to the convention, there have been many remarks made here this afternoon concerning women, females and I would like to make a few on one of the concerns of Miss Perkins, in the less trained and less educated female. If anything, the less trained and less educated female will be better off than before. She will hold an equal share in the community and keep many a probate of a husband from spending the community into bankruptcy. How many women, right now, are forced to work, to feed and clothe their children, and where do you find that husband and father? Delve into your hearts on this issue and check your reasons, could fear of the unknown be one? Some pioneers we have here. I also would like to point out that there is a difference between alimony and child support. Alimony can be claimed by the wife only during the separation period before divorce, this period is normally for one year, and I say, that that less trained, less educated wife will be just as less trained and less educated after that one year period. I've made up a little catchy thing, I'm trying to think of anything and everything I can do to keep the word "sex" in Section 3. I start my little address this way:

Mr. Chairman and delegates to this Constitutional Convention

I stand before you with a clear-cut intention. Tis your support I seek for Section 3, a whole new world for you and me.

Sex, oh how much I've heard and the many meanings of such a little word, but in Section 3 it must stay,

for us ladies it's the only way.

Libbers you call us, freedom you say we seek, just bear in mind it's some of the ladies of Louisiana for whom I speak.

Tis not lesbians we want to be, nor ladies of the evening whose pleasure some seek.

The truth, in fact, it's fairness we lack, protection is the name you call to all of those discriminating laws.

Feel rest assured, my fine male friends, we want nothing you have, just let us in, into the world as equal employees.

Into society, into your lives as equal partners as well as wives. Give us a chance with you from a standing position.

You might be delighted with our changed disposition. We are not attempting to overpower you nor do we envy

your maleness. Good heavens, a world of all the same sex, what a horrible state of staleness.

Tis in our nature to serve and to love. Give us the freedom of choice and free choice, to be claimed

as a friend, as a partner all to the same name. Give us your trust and support; have faith in the song we

sing; we are all waiting in the wings.

Ready to shoulder our share of the load; we are eager to walk with you down that lonely road.

Give us our rights; give us your support. We are your wives, your partners and friends, accept us

as such, that's where true friendship begins.

I ask you to vote against this Juneau amendment, and I plead to your sense of honorable justice and fairness to stay with the committee proposal.

Thank you.

Further Discussion

Mr. DeBlieux Mr. Chairman, and ladies and gentlemen of the convention, I rise in opposition to this amendment. Mr. Juneau has made the assertion that all the inequities which were called to his attention, and I say this because his amendment stressed mostly the portion of this section, can be corrected by legislation. You must remember here that we are writing a constitution, and the constitution is going to tell the legislature what it can do, and what it can't do. If the legislature could correct this condition, it has not done so in the past. This section will force the correction of that provision. Mr. Juneau's amendment will not require that. So, therefore, we should not have that amendment in this particular proposal of our constitution. Mr. Juneau stated that he knew about the vote on the E.R.A. in the legislature. I want to tell Mr. Juneau this, that amendment ratifies, that amendment passed the Senate; it failed in the House, and you have sitting in this august body a delegate that has defeated the person who was responsible for the defeat of that amendment in the House of Representatives. That ought to be an answer to you, and I think a lot of us are going to have to answer to the public on that. Insofar as support in alimony is concerned, I hear that over and over again that it is going to relieve the husband of support of his wife in the event that he leaves or something of that sort. We already have laws on that; there is no need of correcting that because the old reciprocal responsibility, and I tell you now, at the present time, there is no sacredness insofar as the right of a wife against the husband for alimony support. There is, at the present time the law needs correction in that respect because there is not enough support there for that to equal share in that responsibility. This amendment will not change that. The amendment that Mr. Juneau has will wreck this particular provision or this section of the constitution. I, therefore, ask you to please let's vote down this amendment; and if you have some particular portion of a section that you might want to eliminate, such as I have indicated before, that was with reference to age, that is the one that I have heard the most criticism of, let's take that out and let the rest of it stand. But this particular amendment would absolutely strip it of all its effect, and I don't believe you want to do that. Therefore, I ask you please let's vote against the Juneau amendment and go ahead with

the protection of all of our citizens whether there's black, white, female, male, old, young, whatever it may be. Let's give them all the equal protection of the laws.

Further Discussion

Mr. A. Jackson Mr. Chairman, ladies and gentlemen, I rise in opposition to this amendment. The amendment would suggest that we do not need to segregate because we have the Fourteenth Amendment. The Fourteenth Amendment would provide for the categories that we have enumerated here. Ladies and gentlemen, I simply want to remind you that we have had the Fourteenth Amendment of the United States Constitution since 1870, and it was not until 1940 that we even got a similar, ... that we even got any attention that would provide any sort of protection for the categories that we have enumerated here. Now, let's face the central issue; let's deal with the question. People have come up here and they have clouded the issue, and they have tried to suggest that they don't know what we are talking about; they know what we are talking about. They know that we are talking about providing for women in this country the same rights that you enjoy, and that's what ... that's the problem. That's the problem, we don't want to deal with it. We don't want to deal with whether or not we are willing, whether or not we are ready, as men, black and white, to extend full citizenship to women in this country; that's the question. Whether you cloud the issue and whether you address yourself to the central question or not, women are discriminated against this day all over this country. Women are discriminated against in employment; women are discriminated in terms of their profession. You tell me when you go to a typewriter and you get \$2.50 an hour when she could repair the typewriter and get \$7.50, but because we have been steeped in some sort of folkways and mores about what the place of women ought to be, we say that you can't come where. Now, whenever you want to recognize it or not, there are a large number of women in this state today who head up the households, who are the soul wage earner, who cannot depend on a man to augment their income and to help support their family. They have to do it; they are the bread winners, and they are precluded from providing for their families and for their children a secure and just and humane quality of life simply because we don't want to change. There is no justification for the arguments that I have heard up here, none at all. Whether you recognize it or not, black people in this state today are discriminated against; black people in this country today are discriminated against, and whether or not we want to address ourselves to it or not or whether or not we want to hide behind some flimsy excuse like we don't want to establish a precedent, is beside the question. The question before us is whether or not we want to provide for everybody in this country, freedom and full justice and equal opportunity. Look all about you. You walk over to the State Capitol, and people are pouring out of that building right now, and very few black faces will be seen because black people are discriminated against this day, this hour, this moment, in this place, and we are asking that we put an end to it. We are asking that you look at the categories, that you not place the burden for recognition on black people, that you not place the women in a situation, in a category, where they will have to go time and time again and ask the courts to decide whether or not they ought to be equal. That's all we are asking; we are asking that we would put aside this question once and for all. Somebody came to me a few minutes ago and apologized for something that happened on the floor of this convention a few minutes ago. The apology was not necessary. But if you want to make right, if you want to set aside, if you want to put down forever any allusion to any reference to any racial slurs or to the kind of inequalities that we have suggested that ought to be imposed on people, well then look at what we have proposed and give your full support to it, and look at what is being pro-

posed by way of this amendment and know that it will not do the job. It will not afford full opportunity to the people that we are saying that ought to have it. So therefore I ask you, I ask you in the name of justice, I ask you in the name of all women all over this state, I ask you for black people over this state. I have talked to them, and there is nothing up to this point in this constitution that black people are excited about or that they can hang onto, and they say why should we bother about it, and I say to them that the delegates of this constitutional convention are fair-minded people and they are going to put something in there for you, and this is why it was put in there, and this is why we ask you to vote for it, and this is why we ask you to let this amendment pass because they are destroying hope and because you are not addressing yourself to a serious and critical problem that exists in this state this day and at this hour. Ladies and gentlemen, I ask you to vote against the amendment as proposed.

Further Discussion

Mr. Champagne Mr. Chairman, ladies and gentlemen, I rise in support of the Juneau amendment. I submit to you that this is constitutional law. I suggest the intentions of the committee are far ahead of their deeds. We are not writing constitutional law in that committee, we are legislating, and the place for legislation is in the legislature. There is no place for legislation in Section 3. There is no place for any other thing that is mentioned in Section 3, with the exception of race. As this shall be presented as an amendment to this, and I suggest you support the Juneau amendment, and I shall vote for the amendment which puts one and only one thing that has any merit whatsoever, and that is, no discrimination because of race. I want to further say, as some of you know, that I go home every night. I discussed women's rights at length with mamma last night. She told me that she had all the rights that a white woman has, and she wanted, and if any of you think she is ignorant or uneducated, that is not the question. She is well educated, as well as I am, and she is much smarter than some of you would give her credit for because she knows real well that when she writes a check, she says "Babe, maybe you had better check the checking account and put some money in it." I accept that as my responsibility, and that is one of the reasons why women outlive men. I think it is a great deal, I think there is a difference. I don't have to tell any of you here that there is one or two years old there is a difference. As a man of French heritage, I say, "vive la difference" and that to you means "long live the difference." Thank you.

Further Discussion

Mr. Gravel Mr. Chairman, and ladies and gentlemen of the convention, I speak in opposition to the Juneau amendment because I don't think it does anything at all for the people who are looking for recognition, and whether or not their rights are going to be given recognition. If there's one thing that a substantial segment of the population of the State of Louisiana is concerned about, it is whether or not we are going to have the courage to get away from the provisions that were in the Constitution of 1921 and to put something in the constitution that has meaning and validity, clarity and peace in it. It doesn't do a whole lot of good to go to people who have been disadvantaged over the years, by circumstance and by the operation of law, and say to them that we have got a great high sounding platitude here, the concept of equal protection of the laws that is going to take care of the problems that you are primarily concerned with. If we do nothing less, we have got to clearly, concisely and specifically state in this constitution that there shall be no discrimination against those who have been discriminated against; and if we don't spell it out, if we try to gloss it over, if we try to generalize,

then people are going to say, 'the delegates to the constitutional convention are trying to play the same old games and are trying to fool us again.' Perhaps we do have a few more words here than some of the delegates think ought to be in the constitution, but where a few more words are needed is right here in this provision that is going to mean more to more people throughout the State of Louisiana than any other provision that is going to be adopted by this constitution. We have got to spell out specifically, clearly and unequivocally that people will be accorded equal protection of the laws and that specific discriminations will not exist in the State of Louisiana under state law for just as long as we can foresee that this government will exist. I urge you ladies and gentlemen, I urge you to keep in mind that we are not going to fool the people who are interested in and who support this amendment. These provisions are there because they affect identifiable, substantial segments of the population of the State of Louisiana. Let us not forsake them.

Further Discussion

Mr. J. Jackson Mr. Chairman, ladies and gentlemen of the convention, as usual we had predecessors to myself that came up here and articulate very adequately my feelings on this subject. I thank Mr. Gravel, Mr. Jackson, some other speakers who are in opposition to the Juneau amendment. Let me suggest to you very strongly that, being a son of discrimination, I would not like to as a delegate have to prolong or to continue the forms of discrimination that will be allowed to exist if the Juneau amendment is passed. I don't know, and I don't think that many of you here could possibly conceive what it is to have the effects of discrimination carried on for so many years. Many of you here have conceded that we ought not to do it on race, we have bring in another bring in race. We bring in physical condition; we say it's no, we got to make certain exceptions, and I want to suggest to you that that's the same argument, ladies and gentlemen, that I, being the son of discrimination have heard on the issue of race. I want to suggest to you that on the matter of physical condition you got to wait. Whether you are denied.... you're going to get hung up trying to determine.... can you distinguish between a D.W.I. or whether you are going to deny a veteran or a physical handicapped person their just rights. I think that it is very reasonable to assume, to state emphatically, that any court will say that if someone is arrested on D.W.I., that that does not give them the protection of discrimination on physical condition. You know, I don't even see how that could have even been presented. I find it very difficult to get up here time after time after time again and try to convey to you very strongly a concept that I would appreciate, and I say this with no offense, that I can appreciate that many of you can't really conceptualize unless you fit in one of these certain categories. There has been some allusion to the fact that we ought to talk about whether to be interested in brevity. We ought to be interested in Style and Drafting. I want to suggest to you that the persons that fall in this category don't really care about how many words you use to protect them. There have been laws that have been enacted on the federal and state level that attempted to further clarify for court interpretation the rights, responsibilities and the protections of particular classes or categories of people. So there is no problem with us; I think the precedent has been set, and I don't think that we ought to get hung up on the matter of whether we go a little step further attempting to enumerate those certain provisions. I know that it is difficult and I was really debating with myself whether I should come before you again to try to make you understand and to try to at least conceptualize and crystallize the kinds of long range effects that this has. I want to suggest to you that one of my major objections to the Judiciary proposal was the fact that we were including ma-

yors' courts and justice of the peace when we know there have been certain rulings that say certain phases of that is unconstitutional, but the arguments that were presented to me was that hate. Let us include it, because it will make our mayors feel good. I am suggesting to you ladies and gentlemen, let's take that same rationale, but not just to make them feel good, but to really show and demonstrate by this constitution, you know, are we really putting our actions where our mouth is?

Further Discussion

Mr. Pugh Mr. Chairman, and fellow delegates, I want to apologize in that the first order of business this morning I submitted to you an amendment that did not contain all the language that I should and I apologize for that. I would like now, insofar as this body is concerned, to speak against the proposed amendment and to suggest to you that the proponent of the amendment said that everything that he had in his amendment was contained in the Fourteenth Amendment to the United States Constitution. That is absolutely correct. I suggest to you also, however, that every phrase that is included in this paragraph has to my personal knowledge been defined by the United States Supreme Court to be covered by that very same Fourteenth Amendment to the United States Constitution. I suggest to you that the language relating to birth, to race, to age, to sex, to social origin, to physical condition, to political, religious ideas, has each and everyone been already considered and found to be viable under the Fourteenth Amendment to the Constitution of the United States. I have seen an amendment laying on my desk that would do something to this article that I think would be helpful; it uses the word "reasonably" between the words "law and discriminate." I suggest that we take this amendment and look to the next one. Thank you.

Question

Mr. Lanier Mr. Pugh, you said that the committee proposal contains all the jurisprudence. Does not the jurisprudence say that the "unreasonable or arbitrary discrimination" is that which is prohibited, and if that is correct, would you point out to me in the committee proposal where the terms "unreasonable or arbitrary" are contained?

Mr. Pugh I never said this contained all the jurisprudence; all the jurisprudence couldn't be paid for by the people of the State of Louisiana, much less put in one constitution. I have said each and every one of the phrases or words as used here has already been determined to be protected by the Fourteenth Amendment. I suggested to you that an upcoming amendment was a good one when it used the very phrase that you have mentioned from there "unreasonable."

[1973 AUG 29 10 00 AM 1973]

Closing

Mr. Juneau Mr. Chairman, and fellow delegates, I will make my remarks very brief. I would like to clarify a few points. There is not now in the State Constitution of this state an equal protection clause, and that is exactly what I want to insert in. I am putting in, it is my opinion that by putting into this constitution an equal protection clause, you have afforded to the women and to the elderly and to all classes of people in this state a standing, a right to go into court and to contest any provision of law which you in your own mind deem "arbitrary or unreasonable." I submit to you that if you want categories and you want distinction, then vote against the amendment. On the other hand, if you want a provision which has been in the Federal Constitution since the 1800's, which is equally applicable to all people and is not based upon religion, is not based upon

38th Days Proceedings—August 29, 1973

race and is not based upon cultural origin. I respectfully submit that you should vote for this amendment. It is a fair, it is a constitutionally created right which is implicit in its own provisions. I move for its favorable adoption.

[Amendment withdrawn. Amendment introduced by speaker, Motion for its adoption. Motion for its adoption. Amendment adopted without objection.]

Introduction of Proposals [1: 400-401.]

ANNOUNCEMENTS [1: 402-404.]

[Amendment introduced by speaker, Motion for its adoption. Amendment adopted without objection.]

39th Days Proceedings—August 30, 1973

Thursday, August 30, 1973

ROLL CALL

[97 delegates present and a quorum.]

PRAYER

Mr. De Blieux Our Heavenly Father, we thank Thee for being here another day. We ask Thy guidance upon this delegation, all the members of this convention and staff, those we are supposed to represent. We ask that You give us the wisdom to go about the affairs that You would have us to do this day, that we may do it without regard to personalities, without rancor, but only in the spirit which You would have us to do it. We ask this all in Jesus name. Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

PROPOSALS ON SECOND READING AND REFERRAL [1 Journal 405]

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Poynter Committee Proposal No. 25, introduced by Delegate Jackson, Chairman on behalf of the Committee on Bill of Rights and Elections
A proposal to provide a Preamble and a Declaration of Rights to the constitution.

The status of the proposal is the convention has adopted as amended, the proposed Preamble, and Section 1, and Section 2 of the proposal. Presently has under consideration Section 3, Right to Individual Dignity.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Denberry, et al.]. On page 2, delete the line "and the entire" and insert in lieu thereof the following:

"Section 3. No person shall be denied the equal protection of the law. No law shall discriminate against a person on account of race or religious ideas, religious beliefs, or religious affiliations. No law shall arbitrarily, capriciously, or unreasonably discriminate against any person by reason of birth, age, sex, culture, physical condition, political ideas or political affiliation. Slavery and involuntary servitude are prohibited, except in the latter case as a punishment for crime".

Explanation

Mr. Denberry This amendment is an attempt to accommodate all that was said yesterday into Section 3. You will note that the first sentence has the "equal protection of the law" provision all by itself. The next clause provides that there shall be no discrimination against a person, no discrimination of any sort, on account of "race" or religious ideas, beliefs or affiliations". Then there follows the balance of the language that was in the committee proposal which states that "No law shall arbitrarily, capriciously, or unreasonably discriminate against any person by reason of birth, age, sex". We have changed the words "social origin" and replaced it with the word "culture, physical condition, political ideas or political affiliation". The last sentence remains the same.

The authors believe that there is absolutely no basis for any discrimination of any sort on the basis of, on account of race or religion, but they do believe that there can be discrimination if it is not arbitrary, not capricious, and not unreasonable as far as the other items contained in the original committee report are concerned. With the question of birth and age, for instance, reasonable discrimination is understandable because of drivers' licenses, for example, or for retirement

purposes. The reasonable discrimination as to sex is concerned, for example, would be to require separate restrooms for men and women. Otherwise, you might not be able to do this under the law. Culture is obvious. There can be certain reasonable discriminations there. For instance, the English language can be the official language of the state, and therefore, that is a reasonable discrimination against the French language. The physical condition, again, that is reasonable with regard to drivers' licenses or state jobs. Also, for interdiction purposes it would be necessary to have such a reasonable discrimination. The same thing is true of political ideas or affiliations. If there was no discrimination, it is quite possible that we could not have primaries. The last sentence remains exactly as it was in the committee proposal. Mr. Chairman, I would like to yield the balance of my time to the chairman of this committee, Mr. Alphonse Jackson, if that is satisfactory.

Mr. A. Jackson Mr. Chairman and ladies and gentlemen of this convention, I think that we have to arrive at a point where men of goodwill can reason together. I think yesterday we came dangerously toward polarizing not only this convention, but polarizing this state and placing the new constitution in grave jeopardy. That is not the wish of this committee nor is it the wish of any delegate to this convention. I think that this amendment provides the kind of protection, the kind of equality, the kind of justice for all of the categories that we were concerned about. I simply want to say for our committee that we do not consider ourselves prima donnas. We do not consider pride of authorship more sacred than the rights, and the equality, and the justice that's so needed for all people in this state. Therefore, we would urge members of this convention to put an end to the harangue that occupied so much of our time and heated our emotions to a point that caused all of us problems yesterday. Let's all give our consent, give our approval, to this amendment and move on to the next section in the Declaration of Rights Article. Mr. Chairman, if there are no more speakers, I'd like to move the previous question on this amendment.

Further Discussion

Mr. De Blieux Mr. Chairman and ladies and gentlemen, I rise to support this amendment. I'd like to say this, that I think that as it's well-known that I have been in this fight for equal rights for a long time. In reading over this amendment, it is my opinion that it accomplishes everything which I certainly stand for, and I believe the people of this state stand for. In spite of the arguments that advanced yesterday, there is no law we can pass by the legislature or no constitutional provision that we can pass by these constitutional delegates that will change the makeup of a man and a woman. Laws cannot do that; but we can, by passing of our laws, sometimes, equalize the rights of these people. There is no law that can change the race, but we can, by our laws, equalize those rights of race in comparison, one to the other, and so on down the line. I certainly believe that as far as people's religious beliefs are concerned or their racial makeup or whatever it may be, there should absolutely be no discrimination. This particular amendment takes care of that situation. There are some reasonable bases, as I told you yesterday, that I was afraid of by the provision of no discrimination as to age. This amendment takes care of that situation. It takes care of the physically handicapped, and I certainly think that it's worthy of our consideration. Therefore, I ask you, let's go along with this amendment and put this particular section of our Bill of Rights at rest.

Further Discussion

Mr. Jack Mr. Chairman and members, this amendment is not at all like the material we were talking about yesterday. This is not a compromise; this

is a statement of what is the present law, not only through the Supreme Court, but the state decisions. So I go along with this amendment. The first part is just what I said yesterday, when people were making so much noise they were not listening, that you couldn't discriminate against a person on account of race or religion. I told you, age, sex, culture, physical condition, political ideas or political affiliation." That's present law anyway. I just want it understood that I'm trying to help write a good constitution. This has been called a compromise, but I ain't 'cause I'm not going to compromise anything. As to any arguments yesterday, you've got to argue for your rights, and I'm going to always argue for what I think is right. This is the present law. It is not a compromise, and that's why I'm for this floor amendment. Thank you.

[Previous Question ordered. Quorum Call: 101 delegates present and a quorum. Amendment adopted: 100-6. Motion to reconsider tabled. Moved as Question on the Section. Section passed. 102-3. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter. "Section 4. Right to Property
Section 4. Every person has the right to acquire by voluntary means, to own, to control, to enjoy, to protect, and to dispose of private property. This right is subject to the reasonable exercise of the police power and to the law of forced heirship. Property shall not be taken or damaged except for a public and necessary purpose and with just compensation paid to the owner or into court for his benefit. The owner shall be compensated to the full extent of his loss and has the right to a trial by jury before the compensation is paid. No business enterprise or any of its assets shall be taken for the purpose of operating that enterprise or for the purpose of halting competition with government enterprises, and personal effects, other than contraband shall never be taken. The issue of whether the contemplated purpose be public and necessary shall be a judicial question, and determined as such without regard to any legislative assertion."

Explanation

Mr. Jenkins. Mr. Chairman, delegates to the convention, it has sometimes been said that human rights are more important than property rights, but in the close analysis of the subject by someone who lives in a free society leads to the conclusion that property rights are not at all contrary to human rights, but indeed an essential attribute of human rights. Without property rights, it's difficult to see how human rights can exist at all. This fact was brought home to me personally, not long ago. A friend of mine had been traveling abroad. He is an evangelist, been in Europe for the summer. He spent some time in Sweden. Sweden, of course, is a socialist country where property rights have been disparaged for quite a while, and yet where the people escape a belief in liberty. He found a strange thing, however. He found that, for example, there was little freedom of the press. He couldn't understand why. In the atmosphere of Sweden, it would seem that freedom of the press would run rampant. Yet, as he looked further, he found that in the case of newspapers, the newspaper print supplies were controlled by the government. If they wanted to buy newsprint, because the government owned vast tracts of forest land and processed paper, they had to go to the state. They found that in the back shops and in the newsrooms where the editors sit, and the reporters, and the

pressmen, and all the other people who run a newspaper, all the rules and regulations dealing with how they would deal with their newspapers were set by the government. Their right to deal freely had been taken away. The newspapers also were in the situation of finding that for advertising support rather than going to private individuals and businesses, a large portion of their advertising came from the government because the government was owning and operating many of the means of production. So a newspaper was in a compromising position in Sweden. Dependent on the government, if it wanted its sources of newsprint, if it wanted reasonable labor laws, if it wanted advertising revenue. So it was not difficult to see why there was little dissent in the newspapers. Property rights had been denied. My friend found another interesting thing. He found that as an itinerant [itinerant] evangelist he was harassed, because in Sweden, because property rights have been taken away, there is now little freedom of religion. You see, there can be no freedom of religion if people do not have the right to buy a place of worship, a tangible piece of property which is theirs, not the governments. That right is being restricted in Sweden. Freedom of religion can't exist unless a group of people, a congregation can get together and hire a minister of their own rather than one chosen by the state. Freedom of religion can't exist unless people can buy books, religious tracts, and publish same. All of our basic rights are wrapped up in property rights. Without them, there can be no human liberty. In recognition of this fact, most state constitutions, almost all, somewhere recognize very clearly the right to own and control property, as among our essential rights. I refer you to the first sentence in the proposed section. "Every person has the right to acquire by voluntary means, to own, to control, to enjoy, to protect, and to dispose of private property." That means simply this. It does not mean that a person has a right to acquire property, or to own property, to dispose of it, or own it, or enjoy it. But that he has that general right, that the right, say, to own property cannot be a right which is taken away from him. The Arkansas Constitution says this about property rights. It says, "The right to acquire property is above and higher than any constitutional sanction." Other constitutions pay appropriate tribute to this right. The second sentence of this section says "this right is subject to the reasonable exercise of the police power and to the law of forced heirship." There are basically two ways in which government limits property rights. One, by the police power, that is the regulatory power of the state, the authority of the state to do virtually anything in furtherance of the common welfare in the nature of regulation of property so long as property rights are not denied entirely. That is what we refer to here when we talk about the police power. It is a term of art, a legal term, which means the regulatory power of the state. The rest of this section deals with the other type of limitation on property rights. Not the regulatory function, but the authority of the state to take property completely. The authority of the state to seize a person's property is a very serious matter, ought not to be taken lightly. Yet, under present law, there is no restriction on property the way in which government can take property. If there is a so-called public purpose and if just compensation is paid, it's taken. Yet a public purpose has come to mean almost anything. There are a few cases delimiting public purpose. Courts have held time and time again that anything government wants to do is a public purpose. Then, in the matter of just compensation. Just compensation, in our state, is decided by an instrumentality of the state, of the one doing the taking, namely the judge, the jury, the legislature, and reforms. Not to really impede government or restrict it, but to make it subject to certain reasonable limitations, to do what a Bill of Rights should, to regulate government. So, we provide that property can be taken not just for a public purpose, but for a public and necessary purpose.

Mr. Dennis: Yes, sir.

[Motion to otherwise refer to Judiciary Committee adopted: 71-28. Motion to reconsider tabled.]

* * *

REPORTS OF COMMITTEES LYING OVER [1 Journal 420]

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Poynter: Committee Proposal No. 25, introduced by Delegate Jackson, Chairman on behalf of the Committee on Bill of Rights and Elections, which is a substitute for Committee Proposal No. 2 by the same gentleman.

Proposal No. 25 provide a Preamble and a Declaration of Rights to the constitution.

And of course, the status of the committee proposal at this time is that the convention has adopted as amended the proposed preamble to the Bill of Rights and Declaration of Rights and has adopted Sections 1 through 4 as amended of the proposed Declaration of Rights.

The next section which would be up for consideration in its regular order would be Section 5. Right to Privacy.

Reading of the Section

Mr. Poynter: Section 5. Every person shall be secure in his person, property, communication, houses, papers, and effects against all unreasonable searches, seizures or invasions of privacy. No warrant shall issue without probable cause supported by oath or affirmation, particularly describing the place to be searched, the person or things to be seized, and the lawful purpose or reason for the search.

Any person adversely affected by search or seizure conducted in violation of this section shall have standing to raise the illegality of that search or seizure in the appropriate court of law.

Explanation

Mr. Vick: Mr. Chairman, fellow delegates, one of the geniuses responsible for our Federal Constitution and the Bill of Rights said that "there is a circle around every individual human being which no government ought to be permitted to overstep, that there is, or ought to be, some space in human existence thus entrenched around and sacred from authoritarian intrusion. No one who professes the smallest regard for human freedom or dignity can ever call this into question". Those words were those of Thomas Jefferson. The section you have before you is very, very similar to the Fourth Amendment, prohibition against searches and seizures in the United States Constitution. It is very, very similar and in close conformity with the provision in the 1921 Constitution, with one or two changes. The key throughout, as you heard yesterday and as you no doubt will hear again today, is every man's home is a castle. There are many, many subtle and sophisticated ramifications to this from the standpoint of law enforcement. But nevertheless, while a man's home is his castle, there have been intrusions and incursions into those sacred domains. As a matter of fact, evidence seized in unlawful searches, that is without warrants, are allowed to be admitted into the courts of law to convict citizens in this state as late as the mid sixties. The prohibition against unlawful searches and seizures distinguishes a viable democracy from a dictatorship. As I said, there is belated recognition of the prohibition against unlawful searches and seizures insofar as the introduction of that evidence into a court of law in a criminal proceeding just as there was a belated recognition of the right to remain silent and to be informed of one's rights. Now, the major difference between this proposal and the proposal or

the section in the Constitution of 1921 is in the last sentence which says, "Any person adversely affected by a search or a seizure conducted in violation of this section shall have standing to raise the illegality of that search or seizure in the appropriate court of law". Now ladies and gentlemen of the convention, we had numerous witnesses appear before us. Mr. Ed Ware, the president of the District Attorney's Association appeared before us three times. Mr. Aaron Cone, president of the Metropolitan Crime Commission of the city of New Orleans appeared before us twice, in addition to other representatives of law enforcement. They all recognized the problem. The problem, ladies and gentlemen, that the last sentence addresses itself to is lawless law enforcement, which none of us can countenance, that is, members of the law enforcement community or citizens at large. I want to give you an example of why the committee arrived at the determination to include this language. Mr. Chairman and fellow delegates, I'm going to read part of a transcript; it's an exchange between Delegate Wall and Mr. Ed Ware, the president of the District Attorney's Association. I would, Mr. Chairman, like the record to reflect that I cannot give the exchange the space that Mr. Wall would have, but, nevertheless, I want to read this to you and I want you to listen very carefully.

Question by Mr. Wall: Did you have an opportunity to see, about a month ago, the editorial where federal agents without a warrant broke into two innocent persons' houses?

Answer by Mr. Ware: But what I'm saying is for the evidence. If a man is guilty and we have the evidence of his guilt, use it. Why should he go scott free because someone else has violated the law? Do two wrongs make a right?

Question by Mr. Wall: No, I think what we want to do and you want to do is obviate policemen kicking in doors.

Answer by Mr. Ware: Yes, and you know the best way to do it.

Mr. Wall: How?

Mr. Ware: If he does it, put him in jail and make him pay a fine.

Mr. Wall: Ed, have you ever had a case like that in your court where a policeman illegally got evidence and violated the law?

Answer by Mr. Ware: Yes.

Mr. Wall: What did you do with the policeman?

Mr. Ware's answer: What can I do with him?

Mr. Wall: Well, if he violated the law, you can prosecute him, or you can charge him.

Mr. Ware: Show me the statute, "Shady," where it says if you violated someone's constitutional rights that you pay a fine or go to jail.

"Shady": If he's violated the law, there are plenty of laws in the books. I'm not talking a criminal lawyer or a lawyer, but there are plenty of laws on the books and if a policeman violates the law, that you could prosecute him. I'm confident of that.

That not concludes the exchange. What we were concerned with was lawless law enforcement, nothing more, nothing less. Can we have respect for law enforcement when one of the most sacred Anglo-American concepts is violated without affording the citizen an opportunity for redress. That is the question that is proposed in the last sentence. That's the question that has been raised there. We have answered it on this committee, by allowing a citizen redress. There are laws; there are laws, indeed. One of them is the Civil Rights Act, and let me tell you, ladies and gentlemen, you get very, very short shrift if you file a Civil Rights Act in the United States District Court charging law enforcement with violation of constitutional rights. Very short shrift indeed, because federal judges say it's a local matter—a local matter. Therefore, ladies and gentlemen, on the suggestion of law enforcement, albeit with some dissent, I dare say this last sentence has been included to allow citizens who have been aggrieved, who have had their doors kicked in by law enforcement without a warrant, and who have been terrorized and whose property has been destroyed, a right to go into a court of law

40th Days Proceedings—August 31, 1973

and ask for redress of grievances. That's the sum and substance of it and, Mr. Chairman, I yield to questions.

Questions

Mr. Lanier Mr. Vick, with reference to the sentence that starts on line 2, on page 5, there has been some confusion in the federal jurisprudence over whether or not you can lawfully seize an item that is not specifically listed in your search warrant. What is the intention of your committee as to how this language should be interpreted?

Mr. Vick Well, are you referring to . . . of course, the beauty of this section, Mr. Lanier, is quite frankly, as Mr. Burson did for you the other day, gave you a list of all of the Supreme Court decisions that control us today by absorption to the Fourteenth Amendment applying the Bill of Rights, the first ten amendments to the states. If you're talking about *Chimel vs. California*, that sort of thing, where it's within the control. . . All right, fine.

Mr. Lanier No, what I'm getting at. . .

Mr. Vick Obviously, a warrant must always describe with particularity. Now if they pick up other things, under Supreme Court decisions, that are not listed in the warrant, are outside the control of the suspect, or of the accused, or of the person named in the warrant, I would think that a Motion to Suppress would lie. But mind you, I don't think that we want to, here, go into detail matters. I think always a search warrant, historically, has been the things which are particularly. Now if they pick up something else that's not in the warrant, well, that's . . . you know, that's for the court of law to decide. But the intention of, the intention of the committee, Mr. Lanier, insofar as the language in the section is concerned, is to be identical or as close with modernity, as close to the section in the Constitution of 1921 as we could make it, and I think it is.

Mr. Lanier Well, the point I'm getting at is I am familiar with cases in the federal courts that go both ways on this point, and I was wondering if the committee had considered this particular point. In other words, if you lawfully enter with a valid search warrant and during the course of a lawful search find an item of contraband that is not specifically listed in the warrant, could you then lawfully seize that item?

Mr. Vick Well, again, Mr. Lanier, without belaboring the point, the answer is yes, as long as it doesn't violate any of the Supreme Court guidelines, the most recent one of any magnitude being *Chimel*.

Mr. Lanier Well, then it is your intention to adopt the federal jurisprudence for interpretation of this language, is that . . .

Mr. Vick I didn't hear you, but I think we'd have to follow the federal guidelines. But in any event, in *Chimel*, as you recall, that . . . in other words, all the law enforcement officers could have waited there on the premises while their colleague went back and got another warrant. Now mind you, that's very cumbersome, they don't like to do it; they don't do it in many cases. But nevertheless, they could, because the man is not going anywhere, that's for sure.

Mr. Lanier Well then, is it your intention that this should be interpreted to require the law enforcement officer, even though the thing is there in plain sight, have to go back through the procedure of getting a search warrant and finding a judge and everything else?

Mr. Vick Walter, Walter, we're bound by the Supreme Court in the entire Fourth Amendment area, you know that. It's really for the courts to de-

cide these finite points. I can't do that from this podium. I don't have the time, nor do I have the access to the research staff to answer those highly technical questions.

Mr. Sandoz Delegate Vick, does the last sentence in this section carry out the present rights existing under the present constitution, or did the committee intend to insert some additional rights?

Mr. Vick Mr. Sandoz, after the exchange that I just read you, and after discussion with other law enforcement officials, and after discussion with other citizens who appeared before the committee, it was very clear that something needed to be said about this. Therefore, in answer to your question, I would have to answer yes.

Mr. Sandoz Would this, if a judge improvidently issued a search warrant?

Mr. Vick Improvidently issued, yes.

Mr. Sandoz Would that give the person a cause of action against him if it was submitted to him on erroneous information?

Mr. Vick Well, you know, Mr. Sandoz, *Aguilar vs. Texas*, of course, deals with that subject and says that, among other things, that the warrant has . . . there is a groundwork before warrants are issued, affidavits, etc., and the affidavits cannot be attached to the warrant if they are suspect, but a warrant improvidently granted with the proper basis would not give rise to an action, no.

Mr. Henry You've exceeded your time, Mr. Vick.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Deshotels]. On page 3, line 5, after the word "and" and punctuation, delete the remainder of the line and delete lines 6 through 8 both inclusive in their entirety.

Explanation

Mr. Burson Mr. Chairman, ladies and gentlemen of the convention, Mr. Deshotels is not with us today; however, I discussed this matter with him, and I think I understand his intent in submitting this amendment and I will try to explain it as I understand it. First of all, would urge all of you, for a proper understanding of the issues involved in this section, to look at the Fourth Amendment to the little copy of the U. S. Constitution that was passed out to you yesterday, or whatever other copy you might have, so that you would know what is in the U. S. Constitution. It is my understanding of the present state of the law that the protection of the Fourth Amendment against unreasonable searches and seizures, which gives the criminal defendant the right to suppress evidence illegally seized from him, has been applied and is being applied through the Mapp decision to all the states today. In fact, the Louisiana Code of Criminal Procedure provides that any defendant can bring a Motion to Suppress evidence illegally seized. So, both the Louisiana Code of Criminal Procedure and the federal Constitution require, today, that a person who has been the subject of an illegal search and seizure in his home can have that evidence suppressed in a criminal proceeding. Now this last sentence, I have gotten two interpretations from different members of the committee this morning, and I think that we ought to have an explanation of which interpretation is to prevail before we conclude the proceedings today. At least one member of the committee is of the opinion that it is the purpose of this last sentence to give a civil right of action. Frankly, I don't think that there is any question but what, under recent decisions by the Fifth Circuit Court of Appeal as well as under Louisiana tort law, that you would have a civil right of action under many circumstances involving illegal searches and

seizures. But there is another interpretation which has been advanced which would be a change in the criminal law, and that interpretation would be that this last sentence would be designed to give someone other than the person whose house was searched the right to raise the illegality of the search in the criminal proceeding. That would happen in this type of situation. There had been a bank robbery; the culprits are hiding out and there is an illegal search. The house is entered and the evidence seized illegally, let's say. Is therefore the basis of the prosecution not only against the person whose house has been broken into, but, let's say, his two fellow culprits? I think it is a correct statement of the present law that only the person whose house was broken into illegally could raise the issue in criminal court and could move to suppress the evidence; the other two people could not. That evidence could be used against them. It is my understanding, in talking to Mr. Roy, at least, that it is his intent that this sentence would extend the right to move to suppress the evidence from the person whose house had been broken into illegally to the other two people there with him. Now, of course, you could extend this example to other situations that you could think about. Now I don't know whether it is the wish of this convention to make that extension. I would point out to you, and I'm not here to vigorously argue the point but more to inform you, although I assure you I will be here to vigorously argue some other points on criminal procedure later on. If you do accept this sentence and if that interpretation of Mr. Roy is correct, then you would be, as I understand it, changing the criminal code of procedure that we presently have in Louisiana and extending the right to make the Motion to Suppress to others adversely affected by an illegal search in addition to the person whose house has been entered. It is the purpose, I understand, of Deshotel's, in his amendment, in discussing it with him, to eliminate that conflict and to leave the law as it is. This is the reason that the amendment has been offered. I will answer any questions that anyone has.

Questions

Mr. Lanier Mr. Burson, am I correct that there is presently some federal jurisprudence to the effect that even though a person consents to a search you have to affirmatively advise him of his right to decline to consent to the search?

Mr. Burson I think that's correct, Mr. Lanier.

Mr. Lanier Well, under this sentence that's in here right now, the sentence that you are seeking to delete, could you have a situation where, say, somebody robbed a bank and hid it on my property and I wasn't a party to the thing? The police learned and asked me if they could search my property, but didn't tell me I had a right to refuse even though I didn't have anything to do with it. Would that be an illegal search under that circumstance which would allow the bank robber to then claim that that evidence couldn't be used against him?

Mr. Burson It could be interpreted that way. Of course, you get just all sorts of different circumstances under this search and seizure thing. I know when I was a defense attorney, which I have been all the time up until January 1 of this year, I filed a lengthy brief on the first decision by the Louisiana State Supreme Court on the question of the application of Mapp, after Mapp came out. The situation that you're talking about in the consent search was involved in the case that I was defending. As I recall it even at that time, you were right in that the consent had to be an informed consent. I presume that informed consent would mean that you'd have to be informed of your right not to consent.

Mr. Abraham Jack, maybe it was stated and I missed it, but for those of us who are not really familiar with the criminal law and so forth, doesn't a person

right now have a right to contest an illegal search or seizure?

Mr. Burson Yes sir, but I think it's important to recognize the distinction between his right civilly and his rights criminally. As to his rights criminally, there is no question that under the United States Supreme Court decision in Mapp and under the Louisiana Code of Criminal Procedure, that the person whose home has been entered illegally, certainly, can move to suppress that evidence in court. Now, there is a question in the civil situation. It's my understanding of the civil law that in the tort law that you have certain remedies and also under the recent decisions of the Fifth Circuit Court of Appeal, they have said, I believe I'm correct in saying this, that the Fourth Amendment would give you some civil rights. But this whole matter is handled, as I understand it, in England as a civil matter. That is to say, if your home is entered illegally that you are given a civil right to proceed. Now we have never gone this route nationwide, we've been more or less limited up till now to this motion to suppress the evidence on the criminal side. There is some argument, Justice Cardozo, the great justice of the U. S. Supreme Court, in the 1930's made the argument that evidence, if it was good evidence that tended to prove guilt or innocence, shouldn't be excluded just because it was illegally seized, that what you ought to do is give the person who is aggrieved a civil right of action for damages. This may be what this seeks to do. I'm not sure. I think that we ought to get into that question before we vote.

Mr. Jenkins Jack, I appreciate the fact that you are not very vigorous in your support of this amendment. Let me ask you this. Won't this, if we don't have this sentence in there that you would take out, isn't it really going to mean that there is going to be really no effective barrier against law enforcement officials infringing on the rights of people, breaking down their doors? The case in Illinois is a prime example where the police that in there on an alleged drug raid and tore up the place. There was no evidence whatsoever to support it. Isn't this amendment going to just continue to encourage that sort of thing?

Mr. Burson Well, Woody, I can't agree with you entirely. It depends how far this language goes. I think the most effective barrier that you have under the present law is the Motion to Suppress and I filed quite a few of them in my time in defending people. In fact, just about every case I ever had involving seizure of evidence, any good defense lawyer is going to file a Motion to Suppress, and when you are successful, of course, that's the most effective way to bring home to people that they've got to conduct these searches in a proper manner. I think it's fair to say that there are places, and England is one that I am aware of, where they handle this as a civil matter. However, there, they do not have the Motion to Suppress in the criminal proceedings. I think it's important that we understand exactly what this sentence does before we go into approval of it, one way or the other.

Mr. Jenkins Well, but a Motion to Suppress really, while it may have some deterrent effect on illegal acts by law enforcement officials, really it includes no sanction against that individual at all--the person who does the illegal action. It's merely something that will cause him to lose a conviction later on, but it doesn't directly discourage him does it?

Mr. Burson Of course, Woody, and again this is something I'm familiar with because I've filed suits for assault and battery against police officers and for false arrest. You've got remedies under the tort law at the present time for these situations. It's a question that I think is in the state of evolution in the present law as to whether you would also have a right in tort for personal

injury as far as invasion of property rights per se, as distinguished from invasion of your person. There is some authority that you do. I don't think that this facet of the law is fully developed at this stage.

Further Discussion

Mr. Warren Mr. Chairman and fellow delegates, I'm rising very high in opposition to this amendment. I've got a few general parables that we know every day. In recent years men have been able to go to the moon because the government has provided them with the vehicles with which they would go. We can travel from one side of this state to the other in a matter of hours because we have the vehicles to go at that speed. If you have a carpenter, I don't care how good he is, if you don't give him the tools to work with, he's not going to be able to do a job—so then we would not have any houses. I'm bringing to your attention, and I wish this proposal were made just about three or four weeks ago, about three weeks, I'll put it that, when I got home a young woman called me and told me that she was away from home when the policemen kicked her door down and went in it and searched. They found nothing, they just ramshacked it and left. Her door was left; anybody could have gone into this house and took anything they wanted to. Someone saw them do it. I have the highest respect for law enforcement and I would do anything in my power to help promote the welfare of our law enforcement officers. But also, there are a few rotten eggs in any barrel that you can find, and I assure you that there are exceptions to all rules. But the general rule would outweigh the exceptions any day. I'm going to ask you to give the average citizen a vehicle by which he can secure his rights in this constitution and not be subject to "If I can or if I can't." I think that we should make this thing very clear. We came here, probably, to write a new constitution or rewrite this one or not stick to the old rules. If the last sentence, then, and I'm not criticizing it, was all that good and did not need any repairs we would not be here today. I think that this is a very good proposal that has been submitted by the Bill of Rights and I think we should accept this one amendment as it is written. Let me just go back down to the little technicalities that might cause a little trouble or a little change. Change is good sometimes; it might cause a little problem. We changed all the way from the 1925 Ford, as I could remember, on up to 1973 and we're soon going to be buying 1974 if we can afford it. Let us today, give respect to our citizens and give them the right what they also deserve. Let me remind you, "two wrongs does not make a right." Are there any questions?

Further Discussion

Mr. Avant Mr. Chairman and fellow delegates, I rise in opposition to this amendment. You are now dealing with fundamentals. I don't see how anyone can say that they don't understand what this means. It's very clear what it means. It means that any person who has been searched or whose home has been searched, whose property has been seized in violation of the law has the right to question that violation in court. Now I say we are now dealing with fundamentals. One of the fundamental differences between this country and a totalitarian state is that when you go home and you go to bed at night, you don't have to fear the rifle butt against your door in the middle of the night. You don't have to fear the iron brute of oppression kicking in your door in the middle of the night because you live in a free country with a constitution that guarantees you those rights. Now, this provision sets out a fundamental guarantee of human liberty, and all this last sentence says is that if your rights in that particular are violated, you've got the right to question it in court. Now, if you take that sentence out, you leave the way open for you not to have the right to question it in court. Now why is that important?

I served on the Judiciary Committee and it was suggested not once, but several times by some of the so-called experts who came to see us, that this rule which says that evidence that is seized in violation of your constitutional rights is not admissible ought to be done away with. Now why should it not be done away with? It should not be done away with because it insures that law enforcement officers, before they conduct, that is, violate someone's rights, go through the procedures that are required by law to make sure that they have the right person. This provision says that first there's got to be probable cause, and it's got to be supported by oath or affirmation that particularly describes the place to be searched, the persons or things to be seized, and the lawful purpose or reasons for the search. Now all that means is that they have to go before a judge and state under oath why they want to conduct this seizure or search, what information they have that causes them to want to do that, and then particularly to describe the place to be searched, the persons or things to be seized. Now is that too much to ask of a law enforcement officer before, in the middle of the night, a rifle butt knocks your door down? Is that too much to ask? Is it wrong to say that people who take an oath to enforce the law will operate within the law? Is that wrong? No, it's not wrong. I submit to you that it's absolutely and fundamentally right. If you take this last sentence out, you take away from the law enforcement agencies of this state the incentive that they have to comply with constitutional safeguards before they take such drastic measures as breaking into a private residence in the middle of the night to conduct a search and seizure because you take away the penalty; you take away the thing that they stand to lose; you take away the admissibility of that evidence and the ability to use that evidence to gain a conviction. Now I believe that people who have violated the law should be convicted and they should be punished but I do not believe that law enforcement officers have the right to create a dragnet and go out and violate the rights of a dozen or a score or more people in order to get one guilty man. All this does is give them an incentive to comply with the law, to follow the procedures that are there for your protection and my protection, and the protection of unborn generations, before they make such a drastic measure. I say again, you're talking about fundamentals. The difference between our form of government and that which existed in Nazi Germany, as that which existed in the Soviet Union, that which exists in Red China. You are talking about fundamentals, and if you take this provision out of this section, you are depriving the people of this state of one of their fundamental guarantees.

[Quorum Call: 104 delegates present and a quorum.]

Further Discussion

Mr. Roy Mr. Chairman, ladies and gentlemen of the convention, without being too presumptuous, I really think that if we had had a chance to talk with Errol Deshotel before he left, that he would have probably pulled the amendment and I would say why, because after talking with Jack Burson, I think he had a different idea. Let me try to tell you in layman's language the only thing we are trying to do at this juncture. The last sentence of this section simply provides that anybody who is adversely affected by an unreasonable search may go into court before the trial on the merits of the charge which stems from the search and determine whether the evidence that was illegally obtained may be used in the trial against him. Now, that's important, but it's very basic reasons, not the least of which is the amount of cost involved presently with trying cases involving criminal violations of the law. This is what the present law is. If a person's house has been illegally entered or unreasonably searched, and as a result some contraband—take for instance, say

thirty or forty years ago, it could have been alcohol, it was during prohibition—some contraband would be found in his home, he would be charged with possession or attempted sale or whatever have you. Now, it used to be that you'd go to trial on the merits. You'd pick a jury, it would take two or three days to pick that criminal jury; you'd get set, the D. A. would start putting on his case finally, when it would come to introducing the material, the substance that was unreasonably or illegally taken from your home, the defendant would object. At that time, the district judge would have to rule on the validity of the objection. If he concluded that your home had been, in fact, illegally or unreasonably searched, he would keep the evidence out. When that occurred, of course, everybody went home, but you would have had three or four days of cost and expense. Now, all we are simply trying to do because under present law, you see, the defendant may raise the issue of the unreasonableness or illegality of the search before you go start picking the jury. Several weeks in advance you have a hearing; it's called a Motion to Suppress. At that hearing, if the judge concludes that your home was searched, he would keep the material that is going to be used against you is not admissible in evidence, he rules at that time. The cost to the state, a minimal, at that time. The D. A. then decides whether he appeals from the ruling of the judge to a higher court if he chooses or if he realizes that, in fact, your home was illegally searched, then they can't go any further. Now, we want that right, that procedural right, to be accorded to everybody adversely affected. We are simply trying to give a method by which, before getting into a big trial on the merits, this is possible. Somebody asked about civil suits. This does not cover civil suits. We are in no way attempting to give a cause of action to a person to sue the poor little police officer who may have been instructed to kick the door down, to sue him. However, to be honest with you, under the present federal law, 42 USC, Section 1983, a person does have a civil cause of action to be exercised in the United States District Court against everybody except a judge because of the illegal conduct or violation of constitutional rights. I want to say in closing that what Jack Avant said about Russia is true. Certainly, there may be some people, just as there are now, who because of an illegal search may not be convicted. The question that you must ask is, do you think that this constitution is written to protect the guilty or is it written to protect the innocent? My statement is that it protects the innocent. It precludes, it puts down, it says no, no to sincere but erroneous law enforcement officers going down and kicking down doors and opening doors, entering your houses when they shouldn't. Your home is your castle; that's all we're trying to do. I agree that if, in this United States, any time a policeman thought that you may be guilty of something he could stop you on the street and frisk you and take anything out of your pockets, we certainly may cut down a little on the criminal activity of people. But I'm going to tell you one thing, you would cut down a heck of a lot more on the rights of innocent people because I don't think there is a delegate in here that would appreciate being stopped and searched. I'll yield to questions.

Mr. Henry The gentleman has exceeded his time. I'm sorry.

Further Discussion

Mr. Schmitt The question which we have before us at the present time is one of the most fundamental questions which we have had the right or the opportunity to decide. We have been here, I'm against this amendment, this is a terrible amendment. What is a constitution? A constitution is a contract between people and the government and in this contract certain rights and responsibilities are established. With every right there is a corresponding responsibility. What is a Bill of Rights? A Bill of Rights is certain important

facets of an individual's life which have the right to be of such importance that he requires the government to preserve these rights for him, and it is essentially to protect the individual from the state and from state action. There has been no mention up to the present time, however, the terminology in the present proposal goes beyond any statement which has been made so far because the proposal protects a person not only from state action but also from private actions. I believe we have seen examples of this in recent times, in which...

Mr. Chairman, I suggest the absence of a quorum.

[*Speaker* *There is no quorum present and a quorum.*]

Further Discussion

Mr. Schmitt This amendment is bad and it will remove one section which will provide greater protection than has ever been given in the State of Louisiana before. Up until the present time, any individual could hire a private detective firm or by stealth, or other illegal activity, break into someone's home, break into someone's doctor's office, break into someone's business and steal records and turn these records over to the police and these records could then be used by the police and could not be kept out of the record. They could not be kept out on a motion to suppress. This is a very fundamental change in the laws of the State of Louisiana. This change will allow the protection of the individual, not only from state action, but from the action of vigilante committees, from the action of other groups in our society, as an example, those who hire private detective firms to do what they know the police cannot do legally. No private individual has to have a warrant in order to break into your home. He can break into your window in the night and steal records and if these turn up in police hands, you cannot keep them out of the record, they can be used against you. I feel that this has been a fundamental problem in the history of our state, and although it has not been used as much to my knowledge too much, it can be used against the individual. This amendment is a terrible amendment. It will keep or destroy a right of an individual to protect him from a police state, because right now the police can hire an individual in order to obtain certain information in order to get a successful warrant for an individual's arrest. If this individual is considered to be a reliable person, this is accepted and can be used to get a good warrant. Therefore, a private detective firm can break into your office, check your records and see if there are certain things that are improper there, turn this information over to the police, and although the police could not have done this originally, this private detective firm's gross misconduct can be used to the detriment of the individual's rights. I think one thing we are forgetting here, is the question of....

Mr. Henry **Mr. Schmitt**, you have exceeded your time, sir.

Mr. Schmitt now moves for the suspension of the rules to allow himself three extra minutes to speak.

[*Convention refused to suspend the rules to allow additional time: 40-17.*]

Further Discussion

Mr. J. Jackson **Mr. Chairman**, ladies and gentlemen of the convention, I had planned to rise at the point when the vote would occur on the committee's proposal. I think that you have heard adequate arguments against the proposal that is submitted by Delegate Deshotels and handled by Delegate Burson. I reserve my remarks and ask if there are no more speakers, **Mr. Chairman**, at this point, I move the previous question.

[*Previous question ordered.*]

Closing

Mr. Burson: Fellow delegates, there have been some points made in the debate which I wish to address myself to. It seems it is my fate in this convention to be cast in the role of being in favor of those people who kick down people's doors and who abuse people's civil and Bill of Rights liberties.

If that's the way it's got to be, then I'm going to have to accept that role, but sometimes it's healthy to have a devil's advocate in the crowd. You know to require certainty in language is different from being against noble aims. I am not a proponent of illegal searches and seizures, but among other things, I would like to know on this amendment a definition of who is "any person adversely affected" by search and seizure. This is a new term to me in the jurisprudence and that question and I have not yet received a consensus of agreement among the committee members. I would like also to know when they say that you are going to raise the illegality of that search or seizure in the appropriate court of law, whether they mean the appropriate civil court or the appropriate criminal court, because if they are talking about the appropriate criminal court, then unquestionably doing away with this sentence would not leave the way open to getting people's doors knocked down at night. You've got the right to raise that in the appropriate criminal court of law right now, if it's your home that's been invaded, under the Fourth Amendment to the United States Constitution, under the Mapp decision and under the Louisiana Code of Criminal Procedure. I am going to tell you today, that I'm going to agree again in a much, much stronger vein to object to some changes in the present code of criminal procedure that are in this Bill of Rights. I'm going to do so, not because I am against the rights of innocent people, but because I think that somewhere in here we've let the law in the balance, the balance, the interest of society in apprehending the guilty people, because let me tell you, that no matter how arbitrary the decision of the court and a jury may be in a criminal case, it is not nearly so arbitrary as the one man decision made by a rapist, or by a robber, or by a murderer on the street. I'm not saying that here as a matter of scare tactics. I'm just saying that when you are considering this Bill of Rights, for goodness sakes, let's not make every issue up here a matter of the fact that those who are opposed to some specific language are opposed to human liberty, are opposed to civil rights, are opposed to giving full and equal rights to black people, because this isn't the issue. The issue is, if we are going to change our criminal law, then let's know precisely how we are changing it before we vote. I think that that is absolutely necessary. If we are going to make an intelligent vote. I would suggest to you, that while I have no argument whatsoever with the objective of curtailing and eliminating illegal and unreasonable search and seizure, that I still have serious problems with the meaning of the language that the committee has used.

Question

Mr. Willis: I will have to satisfy myself with asking you this question I had intended to ask of Mr. Vick. The sentence you seek to strike is the third in the article, and of course, refers to the first two. I refer you to the second one which says that "no warrant shall be issued without probable cause" and then ask you, why "purpose or reason for the search" when you have probable cause? What does that mean, "purpose or reason"? I ask you this in view of the fact that what you seek to strike... this "purpose or reason" may even enlarge more what you seek to do by striking the "not."

Mr. Burson: I don't know, Mr. Willis, under the Federal Constitution they say that "no search warrant shall issue without probable cause and a description of the place to be searched." I don't know what it means.

[Question withdrawn. See amendments presented and

referred to the committee. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter: "Section 6. Freedom from Intrusion
Section 6. No person shall be quartered in any house without the consent of the owner or lawful occupant."

Explanation

Mrs. Dunlap: I believe this section is designed to prevent the take-over of any house for the purpose of housing any person without the consent of the owner or lawful occupant. This would apply to both peaceful and wartime situations. You ask, probably, how would this section be applicable today? Well, I warn you, you never know what those sheriffs and law enforcement officers will come up with next. Therefore, I move the previous question on the entire subject...

Amendment

Mr. Poynter: [Amendment by Mr. Perez and Mr. Graves:] On page 3, line 10, immediately after the word "be" and before the word "quartered", insert the words "drawn and".

[Amendment withdrawn. Previous question ordered. The Section. Section passed: 107-1. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter: "Section 7. Freedom from Discrimination"

Section 7. All persons shall be free from discrimination on the basis of race, color, creed, national ancestry, and sex in access to public accommodations or in the sale or rental of property by persons or agents who derive a substantial income from such business activity. Nothing herein shall be construed to impair freedom of association."

Explanation

Mrs. Soniat: Mr. Chairman, fellow delegates, this section asserts the right to be free from private discrimination in certain activities. Federal law, at the time, prohibits discrimination in public accommodations and in the sale or rental of houses, except in the case of a single-family house sold without advertising and in the case of rooms or apartments in an owner's own home. Since this is the federal law already and it is also applied to Louisiana and we want to bring our constitution up-to-date and our state up-to-date, I feel that we should put something in our constitution that will make us in keeping with present law. This, the prohibitions intended to those who derive a substantial income from such business activities as opposed to an individual home owner selling or renting his own home. When we think of public accommodations, public accommodation is broadly defined to restaurants, taverns, barber shops, nursing homes, clinics, hospitals, and for this reason I would urge that all of you consider adopting this section.

Questions

Mr. Womack: Would I construe this to mean that under this section of the constitution then, you could not prevent a man from coming in your ladies' restroom?

Mrs. Soniat: No, I don't see how you could construe this and take this idea. Right now we are living under this law from the federal standpoint, and we still have separate restrooms, don't we?

* * *

don't. Number 2, Amendment No. 2, deletes the provision which takes away the rights of appellate courts to review facts. Louisiana has asked very, very well. One reason our court docket is as good as it is, is because it functions with appellate review of facts. In other jurisdictions you have five, six, seven and eight years to wait and you want to talk about justice? You see an old person who gets injured and has to wait ten years, and I know Mr. Roy says there's not many jury trials in Louisiana now, and he's right, there aren't. And that's one reason the system works as it does. But when you start having no appellate review, everybody and his uncle's going to want it, and you're going to have mistakes made, confusion. It's not a question of who's telling the truth and who's not. If you've ever been in a lawsuit it's a pretty complex thing. It's not a question of who's lying and who's not. It's not a oath swearing where you run over coals. It's understanding complex, abstract issues, and I believe that there should be jury trials, but these jury trials should be subject to review by appellate courts because you will perpetuate injustice, you will have new trials constantly. You will have the doggonest mess you'll ever see as they do in many other jurisdictions, where you have to wait years and years to go to trial where injustice is perpetuated, where new trials are had all the time, where a great deal of money is wasted on the administration of justice. Louisiana is unique in its civil law heritage and I don't think other than some of the lawyers here and some other lawyers, you're going to have a great hue and cry among the citizens for this provision. I don't think you'll find that at all. I think you'll find it's a lawyer's provision, not a people's provision, because I guarantee you they don't want to wait eight years and nine years to go to trial, and I guarantee you that you'll have more jury trials than you can shake a stick at if we pass this provision. We don't know all the ramifications that we're going to do here. We are voting on something that's statutory, making it constitutional, and we don't know the ramifications, and I guarantee you not one of us here does know all the ramifications. I don't know what effect it's going to have on the administration of justice. The system as it presently is certainly has worked well, and we're making a drastic change without really knowing the effect. It's going to have on Louisiana's judicial system. Also, we're adopting language in the first sentence that's totally sloppy. I urge that you adopt the amendments, all three amendments. I might point out one other thing. We've gone over this appellate review of facts. It was discussed thoroughly and more thoroughly than it was discussed today. Mr. Pugh had some fine remarks and I appreciate it, but we had this full discussion, and it was voted down tremendously by a vote of 90 some odd to 16, and I can not see what revelation has sent this group to make us change, what statement has been made here to really shake us from that vote. I urge you vote the same way and vote to adopt these amendments deleting those provisions. Thank you.

Questions

Mr. De Blieux Mr. Duval, if all those lawsuits would come about by people asking for jury trials as you alleged it would, don't you think we ought to guarantee the right to the people to have those jury trials?

Mr. Duval Mr. De Blieux, my amendment, as you recall in your first...in your statement you said my amendments do away with the right to jury trial. It doesn't. It keeps the law just as it is and then have jury trials, but I might point out in answer to your question, my primary concern is Amendment No. 2.

Mrs. Warren Senator Duval, you said one thing that's kind of puzzling me. You said it is not a matter of truth or false, and you were talking so fast, I didn't understand what you said afterward.

How they judge people on the truth or whether it's false. Now, how do they judge?

Mr. Duval Mrs. Warren, it's not only a matter of whether a jury deciding whether a witness is lying or not. That is a gross simplification of a jury trial because many issues come up and it is difficult for the jury to understand the concepts... you have expert witnesses talking about fields of metallurgy and other things where the witness isn't lying, it's not a question of whether he's lying or not, it's a question of whether the jury can assimilate all the facts and make a proper determination. Most of the time they do, but when they don't, it is a good idea to have another court to look at it, and when an error is made to get to the truth of the proceeding.

Mrs. Warren So you mean you're saying that if you don't have a jury trial you're most likely to get the truth?

Mr. Duval Mrs. Warren ...

Mrs. Warren Listen, I'm not speaking for or against. You said something and I'm trying to get information.

Mr. Duval I'm merely saying there should be a check on a jury trial which is the appellate courts. That's all I'm saying.

[Division of Question ordered. Record vote ordered. Amendment No. 1, reworded and adopted: 73-41. Motion to reconsider tabled. Record vote ordered. Amendment No. 2 reworded and adopted: 76-37. Motion to reconsider tabled. Record vote ordered. Amendment No. 3, reworded and adopted: 70-43. Motion to reconsider tabled. Final vote ordered on the entire subject matter: 63-48.]

Point of Information

Mr. Tobias As I understand it, if we vote no on this particular section that would delete the language that remains.

Mr. Henry That is correct, sir.

Mr. Clerk, if you will, please, read what's left of Section 8.

Mr. Poynter Section 8, "trial by jury in civil cases." Section 8."

Point of Information

Mr. Burns I've listened so much that I've gotten confused now. In other words if we want to just delete the number of the section and the title of it on this next vote, we vote no. Is that correct?

Mr. Henry If you want to get rid of the title and the "Section 8" the thing to do is to vote no. That's correct, sir.

Mr. Burns Because we've already eliminated the rest of it.

Mr. Henry Yes, sir, we've already eliminated all the words. Now we've got to get rid of the numbers it looks like.

[Section deleted: 17-1. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter "Section 9. Freedom of Expression Section 9. No law shall abridge the freedom of every person to speak, write, publish, photograph, illustrate, or broadcast on any subject or to gather, receive, or transmit knowledge or information, but each person shall be responsible for

the abuse of that liberty, nor shall such activities even be subject to censorship, licensure, registration, control, or special taxation."

Explanation

Mr. Jenkins It has been said that a frequent recurrence to fundamental principles will preserve the liberty of a people. So far just a moment before we consider the language in this section, I'd like to discuss a little bit about the history of "freedom of expression." It goes back a long ways, you know Socrates was sentenced to death because of the views he expressed. Christ was crucified because of his teachings. Early Christians suffered martyrdom because of their beliefs. Under Rome and Athens there was a great deal of freedom of speech, but with the coming of the Dark Ages, freedom of expression was not tolerated at all. In fact if there is one thing that highlights or signifies the Dark Ages, it's the fact that the free flow of knowledge and information was curtailed. With the advent of the printing press and the mass dissemination of ideas, political and religious leaders came to fear more and more the dissemination of ideas. The publication without imprimatur of licensing authorities received harsh punishment. The severity of printing offenses did not lessen with the abolition of the Star Chamber. After that the law of treason was utilized to restrict the speech of opponents. There were some dark days at that time. Under King Henry, VIII printing presses were licensed and only licensed books were allowed to be sold. Queen Mary established a stationers company which was chartered to control printing. Queen Elizabeth issued injunctions requiring that every book that was published in the realm had to have her approval. Many tyrannies occurred under the Star Chamber when they decreed that all books had to be submitted for licensure and registration. In the colonies the governors were given license to censor up authorities. Only when Americans began to challenge and test the right of government to censor their speech did the bars drop. Cases of Benjamin Harris, James Franklin and Peter Zenger, brave men who stood up for what they believed, have brought us our freedom today with respect to freedom of expression. There has been taxes on the press; in fact, taxation of the press was one of the things that founded our free republic. The Stamp Act tax as you may recall was a tax on paper, newspapers and advertisements. British government tried to apply it to the colonies in 1765, but they rapidly had to repeal it because this discriminatory tax amounted to a tax on knowledge and information. Here in our own state we had a discriminatory tax in 1934, the Gross Receipts tax on magazines, newspapers and periodicals which was ruled unconstitutional. There have been many challenges to a free press with the freedom of speech. We hope that the section that we're offering will provide the protection that the people of our state need. Let me analyze it part by part, if I may. The first clause which says that "no law may abridge the freedom of every person to speak, write, publish, photograph, illustrate or broadcast on any subject" is merely a restatement of the present law. It is a modernization of language. The next clause stating that "every person has the right to gather, receive, and transmit knowledge and information" is what is behind freedom of expression. Unless people can gather information, unless they can do research, unless they can read, unless they can ask questions, unless they can think, unless they can learn, unless they can know, unless they can do anything. The greatest threats to the freedom of expression are censorship, licensure, registration, control, arbitrary taxation. We've attempted to prohibit those. Censorship, it should remember, is a prior restraint. It does not apply to impediments of free speech after the fact. Censorship is a prior restraint, and that is what is forbidden here. When we first drafted this section, we did not have the language on line 29 saying that each person shall be responsible for the abuse of that liberty. You know the First Amendment to the U.S. Constitution is unrestrictive of the press. It

says "no law shall abridge freedom of speech or freedom of the press." It doesn't say "but;" it doesn't say "except;" it doesn't say "but there are limitations;" there are no limitations in the First Amendment. So we thought it unnecessary to put any in here, but the district attorneys came and appeared before us and thought there might be some problems with obscenity and libel and slander, so at their request we added this language. They have now endorsed it and said that it meets with their approval, and that they see no problems of enforcement along those lines. This language has the strong support of the Louisiana Press Association and its one hundred and forty newspapers, daily and weekly. It also has the strong support of the Louisiana Broadcasters' Association representing all of the state's television stations and almost all of its radio stations. The President of the Louisiana Trial Lawyers' Association came before us and said that he thought that this should be a model for other state constitutions. Certainly, it's not perfect, but we believe that it gives our citizens the sort of protection that they need in a changing society. So I'll ask if you have any questions, I'll try to answer them.

Questions

Mr. Roemer Woody, on this line 30, 31, and 32 it says "nor shall such activities ever be subject to censorship," etc., but this licensure and registration, how does it affect our current laws that deal with the licensure of either newspapers or television stations or whatever? Could you address yourself to that for my benefit?

Mr. Jenkins Licensure of the press and registration also is presently illegal under federal court decisions. The licensure of the broadcast media by the federal government is not really an exception to that, because they are not licensing there the right to speak or express ideas but only the mechanics of the means of the means of broadcasting and also access to common property, mainly the airways. There are no licensure laws at present, and under current court decisions there could not be, and this simply by asserting it here is to make sure that in the future there could not be either even if the Supreme Court decisions of the United States were to change along those lines.

Mr. Roemer As I understand your answer then, what you're saying is that certain registration and licensure laws as related to the broadcast media relate not to the news that they put out or whatever, the information they disseminate, but rather to the equipment that they use. Is that correct?

Mr. Jenkins Also, you must remember, Buddy, that this applies to state laws. We cannot change what the federal government here does. What we're saying is the state shall not license...

Mr. Roemer I understand, but I would make the further point and ask if you agree that a television station without broadcast equipment is no station at all.

Mr. Jenkins Well, that's true, but you can have certainly closed circuit broadcasting and kind of this nature, and it's not a question there of licensing the right to speak. But anyway, that's a federal problem. We do not have the authority to license broadcasters. Certainly I don't think we ever will. Licensure here is meant, not in the sense of occupational licensing. That is not licensure. Licensure here is the requirement that people go before a state board, get approval before they can ever begin their expressions of opinion or whatever it may be. This was something that was mentioned in the original commentary was a great abuse of the press in its early days, when kings would say that only certain men can express opinion, only those that we license, only ones that register with us or whatnot. This is proscribed now, and we want to keep it that way.

41st Days Proceedings—September 5, 1973

Mr. Tobias Woody, my questions are rather friendly. At this time, are you aware that I'm very much in favor of the committee proposal? My next question is, would you please explain the term "licensure?" It's not a very common word, and I wish you would explain it so people would understand it better.

Mr. Jenkins "Licensure" here is licensure in the sense that physicians or other professional groups are licensed. It would mean that if we had a licensure law as you do in Spain and in a number of countries where the press is severely controlled, it would mean that there would be a state board or agency set up, and before any one could be a newspaper reporter, or a newspaper publisher, or editor, or owner, or whatever, they'd have to go before this board, get approved by the board before they could be involved in the business of being in the news dissemination business.

Mr. Tobias My next question is this: Article I, Section 3 of our present constitution presently uses the language that "abuse of the liberty is prohibited." This would... this particular type of language would cover, I would guess, as it presently does, pornography. In other words, the jurisprudence would be continued under that particular language. Is that not true?

Mr. Jenkins Yes, that is correct, and you notice that none of the things in the last sentence "censorship, licensure, registration, control or special taxation" are presently used to limit pornography. It's done by criminal statutes after the fact, by injunctions, by nuisance statutes and things like this, which these would be perfectly legitimate under this.

Mr. Singletary Woody, my question sort of related to Max's question in that the language "each person shall be responsible for the abuse of that liberty." It seems to me that this committee proposal is so broad that it'd be practically impossible to have any "abuse" of that liberty. How can you abuse this liberty, it's so broad?

Mr. Jenkins Well, no, that's not true. There are... this statement is made in virtually every state constitution regarding abuse. It's not necessary to put in there because with the language we have here and in other state constitutions it is assumed and understood that there are limitations to it. We specifically...

Mr. Singletary You're saying that there are limitations to some of these rights?

Mr. Jenkins Yes, sure. Just as our present constitution says that "no law shall restrain or abridge freedom of speech", but people should be responsible for the abuse of it.

As I was saying, our present law states that "no law shall abridge or restrain freedom of speech or of the press".

Mr. Singletary You're talking about the federal constitution.

Mr. Jenkins No, I'm talking about the state constitution as an example.

Mr. Singletary O.K.

Mr. Jenkins But each person is responsible for the abuse of it. You notice under that language it would say nothing can abridge or restrain freedom of speech, and it doesn't really limit that other than this statement that people are responsible for the abuse of it. And that is the same theory that we're operating under here.

Mr. Singletary So that the intent of the committee would be that for instance the courts could say that certain material is obscene or something like that?

Mr. Jenkins That's correct.

Mr. Jeneau Mr. Jenkins, one of the problems I have, the last clause, I'm not sure--it would seem to me that that would affect the validity or the existence of obscenity laws. Am I misreading that?

Mr. Jenkins No, there is nothing in there that would in any way affect obscenity laws. For example censorship is a legal term and it means "prior restraints before publication, before broadcasting." That is illegal at present, so it simply restates the present law, and now we can't have censorship under present law. You can only go out and restrain people after the fact, after they have done something that is proscribed by the statutes.

Mr. Rayburn Woody, would you define for me what you are talking about here when you say that "each person shall be responsible for the abuse of that liberty?" Would you define "abuse of liberty?"

Mr. Jenkins Well, it's very difficult to define, and that's the reason our committee did not include that language at first was because we thought it was difficult to define. What the District Attorneys' Association tells us it means and some of the D.A.'s who talked to us is that it particularly covers libel, slander, defamation, obscenity, pornography, things like this. It will give judges the opportunity to have some leeway in defining when someone has gone beyond the valid limits of freedom of expression.

Mr. Rayburn Well, in other words it would strictly leave it up to the judiciary to decide whether the abuse of someone's liberty had been made or not?

Mr. Jenkins In the same sense that that is up to the judiciary now, because the present law says somewhat the same thing...

Amendment

Mr. Poynter The first amendment is a Burson amendment.

Amendment No. 1, on page 3, delete lines 26 through 32, both inclusive in their entirety, and insert in lieu thereof the following: "Section 9. No law shall abridge the freedom of speech or press".

Explanation

Mr. Burson The purpose of this amendment is to give the delegates the opportunity to vote on a clear simple statement of freedom of speech or press which is a virtual paraphrase of Article I of the Bill of Rights to the United States Constitution which says simply that "congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof or abridging the freedom of speech or of the press". So the reason why I used the word "no law shall abridge the freedom of speech or press" is, this is a virtual paraphrase of the First Amendment to the United States Constitution. Now, the United States Supreme Court has ruled on many occasions that the First Amendment applies to the states through the Fourteenth Amendment. We have worlds of jurisprudence; we have legions of cases defining what and how the freedom of speech or press should be defined; we will know then what we are talking about. I am not sure that we will know what we are talking about if we adopt the committee proposal. For instance, what does the freedom to photograph include? Does it perhaps include invasions upon or intrusions upon my and your privacy, and how then, if we have previously in Article V here in the constitution established an absolute right to privacy, do we now square an absolute right to photograph or to illustrate? The question has been raised by other commentators and by questions asked earlier today whether, if interpreted liberally, this provision could also forbid control over communications transmitted at facilities, such as telegraph and telephone companies, by the Louisiana Public Service Commission which is presently authorized to control these fr-

strumentalities by state law. The phrase "abuse of liberty", also is something that I frankly don't know what it means. Maybe some district attorneys do, but I don't. I do know what "freedom of speech or press" means. Now the meaning of "freedom of speech or press" as defined in the United States Supreme Court jurisprudence is not a constant one; it changes from time to time. We are all well aware of the tremendous expansion of the freedom of the press that has occurred under the New York Time, Inc. v. Sullivan rule in which now in order to establish a case of defamation [defamation] against the press, one must show not only that there was a misstatement that damaged his reputation, but that such a misstatement was arbitrary and intentionally made, which is a very difficult burden of proof for anyone involved in a defamation [defamation] suit. I would also point out another difficulty with the committee proposal might be: how do we square the absolute right to photograph with the secrecy of the grand jury for instance? Would we then have T.V. cameras in the grand jury room? I don't know. I submit to you that we know under free speech and free press that this would not be permissible. I do not know whether a right to photograph would permit it or not and I suggest to you it might take a few court cases to decide it. In the area of pornography, it may be that the district attorneys are convinced that abuse of that liberty includes pornography. I am not convinced that it does at all, and the United States Supreme Court has only just the time handed down a decision in which they state clearly that the determination of what is and what is not pornography will be a local matter that will be left for the states to decide, and I suggest to you that that is exactly what the citizens of the State of Louisiana want. They want the right to decide what shall be considered pornography, for sale in the corner drugstore to their children, and they do not want to have to be bound by the standards of Las Vegas and New York. Now, you may or may not personally agree with that opinion, but I challenge anyone to get up here and state that that is not the opinion of the overwhelming majority of the citizens of the State of Louisiana. It is my interpretation that as a sovereign constitutional body for the State of Louisiana and not for New York or California or Nevada, that we should begin with this article in remembering that we are supposed to be here to protect the will of the people of the State of Louisiana in writing a new constitution. I'll answer any questions.

Questions

Mr. Roemer Jack, is your amendment...does it, it tracks the language of the Federal Constitution, is that not correct?

Mr. Burson Yes, sir.

Mr. Roemer O.K. Don't you think that that section of the Federal Constitution has been interpreted broadly? In other words, when they talk about freedom of speech or press, haven't they included the other broadcast media in there?

Mr. Burson Yes, sir.

Mr. Roemer Well, then how would you change in effect what we've already done or what the committee's already done in Section 9? Don't they just spell out these various media representatives and segments of the media rather than leave it at freedom of speech and press? I mean, what have you really done?

Mr. Burson Well, they spell it out except they don't limit it, the way I read it, to what has been interpreted as free press. For instance, it says "no one shall be denied the right of any person to publish, photograph, illustrate, broadcast", etc. I [it] seems to me that there should be some distinction between a newspaper man's right to photograph news and perhaps the right of some private detective to photograph some of our activi-

ties that we'd prefer not to have photographed.

Mr. Roemer I see, so you don't think that your amendment as it's already been interpreted by the federal courts would strike down the freedom of the press as we know it? In fact, it would be just a continuation of that. You're worried about these unknown areas that's mentioned here.

Mr. Burson That's exactly right.

Mr. Roy Mr. Burson, aren't there a lot of areas in constitutional law that you didn't know about in the past and the courts determined in the future?

Mr. Burson I don't think there is any question but that the freedom of speech or press is an organically growing area just as all other areas of constitutional law. But I think, like Justice Frankfurter, that they should be allowed to grow organically, to grow a little bit here, a little bit there, and to be defined as they grow and that we shouldn't strike out statutorily-not statutorily, constitutionally-here and set some new language in here that we really don't know what it means. Let's let those areas continue to grow organically.

Mr. Roy I see. You do agree though that the Supreme Court will determine what this section says for our citizens, do you not?

Mr. Burson Yes, except that they, in so doing, they cannot infringe on any Federal Constitutional rights of free speech or press that we have.

Mr. Roy And we won't have to be going back to the federal courts all the time to guarantee to our citizens certain things, but our courts may go ahead and rule on it without the intervention of federal courts. Isn't that true?

Mr. Burson Well of course, Mr. Roy, our state courts do very often apply the Federal Constitution in cases they decide. They do so habitually.

Mr. Roy Don't you agree, Mr. Burson, that the Public Service Commission as created by this constitution, since it will be dealing with specific provisions, for instance, telephone and telegraph, will supercede any general provision we have? Don't you agree with that as an attorney, Mr. Burson?

Mr. Burson That would depend how that general provision was stated. I was merely paraphrasing there an argument that the Public Affairs Research Council had reached.

Mr. Goldman Delegate Burson, do you feel that the First Amendment applies only to the protection of the press and not to the people for the right to know?

Mr. Burson No, sir, not at all.

Mr. Goldman That's the argument that I've been listening to the last few minutes.

Mr. Burson I'm not aware that I made that argument.

Mr. Willis Mr. Burson, focusing on the word "photograph", I envisioned that that could mean, if you read the whole sentence in proper perspective, that anyone could photograph a trial and may be film it, a trial in court, and then publish part of it and thus distort or contort the trial itself, couldn't it?

Mr. Burson I think it's certainly open to that interpretation. Mr. Willis, and I'm worried about the way that some of these undefined rights might have in actually infringing upon other rights that other citizens may have.

Mr. Perez Mr. Burson, isn't it true that the courts have held that the freedom of speech does

41st Days Proceedings—September 5, 1973

not extend to a person standing in a crowded theatre and yelling "fire", but that under the proposal by the committee which would read that, "the law should abridge the freedom of every person to speak", that there would be no such limitation?

Mr. Burson I think that certainly this is a danger we get when we use language that has not been judicially defined. I think the other classic example, other than the one you mentioned, is using a loud-speaker near a hospital. That just points up that when you have these so-called absolute rights that you're going to have a collision between them someplace and you've got to determine which one prevails then.

Mr. Lanier Mr. Burson, am I correct in recalling that we previously passed a section saying that "all rights conveyed herein shall be preserved inalienable and inviolate by the state"?

Mr. Burson Yes, sir.

Mr. Lanier This proposal says here that "no law shall abridge the freedom granted herein", doesn't it?

Mr. Burson Yes, sir.

Mr. Lanier Now, would it be your opinion that the committee proposal as presently drafted would permit a witness in a juvenile case which is normally secret to go in with a camera and....

Further Discussion

Mr. Avant Mr. Chairman, fellow delegates, I rise in support of Mr. Burson's amendment, although I have amendments which I have offered which I hope it will not be necessary for this convention to consider. The words "freedom of the press, freedom of the speech, freedom of the news media" to publish, broadcast, telecast on matters are very sacred and nobody would in any way impinge or infringe to any degree upon that liberty. We owe a great debt to the free press in this country and I wouldn't bother to give you specific cases, but I think you can think of many yourself that would immediately come to mind where the people of this state and even of this nation are indebted to the free press for the things that they have brought to the attention of the general public, and nobody wants to infringe upon that, but this committee report as it is drafted and as it reads goes far beyond, far beyond, any concept of freedom of speech or freedom of the press. It completely, in my humble opinion, destroys any right of privacy that any citizen has. You have been spoken to concerning the one word "photograph," but I'm going to go to another phrase in there which disturbs me much more than the word "photograph," although that disturbs me greatly, and that is the phrase "to gather, receive or transmit knowledge or information" when coupled with the phrase "nor shall such activities ever be subject to censorship, licensure, registration, control or special taxation". Now you know we are becoming a nation of numbers; we're not known by names anymore; we get a number when we are born and a number is placed on us at least one hundred times during our life and it stays with us all during our life. We all fill out applications of one kind or another: for hospitalization insurance, for life insurance, for credit, for any number of things. We fill out applications when we go into the hospital. There are people who are engaged in the business of accumulating that kind of information and putting it on computers and selling it to other people. Now do you mean to tell me that we're going to put in our constitution a provision that forever guarantees to those people the right to accumulate the most personal and intimate data and information about every citizen in this state and to engage in the commercial traffic thereof. To me the idea is absolutely ludicrous, yet that is exactly what this permission would permit that right to engage in that business would not be subject to control,

to any type of licensure, registration or anything else. Another thing, when you come to the news media, there's a very, very clear distinction that is drawn in the law with respect to the right of the news media to disseminate information, and that is, it must have some reasonable semblance of being newsworthy. Now, the courts are very liberal in interpreting what is or what is not newsworthy in favor of the press. But there are certain items of our personal life that are not newsworthy to anybody. The public's got no interest in various and sundry aspects of our life. Well, if you adopt this report as it is written, the right to publish, speak, photograph, illustrate, or broadcast on any subject—it doesn't make any difference whether it's newsworthy or not, you're doing away with the requirement that it must be newsworthy. Then the most intimate and personal details of your life become the property of any person who is low enough to traffic in that type of information. Believe you me, there are people who do that and you know it. I urge you to adopt the amendment guaranteeing freedom of speech and freedom of the press.

[Mr. Pugh is presented the following amendment by Mr. Pugh and Mr. Lanier and Mr. Burson.]

INTRODUCTION OF PROPOSALS

[1. Amendment, 4-1-73]

Announcement

[1. Amendment, 4-1-73]

Personal Privilege

Mr. Lowe Mr. Chairman, ladies and gentlemen of the convention, let me have your attention for a minute to bring you up to date a little bit on some of the problems we're having in paying you off. I know a lot of you are interested in when you'll get your check. We've had some problems in the orderly flow of paperwork. Mr. Burson has problems in getting the delegates to sign their per diem vouchers. Also, we have many absenteeisms that prohibit him from getting all of the per diem vouchers. As of right now, I don't believe we have all of the per diem vouchers signed for last month. Hopefully we'll have them all in the morning and we can start to process them and pay you by at least Friday afternoon. That will take care of this month.

Now, let me tell you what we're going to try to do to keep you a little happier. We're going to start paying twice a month. We're going to let the per diem go in on the fifteenth, covering the first through the fifteenth. We'll pay you ten days after that which will be the twenty-fifth. So on the twenty-fifth [twenty-fifth] of each month you can look for a check covering the first fifteen days. Then we'll pay you again for the last fifteen days by the tenth of the month. You can look for two checks every month, one on the tenth and one on the twenty-fifth. I hope that meets with your approval. If it doesn't, let me know and we'll try to do something that does meet with your approval. Right now, look for a check Friday and I hope that we can meet that deadline.

Thank you, Mr. Chairman.

Personal Privilege

Mr. Pugh Mr. Chairman and fellow delegates, I have something that may be of some interest to you. In Shreveport, in the northwestern part of the state, on September 11, we're having a function. The function is to honor Russell Long. In that connection it's rather unusual in that the governor will speak on behalf of the executive. The Honorable "Bubba" Henry will speak on behalf of the legislature. Justice John Dixon will speak on behalf of the judiciary. We, also, will have in attendance every one of the former living governors. If any of you wish to attend that function, if you will let me know tomorrow, I will see that the

41st Days Proceedings—September 5, 1973

necessary arrangements are made. Thank you.

[Arrangements to be discussed at 10:00 a.m., Thursday,
September 6, 1973.]

42nd Days Proceedings—September 6, 1973

Thursday, September 6, 1973

ROLL CALL

[91 delegates present and a quorum.]

PRAYER

Mr. Alexander Most Holy and Eternal God, we have come again to our task of devising and developing plans for the governance of our people. May each delegate here realize his dependence on Thee. May he operate and work consistent with Thy love, Thy patience and Thy understanding. Guide us in our deliberations and when we come to the end of our journey, admit us into Thy presence, in the name of Jesus. Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

RESOLUTIONS ON SECOND READING AND REFERRAL [I Journal 434]

PROPOSALS ON SECOND READING AND REFERRAL [I Journal 434-437]

Mr. Henry Now ladies and gentlemen, before we start this business on Bill of Rights today, if you will allow me a few minutes. Yesterday, looking out over the Convention, there weren't thirty percent of you in your seats the whole time. We'd have a quorum call, and people were coming down from the balconies, and the rafters, and the men's room, and the women's room and everywhere imaginable. Some people are talking about taking off next week and going home. Well, if you don't want to stay, there is a door over there and there are exits back there and go on home, but let those of us who are interested in writing a constitution stay here. If you don't like what's being proposed, please sit in your seat and listen to what's going on so that your questions will be intelligent. If you don't like what's being done, speak against it. But for goodness sake, for a change, have something to say. We've got a lot of work to do. The T.V. cameras are not nearly covering everything that's done and said at this convention. I know you get extremely irritated with my caustic remarks from time to time. For this I apologize, but I must tell you that I get extremely disgusted from time to time, having to say, "Take your seats and hold down the noise." Now we've got a job to do and it's as simple as that. It's not fun and people tell us everywhere that we're not doing anything but a bunch of arguing and bickering, but we are not deliberating well right now. Now, if we are going to deliberate, let's sit in our seats and act like reasonably intelligent ladies and gentlemen. We don't want people in the state to think the nitwits have taken over this convention.

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Poynter Committee Proposal No. 25, by Delegate A. Jackson, which is a substitute for Committee Proposal No. 2, also by Delegate Jackson, both on behalf of his Committee on Bill of Rights and Elections

A proposal to provide a Preamble and a Declaration of Rights to the Constitution.

The status of the proposal is as follows: the convention has adopted the proposed Preamble, Sections 1 through 6 as amended of the proposal, has deleted Section 7 with the view of further committee study, has deleted Section 8, Trial by Jury and Civil Cases and presently has under consideration Section 9, Freedom of Expression, and in particular, an amendment proposed by Delegate Burson proposing an amendment or alteration to that Section 9.

Explanation

Mr. Poynter, Mr. Burson, and I have been raised and objections to this section, and I want to try to answer some of those ludicrous arguments. For instance, it was said that this section, as proposed by the committee, will allow people to holler "fire" in a crowded theater. Loudspeakers to go blaring down the street near a hospital. It's going to allow people to burst into your bedroom and photograph you or go into the courtroom and photograph the proceedings. It's even going to prevent the Public Service Commission from regulating telegraph and telephone lines in this state. Now, can you imagine that? This section has nothing to do with extending property rights, and let me say what I mean by that. If I have a piece of property here, the fact that you have a right to speak freely doesn't give you the right to come on my property and speak. It doesn't give you the right to come trespass on my property. Nothing in this section says that, and if such an interpretation could be given to this section, it could be given to our present constitutional provision which says, "Any person has the right to speak, write, and publish freely on any subject, being responsible for the abuse thereof." If that interpretation could be given to our proposal, it could be given to the current constitution, but it never has. Now, why can't a person holler "fire" in a crowded theater? The reason he can't is not an infringement on his right to speak freely. The fact is, when you go into a theater, you go in and you are making a tacit agreement with the theater owner that you're not going to do anything to harm his property, that you're not going to do anything to interfere with the rights of the other people in the theater. That consensual reason is the reason you can't holler "fire" in a crowded theater. You have, in effect, contracted away that right, but you haven't given up your right to speak freely, and the fact that someone has the right to do for doing such a thing isn't an infringement on freedom of speech. Now, bursting into your bedroom to photograph you, now how absurd can you be? The fact that you can photograph doesn't give you the right to go on somebody else's property and photograph. The same is true of a courtroom. A courthouse is the property of the state--the courtroom is the property of the state. As property owner, the state can reasonably regulate who goes in and what they do there. Naturally, it's not subject to all the discrimination and discretion of a private property owner, but the state nevertheless is a property owner and has a right to control access. A loudspeaker near a hospital--the reason that we can prohibit loudspeakers near a hospital or sort of loud noise is not a limitation on freedom of speech because it doesn't limit the content of speech; it limits the volume, just as any loud whistle, any loud noise could be limited. This section in no way forbids the limitation of loud noises or other sorts of public nuisances.

It's only speech as speech which cannot be reasonably interfered with here. Now, Public Affairs Research Council in their brilliant treatise on the Bill of Rights said, "Why this might even forbid the Public Service Commission from regulating telegraph and telephone companies." They made that judgment without ever even consulting any attorney, and I'm surprised that some of the attorneys in this body would pick up such an argument. But, if you notice, the ones who have made this have generally been opposing everything proposed by this committee, whether it's liberal or conservative or whatever. Now, here is why this proposal would not change the authority of the Public Service Commission to regulate telegraph and telephone companies. In the first place, the Public Service Commission, at present, does not regulate the content of telegraphic and telephonic communications, not at all. They don't regulate the content of them. But as property owner, the state owns the highways, the state owns the navigable bodies of water, the state owns many public lands, and if any telephone or telegraph company wants to cross any highway or its lines, any navigable body of water, it has the

right as property owner to set the terms over which any of the immaterialities can cross its property. This section doesn't change that at all. Let me tell you what this section does do. This section does one thing and one thing only; it restates the present law. That's exactly what it does, nothing more, nothing less. It's been argued even though we've been over it that this forbids regulation of pornography by the inclusion of the word "censorship." That's not true. Censorship is a prior restraint on expression. In order to be censorship, it has to require that before publication you submit a piece of writing, you submit a film or something else to a censor, and he has the right to strike out certain things, to tell you you can't publish it all. That is outlawed under Supreme Court decisions. Prior censorship, censorship of any kind is not allowed. The way that pornography is regulated right now is not by censorship; it's after the fact--by criminal statutes after the fact, just like murder is punished after the murder, right now. You can go out and seize pornographic films, pornographic literature and there is nothing in this section which doesn't allow that; it's as simple as that. Now one of the difficulties I've seen is that many delegates have not read this section. Look at it, read it carefully, think about it.

There's not a thing strange or unusual about it; it simply restates present law. So I urge the defeat of this amendment.

Further Discussion

Mr. Jack Mr. Chairman and ladies and gentlemen, I rise to support the Burson amendment. It's short, it's clear; it states no law shall abridge the freedom of speech or press. It's been interpreted by the United States Constitution, by the United States Supreme Court, by the Louisiana Supreme Court. We adopt that, we know where we stand. As to this new suggested law which makes the constitution longer in this section, it's uninterpreted. It's a dangerous thing. The first part, in my opinion, gives an absolute right to do all those things. Then, it does say each person shall be responsible for the abuse of that liberty. The damage is done; it says, "nor shall such activities ever be subject to censorship, licensure, registration, control or special taxation." There's no censorship with the first part broader than the present constitution. You pass this thing, Section 9, just like it is, you are going to have people can do anything they want. You are going to create pornography pollution in this state, and you are going to legalize character assassination. Now, Mr. Woody Jenkins was using the word about like people that didn't agree with him were silly, I forgot the exact word, using the example of a person hollering "fire" in a theater. We're not talking about that. We are talking about what people can do, not by some example like he's giving. I don't think anybody but a maniac is going to jump up and holler "fire" in a theater when he don't think there is one. But there's plenty of people that would be willing to advertise with pornographic pictures, billboards, if the paper would take it, newspaper pornographic things to advertise "X" rated pictures, to do anything. You just go in bookstores and see the trash and the rot and try to find something to read. People have to have protection from all that kind of stuff--children do. Why not take the simple version Mr. Burson has, "No law shall abridge the freedom of speech or press." You talk about pollution from smoke and everything else...no, I don't want to answer you, Woody, till I finish. And you really are not going to have learned anything from me; you've got your mind fixed on it. This is just rotten, dirty pornographic pollution. It ought to have been before our Committee on Natural Resources and Environment where we can classify it as the worst pollution you could get, and throw it out and keep it out. Thank you.

Further Discussion

Mr. Thistlethwaite Mr. Chairman, fellow delegates, I rise in support of the Burson amendment. I would like to inform you that I have been the editor and publisher of a daily newspaper in Louisiana for thirty-three years. I've been threatened with lawsuits dozens of times; I have been sued three times; I have paid once; I have settled out of court for liable per se on three occasions; I've been down this route. We've got almost two centuries of jurisprudence behind the Burson amendment. It tracks very closely the first amendments of the Federal Constitution. It sums up what we have now in our constitution. When we go into the committee's language, we do not know what we have. We have at least two decades of litigation ahead of us if we adopt what the committee proposes. I urge you to vote for the Burson amendment.

Questions

Mr. Jenkins John, why is it your colleagues in the Louisiana Press Association have endorsed the committee proposal and opposed this amendment?

Mr. Thistlethwaite Mr. Jenkins, I was not present; I have no idea. Frankly, I don't know why they supported it. They say that they had no objection to it, as I understand it.

Mr. Jenkins Well, did you know that they are actively supporting it and actively opposing the Burson amendment?

Mr. Thistlethwaite No, they are not. . . I just talked to Mr. Norman David who represents the Louisiana Press Association; they acquiesce in the language. They do not actively support it; they endorse it. I disagree with them; I think they are wrong.

Mr. Jenkins Is that correct, they endorsed it? They endorsed the proposal, is that correct?

Mr. Thistlethwaite The Louisiana Press Association Board of Directors said that it will go with this language, that it will endorse it. I think they are wrong. I think they are asking for trouble.

Mr. Jenkins Are you aware that the Louisiana Broadcaster's Association also supports the committee proposal?

Mr. Thistlethwaite I am aware that Mr. Douglas Manship said so.

Mr. Roy Mr. Thistlethwaite, do I understand that you have read Mr. Burson's amendment? Did you read Mr. Burson's amendment?

Mr. Thistlethwaite I have a copy of it in my hand. It says, "No law shall abridge the freedom of speech or press."

Mr. Roy Did you read Section 3 of the present constitution? Have you ever read Section 3 of the present Louisiana Constitution?

Mr. Thistlethwaite Yes, I just read it.

Mr. Roy No, no, you didn't read Section 3. The present constitution says, does it not, "Any person may speak, write and publish his sentiments on all subjects being responsible for the abuse of that liberty." Doesn't it presently say that?

Mr. Thistlethwaite Mr. Roy, that is true; however, we have ample jurisprudence to cover that under the Burson amendment.

Mr. Roy Don't you think that...do you realize the this constitution of Louisiana will be interpreted by our Louisiana Supreme Court, do you not? Do you realize that?

Mr. Thistlethwaite I am fully aware of that.

42nd Days Proceedings—September 6, 1973

Mr. Roy Do you realize that if we leave out this "being responsible for the abuse of that liberty" that Mr. Burson sought not to put in, that our courts may think we have made a substantive change and that there will be no responsibility for any abuse, criminal defamation, pornographic and all these? The reason we added that language to our section was because the district attorneys wanted it. Do you realize that?

Mr. Thistlethwaite Mr. Roy, you are an attorney and I am not. I think that there is ample jurisprudence. I'm not worried about Mr. Burson's language, but I'm worried about yours.

Mr. Roy What jurisprudence in Louisiana supports your contention that if we take out "being responsible for the abuse of that liberty", that our courts will still have that right to make a person responsible?

Mr. Thistlethwaite Yes, sir, I think the courts still would.

Mr. Roy Well, you're telling us that you know about jurisprudence. What cases in this state would support you?

Mr. Thistlethwaite Under the Federal Constitution where these rights end up, there is plenty of jurisprudence on it.

Mr. Roy We're talking about a state constitution written for our citizens to be interpreted by our court. Now, you say that there is ample Louisiana jurisprudence that would not make any difference if we leave out the essential words "being responsible for the abuse of that liberty." You say it makes no difference in Louisiana. Tell me which case would say that?

Mr. Thistlethwaite Mr. Roy, at law you are responsible for abuses.

Mr. Roy If we take it out, the courts may think that we're not going to be responsible any more. Don't you see what I'm saying?

Further Discussion

Mr. A. Jackson Mr. Chairman, ladies and gentlemen, I rise in opposition to the Burson amendment and I do so because I believe that we have carefully considered the question before us and that the language offered by way of this section deals with a rather serious and complex problem in a manner that we believe to be in the interest of citizens of this state.

Last night I heard individuals say that I can't understand why this Bill of Rights Committee keeps talking about the rights of the individual. Well, again and again, we will continue to talk about the rights of the individual. This is the only place in this state constitution where the rights of individuals will be cared for, where we will address ourselves to what we believe to be the rights of Louisianians and the rights of generations yet unborn. And this is why you hear us continuing to talk about it. We plead guilty to that charge. If you think that that is wrong, we simply suggest that this is the real purpose of a Bill of Rights.

Now, I'm kind of complexed by some of the arguments that I've heard relative to this section. Some people have suggested that we can't vote for it for the person section because it's too broad. Yet they indicate that they want to vote for the amendment before you and it is much broader than the committee's language. I am perplexed by that kind of reasoning. May I read to you from an editorial that appeared in a local paper? It says, "The Federal Constitution is understandably broad. That is why there has been so much litigation over interpretation through the years. A state constitution should be more specific in some respects. All we have tried to do is to look at the areas, look at the problems, look at the

litigation, and based on the recommendations of the district attorneys, placed those categories in this section."

We've done more than that. We have made individuals responsible for those abuses. We have made them responsible for abuses in terms of pornography, we have made them responsible for abuses in terms of obscenity, we have made them responsible for abuses when they slander individuals or for defamation of character. Now, there are other arguments which would suggest that this is a dangerous section that we have. One of the reasons why we have so much litigation in this area is because the federal language is broad. But I ask you, ladies and gentlemen, is it dangerous, is it dangerous to assure that citizens in Louisiana will have the right to speak freely? Is it dangerous to secure the rights of individuals to express themselves by way of written communication? Is it dangerous to have people declare that they are for or against and crusade for and against issues in this state? I hope not. I hope that there will never be a day when it's dangerous for an individual to express himself in this state. If we are concerned about these kind of dangers, I dare say that we ought to rest easy because we have no real fears.

But what is dangerous, what is dangerous, my fellow Louisianians, is the abridgement of freedom.

What is dangerous is for us to remove the language that is encompassed in this section which makes individuals responsible for abusing the freedom. That is dangerous. And that is why the committee has placed it in there. And this is why we will say to you today that this section will permit the courts to regulate obscenity, will permit the courts to establish criminal law, civil law, to regulate all of these areas and the Burson amendment will not do this.

I call on you, in the name of justice, I call on you in the name of freedom, I call on you surely, in the names of the rights of individuals to vote against this amendment, this amendment and say to all of the people of this state that we came here not to abuse freedom, but to say to generations yet unborn that they will have the freedom that will allow them to crusade for and against vital issues and vital concern.

I yield to questions.

Further Discussion

Mr. Goldman Mr. Chairman, delegates, I hope you'll forgive a little preamble to what I have to say because this is my ninth day at the convention and my first speech... something that my friends and colleagues would find it hard to believe because I have a reputation for running off at the mouth, and that's the reason I have written what I have to say so that I don't ramble. I also have the reputation of playing the devil's advocate.

I rise in objection to this amendment and any other amendments that would serve to chew up Section 1 as reported by the committee. I could accept technical amendments, such as Delegate Dennerly's changing the word "every" to "any". I find absolutely no fear with this section. I greatly fear what has been proposed.

I'm absolutely convinced that every delegate here is genuinely sincere and dedicated to creating a new constitution that will best serve all the people of our great state. And no one here is subject to pressure or ulterior motive. I have so stated at interviews and in conversations back home, and I believe it, and I hope that you will prove me right. I've been asked about my philosophy and labels. I don't like labels, and a philosophy is difficult to explain because it cannot remain rigid. It changes with the times. It cannot really be put into words, it must be displayed by deeds. However, if labels must be used, and this is to set a little background on myself in case you don't know me, and I've been asked for this by a lot of people and organizations since I've been appointed, I am most conservative in my belief in free enterprise and the minimum of govern-

ment interference....even more conservative than many of you because I don't believe in any government owning any facility.

And I am completely and devotedly a humanist. Unique, you call that? Incompatible? I believe not, and my experience has shown that it is not. Now as one who has been involved in the dissemination of news and information for the past forty-seven years, I can tell you that neither the press or broadcasting are served well by the simple, innocuous phrase, "There shall be no abridgment of the freedom of speech or press."

What's even more important is the fact that it is only an illusory subject, a service to the individual citizen, who has inalienable right to know and be informed. It has and does result in an inhibitory process which tends to slow down the open and robust discussion of public and controversial issues of the day. It really creates a fear that inhibits open public debate. This must be an absolute right in a free and open society such as we claim to prefer.

The key word here is censorship, or if you prefer, prior restraint. These restraints come in many and subtle ways on people and can only be prevented with the kind of constitutional provisions as have been outlined and authored by the Bill of Rights committee. Anything less is an invitation to the subtleties of prior restraint.

The committee section, as written, provides for the rights of privacy and general welfare restraints that all reasonable and responsible people want with the sentence which reads, and listen, "But each person shall be responsible for the abuse of that liberty." We don't want abuse or the right to freedom of speech....abuse of the right to freedom of speech, press, broadcast expression, photography and so forth, any more than we want abuse of the right to the right to anything else in his pursuit of happiness such as kill or maim his fellow man. But there is no way to prevent an irrational person from committing a crime before he commits it. He is punished for it after the fact, not before. And any such person who exercises his right to free expression and abuses it, will be subject to punishment to fit the crime, subject to punishment to fit the crime as established by law and decided by the judicial process. But at the same time, with this constitutional provision, he knows that he will be free to express himself by whatever medium he chooses if he responsibly avoids abuses.

This does not prevent the spelling out of what those abuses are or will be, nor the determination of such abuses and the punishment for them when committed. Really, all this article does is establish once and for all that there can be no censorship or prior restraint in communications and that's as it should be. I know that all the delegates here would go on record to oppose censorship....Any effort to cut this section to eliminate portions of it, or to simplify or generalize it into one line, or sentence, will actually have the effect of censorship or prior restraint.

I urge the defeat of this amendment.

Mr. Henry Some of the....after I've said something about please stay in your seats, some of the people, especially some of the older, one of the older Senators, pointed out that he had a malfunction in his chair. I don't know how he would really note that because he hasn't sat in it too often, lately.

But, we have talked with the people out at LSU, namely the President of the university, about getting some more comfortable chairs for the delegates. But wait, it's not that easy because when you start dealing with something as important and as big as LSU, it takes days and days, because, you see, I called them and then they called Mr. Poynter and said that they would talk to him. And then the President called me, and I called him back. And right now, Mr. Poynter's got a letter in the mail that if he'll call somebody else or there, that we're going to try to work out something about some chairs.

They don't understand, Senator Rayburn, that

they'll be back before the budget committee right away, and that there are ways to explain this. But I think perhaps you and I should get together and write a little note out there to somebody that some folks, especially some folks who sit on the Budget Committee, are looking uncomfortable and plumb mad, at times, over here.

Further Discussion

Mr. Vick Mr. Chairman and fellow delegates, I rise in opposition to Mr. Burson's amendment, and to advocate the adoption of the committee's proposal.

As a former professor of constitutional law, I want to correct a few rather glaring errors. Rights, under the Constitution of the United States, or the Constitution of Louisiana, are not absolute. As a matter of fact, there are no rights that are absolute. Justice Hugo Black considered the First Amendment to the United States Constitution absolute because it says, "Congress shall make no law.... And no law means no law. But believe me, there are no rights that are absolute. And further, there are rights that are in conflict in the present Bill of Rights, in the Federal Constitution, in the present Bill of Rights in the Louisiana Constitution, and indeed, in this proposal that you have before you. There will be rights that will be in conflict. And there are rights that are in conflict.

For example: the right of privacy as opposed to the right to photograph, that has been raised under this Constitution. The example that the delegate gave to me as to why he was opposed to the right to photograph was the example of that rather persistent photographer in New York that used to stand on guard outside Mrs. Jacqueline Kennedy Onassis's apartment and photograph her as she went. And no doubt, she is a public figure, but, that right to photograph was abused. And what did she do? She went to court and got an injunction to keep that man a hundred yards away from her at all times thereby balancing the rights, the right of the photographer to photograph, and the right of Mrs. Kennedy to move with some degree of freedom....or Mrs. Onassis, if you will.

Now I recognize that public officials are very sensitive where the press is concerned, and they have some justification for that sensitivity. Newspaper men are under a deadline as are their T.V. counterparts. They make mistakes. We all make mistakes. But I take that one step further insofar as public officials are concerned, I think in many cases they are hypersensitive to what the press says, both the electronic and the printed media. But let me suggest to you, fellow delegates, that civil recovery is allowed for defamation, for libel and for slander where public officials are concerned, and I commend to your attention the most recent case of Marielito Mayoral [Alfonso] when Look Magazine accused him of Mafia connections, and of course, after recovery a suit, of millions of dollars against Look Magazine that forced them out of business.

Remember, remember under the New York Times versus Sullivan Doctrine that Mr. Burson enunciated, that there is civil recovery for defamation, and if the statement were both false and made without true malice, that is, with the knowledge that it was false or with the reckless disregard of whether it was false or not. And that's what brought the untimely end to Look Magazine is they went to far out against a public official, and they were finished.

Now, insofar as public figures who are not public officials, Mrs. Kennedy, for example, would fit that category, as, indeed, a number of other people. And I commend to your attention, ladies and gentlemen, what happened to the Saturday Evening Post when they accused Earl Butts of fixing football games. He sued and successfully recovered millions against the Saturday Evening Post, which again, was in part, responsible for their untimely demise.

Ladies and gentlemen, this proposal by the committee capsulizes the present law. Some of the delegates remarks from this podium notwithstanding,

42nd Days Proceedings—September 6, 1973

it capsulizes the present law. What's wrong with that? What's wrong with that? I have heard any number of delegates from this podium say, "We want the people to be able to read it and understand it." This is in clear, unequivocal language and believe me, it does not give license to do those things that are permitted by law....

I urge your defeat of the Burson amendment.
Thank you.

Further Discussion

Mr. Newton Mr. Chairman and fellow delegates, I rise in opposition to the amendment and primarily to clear up any misconception that you might have.

It's been remarked from up here that there is this vast body of jurisprudence which interprets the language of the Burson amendment, and there is. But that's by the United States Supreme Court interpreting the United States Constitution, and this language in the Louisiana Constitution is going to be interpreted by the Louisiana Supreme Court, and the Louisiana Supreme Court is not bound by the decisions of the United States Supreme Court in interpreting the United States Constitution. And I think without the language that each person shall be responsible for the abuse of his liberty, I think we are running into problems, and I urge the defeat of the amendment.

Questions

Mr. Lanier Mr. Newton, would you agree that there is substantial jurisprudence under Article 2315 of the Civil Code dealing with libel and slander?

Mr. Newton It is my understanding that there is a considerable amount.

Mr. Lanier And this is a statutory provision that's been in our law since we were under the Code Napoleon, isn't that correct?

Mr. Newton I believe so.

Mr. Lanier And, really, even if this clause in that says, "But, each person shall be responsible for the abuse of that liberty." If that were not in there, all of these things could still be cured under Article 2315 couldn't they?

Mr. Newton I'm not real sure about that if you go changing the constitution from what it is now and leaving that language off, it could very well be interpreted that we meant to change that provision of law.

Mr. Lanier Now, something else. We've been told that the language in this section is very clear and states the present law. Now, would you agree that we have previously, in Section 1, said that "all rights enumerated in this section shall be inalienable and shall be preserved inviolate by the state". Would you agree with that?

Mr. Newton I believe that's right.

Mr. Lanier Now this thing here says, "No law shall abridge the freedom of every person to photograph." Is that correct?

Mr. Newton I assume you are correct. I am not reading it.

Mr. Lanier And that this pertains on any subject. Is that correct?

Mr. Newton I would think so.

Mr. Lanier O.K. And then, in the last clause it says, "Nor shall such activities ever be subject to censorship, licensure, registration, control or special taxation." Is that correct?

Mr. Newton That's what it says.

Mr. Lanier Now, would you, therefore, say that it is pretty plain that under this language that the state could not prohibit somebody from photographing a jury trial?

Mr. Newton I think that would be an abuse.

Further Discussion

Mr. Weiss Mr. Chairman and fellow delegates, back home, many of the people that have seen me in regards to this constitution request repeatedly to bring home a document they can understand. This is rather difficult sometimes when you sit on a committee, as I have, for many, many days with attorneys who use high-class legal language.

However, the amendment as proposed here is a very simple one, it states only, "freedom of speech or press." I contend that this is a over simplification of a very difficult problem and we must modernize it. The committee has spent many hours and days studying this, and it is certainly antiquated to use the term "speech or press." The major media today, the people's lobby, the education lobby, is television. There is no word here which applies to audio-visual.

Now in an attorney's sense, how can you interpret such law when you say, "only speech or press"? Where are the audio-visual people to be interpreted in this short statement? Perhaps there has been jurisprudence over the years established in regards to television. But it is not stated in this amendment.

I urge you to vote against it. There are three points which must be made clear in the committee's proposal. And I would ask you to bear with me to explain in detail these three points very simply.

First is the ability to speak, to write, to publish, to photograph, to illustrate, broadcast and transmit such knowledge which includes the television, which includes the audio-visual media that we have today at our disposal. It spells it out clearly, it tells the public, it tells the Supreme Court, it tells the people of Louisiana that we are in favor of freedom of expression.

Second, it allows for punishment in regards to abuse of that liberty. Injunctions can be obtained, and are obtained, to prevent people from such trash as has been perpetrated upon the public. And this is in newspapers, television, or other special media. This can be stopped by injunction and the courts will make this decision and not some censorship board, which is the third and most important part, that censorship, licensure, restrictions and controls in special taxation have been used throughout the world to stop the press.

In fact, there was a decision in the Supreme Court of our land because Huey Long tried to stop the Louisiana presses from publishing material. And those of you that are familiar with the law can bring that to the attention of this group. It is time we stopped this foolishness and allow freedom of expression as it should be enjoyed by all the people of this great state.

And I urge you to defeat this amendment and accept the committee's proposal.

Further Discussion

Mr. Roy Mr. Chairman, ladies and gentlemen of the convention, of course I rise in opposition to the amendment for many of the reasons previously stated, not the least of which is that it does not provide for the abuse of that freedom.

Now I've heard Mr. Lanier get up about three times and he's always bringing in some issue that I just completely disagree with him on. First of all, Article 2315, for you folks who don't know it, is an article in the Civil Code of Louisiana that allows a person to sue when he has been wronged, either verbally, that is by slander, libel, by written word, or, of course, just run over by an automobile.

Now Mr. Lanier knows, and every lawyer in here knows that if 2315 is in conflict with a constitutional provision, then the constitutional provision

is going to prevail. Mr. Burson has omitted the words, "being responsible for the abuse of that freedom." In my judgment, our Supreme Court, interpreting our new constitution, if ever we get one, and this particular section may say the convention had something in mind when it left out being responsible for the abuse of that freedom.

Therefore, there is no abuse any more, and 2315 is inapplicable. Now, let's go to the other question you asked about...photography.

The section simply says, the last sentence, "There shall such activities be subject to censorship, license or registration to control a special taxation." Now Woody explained that very well. It means that you can't have the state creating any commission or any body that can come in and before you write your book, before you take your photograph, or before you sing your song, they cannot come in and censor it nor can they make you license yourself as an author, nor can they make you register as an author nor can they control what you are going to put in there and nor can they specially tax it.

Once you do it, you are in the same boat as you are now and you always have been. You are subject to the abuse of what you have done and then you are responsible for whatever slander, libel, pornographic and otherwise material you put out that was wrong and against the law. So that's no problem.

Now, the last thing he mentioned is this word, "inviolate," that "We make these rights inviolate with respect to the state." Everyone knows that a person may waive his basic constitutional rights before you are prosecuted or plead guilty in a federal court since every case, you must be in every case where there is a serious crime, you must be charged by a federal grand jury indictment, the court asks you, "Mr. Roy, do you realize that you have to be indicted before you can be charged?" And I say, "Yes." "Do you waive that right?" And I say, "Yes." And then you go on. "You may waive any constitutional right."

I'm going to yield to questions because I see there are some questions.

Questions

Mr. Jenkins Mr. Roy, during our committee deliberations, we had perhaps, two or three hundred people testify before us. Can you tell us how many people came and opposed this freedom of expression section?

Mr. Roy John Thistlethwaite was the only one, and then he really wasn't that sure about what he was getting into.

Mr. Jenkins Is it true that the District Attorneys' Association has said that this section is acceptable, then, and provides adequate safeguards against obscenity?

Mr. Roy John Richardson, the D. A. from Caddo Parish came had omitted the word "and" in "being responsible for the abuse of that freedom," and he said, "You must have that in there because if you don't, it's his judgement that then there would be no abuse and you'd have complete, absolute freedom," so we added that in there because of a D. A.'s remarks. You're right.

Mr. Jenkins Now, is it true that the section as written simply restates the present, existing law on this subject?

Mr. Roy Yes, it does, and it makes sure that our courts understand, our state Supreme Court will understand what we talked about when we say, "broadcast."

Mr. Jenkins Now, isn't it important, though, that we keep this present state of law written in the law because if, say, future U. S. Supreme Courts came back and wanted to allow, say, licensure of the press, we would be protected, wouldn't we?

Mr. Roy That's absolutely correct. What the U. S. Supreme Court does, if it decides to come back and make it...make censorship legal, we, in Louisiana state, we don't believe in prior censorship.

Mr. Goldman Delegate Roy, did you, and do any of the delegates here remember some eight or ten years ago when the legislature almost passed a law that would make the attorney general of this state the censor for all advertising in this state...all advertising? If that law had passed, would have gone to the attorney general before being either printed, broadcast, or any other way it could be brought to the people. And he would have the sole authority to say whether it was true or false, whether it was good or bad or any other thing, and he could stop it or let it go.

Mr. Roy That's correct, and that's a perfect example of prior censorship that no one would think wrong.

Further Discussion

Mr. Dennis Mr. Chairman and fellow delegates, I wanted to ask a question of Mr. Roy, but he ran out of time. The thing about the committee's proposal that troubles me greatly is the part that says that no law shall abridge the freedom to gather, receive or transmit knowledge or information. These words, I believe, could be subject to the interpretation that no law could be passed regulating anyone in bugging devices or using electronic surveillance or infringement on individual's privacy. I know we have already passed a section that says the state cannot practice unreasonable searches and seizures, but I think that this might be interpreted to mean that we could not pass a law prohibiting private citizens from unlimited searches and seizures, so to speak, gathering of information.

Now, I've talked to some of the people who are for this committee proposal and they say, "Oh, it would never be interpreted that way." And I've heard Mr. Roy explain what some of these words mean. But I really don't think that some of these phrases have been interpreted in the courts. I don't know that the words "gather, receive, or transmit knowledge or information," have been interpreted that well in the courts so that we are absolutely certain they would not be interpreted in a dangerous way, a way that would infringe upon individual liberties. I realize that the newspapers and the news media are very happy with this. The district attorney may be happy with it. But what about the people who are concerned about the individual liberties? I didn't get a chance to ask a question as to whether or not you heard from those kind of people.

But I...it troubles me to see you get away from words that have a hundred and fifty or more years of interpretation behind them, and about new words. In this whole Bill of Rights Section, that we are trying to do here is say in a very few words what would really take volumes and volumes to actually spell out, and our courts, over a hundred and fifty years have done that. And in many instances here, we are discarding the very words that have a hundred and fifty years of interpretation behind them, and adopting new words, and it makes me very uncomfortable because I don't know that we know how those words will be interpreted.

So I ask you to support Mr. Burson's amendment, or an amendment similar to that that gets us back to some words that have been interpreted by the courts that we know what they mean, and not adopt language like giving someone the unfettered right to gather information which might mean, and I hate to be one to raise up a bogeyman, but we've got to think about these things. It might mean that we could not regulate individual private citizens in using electronic devices and so forth, that would invade a person's privacy.

Questions

Mr. Smith Judge DENNIS, I'm for the Burson amendment. But don't you think the present section as written is way too broad in what it's trying to point out?

Mr. DENNIS Mr. SMITH, I think that probably, our Supreme Court would, through a series of cases, interpret it so that it would probably come back to mean about the same thing as Mr. Burson's amendment would. But, why force us to enter that much litigation to get back to the same thing? And then, I'm not absolutely certain that that would occur.

Mr. Smith Well, don't you think the section as written now encourages obscenity and pornography?

Mr. DENNIS Yes, sir, it could. However, that doesn't concern me as much as this unfettered right to gather information.

Further Discussion

Mr. Willis Mr. Chairman, my ladies and gentlemen of the convention, plain, honest and well understood words are the only ones to deposit in a constitution. To experiment cutely at the moment with words and phrases which do not have the test of time, or ambiguous connotations, is to court that which would require our citizens to court our courts continually and leave to unward circumstances which are neither now desired or contemplated or predictable. I do not have a mind keen enough, or a tongue nimble enough to suggest all the consequences to which the verbosity of this article may lead. If brevity is the soul of wit, let me suggest we be brief. Let those who would be verbose tell you that this amendment does not achieve their all in less words. As a matter of fact, I plainly heard Delegate Jenkins say, "it didn't."

I am for freedom of clear expression, not of verbosity and ambiguity. My courage to make this suggestion mounts with the occasion. We must purify our constitution with understandable language, not pollute it with words, words, words which will only stifle wholesome statutes existing and to be. Words without thoughts never to Heaven go. I fear that what we now consider great rights, will give license to do great wrongs. Give me enough ink, and I can write, publish, photograph and illustrate your reputation and honor out of existence without a blemish of untruth by merely withholding some of the truth. Give me the audience, whether captive or not, and I can speak and broadcast you likewise. Are we oblivious of the teachings of history? Those same lessons recommend freedom of expression by speech or press. I sound the bugles of war in defense of those freedoms. But there is no need to draw useless blood. We are all in agreement on the freedom. Our disagreement is on the language to achieve the balance between that freedom, these are the others which we have.

You have heard from the Psalm, "My cup runneth over." In parallel, this Bill of Rights is a cup, and this article is its contents which is running over with words and leaving us a legacy of a loss and a great deficiency. I realize we must proceed with deliberate speed. But let us not speed without deliberation. Of the two, deliberation is the better, impatience is a symptom of poverty in judgment. I readily embrace the freedom to express one's self by lith and print...to ear and eye to its fullest extent with and within propriety. Both reach the mind, but I am unalterably opposed to allow any person to reach mine, or those of my own, with impropriety, and I very much fear the article under consideration gives the license under the guise of freedom of expression, to do just that and to turn our society topsy-turvy.

The article is written, under the guise of freedom, proves a smooth path to indecencies, improprieties, and every other....

Mr. Henry Mr. Willis, you've exceeded your time,

Mr.

Mr. Willisvery well, sir.

[Previous Question ordered.]

Closing

Mr. Burson Mr. Chairman, ladies and gentlemen, the authors of the Bill of Rights to the United States Constitution primarily, as I recall Mr. Madison would, I am sure, be astonished this morning to hear that some of its delegates to this convention greatly fear the language which they chose to secure freedom of speech and press in these United States. I am sure they would be astounded to hear that they are in favor of censorship and more astounded to hear that their language was foolishness. I think the best test of their language is, that it has stood the test of time. For those of you who might have fears in that regard, they have stood the test of time quite well in the era of radio and television. We have cases on the books which clearly include radio and television within the protection of free speech and free press. As Mr. Willis put it much more eloquently than I can, we all agreed on the objective. It is simply a question of what language we will use. I have submitted to you language which has stood the test of time and language which is substantially different from the language of the committee proposal and from the present State Constitution. Do not be deceived. The present State Constitution, if you will look at Section 3 of the Bill of Rights of the present State Constitution, talk about freedom of speech and press, just as the U. S. Constitution and just as my amendment speaks of freedom of speech or press which has a well-defined historical meaning. The committee proposal speaks of the freedom of every person to "speak, write, publish, photograph, illustrate, or broadcast on any subject; to gather, receive or transmit knowledge or information," which I submit to you, is quite a different thing from a defined freedom of speech or press. As far as the phrase about abuse of liberty, I suggest to you that no lawyer in here seriously suggests, or should seriously suggest to you, that people have not been responsible for the abuse of the freedoms of speech or press in this country, whether by libel laws. Now by the latest decision of the United States Supreme Court they have removed pornography from the protection of the First Amendment freedoms. They have removed it. That's what the decision says. I have it at my desk, if anyone cares to look at it. Would we turn around in a State Constitution and perhaps, I don't say the committee proposal does this, but it may and some committee members have told me that they intended that it should. I won't embarrass any of them by calling their names here. That it should encompass the right to distribute pornography and if that's what they intend, then I tell you frankly, I am against it. I am against it for the major reason that the overwhelming majority of my constituents are against it and I was born and raised in my district and share most of their views to the "T". Now, as Mr. Lanier pointed out under Article 2315 of the Civil Code, which we have had in effect in this state since we were a possession of France, we are well covered on the question of libel and slander. I'm not worried about that. I am worried very deeply in the areas that Mr. Avant brought to your attention yesterday. Does this untrampled right to photograph, to gather, receive or transmit knowledge or information on any subject include the right to delve into your private, personal affairs and transmit that information to others? If it does, then I don't think there is one delegate here that would want to vote for that provision.

[Record vote ordered. Amendment adopted 61-53. Motion to reconsider failed.]

Amendment

Mr. Poynter Amendment went all the way to Gravel.

Amendment No. 1. On page 3, delete lines 26 through 32, both inclusive in their entirety, (and need to add the language "and strike out Floor Amendment No. 1, proposed by Delegate Burson, adopted by the convention today.") and insert in lieu thereof the following: "Section 9. No laws shall abridge the freedom of speech or press, but each person shall be responsible for the abuse of those freedoms."

Explanation

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, all that this does is to add to the Burson amendment that has just been adopted by this convention, the provision that each person shall be responsible for the abuse of those freedoms. I think this is necessary in order to make sure there can't be any interpretation of the Burson language to make the proposed rights therein set forth completely absolute. I believe this is an adequate protection, and frankly one that I think is needed, despite the language in Article 2315 of the Louisiana Civil Code. I don't think there is any question but that we need this particular authorization or restraint in the constitution itself, and I urge your adoption of the amendment.

Questions

Mr. Giffell Mr. Gravel, Mr. Burson said we didn't need this language. Does he agree with this amendment?

Mr. Gravel I don't think he said we didn't need it. I disagree with him to that extent. I don't think he has any strong feelings one way or the other about the language. I don't know, that's up to him, but I do think it is necessary and we do need it. I would ask that you support the amendment.

Mr. Burson Do you know, Mr. Gravel, that I have no objection to this amendment?

Mr. Gravel Thank you, Mr. Burson.

Mr. Fulco Camille, would freedom of speech and press necessarily have to have included "broadcast." Would that give the... if you added the word "broadcast" in there, would that give the broadcast stations any protection?

Mr. Gravel Of course, Mr. Fulco, I think that interpretation goes more to the question of the Burson Amendment. In my judgment and without much question, without any reservation, I think it definitely includes radio and television broadcasts.

Mr. Fulco I was asked to make that request because the broadcast people felt that in the committee's section, they had to have the word "broadcast" in there to afford them the same protection that is afforded the press. I am only making this request, asking this question at their request, thought maybe you might enlighten me.

Mr. Gravel In my opinion as a lawyer, that is not necessary. However, I say the amendment that I am proposing really has to do with the question of whether or not these freedoms will be constitutionally protected to some extent. I think that the argument and the vote on the Burson amendment has already foreclosed that question.

Mr. Fulco Thank you.

Mr. Gravel Personally, I think broadcast is amply protected by the Burson language.

Mr. Fulco Well, that's what I thought, too. Thank you.

Mr. Warren Mr. Gravel, this is a question I wanted to ask some time ago and everybody ran out of time. The... no law shall abridge the freedom of speech or press has already been interpreted, am I right?

Mr. Gravel I think many times, yes, Ma'am.

Mrs. Warren Could you or anybody give me in writing, I'm asking of this speaker, that I want it in writing, the interpretation of this meaning, please.

Mr. Gravel I could give you maybe my opinion, but it would....

Mrs. Warren Give me your opinion, but I would like for anybody and I'm going to ask the Chairman that I get this in writing, the interpretation of this meaning, please.

Mr. Gravel Mr. Chairman.

Mr. Henry Well, Mrs. Warren, I don't think I can give you that in writing. I don't think anybody here right off can give you that in writing....

Mrs. Warren It doesn't have to be right off, I just want it.

Mr. Henry Well, I'll appoint Mr. Gravel then to make sure that you get this in writing before this convention is over.

Mrs. Warren Thank you, very much, that's all I want to know.

Mr. Gravel Mr. Chairman, I can give the Chairman three cases where the Louisiana courts have interpreted this language, and they are in writing....

Mr. Henry Mr. Gravel, now let's be fair. The lady has asked for a written opinion, I know of no one who writes any better than you do, and I think you can put it in the language that she would understand it and appreciate it. She's not asking you too much.

Mr. Gravel How much time do I have to prepare it?

Mr. Henry Till January 4, Mr. Gravel. He will do that, I am sure.

[Previous question stopped. Amendment adopted without objection.]

Amendment

Mr. Poynter Mr. Drew does want to go with his amendment.

Amendment No. 1. On page 3, delete lines 25 through 32, both inclusive in their entirety (and we need to add some language to the effect of "and deleting the Gravel amendment just adopted") and insert in lieu thereof the following:

"Section 9. Liberty of Speech and Freedom of the Press

Section 9. No law shall ever be passed to curtail or restrain the liberty of speech or freedom of the press. Any person may speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty."

[Amendment withdrawn and resubmitted with correction.]

Mr. Poynter Now, Mr. Drew, you want it to read the last sentence, the abuse of that liberty or freedom."

Explanation

Mr. Drew Yes, sir. Mr. Chairman, ladies and gentlemen of the convention, there is not a great deal of difference between this and the Gravel amendment. The reason I am offering this amendment is because

it tracks the language of the 1921 Constitution, except for the fact that the '21 Constitution reads in line 26, "liberty of speech or press." I thought it would make it a little bit clearer to add, "liberty of speech or freedom of press" and the reason I added at the end of the sentence of the amendment, "or freedom" because the question was raised that the responsibility for the abuse of that liberty may be limited to liberty and not freedom of press. Therefore, it would, the abuse would, be the responsibility for the abuse of the liberty or the freedom of the press would be subject to court action, if necessary. The reason I offer this in lieu of the amendment that was adopted and offered by Mr. Gravel, is that this is the wordage of the 1921 Constitution, which has been interpreted time and time again. Although that on the surface and on the face of it, it has the same meaning, when you change words you have the possibility of changing interpretation. I don't think the minor change that has been made here, by the mere insertion of "freedom of the press" where we also insert "responsibility for that freedom", would make any change in the court decisions and which we are living under. Although from the debate, the extensive debate that was had here on the Burson amendment, I don't think that the press association or the broadcasters' association or any other of the news media associations have had any complaint or any hog-tieing under the present provisions of the constitution. We had many years of jurisprudence interpreting this. It certainly has not been abused; it has not limited the freedom of the press or the broadcasters, and I think by staying with the provision that we have operated under for the last fifty-two years and taking benefit of that jurisprudence would well be to the benefit of this convention and state. I move for the adoption of this amendment.

[Previous Question ordered. Amendment adopted: 69-39. Motion to reconsider tabled.]

Amendment

Mr. Poynter. Next amendments are sent up by Delegates D'Gerolamo, Toca, Ullo and many others. Reads as follows now:

Amendment No. 1. (The instructions are going to have to be changed as follows:.) On page 3, line 26, insert the following after the language added by Convention Floor Amendment No. 1, proposed by Delegate Drew now and adopted by the convention on September 6, 1973, "Any person whose character is assailed by reason of the exercise of any freedom herein granted, shall be afforded an equal opportunity to reply, and the legislature shall enact laws to implement this provision and provide penalties for violation" (and you need to strike out the word "such activities shall not").

Explanation

Mr. D'Gerolamo. Mr. Chairman and fellow delegates, the authors of the Constitution of the United States worked long and hard to ensure for all of us the liberties granted in the Bill of Rights. It took the same time to categorize each of these liberties and these rights, so that there would be no misinterpretation, no misunderstanding as to their meaning or intention. When these, the most precious of American principles, were passed by the first Congress and then ratified by the states in 1791, there was no doubt then, and there should not be any now, that each amendment of the Bill of Rights was applicable to everyone, every citizen, every individual. Yet in the passage of time and the bureaucracy of modern society, it has become necessary that we here in Louisiana, take a close look at the declaration now before this body. I refer specifically to Title 9, titled the Freedom of Expression. This amendment is presented here, and hereon why. Too often individuals, as well as organizations and businesses, have been unjustly accused of wrongdoing in the press and/or the broadcast media. The oppor-

tunity for a just reply to these stories or commentaries are often nonexistent, or handled in such a manner as to deny the public's right to be presented the facts from the other side. We can all recall incidents when a newspaper headline criticizes a public official or exposes an alleged business malpractice only to retract their statements after the true facts become known. More often than not, their retractions in no way receive the same amount of exposure or attention as the initial headline, thereby leaving an erroneous opinion in the mind of the public. It is this injustice which must be closely scrutinized. During the '60's and now in the '70's consolidation, syndication, acquisition of radio and television stations and the demise of vast numbers of newspapers around the country, has resulted in a concentration of ownership of the mass media into fewer and fewer hands. This is a form of private censorship with influence over huge areas of this nation, an unchecked influence over the ideas and morals which guide our daily lives. It is necessary that we as representatives of the people of Louisiana insist that every individual have the right to, and an equal opportunity of, reply when his character is assailed by reasons of the exercise of any freedom granted in this constitution. Fellow delegates, just recently in the State of Florida the legislature in Florida passed a State Statute 10438, referring to candidates running for public office. I will read it to you. "If any newspaper in its columns assails the personal character of any candidate for nomination or for election in any election, or charges said candidates with malfeasance or misfeasance in office, or otherwise attacks his official record or give to other free press for such purposes, such newspaper shall upon request of such candidate immediately publish, free of cost, any reply he may make therein as conspicuous a place and in the same kind of type as the matter that calls for such reply, provided that such reply does not take up more space than the matter replied to. Any person or firm failing to comply with the provisions of this section, shall be guilty of a misdemeanor in the first degree, punishable as provided in the Statute." This case went to the State Supreme Court in Florida and the State Supreme Court. In conclusion, we do not find that the operation of the statute would interfere with the freedom of the press, as guaranteed by the Florida Constitution and the Constitution of the United States. Indeed it strengthens the concept, in that it presents both views, leaving the reader the freedom to reach his own conclusion. This decision will encourage rather than impede the wide-open and robust dissemination of ideas and counter-thought, which the concept of free press both fosters and protects and which is essential to intelligent self-government."

Gentlemen, this is the reasons I have, and that other members who endorsed this amendment, of introducing this. It certainly is not meant to impede or suppress freedom of speech or press, which is so vital to our country. It only affords those who are not in the position to demand front page coverage when their character has been assailed, the right to ask for it and be given free of charge. Ladies and gentlemen, I ask that you go along with this amendment and I ask for favorable passage.

I'll answer any questions, Mr. Speaker.

Questions

Mrs. Warren. Yesterday and I thought it was good and I wanted to be listed as one of your co-authors. One question I would like to know since you made your presentation. Will this one refer to those persons running for public office or some elected official, or will this be broad enough to cover anyone who feels that their character has been in any way affected?

Mr. D'Gerolamo. The amendment that we have here will take care of everyone. The Florida one was just for the candidates, for the one we have any person whose character....

Mr. Warren I would like to get on this one and endorse it.

Mr. O'Neill Mr. D'Gerolamo, I see that it says here that the legislature shall provide penalties for not doing this. Can you tell me in your mind what kind of penalty you might be thinking about?

Mr. D'Gerolamo I have no ideas right at this present time, probably something on the order of the state statute in Florida, but certainly we want to leave it open for suggestions and the legislature to do what they think is right for both the press and the individuals.

Mr. Munson Eddie, does this simply add to the amendment just adopted proposed by Mr. Drew?

Mr. D'Gerolamo Yes, sir, all it does is add another paragraph to it, sir.

Mr. Munson Well, I heard you say in your remarks, any person whose character is assailed would have the right to the same coverage in his reply. It doesn't say so in the amendment. In other words, is the reply going to be on page 32 or page 1, or is that left up to the statutes?

Mr. D'Gerolamo This would be left up to the statutes, Mr. Munson.

Mr. Riecke Who would determine and at what point would it be determined, whether the person's character really was assailed?

Mr. D'Gerolamo I believe the intent of this would be left up to the person who has been assailed.

Mr. Riecke In other words, that person could just simply say "my character has been assailed," whether it really was or not and get front page coverage?

Mr. D'Gerolamo Well, Mr. Riecke, I'm sure that the only time that the use of this thing would be to set out by the legislature the laws to implement this provision. It would be again left to the legislature to implement these laws.

Mr. Riecke I see.

Mr. Kean What is the meaning of "whose character is assailed?" What does it take to assail one's character?

Mr. D'Gerolamo Well, I have probably and you have had read and heard innuendos, accusations about a person, of the character of a person, that later on never did materialize, but they hit the headlines and it's the person whose character was assailed.

Mr. Kean Well, suppose the headline as you refer to it was true. Suppose the newspaper published a truth, which had the affect of assailing one's character. Would this require that nonetheless there be this right to rebuttal that this would give them?

Mr. D'Gerolamo Be in the practical sense, I would say yes. But certainly if a man committed a crime or was accused of a crime and it was the truth, certainly this man would have a type of rebuttal, whether he is found guilty or not, which would be later on. What I am trying to prevent, if possible, at many a time a person is convicted before he is even tried. He is convicted by his peers, by the public, before he is even brought to court.

Mr. Kean Wouldn't you think that the amendment that has just been adopted, the Drew amendment, which makes a person responsible for an abuse of the liberty of speech or freedom of press would take care of this problem that you are attempting to get to with your amendment?

Mr. D'Gerolamo No, sir, I do not. Mr. Kean, because I believe that although reply may be given, sometimes it's not used and printed, or as such.

Mr. Denney Delegate D'Gerolamo, as I understand it the State of Florida adopted a statute as you read it. The State of Florida, however, has no such constitutional provision as this, does it?

Mr. D'Gerolamo I do not know. I think it does. Mr. Denney, by this wording here on page 11 of the suit, it says, "in conclusion, we do not find that the operation of the statute would interfere with freedom of press as guaranteed by the Florida Constitution".

Mr. Denney In other words, if we have a similar provision in the constitution as the State of Florida does, we would not need this provision in the constitution, if the legislature saw fit to adopt a similar statute. Is that correct?

Mr. D'Gerolamo That's possible, sir.

Mr. Denney Furthermore, the State of Florida does not require the legislature to adopt such a statute and your proposal requires the legislature to enact laws to implement this provision. Is that not correct?

Mr. D'Gerolamo Yes, sir.

Mr. Denney So that you are not satisfied that the legislature believes this to be a good thing; you would insist that the constitution require the legislature to adopt this, whether the legislature felt it was a good idea or not. Is that correct?

Mr. D'Gerolamo Well, I believe the legislature could enact the laws, however stringent or lenient as it would feel fit was necessary.

Mr. Denney But it would have to adopt some law, is that correct?

Mr. D'Gerolamo Yes, sir.

Mr. Denney So, don't you agree that what we are doing then, is putting legislative material into the constitution?

Mr. D'Gerolamo Not particularly, sir.

Mr. Denney Thank you, sir.

Mr. Willis Mr. D'Gerolamo, I don't want to abuse you with these questions; I'm in favor of the thrust of your amendment. But don't you think that character...well, let me put it this way, isn't character and reputations different?

Mr. D'Gerolamo I presume so, sir.

Mr. Willis So, then wouldn't the appropriate word instead of "character" be "reputation", your reputation is misused. Don't you think it would be "reputation" would be the word that you should have? The character is something that you make of yourself, a reputation is how you are looked into the eyes....maybe not, then I have this other question. "Equal opportunity to reply" has me puzzled, what does that mean equal facility, equal time? You understand the meaning of it?

Mr. D'Gerolamo Yes. What the intent of this is, that the person who is assailed, whose character is assailed, will have the equal opportunity to reply. Now it would be set out by statute of the state legislature, in the method of reply; but, he does have, he will have the opportunity to reply.

Mr. Champagne Mr. D'Gerolamo, does this thing here....in other words, my question to you and probably you don't agree is, I feel that no other constitution has this in it, to your knowledge, is there any other constitution?

Mr. D'Gerolamo I don't know, Mr. Champagne.

Mr. Champagne The thing that I'm worried about while I'm in sympathy, is that I feel that this is

42nd Days Proceedings—September 6, 1973

legislation. Don't you think, perhaps, this is legislation?

Mr. D'Gerolamo I feel it should be in the constitution. Mr. Champagne, this is why I drew up this amendment.

Further Discussion

Mr. Derbes Ladies and gentlemen, first I would like to dispel any rumors that I have been taking voice lessons from Eddie Lebreton. I just have a bad cold, and I hope you will forgive me for the moment and pay a little bit of attention to what I have to say. I don't think this amendment is necessarily a can of worms or a snake; I think it's a dinosaur, because it is essentially prehistoric. It flies in the face of all that we know about the existing law of libel and slander. It flies in the face of New York Times vs. Sullivan and makes no distinction between public figures and private persons. It makes no distinction between data, which is disseminated about individuals and actual assault, which makes no distinction between data that is disseminated about individuals and an actual attack on an individual's character. I can say, as a matter of fact, that I saw Delegate Bollinger with a red, white and blue tie on the corner of Convention and Exchange Streets in the city of Baton Rouge, and according to Mr. D'Gerolamo, if he considers in his sole discretion that that's an assault on his character, then he can go to court and occasion an equal opportunity for reply. I think most of us are attempting to do in this constitution, what's going to protect all of the people. Thomas Jefferson once said, "Give me a choice between newspapers and government, and I'll take newspapers." Well, I tell you that this amendment is going to have a chilling effect on freedom of speech and on the press. One of the foundations of this democracy is the ability of newspapers and other members of the media to disseminate information and at the same time be responsible for any abuse of that liberty. I don't know what assault means. Does it mean injury? Does it mean physical assault or information about, or does it mean a personal, physical attack? If I say that somebody has certain character traits, that might be an attack on his character. But if I, otherwise, say that somebody did such and such at such and such a time, that's not necessarily an attack on his character, although he may consider it so. Also, I don't know what an equal opportunity to reply means? Does that mean if you publish a transcript of certain proceedings in which an individual was involved and it may take two or three pages of newspaper space, and he considers it an attack on his character, that he has an opportunity to publish a like amount of information in a succeeding publication? Frankly, I don't know. As it stands, if a person abuses his right of freedom of speech, the newspaper or the member of the media that's involved in the abuse, has an implicit obligation to print a retraction, in order to mitigate damages. If I say something about Senator De Blieux that's bad, that's wrong, that's a personal attack on his character, in order to protect myself I've got to print a retraction. I've got to give him an opportunity to reply. If the record is bare of such a retraction, then nothing has been done to mitigate damages. If indeed I have libeled or slandered him, then he can recover appropriately from me. I am not in favor of complete freedom of speech where individuals are concerned.

Further Discussion

Mr. Denberry I rise in opposition to this amendment. First I would tell you so you may know of these facts, although I may be assailing my own character thereby. I am a member of the advisory editorial board of the Times-Picayune in New Orleans, and I am the chairman of the Louisiana Educational Television Authority, and in both of these capacities I would have to object to this amendment. In the first place Mr. D'Gerolamo was

unable to explain what the meaning of the phrase "whose character is assailed". As Mr. Kean pointed out in his questioning it is very difficult to determine what this means. Suppose for example that a newspaper published that in its opinion the representative from the seventy-seventh district has done a good job as a representative. Presumably that representative would consider that his character had been assailed, and he would therefore be given "an equal opportunity to reply", which would mean that he could then publish in the newspaper, or cause the newspaper to publish in the same place a statement which said "the representative from the seventy-seventh district, in his opinion, is doing a good job". I'm trying to reduce this argument really to an absurdity, because I feel that an amendment of this sort becomes an absurd amendment to our provision in our constitution. Despite the language of the court in Florida, it would seem to me that this clearly would violate the "freedom of the press" privilege granted by the Constitution of the United States. I would further point out to you that even in Florida the only time this law applies is during a political campaign in which a newspaper might attack one of the candidates. Then that candidate is entitled to reply. Equal time and equal as interpreted by the F.C.C. and the courts really deals with politics, principles. It doesn't deal with individuals. It seems to me that this would be a very poor type of thing to put in our constitution. As Mr. D'Gerolamo answered to my question, this will "require" the legislature. It will not give the legislature an opportunity to determine whether such a law is a good law, it would "require" the legislature to adopt a law. Now, I don't believe that we in this convention are legislators. We're not supposed to be legislators. We're supposed to write the basic principles of the constitution. If such a law is a good law, the legislature would have a right to adopt it under the present provisions as the proposal has been amended. It seems to me that the very nature of the language in here is so weak, "whose character is assailed"--it has no real definite meaning. "Assail" means a violent attack. Therefore, if the newspaper calmly states, "Well, we don't think Mr. D'Gerolamo has done a good job", that's not an "assailing of his character". That's merely a statement of opinion. Furthermore, if the newspaper carries on the front page that someone has been indicted, that's merely a fact. It is a fact that a grand jury indicts someone after it has so indicted him. I don't believe anyone would require the press or the radio or the television or broadcasting of any nature to come in and say "this man says he was not indicted". That's all you could say because the indictment itself may be an assailing of the character. It seems to me, ladies and gentlemen of the convention, that the language in this proposed amendment is such that it does not belong in a constitution, and I urge you to vote against it.

Question

Mr. Roy Mr. Denberry, do you know some people whose character cannot be assailed?

Mr. Denberry No, I don't know of any, not even me.

Further Discussion

Mr. Tapper Mr. Chairman, fellow delegates, I am a coauthor of this amendment and rise in support of it, will not belabor the point with you, but it seems odd that the only people that have opposed this amendment are those who are connected in some way or form with publications. It is not as simple as Mr. Denberry or Mr. Derbes would have you believe. If your character has ever been assailed, and there's no question of the difference between character and reputation—we know what that is, character is what you really are; reputation is what people think of you—however, if something is said about you that is supposedly

gathered from an unknown or an undisclosed source, and it's printed on a front page of a newspaper or a magazine in the front section, and the retraction is in section 4, page 32, that really doesn't do you a heck of a lot of good. Let's be honest with one another. This may be classified as part legislation because it says that "legislature shall", but aren't we going to adopt a schedule which will do the same thing. We will require in order for the constitution that will finally be adopted to be effective, there will be certain pieces of legislation that the legislature will have to pass. So let's not kid ourselves, we're speaking of something here that's very, very vitally important, not only to public officials or candidates but to every citizen of this state. I don't think that any of the major news media would be in opposition to a fair and impartial equal opportunity to reply in equal space. I don't think you'll have any opposition from them because I believe that they are for fair play and decency and honesty, and I urge that you adopt this amendment. It's been so vitally and badly needed in this state for so many years. I urge that you adopt the amendment and let's get on with the business, because this is not an absurdity, this is a necessity. Thank you.

Questions

Mr. Kelly **Mr. Tapper**, I realize that you have directed most of your statements toward the press, so to speak, but this amendment, as I understand it, refers to any person who might assail the character of any other person. Is that correct?

Mr. Tapper Yes.

Mr. Kelly All right. Can you foresee a situation where in a political campaign one party was on television and in the opinion of the other candidate, his character was assailed? Now, this says that somebody is going to have to afford him an equal opportunity to reply. Does that mean that, say the T.V. station whereby the political advertisements were being run, are they going to have to afford him this opportunity to reply, or is the other candidate the one who made the character assailing going to have to afford him this opportunity?

Mr. Tapper Well, I think you have to take it in two parts. In that instance this would not apply to the television station or radio station. Certainly if they are running a paid ad, then they have no responsibility whatsoever.

Mrs. Zervigon Representative Tapper, are you aware of the fact that Mr. Kelly doesn't own a newspaper?

Mr. Tapper I beg your pardon.

Mrs. Zervigon Are you aware of the fact that Mr. Kelly does not own a newspaper or sit on the editorial board of a newspaper?

Mr. Tapper I really don't know what his occupation or profession is. He didn't say he was opposed to the amendment either.

Mrs. Zervigon Are you aware of the fact that Delegate Derbes does not have an interest in a newspaper?

Mr. Tapper I am aware of the fact that he either had or still has, yes. I think it's the Vieux Carre Courier, I'm not sure.

Mrs. Zervigon Are you aware that he sold that paper?

Mr. Tapper I heard that he might have.

Further Discussion

Mr. Staggs **Mr. Chairman** and fellow delegates, I rise in opposition to the amendment. I think I am

constrained to rise and to take up your time simply on the chance that by, say 55 to 53 or some other close vote, this amendment might sneak through, and in order possibly to obviate that possibility I would like to speak as forcefully as I can against it. In the Florida law that has been quoted by Mr. D'Gerolamo and others it says that if any newspaper assails the personal character of any candidate or attacks his official record, if something like that was presented to narrow the issue, this amendment might be much less offensive to me. I agree with Mr. Derbes when he says that this amendment will have a chilling effect upon the freedom of the press. I want to point out to Mr. Tapper that I don't own any newspapers or any other methods of communication other than my own voice, and I'm going to use it now to oppose the amendment on the basis of the way it's drawn. Look at your amendment. What do they mean by "character is assailed?" What do they mean by "equal opportunity to reply?" If a purported assailing takes place on the six o'clock news on Monday, which is a heavy night of viewing of the news at six o'clock, and the reply is at ten o'clock on Tuesday, has that man an equal opportunity to reply? Can he ever get together the same audience who heard the assailing and then give his reply? It's not possible. The "legislature shall enact laws to implement." How in the world can our legislature slug its way through all the business they've got to do now in order to come up with some sort of legislation that will assign say "column inches"? Suppose that in the Times Picayune they said in a story that contained no more than three column inches that such and such a person has done this or that, and he has only three column inches in which to reply. Is that an equal opportunity? Does it have to be the same length? Does it have to be on the same page in relatively the same location? What in the dickens do they mean by "equal opportunity to reply?" Shall provide penalties for violations? What kind of penalties? Do you go to jail if you don't do it? How do you jail a whole newspaper or a television station for not allowing what they think is an improper denial of an opportunity equal to reply? Look again at your amendment at the end of the line. It says, "such activity shall not". That doesn't apply to anything anymore because we're now working against the Drew Amendment which passed this convention by 69 to 39, and that tag end on this amendment has no place to attach. If you attach it, if you would adopt it, it's got nowhere to go. It doesn't apply to anything. I would like to close, Mr. Chairman, by urging the convention to dispose of this amendment, to vote it down, to do away with it, so we can go on to the other matters before the convention this morning. I'll be glad to yield to anybody's question.

Question

Mr. Conroy **Mr. Staggs**, I agreed with your analysis of this, but I think you left out one part of it. The reference to any person at the beginning, would you understand that to mean any person in the world whose character was assailed, the way it's written, just what would it mean? Would Palestinian guerrillas have the right to equal time in this state to explain why they might have hijacked an airplane or something?

Mr. Staggs If you could view those words in any other context, I can't figure out how you would. Your answer to your question is certainly yes.

[Previous question withdrawn. Re-11.
Amendments rejected: 10-11. Motion
to reconsider tabled.]

Recess

[Motion Call: 9-5 delegates present and
a quorum.]

Amendment

42nd Days Proceedings—September 6, 1973

Mr. Poynter Amendment No. 1 [Law Mr. Jenkins], on page 3, line 22, at the end of the line add the following: (We'll have to change that, Mr. Jenkins, to add it after the language added by the Drew Amendment.) Add the following: "such activity shall never be subject to prior restraint, licensure, registration, control or special taxation."

[Amendment 1, with the following changes, is being presented.]

Mr. Poynter Are you going to send up new amendments that would delete the word "control"? So it would read as follows: "such activity shall never be subject to prior restraint, licensure, registration or special taxation".

Explanation

Mr. Jenkins Mr. Chairman, delegates, this is an attempt to include basically what was in the last phrase of the committee's proposal in this section. I don't think that this last section was really fully and adequately discussed, and I think it ought to be. You notice that we have taken out the word "censorship" and put in "prior restraint." Under court decisions they have the same meaning. There is no difference, but because some delegates did not like the word "censorship" being in there, we put in there "prior restraint." We've deleted the word "control" so that now forbidden would be prior restraints, licensure, registration and special taxation. That is the law at present, and this would ingrain that in the constitution. The reason that it's important to put it there is that if we ever had reversal by the courts, particularly on the federal level, there are other decisions which have ruled out prior restraint, licensure, registration and special taxation. It might be possible for legislatures to come back and do that sort of thing, impose that sort of restriction. So, we think it important to include these protections in the constitution. You'll notice that each one of these protections protects against some sort of interference by the government before anything is ever published, before it's ever put out to the public. There's no prohibition here against punitive action being taken against someone after he has abused that right, but this forbids any government from going in and trying to prevent him from speaking. There's no way to know in advance what a person is going to say, what he is going to write, what he is going to publish, and certainly the government should not be set up in a position where they are examining the papers that people intend to publish or whatever else, before publication. If you're going to have a free press and freedom of expression by every person, you have to do away with prior restraints on freedom of expression. So I urge the adoption of this amendment.

Questions

Mr. Roy When you use these terms "restraint, licensure, registration, or special taxation," for instance if an evangelist is going around the state, he's engaging in freedom of speech. Is that right?

Mr. Jenkins That is correct.

Mr. Roy The state could never pass any law which would require him to be licensed or to register as an evangelist or to specially tax whatever contributions are gotten, or even to restrain him from making speeches as long as he was not abusing that privilege, isn't that what you're seeking to do?

Mr. Jenkins Yes, they couldn't require all evangelists for example to go and register at the state capital before they could go around the state.

Mr. Roy Neither could they require an individual who's interested in writing a book to register as an author or whatever have you, nor to submit his manuscript for prior censorship nor anything else.

Isn't that right?

Mr. Jenkins That's correct.

Mr. Roy But if he would engage in writing a book that slanders someone, of course once that's done then the person would have redress and sue him because he abused the freedom of the press by slandering. Isn't that true?

Mr. Jenkins That's correct. It's just like the rest of our criminal laws. In other words you don't punish someone for doing a criminal act until he's done it.

Mr. Berbes Mr. Jenkins, one of the contemporary developments in modern American society has been the development of cable television. Cable television as I understand it is something that can be licensed on an individual metropolitan basis, and has been licensed in many large cities. Wouldn't your amendment prohibit the municipality from entering into any form of regulation or licensing of such enterprises?

Mr. Jenkins No, not at all. The protection of the section as written right now says that any person has the right to speak, write or publish his sentiments on any subject, and you could not license those activities, but licensure of cable television does not license those activities. What it licenses is the construction and the interconnection of certain mechanical facilities. That's what is licensed, not the content of speech or is there any control over the speech itself, so that would not be applicable in this case.

Mr. Avant Woody, I'm strictly seeking information. You have taken the word control out of your amendment.

Mr. Jenkins Yes, that's correct.

Mr. Avant Then I want to know something about "prior restraint." Would that language prohibit an individual from obtaining injunctive relief against a person who was, because of his past activity, you knew was going to abuse the individual in some way under the guise of exercising his speech or the freedom to write or something like that. Do you understand what I'm talking about?

Mr. Jenkins Yes.

Mr. Avant I wouldn't want to stop an individual, say you or anybody who could come into court and show that they had been abused and had reason to believe they were going to be abused in the future, from obtaining injunctive relief against someone who was abusing him.

Mr. Jenkins No, let me refer you to Section 22 which has to be read in conjunction with this section. Section 22 gives the right to every person in private action to "due process of law and justice adequately administered without denial, partiality or unreasonable delay for actual or threatened injury to him in his person, property, reputation or other rights." So you would be protected in those circumstances for injury to your reputation under Section 22.

Mr. Avant In other words, the words "prior restraint" are primarily intended to be prior restraint by government.

Mr. Jenkins That's correct.

Mr. Weiss Delegate Jenkins, if your amendment was to pass would it have avoided the 1936 Supreme Court hearing at which time a statute on the Louisiana books imposed heavy and discriminatory taxes on advertising revenues of newspapers of the larger cities, particularly those that opposed Gov. Huey Long at that time?

Mr. Jenkins Yes, that is correct. You see the

very language that we have adopted now with Mr. Drew's amendment was used as the basis in our state courts to oppose that very discriminatory tax. This would particularly prevent just such abuses as occurred during the 1930's in which the U.S. Supreme Court found to be unconstitutional.

Mr. Staggs Woody, I think you said that if the Supreme Court ever changed its line of decisions interpreting the First Amendment, then we would need these in our constitution. Would you give us the benefit of what thinking leads you to believe they might in some measure melt down the line of decisions on the First Amendment?

Mr. Jenkins Well, I think we're seeing a more conservative court, and if that trend continues, and certainly I think that most of their decisions thus far, I don't think are particularly objectionable to me, but I think that that trend could continue to the extreme, to the extent that some of the basic great protections for freedom of expression could be diminished to the extent of allowing licensure, registration, special taxation, prior restraint, and things of this nature.

I urge the adoption of this section.

Further Discussion

Mr. Jack Mr. Chairman and members, I'm against this amendment. Now putting in the word "restraint" to me clearly means no matter what someone said or wrote about you, or published, if you knew it ahead and it was the most libelous thing going, you could not get an injunction, because that's exactly what this word says. "Such activities shall never be subject to prior restraint, licensure, registration, control or special taxation." They've taken out "control". They took out the original one "censored"; "restraint" should come out, "licensure" should come out; "registration" should come out. I don't know about "special taxation". We've got too much taxation so that's all right with me. I'm just saying that I'm for freedom of speech and those things, but when an injunction will show that the man is libeling you, you say he has the right to write about you a falsehood, a lie, a...lie, or whatever it is and something that ruins your good reputation and to put in here that you couldn't have an injunction issued against him, and you are left to your relief under the present constitution of things that are in the '21 and which we've adopted and should adopt. It's just not fair to allow a few people that would want to do that to make the other good people suffer. I don't know where people get some of these ideas, but I'm telling you when you see these amendments, when a man or woman starts amending their own amendments, to add things, to take them out, they just keep at them. It's just like an apple-as far as I'm concerned, I used to say in that House rules an apple is an apple. This one's got four worms in it, and I say let's get rid of it and defeat that amendment. Thank you.

Questions

Mr. Roy Doesn't the restraint that we're talking about or the prior censorship or restraint or licensure refer to state action only and not to conduct between individuals?

Mr. Jack No, I don't agree with you at all. It says "no law shall abridge the freedom of every person to speak, write," so forth.

Mr. Roy What is a Bill of Rights but an instrument, a document addressed to what the state may not do.

Mr. Jack Mr. Roy, I'm not meaning to be unpleasant, but I don't believe in how much you stretch the North Pole and how much you stretch the South Pole, you're going to ever bring them together. And, on this Section 9 you're not going to bring you together and me together. So we're just wast-

ing the time, and the Chairman has been on us this morning until my back's sore about all these things we're wasting time. So I don't see any use in...I don't want to be impolite, but I can't answer to suit you.

Mr. Jenkins Mr. Jack, maybe didn't hear my answer to Mr. Avant. He asked a similar question. Don't you think that under Section 22 of this proposed Bill of Rights that the question you raised would be covered because we provide that "every person shall have an adequate remedy by due process of law administered without denial, partiality, or unreasonable delay for actual or threatened injury to him in his person, property, reputation or other rights." "Threatened injury to his reputation", isn't that by being more specific a particular answer to the question you raised?

Mr. Jack If I understand you, when you talk about having a remedy, going to court, is that what you're talking about?

You're to hire a lawyer when you go to court on these things.

Further Discussion

Mr. Conroy I speak in opposition to the proposed amendment by Mr. Jenkins. I had previously prepared an amendment to this section as originally drawn to delete the similar phrase, and feel that while some of the most objectionable words have been deleted, the provision still contains a lot of very dangerous language that I think would have an adverse effect on desirable, regulatory control. In order to understand my interpretation I think you have to go back to the language as we now have it in the section and understand that it says that no law shall ever be passed to curtail or restrain the liberty of speech or freedom of the press. I think that everyone realizes that those phrases have to be given a broad understanding and interpretation, because they go far beyond just speech and just press, to T.V. and to other means of communication. The provision here which would preclude certain—"prior restraint, licensing, or registration or special taxation of such activities" is in my opinion undesirably vague as to exactly what it does prohibit. "Such activities" is a phrase that worries me when it refers back to an earlier phrase that the courts have given a very broad interpretation to. In other words I think that the final clause as Mr. Jenkins now proposes to introduce would be subject to the same objections I had before and that is that it could prohibit our copyright laws in this state. It could prohibit the attempts by a court to prevent photographing of activities within the court. It could prevent for example the registration of lobbyists. There were some questions and answers about whether somebody could require registration of evangelists. Well, registration of lobbyists is a form of registering some limited group of evangelists in some activity, but it is a proper restraint on the freedom of speech. I think that we have to understand that the legislature and the state need some desirable reasonable restraints upon the exercise of the freedom of speech and freedom of the press. Those are permitted under the existing section as this convention has adopted it, and I urge your rejection of the Jenkins amendment.

Questions

Mr. Vick Mr. Conroy, are you aware that this provision capsulizes three landmark cases?

Mr. Conroy Mr. Vick, I would disagree with your description of what this does because I think it may attempt to do that, but I don't think it does it, Mr. Vick.

Mr. Vick Well, if I gave you the three cases, would you then might be inclined to change your

mind?

Mr. Conroy Mr. Vick, I'd be happy to look at the cases, but as I said I think that any provision here that would preclude any registration of such activities without defining such activities leaves itself open to severe criticism as to what activities it's precluding the registration of.

Mr. Vick If it dealt exclusively with the press, would that satisfy you?

Mr. Conroy Mr. Vick, if this thing were considerably reworded, it might under some circumstances satisfy me, yes, but it is not so worded. We can only speak of the amendment we've got before us which I think is objectionable.

Mr. Annette Mr. Conroy, would the phrase "prior restraint" possibly do away with all censorship of pornography, of things of this nature or perhaps permits to parade or permits to assemble in certain areas requiring such public display certificate saying you have the proper number of rest rooms and things like this? Would this prevent anything like this?

Mr. Conroy Mr. Annette, it might. That's my objection. I don't know what it might prevent, and that's my concern with the wording of...the vague wording of this particular amendment.

Mr. Denberry Mr. Conroy, don't you agree that all of the examples you gave are properly subject to the police power of the state?

Mr. Conroy Yes.

Mr. Denberry Then don't you agree that when the police power of the state and the rights of freedom of speech and press come into conflict that a reasonable exercise of the police power will always be permitted by the courts?

Mr. Conroy I think it would always be permitted under the language of the section as adopted by this convention, but I think it may not be possible under the amendment as proposed by Mr. Jenkins.

Mr. Denberry Would you explain why you don't think it would be possible?

Mr. Conroy Because it says such activities shall never be subject...

Mr. Henry Mr. Conroy, you've exceeded your time.

Further Discussion

Mr. Champagne Mr. Chairman, ladies and gentlemen, I'm going to be very brief. This committee has done a good job of freedom of the individual. At the beginning I thought it was doing fine. I find and I submit to you that in this Section 9 we now put the individual on the defensive. I think we're now seeking to retake some of these rights. The real trouble with this section is that it is pure legislation. The fact that they come here and take this word out and that word and that is one of the problems you run into when you start legislating in the constitution. You have a hard time saying what you mean. This legislation does not belong in the constitution. I submit to you that there is nothing in the wording as previously adopted that doesn't completely take care of this section. We can have other legislation if we see that it's necessary. What we're trying to do here, and they have admitted, is that we're trying to anticipate what might happen in the future. We're anticipating what might happen in the Supreme Court, what maybe they are going to do. They can't tell you what's happening here. They can't tell you what it means. They get up here and they say well, it doesn't mean that and it doesn't mean this, but the thing that bothers me is that if they don't know what it means, how in the world are we going to impress the people back home what

it means. I tell you that we'd better stop this legislation right now and get down to writing the constitution. We picked this out a few minutes ago. It keeps coming back. Let's kill it once and for all. Let's beat this amendment and just put flaming red all over that board. Thank you.

Questions

Mr. Jenkins Mr. Champagne, I don't know why you say that we don't know what these words mean. Certainly the terms "licensure," "registration," "special taxation," and "prior restraint," are all legally defined terms with very specific meanings. How can you say we don't know what they mean?

Mr. Champagne Well, Mr. Jenkins, I haven't been well. You can't answer questions in your position. I've been trying to ask some for a long time, and I haven't had a chance. The point is, Mr. Jenkins, anytime you start writing an amendment, and then you start pulling words out and adding others and this and that, I say that you don't really know what it means. That's my answer.

Mr. Willis Mr. Champagne, the words with which we are laboring are definable legally, but we don't know what the ultimate legal definition will be, do we? It depends on the court at the time.

Mr. Champagne That is correct.

Mr. Willis And what it may mean to us today may not mean that to them tomorrow, isn't that correct?

Mr. Champagne That's correct.

Mr. Willis But we know what we've got, what it means, don't we?

Mr. Champagne That's correct.

Further Discussion

Mr. Denberry It seems to me that this is not legislation at all. This is a prohibition against legislation. When Mr. Willis said "We don't know what the court is going to interpret this to mean," we don't know what the court is going to interpret any of the things we put in here. They may change definitions in the future, as well. But it seems to me that this will protect the people of the state in the long run by never subjecting to prior restraint, licensure, registration, or special taxation, the rights of freedom of speech and the rights of freedom of the press. If you have a question, I...

Questions

Mr. Drew I have two questions, Moise. Would you define "licensing" for me? I haven't been able to find anybody that knows what it means.

Mr. Denberry Well, I read it in the dictionary a while. . . about yesterday when I first saw it because I wasn't sure what it meant, myself. Although I can't really quote the dictionary on it, Mr. Drew, it means roughly the same thing as licensing, but it's a noun rather than a verb. Licensure means that freedom of the press shall never be subjected to licensing by means of licensure, if you will.

Mr. Drew As written, that would mean any type of license, occupational or otherwise then, would it not?

Mr. Denberry I would think that it would mean anything other than what the police power of the state would permit. If a reasonable. . . licensure means the granting of a license especially to practice a profession. For example, you and I pay no license tax as lawyers.

Mr. Drew A second question, Moise. What is special taxation, and can you put it into categories

of what is general and what is special taxation? I think I know what they are intending to say.

Mr. Denberry Well, my understanding of special taxation would be a special tax on the right to disseminate information, for example. But the publishers of a newspaper, obviously, would be subject to the general income tax laws, that sort of thing. If they have a corporation, they would be subject to the corporate franchise tax which is a general tax applicable to all corporations. The income tax would be applicable to all individuals and corporations.

Mr. Drew Would you say that the sales tax which newspapers do not pay, I understand, is a special tax?

Mr. Denberry If I'm not mistaken, newspapers are specifically exempted from paying sales tax. I do not know that if the special exemption were not in there that they would be exempt from that. I know I think that's a general tax.

Mr. Drew Do you call that a general tax or a special tax?

Mr. Denberry I would think it would be a general tax.

Mr. Willis Mr. Denberry, with submission, sir, your declaration indicated that the courts may, in the future, change its definition of free speech and free press. Is that what you intended?

Mr. Denberry Yes, sir, it could mean that.

Mr. Willis Isn't it a fact that as opposed to the mere decisal rule...

Mr. Denberry That's Latin, that's not French. Be careful with it.

Mr. Willis Yes, but I'm coming with some French for you, my dear sir.

Isn't it a fact that that's in the common law and that in Louisiana we have jurisprudence constant?

Mr. Denberry Out, out.

Mr. Humez Mr. Denberry, I didn't quite understand your answer to Mr. Drew about the advertising, the sales tax on advertising. Newspapers are exempt at this particular time.

Mr. Denberry That's my understanding, Senator.

Mr. Humez That's mine, also. Suppose in the event, that it says "It shall never be subject to." Suppose that they would, some day along the future, fifty years from now, they might want to be registered, and they might want to be licensed, or they might want to have some of these things. You are saying "They shall never be."

Mr. Denberry Well, I think for the purposes of our constitution, Senator, that you know you can waive your rights. I can't conceive that they would, however.

[Previous Question ordered.]

Closing

Mr. Jenkins Mr. Chairman and delegates, let me just hit a couple of more licks on these terms. They are all very clear. I don't think there can be much discussion about what they mean. "Prior restraint" simply means before publication, before dissemination of the information that the state can't come in and question or challenge it. That's all that means--before publication. After publication, they can. Licensure, of course, is not referring to occupational license taxes. That is not licensure at all, that is a mere tax for doing business, and licensure, the prohibition against

licensure is already upheld under the First Amendment. We want to make sure that it continues to be held that way. Of course, what that means is that no state board could be set up to say that newspapers or other media could not operate. Imagine the situation, if you had a state board of newspapers and it gave the Times Picayune a license. At any time it could withdraw that license and if it did, the Times Picayune would have to close up. You can see the tremendous influence that the politicians would have over the publishing industry--over the people who would be criticizing the politicians. Registration is simply the requirement that someone go and register with the state before they engage in certain activities such as before they publish a newsletter, or a newspaper, or whatever. If you required that before anyone disseminated ideas he go and tell the state, I'm going to disseminate ideas, that would be registration. That's a very clear term; there's no doubt about that. Certainly, it's not the prerogative of the state to know to have to have access to who all is going around expressing opinions. That's simply not a function of the state, if you are going to have a free society. Special taxation simply means that taxation could not be applied just to the dissemination of knowledge and information. It would not at all prohibit an extension of the sales tax to advertising. If it's a general tax applied to all business, whether it's sales tax, income tax, whatever it may be just as corporate income tax now are applied to newspaper corporations. There's nothing prohibited about that. What would be prohibited would be just the sort of tax we had back in colonial times with the Stamp Act, when newspapers, per se, and nothing else were taxed. Advertising, per se, and nothing else was taxed; and paper was taxed, and nothing else. This would not be allowed. A special tax on the dissemination of ideas and knowledge. So these are very clear terms. They are things that we need protection against; it's of constitutional dignity. I urge the adoption of this amendment.

[Record vote ordered. Amendment 1-1 adopted: 41-68. Motion for reconsideration failed. Previous question ordered on the Senate bill, which passed: 48-22. Motion for reconsideration failed.]

Reading of the Section

Mr. Poynter "Section 10. Freedom of Religion.

Section 10. No law shall be enacted respecting an establishment of religion or prohibiting the free exercise thereof."

Mr. Weiss Mr. Chairman, fellow delegates, this section should be like an oasis in the desert.

Mr. Henry Well, get ready, Dr. Weiss! We'll bring the camels in in just a minute.

Explanation

Mr. Weiss For the major majority group, or the major minority group, rather, the major minority group of those present, it certainly was asked verbatim and has no ilk of jurisprudence. It is a reiteration of the first two lines of the Bill of Rights of the Federal Constitution and is a streamlining of the old Louisiana Constitution. Our forebearers have recognized the mistakes of centuries. Four thousand years ago when slaves left Egypt to the time that the Puritans came to these shores about four hundred years ago, our forebearers and those of us present all recognize that to avoid mental enslavement and control is essential. Therefore, freedom of religion as cited in this section is nothing more than a copy of the Federal Constitution as it exists, and a streamlining of the 1921 Constitution. It is my understanding that it takes nothing in removing a few statements from the 1921 Constitution, and with the tremendous amount of jurisprudence backing it, it should meet all the criteria that we expect of it.

42nd Days Proceedings—September 6, 1973

first, that there will be no state religion or national religion, and secondly, that it allows us to practice one's religion with freedom. There have been no opposing testimonies in this regard, and I am open to questions. If there are no interested speakers, I move the adoption of Mr. Jenkins' motion.

Questions

Mr. Lanier Dr. Weiss, I note in the comments that were sent out with your article that it says that it is intended for a modernization of language and makes no substantive change. Is that correct?

Mr. Weiss That is correct.

Mr. Lanier Has it the intent of your committee that the case of Seegers v. Parker, decided by the Louisiana Supreme Court in 1970, which said that the constitutional prohibition against enactment of laws respecting an establishment of religion forbids not only full establishment of religion or religions, but also prohibits legislative action either advancing or inhibiting religion? Is it your intent that this jurisprudence would not be changed?

Mr. Weiss It was the intent of the committee and certainly, all of us felt that it would not be changed. Furthermore, the Supreme Court in *Lemon v. Kurtzman* and *Tilton v. Richardson*, in 1971, substantiated the Louisiana decision. I think I might mention at this point to further clarify the excellent point you brought up, sir, that the court applies two guidelines, it's my understanding, in dealing with religious and secular matters. First is, a law or program must have a secular purpose, neither advancing nor inhibiting religion in making decisions in the regard. Second, it must not involve the government—federal, state or local governments—with excessive entanglement with religion. These are decisions that have been substantiated by both the Supreme, and as you pointed out, the Louisiana Supreme Court.

[Previous question ordered on the Section.
Section passed: 104-0. Motion to amend tabled.]

Reading of the Section

Mr. Hardin [Assistant Clerk] "Section 11. No law shall impair the right of every person to assemble peaceably, to petition government for a redress of grievance, to travel freely within the state, or enter and leave the state. Nothing herein shall prohibit quarantine or restrict the authority of the state to supervise persons subject to parole or probation."

Explanation

Mr. Jenkins Mr. Chairman, delegates, this section is the same as the present Section 5 of the 1921 Bill of Rights with the addition of two concepts. On line 7, the concept that people should be allowed to travel freely within the state, and second, the fact that people should be allowed to enter and leave the state. I think everyone grants that these are basic rights that everyone has, and we want to make sure that nothing is ever done to impair those rights. This has been a real problem in a number of other places and countries. If you've ever been to Europe or Latin America, you know that virtually every transportation stop, you will be stopped and asked to see your papers. Constantly, people are harassed in their freedom of movement, and this is something unwholesome and unsavory. The Universal Declaration of Human Rights, for example, in Article 13, states that everyone has the right of freedom of movement, and residents within the borders of each state. Also, everyone has the right to leave any country including his own, and return to his country. Of course, it would be impossible, at present, in all likelihood, for statutes to be passed forbidding people from leaving a state or entering a state,

but there have been attempts by other states, in the past, to forbid just that. The State of California, for example, at one point was trying to stop people from coming into the state. In other areas of the world, various governments are notorious for forbidding people from leaving. The district attorneys asked us to include the second sentence specifically reserving the right to quarantine, and parole, and probation supervision. Obviously, things like arrest, things like bail are not covered by this because they are covered in other sections of this Bill of Rights. Naturally, if someone is under arrest, or in a penitentiary, or a jail, he loses a number of rights given in this Bill of Rights, and freedom of assembly and movement is just one of them. Certainly, he loses freedom of speech—he loses a lot of other things, if he is arrested. Bail, of course, is a contractual thing. A person is allowed out on bail only after he has consented to confine his activities to certain areas; so there is no conflict there. I urge the adoption of this section.

Questions

Mr. Roemer Mr. Jenkins, I notice on line 7 it says, "to travel freely within the state. . . . No law shall impair the right of every person to travel freely. . . ." What about this toll road we are going to build? Can I ride on it free?

Mr. Jenkins No, of course the state is property owner of the roads just like any other property owner has the right to charge you for the use of its property. But there could be no legal barriers to people traveling on property where they had permission to be.

Mr. Derbes Mr. Jenkins, what are you really trying to accomplish by these words, "to travel freely within the state, and to enter and leave the state"? I mean, what are you really afraid of here that you are trying to prevent?

Mr. Jenkins We're trying to prevent the sort of things that happen particularly, in the European countries where people are required to say, to carry papers at all times, to constantly prove who they are, or where they are going and things of this nature, Mr. Derbes.

Mr. Derbes All right, well, let's just take a couple of examples, for example. How about commitments for mental health purposes? You have seen fit to set forth two specific exceptions to your general rule, but you leave a lot of other exceptions out. I don't understand the mechanics of the article when you do that. I mean, what about arrest, what about imprisonment, what about commitment, what about the police power of the state to restrict travel in times of emergency or hurricanes or the like, for the public good? Why aren't these exceptions set forth with particularity?

Mr. Jenkins Well, naturally, all of those things are exercises of the police power which the state has the authority to do. But, you see, you could raise the same objection to the present constitution which says, "Everyone has a right to assemble for peaceable purposes." Well, you could say now, that prevents, you see, laws which forbid you from going to a certain place or would restrict you in some way. That's a frivolous argument, though, we think. We think that all those things are implied. The only reason that we have the particular exception noted is because our district attorneys felt that it was advisable to put those exceptions in there. They are really not necessary to put in there either, because the police power of the state is granted.

Mr. Derbes But don't you agree that when you put certain exceptions in there and leave other exceptions out, that you question the validity of the exceptions that are absent?

Mr. Jenkins No, I don't think so at all.

Mr. Abraham Well, you are saying, of course, that this doesn't apply to a person out on bail and this type of thing because you assume that that's handled, but I don't see it that way because doesn't the Section 1 say that "all these rights shall be preserved inviolate by the state" This tells me, in effect, does it not, that a person is out on bail and he is told that he can't leave the state, that this is a violation of his rights, is it not?

Mr. Jenkins No, not at all. You see, a person can... you could not take away the right of a person to do certain things, but a person in a given situation may contract not to do certain things. That's all that bail is, is a contract.

Mr. Abraham If I'm out on bail, I'm not contracting to stay in the state.

Mr. Jenkins No, you agree, by the terms of your bail, that you will return at a certain time, that you will stay within a certain area according to the terms set forth.

Mr. Abraham Well, aren't there other exceptions, for instance, maybe in a child support case where the husband is required to stay in the state? This is the thing that bothers me, is the language to enter and leave the state. I'm just wondering... I realize what you are trying to get, but isn't this too restrictive?

Mr. Jenkins No, this is merely the constitutional protection that you have under the federal Constitution of the fact that the states cannot regulate interstate commerce. They can't stop people from going between the states, anyway.

Mr. Kelly Woody, Mr. Abraham touched upon one of my problems, and that is saying a child custody case. It's not uncommon for a court to dictate that either a mother or a father, having the custody of minor children, shall not take them out of the bounds of that particular district. I think a child would have to be considered a person under the proposed Section 11, and there is no exception for that. I can foresee where this would create problems in the custody.

Mr. Jenkins Well, certainly a child is a person, but he legally does not have a free will. Don't, as long as he is a minor. So I don't see that that's a problem, the fact that a child may or may not want to leave the state would not be a question. I don't think.

Mr. Kelly All right, but what if the parent is ordered not to take the child outside of the jurisdictional boundaries?

Mr. Jenkins Yes, it's the same question of withholding alimony or something like that. There are sanctions that can be levied against a person in those circumstances.

Mr. Kelly Well, what bothers me, I think that this is one of the things that protects certain fathers. Let's assume, and you are well aware of this, ladies get the custody of the children in most cases. This does give a father, in some instances, some protection by saying that these children, at least, have to stay in the jurisdictional boundaries of Louisiana. As I read this proposal, there is a possibility that the lady, once receiving custody of them, could take that child to New York City and never return with it.

Mr. Jenkins No, this doesn't grant the right of any person to take anybody else out of the state-- just the right to take yourself out of the state.

Mr. Perez Mr. Jenkins, is there any companion provision in the present Louisiana Constitution on this subject matter?

Mr. Jenkins There is not, in the present constitution, that I can find. However, in our early constitutions, this was mentioned. The fact, in particular, that people have the right to enter and leave the state. If you check the 1812 Constitution, for example, you will see that mentioned.

Mr. Perez But not "to travel freely within the state." That was not in any article.

Mr. Jenkins No, I think that that was understood and granted.

Mr. Perez Isn't this provision, if adopted, would be under the police power of the state?

Mr. Jenkins Subject to it, yes, sir.

Mr. Perez No, no, under the police power. That is the only reason that this would be adopted would be as a limitation upon the police power?

Mr. Jenkins Yes, I think so, yes. That's right.

Mr. Perez All right, would you answer how I would handle this situation? You alluded to the fact that under the police power, and we've heard these general words that these certain things could be done, but you take in Cameron Parish within the last few days, or in my parish, or other south Louisiana parishes, and we have hurricanes, and we have areas that are destroyed; we have roads that are flooded. If a person has the absolute right to "travel freely within the state," how can I, for instance, as head of a local government, say, "Oh no, you can't come into this area now. It's not safe for you to travel in this area?"

Mr. Jenkins I think that you can do it when you own the roads and have jurisdiction over the roads; you can forbid people from coming into it. I don't know if you could forbid, for example, someone from flying in in a helicopter or something of that nature. I don't know that you have that authority now.

Mr. Perez Can you point to any provision where you say you think we could do it? As I understand...

Mr. Jenkins No, I didn't say I think... I didn't mean to say "I think." I know that as long as you own the roads you can close certain roads. Mr. Perez, if you are the governing authority of the parish.

Mr. Perez Aren't roads public in nature and belong to all of the people, not to the parish of Plaquemines, for instance, or to any particular parish?

Mr. Jenkins They are public property, not common property.

Amendments

Mr. Hardin Amendment No. 1 [by Mr. Arnette]. On page 4, line 6, immediately after the word "peaceably" and before the word "to" delete the comma "," and insert in lieu thereof the word "or".

Amendment No. 2. On page 4, line 7, immediately after the word "grievances" change the comma "," to a period "." and delete the remainder of the line and delete lines 8 through 10, both inclusive, in their entirety.

Explanation

Mr. Arnette Well, I think it doesn't require much explanation after the questions that brought out the problems with the committee proposal, but I'd just like to reiterate a few of them. First of all, it's totally unnecessary because we've been going by this... we haven't had this in our present constitution; we've been living under it for fifty-two years. I have had no problem with it whatsoever, but I can see some problems that might

42nd Days Proceedings—September 6, 1973

arise if the committee proposal is adopted. First of all, well, the question has been raised about arrests. Well, Mr. Jenkins might have a valid point. You might be able to arrest someone and prevent them from moving within the state and around the state. But what about questions of bail? Perhaps one of the parts of the bail agreement is that you don't get bail unless you promise that you won't go outside say, the parish or the state. Well, it might be a contract or an agreement, but I think the state is in a pretty good position to make you agree to that contractual position. I don't think we ought to necessarily do this. The next thing, the question was brought up about commitment of people to mental institutions or other institutions. What about material witnesses that need to be kept in jail for their own protection or possibly to make sure the prosecution is going to have a case when the case does come up on trial? What about juvenile travel in cases of emergency? What about juvenile restraints, custody cases, children of juveniles sent to L.T.I.? They haven't committed any crime; they haven't actually been arrested. It's not considered a crime or anything like this, so the police power under arrest would not apply in this case. Could you confine a child to L.T.I.? Now, Mr. Jenkins says, "well, it's understood that all this is under the police power of the state." But where you specifically prohibit the police power of the state from operating, there is no police power. It's very, very obvious. When you have a specific prohibition that says "you may not do this, State of Louisiana," then the State of Louisiana may not do this. It doesn't make any difference about any police power they supposedly had; you just took it away from them. Now another thing Mr. Jenkins says, he said "well, since you own the roads, you can prohibit people from traveling the roads." Well, that's a fine argument because it gets around the whole constitutional prohibition. If you licensed all the cars, no one is going to be able to travel around the state unless they have a helicopter, or an airplane, or something like this, or make agreements with every private persons along the way, that you can travel across their land. The main point of what I want to bring out is that present restrictions do not have this prohibition. It is unnecessary. Why bring up problems with it? They sought to have two particular exemptions to this, but there are many, many other exemptions that you could think of just right off the top of your head, in no time at all. Also I think it's unnecessary because the federal courts have decided that travel interstate is governed by the ICC clause, the Interstate Commerce Clause of the Federal Constitution, and they have based the Civil Rights Acts on it—the Civil Rights Act of 1964, for example. Also, we are guaranteed a representative form of government in this state, and our only fear of such restrictions, of travel restrictions, would come about if this representative form of government is taken away and you would go to a dictatorship. But I don't think the federal government would ever let that happen in any one of the states of the Union because simply, it's against the Federal Constitution. I don't think any representative form of government would unnecessarily restrict a person's travel within the state. So, this, let's get rid of this language that is unnecessary, that might definitely cause us problems. I urge the adoption of the amendment. Thank you.

Questions

Mr. Roy Mr. Arnette, under your provision, we could have a real anomaly in that you are entitled to peaceably assemble, but you might not be able to travel freely to get there. In other words, the state would say "Yes you can assemble, but to do anything you want, peaceably, but the only thing is, we're not going to allow you all to get there." Isn't that what you are saying?

Mr. Arnette Mr. Roy, don't you think that's a kind of silly question?

Mr. Roy No, I don't. I think your amendment are real silly because on this point, there have been contries. . .

Mr. Arnette Are you arguing or asking me a question?

Mr. Roy Let me ask you another thing. Don't you think that if each parish decided from now on that anybody coming into their parish, that they were going to stop every vehicle coming in there to check driver's licenses and all, isn't that one thing that would stop the free travel of our citizens? Wouldn't that be permissible without this amendment?

Mr. Arnette You are exactly right. They have the power to spot people to check driver's licenses, they always have had it, and they have done it in the city of Baton Rouge. I got stopped there for them for quarantines, but I don't think anything like this is necessary.

Mr. Jenkins Now Greg, let's assume your interpretation of the committee's proposal is correct. Let's assume that. Now, let's look at the old constitution. The old constitution says "the people have the right, peaceably to assemble." So let's interpret the old constitution the same way you interpret the new proposal. According to that then, under the old constitution, the people have the right, peaceably to assemble. Isn't it correct that you can't stop people for identification? You've got to allow them free access to all highways at all times, even if there is a hurricane, so they can go assemble? Can't you stop them for quarantines if they are trying to go assemble? Wouldn't that be the interpretation of the old constitution?

Mr. Arnette No, Mr. Jenkins, I don't think your interpretation is correct because the present constitution has been interpreted and it has meant reasonable assembly. You have certain reasonable restrictions on that assembly, but I'm afraid that if we come up with some new language that has not been interpreted, we're going to end up with some problems and that is why I proposed this particular amendment, because it is absolutely unnecessary. You have the right to free travel now; you have it interstate. I can't conceive of any situation where it would be taken from you interstate, but you said that if a man owns a highway or the state owns a highway they can make you pay a toll, they can stop you from going on that highway in case of an emergency. Well, if that's the case and that is the interpretation, then they could stop all travel whatsoever on any highway in the state in any manner they so chose.

Mr. Willis I want to focus on the word "travel." On water, you can sail, swim, or submerged. Now, on land, you can walk. . .

Mr. Arnette Was that sink or swim, Mr. Willis?

Mr. Willis Well, you travel submerged, submeriner. Travel on land can be all sorts of locomotion, by walking. Now, let's focus on that. We'll exclude air, air, airplane and helicopter. In Section 4, we have a right to control private property. Now, this provision says "travel freely within the state. My property is within the state, so they will be able to trespass on my land. If we adopt Section 20 where they can bear concealed weapons, then there is going to be a standoff, isn't that correct?

Mr. Arnette Well, I think you might be exactly right, Mr. Willis.

I'd just like to say one more thing about Mr. Willis' statement. I realize some of the things that I'm mentioning and he brought out are fairly farfetched, but they could definitely happen under the committee proposal.

Mr. Rayburn Mr. Arnette, I'm deeply concerned about the language here that I believe you are

trying to take out of this provision. It says, "to travel freely within the state." Would that mean that if you have a bunch of people who want to parade in the city of Bogalusa, and the city council adopts an ordinance that they cannot parade during business hours, it will have to be between the hours of five in the afternoon and eight at night, or something similar to that, does that mean that they won't have that power to adopt that ordinance anymore if we put this language in the constitution?

Mr. Arnette I think you might be right on that, Senator.

Further Discussion

Mr. A. Jackson Mr. Chairman, ladies and gentlemen, I rise in opposition to this amendment and in support of the section as proposed by the committee. Now, I don't know whether some of you are taking this section seriously or not, but I would suggest and hope that you would give your full attention to it. Today, in South Africa, one cannot travel freely. Today, in Europe, there are walls erected between sections in Berlin that will not permit free travel. I know you say that that could never happen in Louisiana. I'm sure there was a time in Germany when people said that that would never happen. I'm sure that there are people in South Africa, especially people black like me, who would desire the right to be able to move freely and to exercise their freedom as human beings, but this is not being permitted. Now, I also, heard that we ought not to adopt this section because it's new language. Ladies and gentlemen, we are writing a constitution. We are writing a constitution that will set forth a new set of interpretations. You know, why write a new constitution if we've got to know what every word means, what every shade. . . . There is no way. As the Chairman stood here some months ago and said that part of this constitution will be written by nitwits, some of it will be written by the courts of this state. Ladies and gentlemen, that is true. Much of this constitution is yet to be written, and if we are going to allow individuals molding in their graves to originate this constitution, if we are afraid to embrace new language, if we are afraid to say that individuals ought to be free to move in this state, if we continue to raise all of the extraneous issues, if we continue to be frivolous about the freedoms of individuals in this state, I fear that we will not have any protection at all for Louisianians. I urge you to reject this amendment, and I urge you strongly to adopt the committee's recommendations by way of this section, because it is in the interest of people that they be able to move freely, and that their right is guaranteed them by way of this constitution.

Further Discussion

Mr. Jenkins Mr. Chairman, delegates, I'd like to call to your attention an article in U.S. News and World Report, from about two or three weeks ago—the August 13, 1973, edition. The headline of the article is "Plight of Cubans Under Castro—Nobody to Trust." I want to read you about three paragraphs out of it.

"A few months ago orders were issued that anyone wanting to travel from one province to another needed special government permission. Later, this decree was tightened to require authorization for trips even between cities in the same province. One example, to obtain a permit to travel from Guantanamo City to Santiago de Cuba, both an oriente province, like our states, a Cuban must register." Now listen to this. "He has to tell officials the reason for his journey, whom he will see, where he will stay, and when he will return." To travel simply within an oriente province. Even inside a city, anyone boarding a bus must show his work permit—an essential identity card for everyone these days. Failure to carry this card means a sentence to work on a state farm in a sugar

cane field or anywhere else the government decides to send an offender. Resist, and the alternative is jail."

One of the great problems of American society today, I think, is our self-satisfaction. We think because things are rocking along well at the present, that things are going to continue to grow on. Because there is no problem about traveling freely today, there never will be.

Mr. Chairman, I suggest the absence of a quorum.

[Quorum call: I do declare present and a quorum.]

Recess

[Record quorum call: I do declare present and a quorum.]

Further Discussion

Mr. Jenkins Mr. Chairman, delegates, it's been said, and by our founding fathers that a frequent recurrence to fundamental principles will help us preserve liberty, and that's what we are trying to do. We're trying to have here a constitution for all times. Not just for good times, for fair weather, but for foul, when we have bad leaders, demagogues, when times are hard. Now, we never would have had a Bill of Rights to the Federal Constitution if in the discussions there, when they were proposed and considered in the various states, people had said, "Oh, freedom of speech to the press, think about the terrible abuses." Or freedom of religion, think what can happen with that, or right to assemble. I'm suggesting this, that when we talk about the right of people freely to assemble, to enter and leave the state, that the courts are going to give that a reasonable interpretation just like they have freedom of assembly. If we give the court some reasonable language, I think they will interpret it reasonably, but if we make all these frivolous objections and comments, we're not going to have our Bill of Rights at all. We could take any fundamental principle and talk about apparent exceptions and contradictions and things like that, but that doesn't change their fundamental nature. Now, if we defeat this amendment, we certainly certainly will have our coming back and deleting the second sentence of this paragraph, the thing excepting quarantines and of pardon and parole. This might give the courts a little more leeway in interpreting the first sentence, reasonably. Well, let's don't raise the frivolous objections, let's give them, the words here, a reasonable interpretation. I think we'll have a better Bill of Rights and constitution as a result.

Further Discussion

Mr. De Blieux Mr. Chairman and ladies and gentlemen of the convention, the first thing I want to point out to you about this particular section of this amendment. The only thing we are concerned with is the words "to travel freely within the state, and to enter and leave the state." I wanted to say that I'm supporting Mr. Arnette's amendment. I think it is a good one because it deletes those words and I think that I can see problems that may arise as a result of that particular language in our constitution. First, let me state this. There has been some reference here with the reference to the conditions in Cuba, or maybe South Africa or some place like that. There is one distinct difference between Cuba and other places in the state of Louisiana. That is, we elect our representatives. The representatives elected to the legislature are the only ones who could possibly deprive you of that right, are elected by the people. They are the representatives of the people, and they have to act for the people. Do you think they are going to legitimately take away that right from the people? Do you think they are going to deprive the people of the right to travel on their highways? You need legislation to take away that right, and I just don't feel any leg-

islator is going to have the nerve to try to deprive the people of the freedom of traveling on the highways and getting to and from places that they have a legitimate right to get to and from. We are not like other places insofar as our representatives are concerned. I don't think we have to worry about that. I think Mr. Arnette has a good amendment and this particular provision that we have in this section should end with the word "grievances," stating that "No law shall impair the right of every person to assembly." We all agree upon that, or "to petition the government for a redress of grievances." We all agree upon that, and I think that's all that's necessary to put in the constitution and we should leave the legislation to the legislature, as time sees and conditions permit. I ask you to support the amendment.

Questions

Mr. Roy Senator De Blieux, were you in the legislature when it said that only certain people could drink out of certain public fountains at L.S.U. in the 50's?

Mr. De Blieux I didn't get your question, exactly, Mr. Roy.

Mr. Roy Were you in the legislature when it said that only certain people of a certain race could drink out of certain fountains at Louisiana State University in the 1950's?

Mr. De Blieux No, I was not there, I don't think, at that particular time. I believe that was in the 60's.

Mr. Roy Do you know that when I was at L.S.U. there was such an act pasted on the wall of the fountain and that it was the legislature that did that? Can't the legislature infringe on the right to travel when it chooses, if it chooses?

Mr. De Blieux Well, we are a lot more enlightened than when you were in school, Mr. Roy.

Mr. Flory Senator De Blieux, if I remember correctly, you were Chairman of the Institutions Committee in the legislature at one time, concerned with rehabilitation, and I ask you the question in that light. If you delete this language which would leave the constitution silent, could it not then, the legislature, prohibit the reciprocity agreements that the legislature has adopted in the past in the way of a parolee who, let's say, was sent up in Georgia as a Louisiana resident; the legislature could forbid him from coming back into the state by refusing to supervise him on parole, if you delete the language?

Mr. De Blieux If we deleted that language it's possible to do that, I suppose, Mr. Flory, but I certainly don't think that this language is proper for the constitution. I might add that it would be beneficial to the state, too.

Mr. O'Neill Senator De Blieux, in going and coming back and forth to the legislature, you are immune from being picked up, are you not?

Mr. De Blieux Well, I don't know. I never have been picked up on my way back and from the legislature, Mr. O'Neill, but I suppose....

Further Discussion

Mr. Kean Mr. Chairman, fellow delegates, there has been some discussion here before this convention in light of this amendment, as well as others which have preceded it, about frivolous objections which are being made to the proposals of this committee. And I might say that I suppose I stand at a point where I have voted rather consistently against the proposals of this committee, and it pains me to do it.

But I want to explain why the problem I have with

respect to some of these matters that have been put into this proposal by the committee, why I have voted against them and why I rise in support of this particular amendment. The problem as I see it is that we have painted ourselves in a corner. If you go back and read Section 1 of this proposal, and particularly the last sentence of that proposal, of that section, you will find that we have provided that the rights which are set forth in this proposal are to be held inalienable by the state and inviolate by the state.

Now there's been a good bit of discussion up here about the right of the legislature to reasonably regulate, the right of the legislature through the exercise of the police power to override certain constitutional guarantees, and under the present constitution, that is correct. Under the present constitution, the legislature has the right to reasonably regulate speech; it has the right to reasonably regulate other constitutionally guaranteed rights, and where the conflict occurs, the reasonable exercise of the police power prevails. But the present constitution does not contain the last sentence of Section 1 of this constitution...of this proposal. And in light of the provisions of this last sentence of Section 1, which guarantees to the citizens of this state the right to travel freely within the state and says that "that right is inviolate by the state," it means to me that no police regulation could affect that right. And under those circumstances when we talk about the application of reasonable police regulation to these rights as proposed in Section 11, we overlook the guarantee of the last sentence of Section 1. And for those reasons, I simply cannot go along with these general guarantees where we have no protection against reasonable regulation of those guarantees. If we did not have the last sentence of Section 1, then I would accept the provisions of Section 11 as it is now written, because under general constitutional principles as they now stand, the state would have the right to reasonably regulate travel within the state and not violate the right given under Section 11. But in light of the last sentence of Section 1, I do not believe that the state would have that right, and under the circumstances, you'd simply have the right to travel without any restraints, and I don't know where that would lead us to. I think it would be chaotic, and for that reason, I support the amendment by Mr. Arnette.

Now, if the committee wants to delete Section ...the last sentence of Section 1 and leave the constitution as it stand with respect to the exercise of the police power, then I'll join with them in supporting Section 11 as it now reads.

Further Discussion

Mr. Fulco Mr. Chairman and fellow delegates, I have no quarrel with the first sentence in the section, "Freedom of Assembly." But I would like to tell you how broad the rest of this section is.

Back in 1930's in Shreveport, a black limousine loaded with shady characters armed with submachine guns, sawed-off shotguns, so forth, moved into Shreveport and, somehow or another, the sheriff was notified about this movement. And as part of these people. He located them and notified them that they had two hours to leave Shreveport. The sheriff was concerned about a possible massacre or a possible incident that would endanger or involve the lives of certain people. And, because of this police regulation, and because of this authority that he had, he was able to get this car with its occupants out of the city and so on, on its way. But, supposing that we had this second part of the section in the constitution, in my judgment, the sheriff could not have gotten these people out of the city because the constitution would have guaranteed them the right of movement in the state. And as a result of this part of the section being in the constitution, who knows what the consequences might have been.

So, I say it's too broad, and just like Delegate Kean, I think it can lead to perhaps a chaotic situation, chaos. So, let's leave the section as it

is with the amendment. Let's adopt the amendment and allow the rest of it to remain.

Thank you.

[The speaker is interrupted by a voice from the audience.]
ordered. Amendments adopted: 14-10-73.
Motion to reconsider tabled. 14-10-73.
Resolutions adopted: 14-10-73.

Reading of the Section

Mr. Poynter "Section 12. Rights of the Accused
 Section 12. When a person has been detained, he shall immediately be advised of his legal rights and the reason for his detention. In all criminal prosecutions, the accused shall be precisely informed of the nature and cause of the accusation against him. At all stages of the proceedings, every person shall be entitled to assistance of counsel of his choice, or appointed by the court in indigent cases, if charged with an offense punishable by imprisonment."

Explanation

Mr. Stinson Mr. Chairman and fellow delegates of the convention, Section 12 has to do with the rights of the accused. Now in considering this section, I hope and I am sure that each of you will consider the premise of our law, our freedom and our liberty, that every person is innocent and is to be presumed innocent until proven guilty beyond a reasonable doubt in the courts of law. The Bill of Rights is passed and enacted for the purpose of protecting the individual citizen from the unreasonable action of some government. We are blessed statewide, and nationwide, with having a government that considers that. But as we have repeatedly said, we've got to think of the future. We've got to think of the future. The rights of the individuals now and in the future, I hope, will continue. There are abuses, but we can't go overboard one way or the other. We've got to be steady and considerate and determined in protecting the rights of the individual, and the fact that crime now may be on the increase doesn't mean that we have got to discriminate against the individual. It means that we have got to do more towards having better law enforcement, not taking away or infringing on the rights of an individual citizen.

So, it's with this in view that this Section 12 is presented for your consideration at this time. As a member of this convention, as a member of this committee, I certainly do not think that I am any better qualified to pass on this than you are. However, as every lawyer knows, there are different words that mean the same thing. Any lawyer or any individual can take a passage or letter, or even a story or a poem, and revise it according to the way that they like the words. But let's consider this as to what would be best for the individual. And it's with that in view that I present it for your consideration.

Questions

Mr. Derbes Mr. Stinson, although I don't disagree with your purpose, I have some semantic problems with the first sentence of the section. It says, and I quote, "When a person has been detained, he shall immediately be advised of his legal rights and the reason for his detention."

Now, does that refer to all phases and stages of detention? In other words, when a person is detained by a law enforcement officer, must he be informed at that point? When he is detained again by a judge in a bail hearing, must he be informed at that point? When he is detained after conviction and confined to an institution, must his habeas corpus rights and other rights to post-conviction remedies be given to him? Do you understand that?

Mr. Stinson I certainly do, yes, sir.

Mr. Derbes And is that the intent of your article?

Mr. Stinson The purpose is to protect the innocent person who is not a lawyer himself....

Mr. Derbes No, no, that's not what I'm saying....

Mr. Stinson And so, therefore, we'll let me finish it.... When a person is picked up and someone raises the question, we'll suppose this is a citizen's arrest, this is pertaining to state action where it's a state policeman or something of that type. I think if we have more advice given to people, we will have less of the sad results that we have seen recently. In other words, we've read in the paper where the....

Mr. Derbes Yes, I understand that, Mr. Stinson, but after conviction, after a person has been convicted of an offense and incarcerated in an appropriate institution, must he then and there be informed of any further rights which he has? It seems to me clear from my reading of your sentence that he should be. Is that what your intention was?

Mr. Stinson No, sir, no, sir. Which portion of that....

Mr. Derbes It says, "Whenever a person has been detained, he shall immediately be advised of his legal rights."

Mr. Stinson Well, they are done if the person is being sent off to an institution or the penitentiary; he is given a copy of his commitment papers at that time.

Mr. Derbes No, but his legal rights are further than that, Mr. Stinson. He has rights to post-conviction remedies like habeas corpus, and the like. Should he be sat down at that point and given a full account of all his post-conviction remedies? Is that your intention?

Mr. Stinson If the legislature sees fit to broaden that....

Mr. Derbes No, no, that's not.... alright.... O.K. Now, what about the instance of involuntary commitment, that is, commitment for other than a commission of a crime, the commitment of somebody who is mentally ill, judicially and extra-judicially? That's detention in my opinion. Should he be again sat down and informed of all of his rights? Is that the intention of this article?

Mr. Stinson It was primarily intended for criminal prosecutions and criminal action.

Mr. Derbes Well, it doesn't say that.

And finally, what are his legal rights? I mean are legal rights the right to trial with respect only to the trial at that stage or the proceedings at that stage? Or do they imply.... I mean what is the extend of the definition of legal rights?

Mr. Stinson I think that's been interpreted by the Federal Courts. They have to explain that any time of arrest, and what his legal rights are as to counsel and not to make a statement and many other things that he's entitled to.

Mr. Derbes O.K.

Mr. Ginn Mr. Stinson, it says, "at all stages of the proceedings," at all stages of the proceedings he must have a lawyer there. Does that mean that a sheriff or a district attorney could not talk to the man unless there was an attorney there? Is that what this implies?

Mr. Stinson It says, "He shall be entitled." And I think that means that if a person says, "I'd rather not talk to you until I have the opportunity to see a lawyer," and they should explain to him before he answers any questions, and I believe that's

42nd Days Proceedings—September 6, 1973

federal and, also, state, that he has a right to an attorney to advise with him before he makes any statement. I think it's just a reenactment of what the present law is.

Mr. Roemer Mr. Stinson, in lines 14 and 15, it says, "In all criminal prosecutions, the accused shall be precisely informed." I heard some discussion over that phrase, "precisely informed." Why not just "informed"? What are you driving at "precisely informed"? Could you explain that?

Mr. Stinson If you had practised law for forty years, you'd understand that. The district attorney doesn't want to give you anything. You have to end up filing a Bill of Particulars or even the assistant district attorneys don't, either. You have to file a Bill of Particulars and argue in court and sometimes take it even to the higher courts to find out something that you can build your defense on.

Mr. Roemer So, by "precisely" you mean completely. Is that it?

Mr. Stinson "Completely", as far as they have it, yes, sir. And I think that, let us say the presumed person is entitled to that. The district attorney shouldn't be able to hold back anything as a surprise at any stage of the prosecution.

Mr. Roemer Well, as far as I'm concerned, "precisely" does not mean the same thing as "completely". I think you mean this not as the opposite of "imprecisely", but I think you mean "precisely" as "completely". It ought to read that. It does not.

Mr. StinsonI was using the Louisiana language, not Yankee language.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Avant], page 4, between lines 19 and 20, insert the following: "No person shall be subjected to imprisonment or forfeiture of his rights or property without the right of judicial review based upon a complete record of all evidence upon which such judgment is based. This right may be intelligently waived."

Explanation

Mr. Avant Mr. Chairman and fellow delegates...to this convention, this amendment supplies something that is an absolute must in view of the present status of this constitution. There are certain courts that are not courts of record. There are certain courts where you may be fined or imprisoned or your property may be forfeited for certain offenses where no record is made. In a municipal court, for example, you can be fined up to three hundred dollars, I believe, and imprisoned up to six months, and there may not be a record of the evidence of the testimony upon which that conviction or sentence is based. Now that is no problem under the present constitution because Article VII, Section 36, of the constitution now provides that in those cases, and in certain civil cases, that the district court has appellate jurisdiction and you can go to the district court and have a trial de novo, which means a new trial where the case is tried by the district judge, without a jury, and you are limited to the same witnesses, of course, who testified in the lower court. But the Judiciary Committee, in its wisdom, and it so far has been concurred in by this convention, eliminated the provision for appeal by trial de novo. It is no longer in the document as it now stands, although it had worked, in my humble opinion, very satisfactorily under the provisions of Article VII, Section 36, for many, many years.

But now, we are faced with this situation under the present status of this constitution. And that is that a person may be sentenced to actual imprisonment up to six months; he may be fined up to

three hundred dollars, or certain rights or property of his may be declared forfeited in a court where there is no record made of the evidence upon which that sentence is based, and he has no right of appeal. He has no trial de novo; he has no right to appeal. The only thing that he has is the right to apply to the Supreme Court under the exercise of its supervisory jurisdiction for a writ of review.

Now, the way you do that is you attach a copy of all of the records in the lower court and send it to the Supreme Court, and you point out what you feel to be an error; and you ask them to agree with you that there was an error, and ask them to bring the case up and consider it on the record. The problem is that you are not going to have a record. There's not going to be any record. So, the result of what we have done so far in doing away with the trial de novo, and in adopting the provisions with respect to appellate jurisdiction in Article VII which we have adopted, is that it is not only possible, but it is inevitable that unless we correct it, that when this constitution becomes effective, if it ever does become effective, that a person can be sentenced to six months in jail, or at least five months and twenty-nine days in jail; he will have no right of appeal, and there will be no right of review based upon any kind of record.

Now, various problems were brought up in connection with this, and I put in, I incorporated specifically in this provision that this is a right which the accused has which may be the subject of an intelligent waiver. Now, let me explain to you what that means.

In....under the law and the constitution, you have in certain cases the right to trial by jury. You have the right to counsel. The court advises you of these rights, tells you, "You have the right to be charged with this and such a crime which is a felony; you may be sentenced to up to so many years. If you are convicted you have the right to be tried by a jury. You have the right to counsel; if you can't afford counsel, the court will appoint a lawyer in your behalf. Do you understand those rights?" And he says, "Yes." "Do you wish those rights or do you want to waive them?" "I waive them." So he can waive this right intelligently after it has been explained to him. So it's not going to mean that in every case that's tried in a municipal court or city court that you are going to have to have a court reporter and go to all this what has been termed, perhaps, an unduly prohibitive expense in order to supply this man his rights. All you've got to do is explain to him his rights, make sure that he understands his rights. If, after explanation and understanding, he waives them, then that's his business. But the way the situation is now, he does not have that right, and he can be imprisoned up to six months; his property can be forfeited, taken away from him; his rights can be taken away from him, even though that may be the way he makes his living, without any right of review based upon a record of the evidence upon which that sentence is based.

And I just respectfully submit to you that that is not right and that is not proper, and that the right of that kind of review is fundamental and has to be provided.

I urge the adoption of the amendment.

Questions

Mr. Perez Mr. Avant, do you know of any provision that we have adopted yet that would be contrary to the provision which would authorize the trial de novo that you were talking about before that's been taken out of the constitution?

Mr. Avant I don't know of one that I would say would absolutely prohibit it carte blanche. Mr. Perez, but I say it is in the present constitution. It was provided for it in this constitution. We have omitted it. We have provided that the appellate jurisdiction of the Supreme Court is only

in those cases where there has been a fine in excess of three hundred dollars, or imprisonment in excess of six months, and that in those other cases, the other cases, where the fine is less than three hundred dollars, or the imprisonment is less than six months, we have made no provision for that.

Mr. Perez The reason I ask the first question is because of the fact that we all know that there are going to be many, many provisions taken out of the present constitution which, apparently, the members of the convention consider to be statutory in nature. And those provisions will be carried over as statutory material. And I was wondering whether your problem wasn't really taken care of because of the fact that this provision for the trial de novo would be carried over as legislative material.

Mr. Avant Well, I have not been told by anyone that it is being carried over by legislative material. It's legislative material, Mr. Perez.

Mr. Perez Well, don't you think it's reasonable that we are going to have many, many provisions which are going to be carried over as legislative material, and this is one of them that we could take care of in that fashion?

Mr. Avant We may take care of it, and we may not take care of it. I am aware of a strong sentiment in favor of abolition of trials de novo. We were told that there was a waste of time, a useless repetition, unnecessary, etc., etc., by many learned scholars and so-called experts, and based upon that, and perhaps other considerations, the committee in its wisdom did not incorporate the trial de novo, nor has the convention to this point done so, and I feel that I would be derelict in my duty in what I conceive my duty to be, to sit here silent while we have a situation where a man can be imprisoned for up to six months and have no right of appeal and no record. That just goes against my sense of fair play and justice and what should be done. And I am not going to be silent as long as that is the situation which is what it is now.

Mr. Perez I'm in general sympathy with your purpose. The only problem, and I'm very much concerned about it, is what the tremendous cost would be. And my question is whether you have any idea what the cost would be to provide these complete records in these lesser courts.

Mr. Avant I would say this, Mr. Perez. Number one, it is a right which may be waived after it has been explained. And I dare say that the record will not cost as much as the trial de novo.

Mr. Kelly Jack, a lot's been said here concerning courts of limited jurisdiction and trials de novo, but this provision which you are proposing at this time is directed to district courts also, is it not?

Mr. Avant It's directed to any situation where you can be put in jail for six months and have no right of appeal and no record.

Mr. Kelly Let me ask you this. Can this happen...

Mr. Avant It can happen in a district court.

Mr. Kelly ...in a district court at this particular time, can it not?

Mr. Avant Yes, it can.

Mr. Kelly Even though a district court is supposed to be a court of record.

Mr. Avant That's right.

Mr. Kelly If you don't walk into that court, or have a lawyer sitting there beside you that asks to have a complete record made, you are not going to get one, are you?

Mr. Avant That's correct.

Mr. Arnette Mr. Avant, I'm in sympathy with your amendment and what it tries to do. The only problem is, I see a couple of things that bother me about it.

The first is that it says that you are going to have a complete record of all the evidence in all these courts, which would include city courts, J. P. courts, and all these other courts.

Mr. Avant Mr. Arnette, let me correct you on one thing. A Justice of the Peace Court does not have any criminal jurisdiction other than as a committing magistrate. A Justice of the Peace Court in this state can't put anybody in jail.

Mr. Arnette Well, you say "forfeiture of property."

Mr. Avant I don't know how a Justice of the Peace Court can forfeit your property.

Mr. Arnette O.K. Well, let's go with the city court example.

We have a city court in my hometown, and I don't see anyway in the world they could afford to have a record of the cases if everybody wanted to have them. And a trial de novo has worked well in the past. We've made provision for it. In the Judicial Article, Section 16, we say that the "district court shall have appellate jurisdiction as provided by law."

Does that not provide for a trial de novo in statutory form?

Mr. Avant That does not. It does not. If it said that there would be trial de novo, I wouldn't be up here, Mr. Arnette.

Mr. Arnette But you... in other words, you want to get rid of all of the city courts in the small towns around Louisiana with....

Mr. Avant No, sir, I do not want to get rid of the city courts in the small towns around Louisiana. All I say is that....

Mr. Henry Mr. Avant, you have exceeded your time.

Further Discussion

Mr. Stinson Fellow delegates, I'm in... certainly in sympathy with what Mr. Avant has, and this is in addition to what we have proposed, but I'd like to point out some things for your consideration and also for Mr. Avant's consideration.

Someone touched on the fact if it's a bail forfeiture, naturally that means that the defendant is absent so he cannot waive. Now I don't know how they can take the evidence in the city courts and other places on all bail forfeiture in the event this person would want to appeal later on.

Next, forfeiture of property. Now, you know under the present law, a lot of times the district judge or the city judge will tell the person he can keep his driver's license, but it's forfeited in Baton Rouge by the Department of Public Safety. Does that mean that the Department of Public Safety has got the complete record of what action they take so that person can appeal it to some court? I don't know what court.

Next, it says "subject to imprisonment." Mr. Avant doesn't say, he's talked on six months, but he doesn't say six months. Under this, it would be for two or three days. I don't see how that would work.

Now an extreme case... maybe Judge Tate can pass on that... if a lawyer is disbarred, he certainly has forfeited some rights and property, and if the Supreme Court disbars him, who is going to review the judgment of the Supreme Court in the disbarment proceedings? That's another feature that's bad. Now, as I say, I'm in sympathy for giving everyone protection, and I think if he is on an appeal, the higher court that reviews it should

42nd Days Proceedings—September 6, 1973

have all the evidence. There is no question about it. If not, he's being denied his rights.

But now on this, as I read it, it would say, "On appeals from the district court to the Supreme Court, it would be on the law and the evidence." We have another provision that only criminal cases can go up on the law question. There's a conflict between this and what we have already enacted. As to what the courts would pass on, I don't know. Those are features here that I've outlined that I'd like for you to consider, and also, as someone else pointed out in the city court, they are limited, and the cost, if they have to have a secretary or a court reporter there, is going to run up and the legislature is going to have to end up increasing the cost of court now in criminal cases, and in some cases, there might just.... a fine may be five dollars and the court cost is already as much as eighteen to twenty dollars in the legislature.

And when I speak of this in the legislature, they used to say, "Well, you are taking care of the criminal." As you know, if a man is convicted of a felony and goes to the penitentiary, he doesn't pay court costs. It's our everyday citizen that runs a red light or fails to stop, gets fined five dollars and then has the court cost attached on to twenty and twenty-five dollars. That is the person we are trying to protect, from the cost angle. So these are the bad features of this. If you could adjust that, we have no objection. I personally don't not speaking for the committee. But with these defects and these dangers, I'm afraid that we shouldn't adopt it and put this in the constitution. It's a matter that could be protected in there that's already been adopted, appeals by law, and the legislature has the authority to pass that in its wisdom.... not putting it in the constitution. In view of all this, I'd like to urge you let's reject these amendments.

Further Discussion

Mr. Derbes I guess there aren't too many people who are interested in this amendment because I see a lot of empty chairs.

I'm completely in agreement with Mr. Avant's principle that whenever anyone is imprisoned, he should have an opportunity for judicial review. No matter what the court.... I'd just like to impress upon you that as I read this amendment, this amendment will provide for judicial review of all administrative agency determinations where any body loses any rights for which he may be an applicant, or any rights that he may possess. There are literally scores of administrative agencies in this state which affect the trades and professions and conduct of business in the state. And it would seem that although the amendment is not directed in purpose toward those administrative agencies, they nevertheless come under its scope, or within its scope. And by adopting this amendment, you will be providing for judicial review of, in my opinion, all administrative agency determinations.

So, I think you should think about it very carefully. It's much broader, in my opinion, than merely the instance where a person is imprisoned by a Justice of the Peace Court.

Questions

Mr. Lanier Mr. Derbes, are you aware of the fact that under Article 884 of the Code of Criminal Procedure that if a sentence imposed includes a fine or costs, the sentence shall provide that in default of payment thereof, the defendant shall be imprisoned for a specific period not to exceed one year?

Mr. Derbes No, I'm not specifically aware of it. How do you relate that to this proposal?

Mr. Lanier Well, I'm saying it says here, "No person shall be subjected to imprisonment." Would that not mean that even if the authorized penalty was a fine that nevertheless under the criminal provision, that in default thereof, imprisonment would be authorized?

Mr. Lanier That seems to be one of the problems. Mr. Lanier. I'm glad you pointed it out. I happen to be in favor of judicial review for anybody who is convicted of a crime. I just think this goes much further than that and we should take that into consideration.

Mr. Lanier Well, wouldn't that mean that this provision would apply to all misdemeanors as well as all felonies?

Mr. Derbes I would think so. Yes.

Mr. Lanier Now, further, and this is something, quite frankly, I don't know the answer to. Do you know if the decision of *Boykin versus Alabama* is applicable in misdemeanor cases?

Mr. Derbes That's a transcript case?

Mr. Lanier No, that's the case that says that the judge has to....

Mr. Henry You've exceeded your time, sir.

Further Discussion

Mr. Arnette I just have a couple of short statements. First of all, I'd like to go in there under Paragraph 8 of Section 16 of the Judicial Article, we made provision for appellate jurisdiction in the district court. We presently have that appellate jurisdiction in the form of the trial de novo. I don't envision us changing anything. But what this particular amendment is going to do, and the thing I'm afraid it's going to do, is put the city courts of the small towns out of business. You can't possibly have a record of every traffic violation, every assault and battery, every disturbing the peace, and have a city court run. They just don't have the funds to do this. And I think you're going to clog up your district courts when you do away with these city courts. This is what the big problem is with this particular amendment.

I don't see how we can accept an amendment like this that would accomplish such a purpose. We have worked well in the past with a trial de novo to the district court, and I don't see any reason to change it. We've made provision allowing for a trial de novo, and I don't see any reason to have anything different.

Thank you.

Questions

Mr. Drew Mr. Arnette, in addition to Section 16 (A) that you referred to where we can provide appellate jurisdiction in district courts, are you aware that, also, in Section 5 (F) of the Judicial Article, it provides "in all criminal cases not provided for in Section D (2) of this section, an accused shall have a right to appeal as provided by law," which would further strengthen your argument?

Mr. Arnette I wasn't aware of that, Mr. Drew; I hadn't remembered that. But it's a very good point to bring out. No person would be denied the right of review. Now Mr. Avant has put down here, it says, "This right may be waived intelligently." Well, this is a fine idea except nobody is going to waive that right before the record is already taken to make sure that no mistakes were made. So you would have to have a record of every single offense in the city courts, and they are just not equipped either financially or physically to do this. So if you want to put your city courts out of business, adopt this amendment.

Mr. Stagg Basically your argument is against the cost of this proposal. Is that correct, Mr. Arnette?

Mr. Arnette Well, I'm against the cost of it. I'm against the burden it would put on the district courts, the backlog of cases it would present to

42nd Days Proceedings—September 6, 1973

them that are presently handled by smaller courts: circuit courts of the district.

Mr. Stagg Are you aware that in some legislation, it's necessary to attach a fiscal note to show what the proposal would cost if it was enacted? What would you estimate the annual salary of a court reporter would be? About twelve thousand dollars, would that be a fair figure?

Mr. Arnette I would say twelve thousand....

Mr. Stagg And a transcript is normally a dollar per page. Is that not correct?

Mr. Arnette That's exactly right.

Mr. Stagg And how many city courts can afford that kind of expense if this record was required?

Mr. Arnette I don't know of any city court outside of, perhaps, the city courts in New Orleans, or maybe Baton Rouge, or the very large cities. But when you get in a town the size of Jennings, around twelve thousand, it's impossible to provide that.

Mr. Stagg Would not then the court reporter make more than the city judge?

Mr. Arnette Oh, a lot more.

Mr. Smith Mr. Arnette, wouldn't this apply to the mayor's court, too, in any town?

Mr. Arnette It would also apply to mayors' courts or any courts that presently have any criminal jurisdiction that are under a district court. And it'd just do away with those type courts, Mr. Smith.

Mr. Hayes Mr. Arnette, you would want to deny the rights because of the amount it's going to cost. Is that correct?

Mr. Arnette No, Mr. Hayes, that is a fallacy that I think Mr. Avant stated, "that there would be no review." But this is not the case. We presently have trial de novo, which is an entirely new proceeding in a district court, that if a defendant wants this, he may have it by right. He's presently got this right. We're not taking away this right from him.

Mr. Hayes Didn't this amendment say that you could waive it if you wanted to?

Mr. Arnette This amendment does say that you can waive it. But the problem with that is, Mr. Hayes, that nobody is going to waive it before the record is taken, before the trial is over, because he doesn't know whether there's a mistake made until the trial is over.

Mr. Hayes In the terms of cost, since it can be done, say, on a tape varied sheet, and you are only, this cost only comes into play after you are actually making the record, wouldn't it still be reasonable to make this record?

Mr. Arnette Well, it's presently done by the means of court reporters and transcripts and things of this sort, which are quite, quite expensive, Mr. Hayes.

Mr. Hayes Don't you have a right to a jury trial in federal court with twenty dollars, Mr. Arnette, about twenty dollars? Can't you get a jury trial if you want it?

Mr. Arnette If you can get in the federal court in the first place which takes a ten thousand dollar claim, yes.

Mr. Hayes Twenty dollars. Right?

Mr. Arnette No. Ten thousand dollars, Mr. Hayes, in ninety-nine percent of the cases.

Mr. Hayes I say with the involvement of twenty dollars, and that's when you can demand one for twenty dollars.

Mr. Arnette If you can get into court in the first place which takes ten thousand.

Mr. Hayes Oh, yes, O.K., then. Thank you.

Vice Chairman Casey in the Chair

Further Discussion

Mr. Kelly Mr. Acting Chairman, ladies and gentlemen of the convention, I rise in support of the Avant amendment.

We tried to bring this out in the Judiciary Committee for months and months, and apparently it finally did get something on to the floor of the convention. However, apparently, this did have some ambiguity in it because, I think I discussed this with Mr. Duval, and you could read it in one way whereby it would mean that free transcripts would be provided in all cases including civil cases and everything else.

That's not what this amendment does. And there's one basic question that has to be answered, and that's whether or not we are going to put a price tag on justice. Now anytime a person is called into a court of law—I don't care whether it's a mayor's court, a district court, or whatever court you may bring him into—I think that he should be entitled to have every right provided to him, including this right to know what has been said against him and to have some recollection of the same.

Now, the cost factor has been argued here today heavily. That's the main opposition to this. It is, well, look what this is going to cost. This is just no argument when we start talking about placing a man in jail or taking his property away from him. And this city court argument, that's a fallacy because a city court can provide a cassette recorder just as easily as a district court can. And I'll say this.... This misuse is not only in the city courts or courts of limited jurisdiction, it's Mr. Avant answered in a question by me. This goes on in our district courts today. I guarantee you, you get the guy that is called in, is ticketed, say, for simply battery. He's got a good job; he's got a wife to support; he's got children to support. So he gets picked up on a simple battery charge one Saturday night. All right, he goes into court the next Friday or the Friday week, and he doesn't think too much about it because he looks at the penalty and he says, "Well, not too much can happen to me over this. I don't think I'll even get in the trouble of getting a lawyer. I'll go and defend myself." He walks in there and the judge calls him up and says, "Are you ready for you case?" "Yes." And let's suppose that he has been apprised of all of this other constitutional privilege. No one ever asked him, "Do you want this recorded?" They are not even going to ask him, if he's got a lawyer sitting beside him, "Do you want this recorded?"

So he goes on and the witnesses testify against him. Now he thinks, "Well, maybe I am guilty, I'll get a fine or something. But for some reason, somebody's in a bad mood on this particular day, and the first thing you know, he's been sentenced to four months in jail. He doesn't even have time to go home, tell his wife, "Look....", or call his employer, "I'm not going to make it to work today because I've got four months to serve." And then he decides, "Well, it's high time I'd better get a lawyer because I'm in trouble."

So he calls one. Now, what's he going to do? There has been no recollection of any of the evidence presented against him, and by evidence, I'm talking about what witnesses said happened on this particular event. This is the very thing which I think Mr. Avant has in mind. This is no move to abolish city courts. This same thing goes on in district courts. This is a move to protect the average man who doesn't think that he's got legal problems, and he walks into that district court or

city court and the first thing you know, he ends up in jail.

I request that you give sincerity to this proposal. I think it is a good proposal. It's not going to cost anyone any money. The cost involved in these matters involves the transcription, not the actual recording of it, and anyone can record the testimony. There's going to be no real expense. But that record's going to be available so that another court can look and see if this man or this woman received true justice.

I ask that you vote for the amendment.

Question

Mr. De Brieux Mr. Kelly, isn't it now available to where they have these transcribers that they can take the testimony down and make the cost of these records almost minimal?

Mr. Kelly That's my understanding, Senator.

Further Discussion

Mr. J. Jackson Mr. Chairman, ladies and gentlemen of the convention, I rise in support of Mr. Avant's amendment. I think that some points have been raised relative to what kind of effect that's going to have on our judicial proceedings. I want to suggest to you that we are talking at this point about the Bill of Rights Section. We have provided in the judiciary all the rights, responsibility, jurisdiction, and we have in some cases expanded the powers of the district attorneys and the powers of the courts. I suggest to you that this is no more than a provision to allow that, while engaged in the criminal justice system, that we will provide necessary measures to protect an individual's right.

Now the question is raised that if he pleads guilty, can he not waive...does this prevent him from waiving that right? I'm suggesting to you that it says very clearly that this right may be intelligently waived.

I think when we looked about - and I read the memorandum that was issued out by the District Attorneys' Association, someone representing the district attorneys' viewpoint - I read it and it just implied to me that maybe what we ought to do more when we talk about the term, "law and order," we ought to talk about the terms, "law and order and justice," has been...as my appreciation of those words, been espoused. Let me suggest to you that in the criminal justice system, that besides the point of arrest, that at this point where a person goes before a court and feels as though he didn't get a fair shake, then he ought to have the right to appeal in necessarily he has to have the supporting documents to justify his rights. It would seem to me that we extend this kind of right or privilege to prosecuting attorneys, and I'm...I think if he gets a fair judgment, and if he wants to appeal, then it does no harm. It does no harm to provide the recordings of that.

Now, some people say we are not talking about cost. I'm suggesting to you that I think, personally as a delegate, that some people are overlooking that factor and that's the way they are going to decide how to vote on this amendment. Can we really substitute cost for justice?

I'm suggesting to you that whereas we had provided our judiciary, where we have provided our district attorneys with the necessary funds, with the necessary staff, with the necessary supportive services, then it seems no more than reasonable that we ought to provide at least as this amendment provides...states, the opportunity for a person who may have his property, certain of his rights forfeited, to have the recordings of that testimony against him. I think some people have some concerns about, you know people, and when we are on the freedom of expression, saying things against you without you having the right to defend yourself. I think that if it's on the record, then those records ought to be available and a review of a judicial decision.

For those reasons, and particularly for the

reasons again, as enumerated by Mr. Avant and Mr. Kelly, I would ask that you seriously consider this and that you vote favorably for the adoption of this amendment.

Finally in closing, Mr. Chairman, I just want to say that we could spend days and days talking about the possibilities and the effects of a certain legislation. I'm suggesting to you that this provides any legislation that this convention comes up with is subject to court interpretation. That's why we got a judiciary, and in that we have members of the judiciary, practicing attorneys, and possibly some defendants presently in this convention. I do not see where that should be a major obstacle to the adoption of this amendment.

So, therefore, I've given you my sincere and that addition, I ask for your favorable support.

Mr. Chairman, if there are no further speakers, I move the previous question on...

[Inaudible speech, overlapping, indistinguishable.]

Closing

Mr. Avant Mr. Chairman and fellow delegates, I think that Mr. Kelly stated succinctly the reason why this amendment should be adopted. You can put a price tag on justice. Now, insofar as the allegations that the cost of this would be unduly prohibitive, that is simply not correct because with the electronic recording equipment that is available today, I can record virtually any word that has been said in this convention all day today for less than ten dollars. Now, another thing, insofar as the argument that the trial de novo still exists, if it did, I wouldn't be up here. I'm telling you that it does not. It's in Article VII, Section 36, of the Constitution of 1921, and it is nowhere to be found in this constitution up to this point, and if it is transferred under some transitional article, it's still won't be in the constitution. I don't care how you explain it, or how you try to explain it, there's no way, in my humble opinion, that you can justify depriving an individual of his liberty and putting him in jail and locking him up without giving that man a right to have the evidence upon which that conviction and sentence is based reviewed by another court based upon a record of the proceedings.

Now let me tell you something. Let me tell you the kind of thing that I'm talking about. I'm going to get down to the kind of nitty-gritty, as some people say. And I'm not saying that all city judges are like this. But let me just give you...not a hypothetical case, let me give you a case.

A man's son is attending a high school dance. He's supposed to be in at 1:00 A.M.; about 1:30 A.M. he's not in. The man's up, he's sitting. He's waiting, he's watching television or reading, he's drinking a few beers and the boy's late and he comes home a little bit faster than he should and about two blocks behind him comes a police officer. He runs in, jumps out, runs in the house. Papa goes out to see what's been going on...has he torn up the car or something?...and there the police officer arrives. "Mr. So and So, you've been drinking...you been driving this car?...Oh, no, I haven't been driving this car."...Sentences...convicted on DWI on that kind of testimony. Now, that's what I'm talking about. No record; trial de novo under the Constitution of 1921 didn't stick. No, it didn't stick, but it would stick under this one, because you don't have a trial de novo, you don't have a record and you don't have any appeal. You can't put a price tag on justice and you can't put a man in jail, in my humble opinion, without giving him a right to have somebody else look at that record and see and determine whether he belongs in jail. I'll be happy to answer any questions anyone may have.

Question

Mr. Alexander Mr. Avant, I'm trying to get some

information. Now this amendment would actually work. For example, in the traffic courts in the city of New Orleans a judge may handle three hundred cases in the course of a day. Some of them may plead guilty, some of them may stand for trial. Now, at what point would the provisions of this amendment go into effect when we say he shall not be deprived of certain rights? How would that work?

Mr. Case: All you have to do, Reverend, is you have to explain to the man his rights, the right you explain to him that he doesn't have to plead guilty, that he has a right to be tried. Prosecution is compelled to put on evidence and establish his guilt beyond a reasonable doubt. He could plead guilty if he wants to.

[Revised vote ordered. Amendment adopted: 66-47. Motion to reconsider tabled.]

Amendment

Mr. Poynter: Amendment No. 1 [by Mr. Burson], on page 4, line 15, after the words "shall be" delete the word "precisely" and insert in lieu thereof the word "reasonably".

Explanation

Mr. Burson: Fellow delegates, this amendment is proposed because under the present law the constitution simply requires that you be informed of the nature of the charge against you. It doesn't say precisely; it doesn't say reasonably; it does not say as Mr. Gravel's amendment will "with particularity". Now, "with particularity"... seems to me would imply that you'd have to more or less include a bill of particulars in the indictment or information. Now this may be as good a time as any, I don't know if there would be a good time, for me to express some views that have been welling up inside me since I first read the Bill of Rights Proposal and I have waited a long time to express these views because had I expressed them when I first reacted I probably would have over-expressed them. But I want to point out to you because I think you can't decide on these rights of criminal defendants in isolation. You have to consider the whole committee proposal, and in my view, the whole committee proposal taking it together, makes about nine or ten radical changes in favor of the rights of criminal defendants. I am stating here and now my intention, on each one of these changes, to submit to you amendments which will retain the present criminal law. Not because I think the present criminal law is perfect, which Lord knows it is not, but because I do not believe that your constituents or mine sent us up here with a commission to execute a bill without the representation and committee study that a legislative body would do over perhaps eight or ten years of time, to give vast new areas of rights to criminal defendants and to make criminal prosecution infinitely more difficult than it has been in the past. Now you may think that is an attitude which grows out of the fact that I am an assistant district attorney. Well, I have been one for less than one year of my life. I practiced eight years of criminal defense law. I am taking these views rather as a representative of Representative District 41, the people I was sent here to represent, and I think that their views on this score are probably emblematic of the views of the overwhelming majority of the citizens of this state, and I want to say at this point that I don't pretend to be an expert on the attitudes of black people, but I will tell you with some degree of knowledge as having run for public office on two occasions in the district that I represent and having got votes varying between sixty and ninety-four percent of the vote that I am familiar with the attitudes of black people in District 41 and they do not interpret granting new rights to criminal defendants as a minority rights issue. The only request I have ever had on this score is want equal enforcement of the law. "We want the law to be enforced

equally the same way to us as it is to everybody else," which is an extremely reasonable and just position. But it seems to me that if we fall into the trap of considering criminal rights as a minority rights issue that we will be guilty of the same kind of paternalism that in my view has been our biggest problem in our segregated society. When we do not punish the crimes of blacks against blacks or...

Mr. Casey: Just a minute, Mr. Burson, let me interrupt you.

Point of Order

Mr. A. Jackson: Mr. Chairman, I question the line of discussion being pursued by the speaker. He's not addressing himself to the amendment and while I know we have allowed a great degree of latitude, it would seem to me that it would be in the interest of this body in order to inform them precisely of the intent of this amendment that he would confine his discussion to the amendment before us. I think that he's raising a lot of extraneous issues that should be offered by way of a general debate and I object to this discussion at this time stating that it's not germane to the amendment.

Mr. Burson: Mr. Chairman, I requested earlier, of the Chairman, in the day, a personal privilege and was informed that personal privilege was not appropriate on this topic, at which time I decided to confine...

Ruling of the Chair

Mr. Casey: Just a minute. Alphonse Jackson has addressed a point of order to the Chair and I think it's only the prerogative of the Chair to answer the point. I will ask this speaker or any other speakers to confine their remarks as far as possible, and I realize we have enjoyed a tremendous amount of latitude in the past, but we still have to in the future enjoy that latitude [latitude] but as far as possible all speakers should confine their remarks to the precise amendment under debate or to the proposal under debate, and I would ask the speaker at this time to do so.

Mr. Burson: Yes sir, Mr. Chairman. The only point I was trying to make here is that you don't solve problems by throwing the baby out with the bath water and in my view, to propose these radical changes in a new Code of Criminal Procedure which was adopted in 1966, after ten years of work by the Louisiana Law Institute, by a practically unanimous legislature and enshrine in the constitution material which is essentially statutory in nature would be a tragic mistake. Now the Code of Criminal Procedure is not perfect although I think it would be rated one of the better modern codes of criminal procedure available in the states of this union. But it can be changed as the need arises in the state legislature. If we freeze into the constitution minute details of criminal procedure beyond those basic guarantees similar to the guarantees that are enshrined in the United States Constitution, in my view we are making a fatal error. Now I am making this speech, not after failing to discuss this with the proponents of these changes, because I have discussed it, and when they talk compromise, the compromise idea I get is that it is a compromise to agree to only get hit over the head five times instead of ten times. It seems to me that on this particular amendment that it is all we need put in any constitution that "a criminal defendant should be reasonably informed of the nature of the charge against him," consonant with the short form of the Bill of Information which is available under our code of criminal procedure, consonant with good practice in the practice of the courts and that if it is the design of the committee by the use of the word "precisely" to mean that we have to begin to include in each and every indictment or information what amounts to a Bill of Particulars that we are giving prosecutors a new and unnecessarily cumbersome

42nd Days Proceedings—September 6, 1973

some duty. We are spanning perhaps a decade of litigation to determine how precise you have to be in informing him. Any defense counsel worth his salt now can be means of filing a motion for a Bill of Particulars obtain the information that the law says he is entitled to. When I practiced defense law, on the simplest case, I could think of twenty-five or thirty questions to file a motion for a Bill of Particulars, so I am bringing to your attention for the first time one of many issues which I will discuss as they come up, and I will answer any questions that anyone has.

Further Discussion

Mr. Tate Mr. Chairman, fellow delegates, I rise to speak first of all in support of the section and primarily in support of the Burson amendment, if it is amended with the Burson amendment. I rise to speak, in short, in favor of the Burson amendment. Now, what I have to say involves a very technical legal question and I hope you will pay some slight attention to what I say. I think the first thing it looks like there is no harm in saying that the person should be precisely, completely, or with particularity, anything you want to say, informed of the nature and cause of the accusation against them. I'm in favor of that; you're in favor of that; everybody's in favor of letting a man have the facts to prepare his defense. Unfortunately, we have about a hundred years of jurisprudence which has given to these words "informed of the nature and the cause of the accusation against him," meaning that means, if the criminal indictment or information, it's a piece of paper about this long, it's filed. It has to inform him of the nature and the cause of the accusation against him which means the essential facts. Now, if you say for instance, I'll give you an example...one of the hardest decisions I ever had to decide in my life and there are others like this...there's an indictment, they charge this fellow with armed robbery of the Guaranty Bank....no objection to it...full, fair trial, everything's fine....jury sends him guilty....everybody's happy....and we know this, that it is our bounden duty under the jurisprudence until it's overruled, we had to say that indictment was defective. This piece of paper that had been written by a secretary, filed, and nobody really paid any attention to it, said he had robbed a bank, which is a building. Armed robbery is a crime against a person. It had to be a bank teller of a certain name. Now, I think it is perfectly fair that if the accused didn't know and wanted to, he could find out who they are charging, but the accused knew, everybody knew, and yet because of the technical meaning of "be informed of the nature and cause of the accusation" this little piece of paper that is an indictment of information had to have the essential facts in it. That meant that the whole conviction was thrown out, the whole trial, the whole case. It had to start over again, it wasn't former jeopardy. Now, I have to bring you back four hundred years for the reason for that. There used to be two hundred capital crimes....the indictment or information was the only thing the accused had. He showed up in court, he didn't even have the right to a lawyer and this is all he had to defend himself on, this piece of paper. So that naturally the English courts, and following them the American courts, and following them the Louisiana courts, in our early days said this had to tell him everything, everything he needed, but since then we have perfected various devices by which the accused is entitled, for instance, by a Bill of Particulars, to learn the information that he should be able to learn and I'll say in my opinion he should be able to learn more than the court gives him but he is at least able to learn the essential elements. Now, if we ignore that jurisprudence that says "informed of the nature and the cause of the accusation against him," means this indictment or information....that piece of paper and if we add to that, that has to "precisely" inform him, that means that piece of paper way back there that has to go into a lot of detail even though later on,

as in civil cases you can get plenty of discovery, you can find out, and we should have more discovery. I'm for that sort of approach but to freeze into the constitution the idea that this piece of paper has to state with particularity one more technicality, one more area of discussion that we're going to have to worry about - how much detail you have to put in the indictment information. You see my problem and your problem and all our problems, it's a trend in the wrong direction. Now you might say and you might be right, the primary fault is interpreting the constitution like it has been but it's been interpreted that way for a long time. It's hard to change an interpretation like that and the easiest way to do it in my opinion is to substitute the word "reasonably" for "precisely" which would let us have a modern criminal procedure and avoid that technicality, that particular technicality, which in this case I think is senseless - operates against efficient administration, does not deprive the accused of any right because he has the right to be reasonably informed. It can be informed any way you want to - Bill of Particulars - and so on and the discovery....

Mr. Casey I'm sorry, Judge Tate, you've extended your time.

Further Discussion

Mr. Roemer Mr. Chairman and fellow delegates, I'm here to disagree respectfully with Mr. Burson and Mr. Justice Tate. We're not here talking about the rights of criminals. We're talking about the rights of free men and women. These people in this section are not criminals; they're being prosecuted; they're being accused. That does not make a man in this nation nor in any State, a criminal. We are not criminally liable unless we have been proven guilty of something; we are not criminals until we have been accused. Now, that's the premise of my remarks. It's been said here unless we put in the word "reasonably informed of the nature and cause" then we'll show a decade of litigation. I submit to you we'll spawn a century of litigation with a word like "reasonable". What is reasonable to you may not be reasonable to me. What is reasonable to D.A. No. 1 may not be reasonable to D.A. No. 2. Now, I think we should freeze in, I think we have to freeze in, this constitution certain rights that are ours, and there is a right in this country for free men and free women when accused to be informed of the nature and the cause of that accusation, informed completely and with particulars, completely and with particulars as to why and what is the nature and what is the cause of this accusation. Now I think we should strike down this amendment...vote no. There will be an amendment to follow that says "informed with particularities", and I think that's where we're heading. "Informed with particularities" so that you'll know and that day might come, God forbid but it might come, when you or myself will be accused of a crime and I think we have a right, and I think the least we can expect is to know why we were charged and what is the nature of the charge and the particulars of the charge. I submit to you that "reasonable" does nothing. Government should be of laws, not of mean and men decide reasonableness, not the law.

Questions

Mr. Stinson Mr. Roemer, when you use "reasonably" here isn't it just....it really is the same as just sort of telling what he's charged with, isn't it?

Mr. Roemer That's right.

Mr. Stinson Common expression up in Bossier....sorta....sorta tell him what's he charged with.

Mr. Roemer That's exactly right, Mr. Stinson.

Mr. Singletary Buddy, you say you don't know what "reasonably" means. What does "particularity"

mean? I don't know what that means.

Mr. Roemer Well, it has the same thing to do with your Bill of Particulars, Alvin, where you are at least given some nature of the scope and the cause of your accusation. "Reasonable" is just to me so undefined as to be unworkable here. As far as I'm concerned when we had "reasonably informed" we might as well not mention information at all.

Mr. Roy Actually, Buddy, wouldn't you agree that as an analogy, if I tell you that you have to be careful in the way you do something that if I then say you must be reasonably careful I'm actually allowing you to be less careful? Is that not correct?

Mr. Roemer That's exactly right.

Mr. Roy So when...in the present law it says that you must be informed, if we adopt this amendment that says you must be only reasonably informed, it's even less than what you're being informed at present, isn't it?

Mr. Roemer Exactly.

Further Discussion

Mr. Warren Mr. Chairman and fellow delegates, I first had in my mind to ask a question what was the word "reasonably" mean as referred to Mr. Burson's amendment. After Mr. Burson began to explain his amendment, I became a little bit upset, or probably disturbed might be a better word. I think I said from this platform when I came, that I came here to represent all of the people, and I think if this convention will write a constitution that will reflect the justice of all people, I think we will have done a good job. I also think that Mr. Roemer had versed principally the things that I had in my mind that this section refer to people who were coming up, who are accused, who we would be bringing up to say you have done something. I think that a person should know what he is charged with exactly. If I'm charged with killing a person, I'd like to know that the charge was murder. If I'm charged with manslaughter, I'd like to know that it was manslaughter. I can remember some years ago when the question came up about jails and things didn't dawn upon me. I just knew it was a place to put you away and I didn't want to be there, and I made this remark "jails are not made for dogs, but it certainly is not made for me". I don't know when the time will come that I might be put in that position, that I might be stopped and I might we [be] taken in for some reason or not. If I'm stopped driving my car I'd like to know what the officer is stopping me for before he takes me in. So I'm going to ask you to please vote against Mr. Burson's amendment. Judge Tate said something about it would be hard to change what had happened maybe four hundred years ago. It might be hard but if it's right I think we should make that attempt so lets [let's] us defeat this amendment.

[Previous Question ordered.]

Closing

Mr. Burson Fellow delegates, in response to the arguments that have been raised against this amendment, let me say at the outset that Article VI of the United States Constitution Bill of Rights, which you all have in the copy of the U. S. Constitution that was given to you by the League of Women Voters, if you look at it, says that you have a right to be informed of the nature and cause of the accusation. It doesn't say "precisely informed" and it doesn't say certainly informed "with particularities". I would bring to your attention the fact that under *Gideon versus Wainwright*, every criminal defendant who is charged with more than a misdemeanor has the right to counsel, an absolute right to counsel, provided for by the state, if he can't afford counsel, and that counsel if he is

worthy of the name certainly knows how to file a motion for a Bill of Particulars. This is just trying to do with one word or two words or three words exactly what I told you, to make criminal prosecution more difficult. Now, Mr. Roemer was talking about the fact that these rights are designed to protect innocent people. That is true. They are also going to be used mainly by people who are guilty of crimes because whether or not you realize it, sheriffs and police officers don't go around arresting people who didn't do anything if they could help it and district attorneys don't go around prosecuting people who they know are innocent, and it seems to have been a tacit presumption engaged in by all of the members of this committee. Now, that presumption may be correct.

Now, maybe our elected sheriffs and our elected police chiefs go around arresting people who didn't do anything, and maybe our elected district attorneys go around prosecuting people who didn't do anything, but you know it's funny; the only district attorneys I ever saw defeated in the area of the state I live in were those who were not zealous enough in prosecution. I never say one defeated yet because he was too zealous in prosecution, and I'm telling you that the law abiding people in this state don't want us here doing everything we can to make apprehension and prosecution of criminals impossible in the guise of establishing individual liberties and rights. By the way, defining for the first time rights and liberties which have not heretofore been defined by any state in the union.

Questions

Mr. Kelly Jack, under the present law, say as an assistant district attorney, and I file a Bill of Particulars asking you for the witnesses that you're going to use in a criminal prosecution, do you have to even tell me the names of those witnesses?

Mr. Burson No, sir. There is no criminal discovery in Louisiana.

Mr. Kelly Alright sir, I file a twenty-five dollar law suit against a defendant....does that defendant in that twenty-five dollar law suit.... he has the right to all types of discovery devices, does he not?

Mr. Burson Yes, sir.

Mr. Roy Jack, you mentioned the Sixth Amendment to the Constitution of the United States. I am very interested in it, but didn't you forget to tell these delegates that the Constitution of the United States Sixth Amendment requires a grand jury indictment for every crime that is serious, which has been interpreted by the United States Courts to be any crime for which you can be sent to prison for one year or more?

Mr. Burson Yes, sir, and in *Hirtto versus California*, decided by the U.S. Supreme Court in 1984, they said that the grand jury indictment was not included in the due process of law guarantee which the states must provide under the Fourteenth Amendment.

Mr. Roy Isn't it also a fact that when you're charged by a grand jury indictment that you give a lot more information than the short form Bill of Information that you and other assistant D.A.'s and the D.A.'s, in this state may use at this present time?

Mr. Burson That's not necessarily so at all.

Mr. Roy Isn't it a fact that under the short form indictment, Jack, that for murder you merely have to say Chris Roy killed Camille Gravel and that's enough under the state indictment?

Mr. Casey I'm sorry gentlemen. Mr. Burson has exceeded his time.

[Amendment adopted: 54 yeas, 1 nay, 1 excused, 1 not voting.]

Time, Mr. Gravel:

Explanation:

Amendment

Mr. Poynter: Gravel amendments. Amendment No. 1, on page 4, line 15, after the words "shall be" and before the words "of the nature" delete the words "precisely informed" and insert in lieu thereof the following: "informed, with particularity," and we need an addition to this to... on page 4, line 15, strike out the Burson amendment.

Mr. Gravel: Mr. Chairman, before I do that, I don't know that it's necessary to strike out the Burson amendments. All that the Burson amendments would do would be to delete the word "precisely" and substitute in lieu thereof the... as I understand the word "reasonably". Is that correct?

Mr. Poynter: That's correct, Mr. Gravel. How are you going to make it read then? It says "reasonably informed". Do you want to say "reasonably informed with particularity"?

Mr. Gravel: All I'm suggesting is that it could, but I think that might be confusing. I'd rather go with it this way and see what happens. Go ahead then and put the other amendment to strike the Burson amendment.

Mr. Casey: You're requesting now, Mr. Gravel, the deletion of the Burson amendment, is that correct?

Mr. Gravel: Well, as I understand it... I'm not quite sure that it's clear to me, but as I understand from what the Clerk said that my amendment, of course, cannot be accommodated with the adoption of the Burson amendment and so I would ask that Amendment No. 2 provide for a deletion of the Burson amendment. Isn't that correct, Mr. Clerk?

Mr. Casey: You're requesting deletion of the Burson amendment then. Please proceed, Mr. Gravel.

Point of Order

Mr. Riecke: We have just adopted just the opposite of what this gentleman is proposing. It was put on the table and it takes two-thirds to kill it; now he's proposing one just the opposite which would kill that amendment and it only requires fifty to fifty-one percent of the vote, the majority vote. That doesn't seem right.

Ruling of the Chair

Mr. Casey: Just a minute. Let the Chair rule. The Chair would have to rule that his amendment is in order and we have considered and have adopted many amendments under the same procedure as this, and I think you'll probably recall very well from our efforts on the Legislative Article that that was done on many occasions. I would have to rule first of all, he has... and we have done this on many occasions, deleted other amendments previously adopted that that is a proper part of any amendment and that this amendment to add the wording "informed with particularity" would be properly in order, even though naturally it would conflict with the other amendment.

Mr. Riecke: Well, what's the purpose of laying it on the table then?

Mr. Casey: So that that particular amendment, and only that particular amendment without any change whatsoever added by another amendment, that particular amendment would be laid at rest altogether, Mr. Riecke.

Mr. Gravel: Mr. Chairman, I hope that my time is just starting because I haven't had the time to...

Mr. Casey: Your time is just starting. His point was certainly in order to be raised and the Chair will use its prerogative in not taking up your

Mr. Gravel: Thank you, sir. Mr. Chairman and ladies and gentlemen of the convention, I think it's very important for us to determine whether or not in this Bill of Rights we are going to afford to the individual citizen of the State of Louisiana the opportunity to have fair charges presented against him in such a manner that he will know exactly what the prosecution is all about. Now with all due respect to Mr. Burson and also to the observations made by Mr. Justice Tate, let me say for the benefit of those of you who are not familiar with the criminal laws of this state that there is a very serious problem that exists in the State of Louisiana as a consequence of the statutory laws... of the statutes that are in existence. Let me give you an illustration because I think it points up the problem very well. Either a grand jury by indictment or a district attorney by a Bill of Information can come in and charge that John Smith negligently killed Jack Brown. Now, under our law that is supposed to be an adequate charge that is to inform the defendant of the nature and extent of the offense against him. It really doesn't do that as all of you can see. The law of Louisiana then permits a defendant who has such a charge filed against him to come into court and be represented by an attorney, and file a motion for a Bill of Particulars which as someone has pointed out, has got to be set down for a hearing; a determination has got to be made by the court and in many, many instances it takes weeks and months for a defendant to extract from the prosecution the facts upon which the charge has been based. Now what does this proposed amendment do that I am asking you to adopt? It says... seeks to say in this constitution that every person who is charged with an offense must be told either the charge or as a matter of constitution right by a Bill of Particulars, what facts are the basis on which the prosecution is going to contend that the essential elements of the offense have been committed.

There's a vast difference between the Federal system and the State system and this Bill of Rights did not point out to you. The Federal Constitution does have the language that he stated to you. It does not provide for particularization of the charge but the Bill of Information, or rather the indictment in every grand jury prosecution, spells out in detail all of the facts and facts of the charge against the federal defendant. Now, I think if you stop to think about it, if you want to be fair with anybody who is being subjected to indictment or a charge by a Bill of Information, that you certainly are going to want to compel the prosecution, the State of Louisiana, though the grand jury or the district attorney to state with particularity the basis of the charge and not just say as in a negligent homicide case for example, that AB negligently killed CD. The statute in that example in that case says that "in order to constitute the offense of negligent homicide, the death must occur as a result of criminal negligence" and unless there are some facts and some circumstances given to the defendant, in many instances he doesn't even know what the charge is based on. All that this amendment seeks to do is to constitutionally require that every person charged with an offense will know the facts on which that offense is based and not have to go through the long court routine with a lawyer in order to get the facts. I submit to you that it's important that we do in the interest of according to the citizens of this state who may be charged with offenses, a full and fair statement of the facts on which the charge is based and I urge that you adopt this amendment.

Questions

Mr. Lanier: Mr. Gravel, I'm not sure I understood all of your argument. Is it your intent by this amendment to make the statute authorizing the short form indictment or information unconstitutional?

Mr. Gravel It is not my intent nor do I think that it does but it would require that if the short form indictment is employed that the prosecution would have to give full particulars together with the indictment. In other words, I think the facts would have to be stated and this is the intention of the amendment. The facts would have to be stated fully in the indictment or else in some accompanying document that would set forth the facts.

Mr. Lanier Let me ask you this, under our present statutory law and jurisprudence and I would specifically refer to probably one of the first cases, *State vs. Barksdale*. Is it not the present law, that where the short form indictment or information is used that the defendant as a matter of right is entitled to a Bill of Particulars?

Mr. Gravel That's correct. In other words, he's entitled statutorily as a matter of right to a Bill of Particulars and this would constitutionalize that right. That's exactly what I'm trying to do.

Mr. Lanier Now, when you say "to be completely informed", as I understand the present jurisprudence, it says that you are required to state the date, time, place and manner in which the offense was committed. Is it your intention that the state would be required to furnish more than that information?

Mr. Gravel Absolutely, I think that's one of the big problems that we have now is that just giving that information and not other facts does not particularly and fully inform the defendant.

Mr. Lanier If you require more information, what specific additional information is it your intent to require as a result of this amendment?

Mr. Gravel Sufficient facts that would justify a basis for the essential elements, as set forth in the statute, of the offense.

Mr. Lanier No, but what I mean...if you furnish date, time, place and manner in which the offense was committed, what additional types of things would you want?

Mr. Gravel Well, it would depend on what you mean by "matter." "Matter" might very well encompass enough facts to justify a determination that the essential elements of the offense have occurred. I can't generalize on that.

Mr. Lanier I'm trying to get to this point. If I were an assistant D.A. and I was reading this in the new constitution, how would I know what I am required to furnish?

Mr. Gravel You would be required to furnish, Mr. Lanier, as you well know, sufficient facts—I've said this about three times---that would justify the conclusion that essential elements of the offense had been committed. In a negligent homicide case you would have to allege facts that would show that criminal negligence, and not just simple negligence, occurred.

Mr. Burns Mr. Gravel, as a result of the conversation, question and answers, between you and Mr. Lanier, this is the only thing that concerns me. Under our present law when the defense attorney asks for a Bill of Particulars, he enumerates and specifies in that request exactly the information that he wants. Now under your proposal, and I understand the purpose of it, who would determine whether a Bill of Information or an indictment was set forth with the necessary particularity? Would each case have to depend on the particular facts in that case, or would there be some standard? Who would set the standard, is what I'm getting at?

Mr. Gravel I don't think there's any doubt but that it is my intention by this proposed amendment

to require that there would be the same facts set forth either in the indictment, or Bill of Information, or in a statement of particulars, as would justify the conclusion that a crime had been committed. Mr. Burns, I don't think there's much question that you as a district attorney, Mr. Lanier as a former district attorney, and Mr. Burson know what I'm talking about. We're talking about those facts that are necessary to be alleged, either in a Bill of Particulars, if the short form indictment is used, or in a Bill of Information if the short form is not used, that would be adequate to constitute a crime.

Mr. Burns I'm not arguing against your amendment. I'm not questioning...I'm just sincere as to what facts would have to be disclosed in the Bill of Indictment or Bill of Information to meet the requirements of this particularity if you didn't give enough information, in other words. Would the defense attorney...could he get up in court and ask that the indictment or Bill of Information be dismissed, or would you as a defense attorney require the state to furnish more particularity?

Mr. Gravel Sufficient particulars that would constitute the offense and set forth the nature of the offense.

Mr. Anzalone Mr. Camille, a few minutes ago you told us what a short form indictment contained. Now, by your amendment I would assume that you are wishing to change this somewhat.

Mr. Gravel Well, it could be done in two ways: either the short form indictment would not be employed and used by the prosecutor where he would, say, come up with a Bill of Information that would set forth all of the facts as is done in the federal court, or it could be done by employing the short form indictment but requiring that a separate statement of particulars accompany that.

Mr. Anzalone Now, Mr. Camille, would you tell me how the indictment would read? You were able to tell me how the indictment read under the old law under your provision, because I would assume that it is detailed enough that we would know what to do. So tell me, if you can, how your new indictment will read.

Mr. Gravel Well, assuming that we don't use the short form...let's assume that we're talking about the case of negligent homicide so I can stay within the illustration. You would say that John Smith met his death as a result of the criminal negligence of Jack Brown, which criminal negligence consisted of his driving while intoxicated on the highways of this state at such and such a time and place. That would then inform the defendant a whole lot more about the criminal activity on which the prosecution was being based than to say that "AB" negligently killed "CD."

Mr. Anzalone That is all that your amendment does?

Mr. Gravel That's absolutely all that it's intended to do. To require....

Mr. Anzalone Are you sure that's all it does?

Mr. Gravel That's what I intend for it to do: that the nature and cause of the offense be particularly set forth in the charge or in the accompanying papers.

Mr. Berry Mr. Gravel, as I understand your amendment, you would be requiring everything that you would ordinarily get in a Bill of Particulars in your initial short form indictment or information, so as to prevent and obviate pre-trial motions. Is that right?

Mr. Gravel It would certainly tend to do that considerably, if the requirement was made. One

42nd Days Proceedings—September 6, 1973

other thing it would do in that regard too, Mr. Berry, is this: is that it would not require necessarily that the defendant, the person who is charged, go hire a lawyer in order to find out everything that has to be found out about the charge here. He at least would have before him at the time the charge was made the facts and circumstances of the alleged offense.

Mr. Berry It would have a tendency to lock the prosecution in within the scope?

Mr. Gravel Well, it would require the state when it is undertaking to prosecute somebody to have sufficient facts upon which a charge could be based. In ninety-nine instances out of a hundred those facts are within the control exclusively of the prosecuting attorney who either can file a Bill of Information or can in most instances get an indictment since he is the legal advisor to the grand jury.

[Laughter and a full delegation present and a quorum.]

Further Discussion

Mr. Tate Mr. Chairman, fellow delegates, I rise to oppose the Gravel amendment. I've been told I should speak more slowly and try to make more sense, but God punished me with not being able to, but I'll do my best. Let us say again that we all agree with Mr. Gravel's objective that by some means or another the defendant should have sufficient information with particularity to enable him to prepare his defense. There's no...absolutely in my opinion...should be no opposition to that aim. Unfortunately, and I repeat again, under the interpretation of what is "the nature and cause of the accusation against him" that refers to one piece of paper, the indictment or information that is typed up by a secretary at the behest of an attorney general...district attorney, or assistant district attorney, and filed and starts the proceedings. Now, mind you, Mr. Gravel, I think, fully and fairly informed you of the difference. Under the interpretation of the Supreme Court, wrong or right but for a hundred years, this has to give the essential facts. Now, the essential facts, for instance he said in the negligent homicide case, were "AB" negligently killed "CD". Chris Roy negligently or with intent killed Camille Gravel. Something like...no, I take it back. Nobody's listening. The lawyers laugh at my jokes. Why don't you? Thank you. A short form indictment just gives the facts. Somebody killed somebody. Now he himself, and he was very thorough, he said from now on you would have to say "he killed him with criminal negligence as a result of driving while intoxicated" and maybe the courts would say "at the corner of Highland Road and Nicholson Drive, etc." Now, let me give you the history of the short form indictment. When you have a long form indictment with all that particularity that can't be waived under our law, (in many states it can be and perhaps it should be, but under our interpretation of our constitution it can't be waived), that means if he puts it at the wrong crossroad, even though everybody knows this is the right crossroad...it might mean that--I'll be fair enough to say that it might not mean that--but if they left out the words "with criminal negligence"--it just said "with negligence" even though everybody knows he's on trial because of criminal negligence. That would mean the whole prosecution is knocked out even though there's been a fair trial and they come up on appeal and some bright judge notices that they left out that word. Now, I can't tell you that we can not help but be in sympathy with the general objective that the accused should be informed. But under the historical meaning of "the nature and cause of the accusation against him", that would mean that on this piece of paper, typed up at the very beginning of the prosecution, they'd have to state the particularity, and we don't know how much particularity. All, many facts that everybody knows,

if that thing was misspelled or left out of this piece of paper, the whole prosecution could be thrown out after a fair trial and upon appeal. I want to tell you the reason for the short form indictment is because the long form indictment is a lawyer's game. Even though everybody knows what he's charged with. The accused knows.

I want to say one other thing. There's difference between indictment...this is what starts it...and a Bill of Particulars. The Bill of Particulars enables the accused after the indictment to obtain the information, more precise information, than is on the indictment. As much as he ought to have, and in my opinion, in the future the legislature is going to give him more discovery, and it should. It should give him more discovery. But that is not the question we're asking. The question before us is we're going to freeze into the constitution a requirement that the indictment or the information, that piece of paper that's type up in the beginning of the transaction, has to be letter-perfect at the risk later on of some omission devastating the entire trial proceeding and appeal and conviction and making you start over again.

Further Discussion

Mr. Burson Mr. Chairman, fellow delegates, you know Mr. Gravel the other day said that the two best lobbies that we'd had at this convention were the D.A.'s lobby and the judges' lobby. I think we better add a third one to that list now, the criminal defense law lobby. If I was still practicing criminal defense law, I think that this language would be a dream. This would, more than anything I could imagine, transform criminal law from an attempt to determine the guilt or innocence of a party of a jury, into a legislative act. As Judge Tate told you, the genesis, the origin, of the short form indictment was to get away from the game over whether on that one piece of paper you could include everything that Mr. Gravel has in his mind when he says "with particularity". Now, we have to take his word about what he has in his mind, because we have not had a legislative committee study this thing and make a record as to whether or not they intend a criminal discovery bill to encompass finding out the list of witnesses that the state is going to have and so on. I agree with Judge Tate. I have long felt that there was room for a criminal discovery act in this state, but we ought to know in a criminal discovery act what can be discovered, and not leave it to vague terms such as "with particularity". Now I submit to you that Mr. Gravel's amendment does either one of two things: it either makes unconstitutional the short form indictment statute or it does not. If it does make it unconstitutional, then we're legislating in this convention and let's own up to it like a man. If it does not change the short form indictment statute, then I submit to you by his own argument it has no purpose and should be rejected therefore.

Question

Mr. Kilbourne Mr. Burson, I was interested in a remark made a while ago by Professor Berry, something to the effect that the prosecution would be locked in, in this bill, in this statement of these facts, these particulars in the indictment. I ask you if the prosecution is locked in, which I think Professor Berry is right, would it not be completely possible that, say, a murder indictment where some fact was erroneously stated, inadvertently omitted, that the whole indictment...the whole trial might be thrown out?

Mr. Burson Yes, sir. I agree with Professor Berry's interpretation on that score, too. I think it's just another example where we would be throwing out criminal prosecutions on technicalities rather than on the basis of whether or not "due process of law" in its historic meaning, and whether or not justice had been done in determining the guilt or innocence of the accused.

Further Discussion

Mr. Roy Mr. Chairman, ladies and gentlemen of the convention, I'm getting kind of up to here with two things: one is the pontification of some people and the other is the influence of the district attorneys in the convention, and the district attorneys sitting in the audience in this convention. Mr. Burson, for your information, if you'll just get the record of the vote, you will find that about eighty percent of the lawyers here voted on your, and for your, amendment. It's just not right to get up and make personal ad hominem arguments when we're dealing with principles of law. If we can't be intellectually honest in a convention like this, we'd just as soon fold up. We're not intellectually honest when we make the assertion that the people who are criminal defense lawyers are for a certain provision because they're going to make more money or because that's where their interest lies. Because Jim Derbes is not a criminal defense lawyer in my opinion. At least I don't think he does. Harmon Greve, I don't know how much he practices. These fellows voted for the Burson amendment. I'm not singling them out to disagree with them. I'm just saying that it's not right to keep getting up and always have a scapegoat when you really don't want to address yourself to the real issue at hand, which is whether we are going to say that an accused will not be told what evidence the D.A. has. We're not asking for that. We're asking that if the legislature says that the crime of murder is committed when you do something one, two, three, then when the man is charged, we think it ought to be stated that he committed murder by doing one, two, three. We're not asking them to give us anything that they have or they may not have. We're simply saying, "Tell us," under a section of the law where you're dealing with a crime that may be committed in several different ways, "tell us which way this man committed the crime." That's all. Now, with respect to the influence of the district attorneys, there's no question about it. I just happened to talk with some guys just now who thought Mr. Gravel's amendment was good, and they got the word from back in this seating arrangement up there and suddenly they've had to change. I'm not going to say who. I'm not privileged to disclose that. I am privileged to tell you that I worry about it. If anybody doesn't know what it's like to have to vote, well I can tell you, because I had the great fortune of having to cast the tie-breaking vote under circumstances like that. I just don't think it's right. We have given the district attorneys what they need to prosecute people. We don't have to give them the victims. We don't have to give them innocent victims of whatever they seek. They may be in good faith, but I've had enough of that little print-out that they sent out that's not logical either and doesn't make sense. Justice Tate said that you have to have a letter-perfect Bill of Information, and I can't disagree with him on that. The fact that he's on the Supreme Court doesn't make him right. In other words Justice Tate has told you that if you spell a word "seize" s-i-e-z-e instead of s-e-i-z-e that you would let a criminal off. That is not the law and he knows it. We're simply asking that you particularize. If you're going for a hundred dollars, I have the right to make you particularize. I have the right to say, "Tell me for what reason do I owe you the hundred dollars, and what did I sell you or what did I buy from you that you're entitled to collect." All we say is that you're going to send a man to prison for ninety-nine years, which you may do under armed robbery and for which a district attorney may charge a person on his own motion, on his own Bill of Information, let him say "These are the facts upon which this prosecution will be based, but I will not tell you what evidence I have." We're not asking for the district attorney to give us his evidence. We're asking for them to tell us, for what facts upon which he relies to charge and convict a person. I am for the amendment and I wish you would adopt it.

Chairman Henry in the Chair

Further Discussion

Mr. Drew Mr. Chairman, ladies and gentlemen of the convention, with all of the discussion we've had on this amendment, I hesitate to even get up here, but I think that I do have an obligation to the convention and to my constituents at home and to the rest of the people of the State of Louisiana. The one thing that I have not heard mentioned in this Constitutional Convention since the day it began in January is the term "law and order," and that is what the people of this state are interested in. It has been very prominent by its absence throughout this entire convention. Let me tell you, in answer to Mr. Roy's statement about who handled what type of crime, I served as assistant district attorney for two and a half years in the 1940's. Since 1949 I have been a criminal defense lawyer and a civil defense lawyer. Approximately forty percent of my practice is criminal practice. I violently oppose this amendment. Mr. Gravel and I will tell you why. Everything that they have told you, the proponents of this amendment have told you, that they want by virtue of putting this trap in the constitution can be acquired now by a Bill of Particulars. It can all be acquired by a Bill of Particulars. If you are not satisfied with the answer to your Bill of Particulars, under our Code of Criminal Procedure you have a right to object to the sufficiency of those answers, and ask the court to order them to furnish you additional information. If this amendment is adopted and put in the constitution, you have no recourse, ladies and gentlemen, it is not subject to the provisions of the Code of Criminal Procedure because it is a constitutional provision. What this amounts to is that if the prosecution in attempting to set up the initial basis for the case does not put every detail in there, there's no provision that defense counsel has to object to the sufficiency of the charge. He can wait until it winds up in a conviction and the man goes to the penitentiary, and then he can come out and say he was denied his constitutional rights because it was not "with particularity." What does particularity mean in this other amendment that everyone was so worried about? Look at the cases if you would as to what an intelligent waiver is. There are so many definitions in what has been held an intelligent waiver. Now leave it up to the courts to tell you what "particularity" is, and you'll empty Angola. As I said to begin with, this Constitutional Convention should take into consideration the will of the masses of this state and not go overboard on the rights of the individual defendants in criminal cases. I want them to have their just rights because I represent them. I see nothing wrong with the procedure that we have now as prescribed by our Code of Criminal Procedure, which is that if any change should be made, it should be made by statute, by amending the Code of Criminal Procedure and not by putting a trap, and ladies and gentlemen, that's all this is--- a trap to turn convicted criminals out of Angola. It has to be that the defense should have additional information and that it's possible we should be entitled to a little more information than the jurisprudence allows us, but that can be handled by statutes, ladies and gentlemen. I urge you to defeat this amendment because it is nothing more than a trap. I yield to questions.

Questions

Mr. Haynes Delegate Drew, I'm not a lawyer but this would clear up a lot of things in my thinking about this amendment. I remember a few years ago, the Johnny Jones case in Minden that involved Johnny Jones and Sonny Man Harris, wherein Mr. Johnny Jones was lynched and I think Mr. Sonny Man Harris escaped and went back to New Orleans somewhere to safety. Would this amendment have made it possible for the district attorney and the others involved in law enforcement in Webster Parish to have prosecuted the perpetrators of this crime?

42nd Days Proceedings—September 6, 1973

Mr. Drew Mr. Haynes, you have asked me something that I can tell you in great detail, because I was sworn in as assistant district attorney the day before that incident happened. I had grand jury investigation of the case, was unable to provide enough evidence to warrant an indictment of any type. The federal courts intervened. They indicted on less evidence than I was able to present to a state grand jury, and every defendant they indicted was acquitted because one of the defendants, Harris, who was not killed, took the stand in federal court in Shreveport and said four of the five defendants were not even present. I'm very familiar with that case and this would have added nothing to it.

Mr. Stinson Mr. Drew, if this amendment is beaten and you leave in "reasonably," don't you think that that is going in the future to prohibit filing a Bill of Particulars because it would be best not to have anything in there than have "reasonably inform him"? If you have that, it's going to be a question, instead of your right to a Bill of Particulars under the present law, it's going to be a question of whether or not "reasonable information" has been given. So....

Mr. Drew I don't agree with your statement, Mr. Stinson, that that would prohibit the filing of a Bill of Particulars, a motion for a Bill of Particulars. I don't think that "reasonably" is necessary. I'm sorry it's there, but I don't think it would prohibit me from filing a motion for a Bill of Particulars and getting additional information that I might need.

If there are no other questions, I sincerely hope that you will defeat this amendment.

Further Discussion

Mr. J. Jackson Ladies and gentlemen of the convention, Mr. Chairman, I'll try to be as brief as possible, possibly can. I rise in support of Mr. Gravel's amendment. It seems to me and I would imagine that, and I wasn't there, but I would imagine that when the founding fathers came up or when persons came up with the concept that a man should be innocent until proven guilty that we probably heard the same kinds of arguments... that we're going to let everybody out of the stockyards; we're going to deny the protection to our citizens. I want to suggest to you that it's almost like history repeating itself. I want to suggest.... what's so different between three words of "precisely, reasonable, and particularly"? It's a matter of a choice of words, except that the word "reasonably," as I appreciate it, is less than what we have in our present constitution. I think and I'm for it, and let me go on record for the public, to say to the delegates that no one condones criminal action---no one. It disturbs me that the more and more we attempt to discuss rationally the rights of a citizen that we make the presumption that if a man is charged he is guilty. There is a difference between being a criminal defendant and a defendant in criminal court. I'm just so scared that we're moving so far in terms of reacting to the crime wave that we're getting away from the basic protection of the rights of "a person is presumed innocent until he is proven guilty." On the other side of the coin, about the technicalities that let criminal escape, I think Justice Tate mentioned that in the technicalities it didn't let the criminal escape.... just meant that you go back and have a trial again. There is not going to be any absolute law whatsoever than can provide and cover all loopholes. But it seems to me under the presumption that a man is innocent until proven guilty that society balances out much better under the Gravel amendment. I would like to pose the question, what about the people in parish prisons throughout this state and who have just been charged with a Bill of Information, and they have not gone to trial until this very date, from four to eight or nine months? Under our present system what about people being charged on Bills of Information, limited without a kind of particulars... because of political beliefs. I want to suggest

to you that the kind of baggage that is being presented to you here is not really valid. The matter of law, and I'm not a lawyer, but the whole matter of law and judicial interpretation and court action is based on technicalities. That's what law is all about. When you try a case, and lawyers know, raising a technicality... even district attorneys use that. So I don't see how we're going to say that we're so hung up on the fact that it offers a technicality. I want to suggest to you that this amendment as proposed by Mr. Gravel just maintains with some reasonable or precise... the presumption that every person that is accused is innocent until proven guilty, no matter if you knew and you saw him. That doesn't deny the judicial process, but you should not.... What about the man that is charged on circumstantial evidence? Is he to be denied the particularity of what he is being charged with? We talk about this whole presumption of innocent until proven guilty. I would ask that you weigh that. I would also ask that you weigh that there's no law that we can pass or no constitution that's going to cover all loopholes, but that through the judicial process it provides that criminals will not escape. For those who are talking about letting criminals out of Angola, and the crime rate, I am suggesting to you that criminals are being processed, being convicted, sent to prison and the crime rate hasn't changed that much. I think that we ought to try to keep it in perspective, and I'm saying we're dangerously treading on a thin line between law and order and the presumption of innocent until guilty, without necessarily favoring criminals or not. We're talking about the basic rights of an accused person. So I would ask that you weigh that.

Mr. Chairman, if there are no further speakers...

Mr. Henry There is another gentleman on the list and you have a gentleman who wants to ask you a question, Representative Jackson.

Would you yield to a question from Mr. Arnette?

Question

Mr. Arnette Johnny, this will be a quick question. Are you aware that under the Code of Criminal Procedure at present all you need to do to get the particulars of any crime that you are accused of is just ask for a Bill of Particulars?

Mr. J. Jackson Mr. Arnette, as I appreciate these three amendments, and this one here talking about the Bill of Particulars... we were talking about constitutionalizing the rights of an accused. We presently... I'm just saying that that same argument could hold for the various other amendments, prior to the Burson amendment because "reasonably" says through the Bill of Particulars you can do it. I think if we're going to constitutionalize it and we're going to get away from the ill effects that result as a matter of a person being accused without fully knowing and that's his right to know, whether you get it or not.

Mr. Arnette Well, Johnny, why don't you constitutionalize...

Mr. Henry Mr. Arnette, he's exceeded his time.

Further Discussion

Mr. A. Jackson Mr. Chairman, ladies and gentlemen, I simply want to see if I can't return us back to what we were trying to achieve by way of this section. We were trying to provide here for a basic right that we think ought to be afforded to individuals. There was no attempt ever on the part of the committee to allow us to increase of crime in this state. There was never an attempt on the part of the committee to impede criminal prosecution in this state, but we looked at all of the massive powers that we had accorded to all of the other branches of government, and we felt that we ought to have some kind of a constitution some guarantee for individuals who are

citizens of this state, individuals who walk down the street, individuals who are arrested every day, individuals who are innocent who are arrested every day. We thought that we ought to provide for them. Now, I think Delegate Drew has brought it all out. In the open. I think he has. I think he said to you that nobody has raised the issue of law and order. Well, you know one of the problems we have in this country today is the law and order syndrome that has pervaded all of the thought process of this nation and of this state. The rights of individuals are not only abridged but the rights of individuals are threatened on almost every hand. So I ask law and order for whom? Law and order for what? Where I come from I hear a lot of people talking about they are representing their district. I represent my district, and I say to you that in my district when they say law and order, we say it's a code word. It's a code phrase. It means law and order for black people, and it means a license for police to do whatever they want to to people who are powerless. That's what law and order means to the people in my district. So when people yell about representing their district, I have to represent mine, too. So I say to you that the law and order syndrome is not the issue, but I can understand how it clouds the issue because it's so much a part of what we think and what we believe in this country today. We can sit here and we can be unmindful of it if we want to. You can think that when Delegate Drew talks about law and order that he's only talking about black people. Sooner or later they're going to knock on your door, sooner or later you are going to be enslaved; sooner or later you're going to be arrested; sooner or later you're going to have your freedoms abridged and then you're going to know what law and order really means in this country. I'm disturbed. I'm disturbed that we can't address ourselves to the fundamental issue which is that an individual ought to have some guarantees. He ought to have some rights. It ought not to be abridged simply because we are afraid to allow people justice and dignity in this country.

Further Discussion

Mr. Gauthier Mr. Chairman, members of the delegation, I rise in opposition to the Gravel amendment. I would like to preface my remarks with a couple of words on what I feel has been going on for the past few days. I have sat at my desk and tried to intelligently vote on each amendment as it comes before us, regardless of who was for it or who was against it. I listened intently any time a group was for it or against it. I did not cast my vote because they were for it or because they were against it. Yet a few speakers before us has suddenly labeled this whole group as being pro one group or con another group. I believe this is wrong. I think each and every member of this delegation....

Point of Order

Mr. Stovall Point of order, Mr. Chairman, is that we had a ruling when Mr. Casey was in the Chair a few moments ago that we would try to stay on the substance of the various amendments that were being presented, rather than dealing in generalizations about what has been done previously. That's simply my point, that we should remain on the substance of the amendment.

Ruling of the Chair

Mr. Henry Well, Reverend Stovall, I was not apparently in the Convention Hall when the ruling was made, and I'm sure if Mr. Casey made a ruling he was correct. I would ask and invite and insist members who speak to speak on the amendment and let it go at that. We've got enough on that to worry about without getting into everything in the world that's been created. Proceed.

Further Discussion

Mr. Gauthier Mr. Chairman, in speaking directly to this amendment, let me say that there has been numerous occasions when I have supported the committee's stand. On other occasions I have not and in the future I will not when I feel they are being unreasonable. In this particular case, the Burson amendment, to me, put back in what was reasonable; the committee had been unreasonable. The Gravel amendment, if adopted, would simply do what the committee had done. I would suggest to you, this is not what we want to do. I continue to urge each and everyone of you delegates: do not let the streamlining or the type of words you heard up here alleging that you belong to this group or that group interrupt your train of thought and to continue to cast your vote as you feel it belongs and not as any or one group would have it cast.

Further Discussion

Mr. E. J. Landry Mr. Chairman, ladies and gentlemen of the convention, I just wonder if at this particular time, I could get your attention. I've paid each one of you off before I came up here. By that I mean this. I have listened to you, I have listened to you faithfully, diligently, and now I'm asking again for the favor that you gave me sometime ago. It takes a lot of courage for me, at my age, to muster up the energy to appear before you at this time, but I did, I'm here. I'm asking you not to be weary. Years ago, Ted Gormley taught me a tremendous lesson very near this place where we are meeting now. He said the most important thing are being weary when you are weary. I ran the five miles out to the Standard Oil long distance races. He taught me the lesson of second wind. He said there comes a time in your life when you get a second wind. I got my second wind and I got going again and I got my energy. Ladies and gentlemen of this convention, I've heard the lawyers talk, and really and truly I want to hear more layman talk. I want more reactions from ordinary people, like myself, who don't know the law. I'm going to tell you that I can appreciate this amendment. I know what it means. I know what it means to be informed with particulars because I would not be here today if that hadn't happened to me. I wasn't a criminal but power surrounded me and because of the fact that I exercised my civil rights at one time, I came near being crucified, but because of the fact that I was protected with human rights, with particular rights spelled out in law telling me exactly what I had to defend myself against. I am here to defend this amendment will all of the vigor that I have. Ladies and gentlemen to this convention, if there is no other one thing that I could help put into this constitution, this one thing would protect the liberty and the dignity of the people of Louisiana. I am here to plead with you to put this into the constitution because that's why I came here. Thank you for doing it.

Further Discussion

Mr. Stagg Mr. Chairman and fellow delegates, I am not a criminal defense lawyer; therefore, I am not a member of that lobby. I am not now, nor have I ever been, a district attorney or assistant district attorney. Only on one occasion in twenty-five years of law practice have I had the opportunity to defend a man charged with a capital crime and that occurred some seven years ago. The case took six years to dispose of. It occurred in the area where Chairman Jackson lives and it was a charge of rape against a black man and the victim was a white high school girl. It was not a popular thing to do, but the court appointed me to defend the case, and I didn't know my way to first base about defending a criminal case...or man or charge of a capital crime. But I did learn right off from the Code of Civil Procedure that I had a number of defense motions available to me as well as to him, and they were used. We first moved to quash the indictment. Then we moved for motions of Bill of Particulars. Then we moved to separate

these defendants one from the other. We did everything that the code of civil or criminal procedure allows in this state. Because they were available, the district attorney had to comply with them. This is a safeguard. These are the safeguards that presently exist in this state. Any lawyer, if I can do it, any lawyer can do it, and every man charged with a serious crime is required under the laws of this nation to be furnished with an attorney for his defense if he can not afford to hire one. With a great deal of respect for Mr. Landry and with a great deal of respect for those others who have spoken at this microphone, I urge the defeat of the Gravel amendment. It is not necessary. There are means available in the statutes for the protection of all. Mr. Chairman, if there are no further speakers on the list, I move the previous question on the Gravel amendment.

[Motion for Previous Question withdrawn.]

Further Discussion

Mr. Berry Mr. Chairman and fellow delegates, I rise to speak in behalf of the Gravel amendment. Now the Gravel amendment, as I see it, would further expedite and speed up the whole criminal procedure. As you lawyers know, that under these abbreviated indictments and Bills of Information—it's only succinct statement of the crime. You have come back into court to get a Bill of Particulars, that takes time. Then you have to argue before the judge as to whether or not your Bill of Particulars gives you all of the facts that you are entitled to, whether or not the criminal defendant knows what he is charged with so as to prepare his defense. Under the Gravel amendment you would be getting all of that information initially. Whereby it would facilitate the trial and will speed the whole procedure through the criminal court. There are no doubts in my mind as to the use of the Code of Criminal Procedure the legislature could easily change the requirement of the Bill of Particulars now while this amendment would make it an organic law or as part of the constitution and, therefore, would not be subject to the whim of the caprice of the legislature. I strongly urge that the Gravel amendment be adopted.

Further Discussion

Mr. Landrum I've tried to be quiet as I listen to the conversation about the press, which is basic in this society of ours. Sometimes it's just hard to just sit down and listen to things and not to express an opinion. I've heard about Angola; nothing would please me more than to see Angola absolutely clear of prisoners. I wish we had a society that we wouldn't even have to have places like Angola. I also noticed that we are really coming down to what this convention is really all about; that is the basic rights of people. Unless we are able to discuss these rights, we are not going to really solve any problems. I have sat here, and I have thought about how far mankind could have been, could be right now, probably the many diseases that plague mankind today. We probably would not even been bothered about cancer and the many other diseases that we are concerned about today. If we could have rid this nation of one thing, that one disease that plagues us all, and that is disease of discrimination.

Mr. Henry Wait just a minute, Reverend Landrum. I'm going to go ahead and say what's already been said on this; speak to the amendment directly, please, sir. Let's don't get all far afield on this, we are going to have this convention in blows here shortly. Now be direct and speak directly to the amendment, please, Reverend Landrum.

Mr. Landrum Mr. Chairman, I'm not a country boy, so I don't know about fishing and rabbits and trees and all of that, and I have sit and I've heard all of that. I don't know about any of that, I have to speak what I feel, and I think I am speaking to the question, to the amendment.

Mr. Henry Well, there is some disagreement then between your opinion of direct and my opinion of direct...

Mr. Landrum Well, I have been at disagreement with some people ever since I've been here. I believe this: that if we are concerned about protecting the rights of individuals, then we have to try to do everything possible to protect the rights of individuals. You call about lawyers... no I'm not a lawyer, but I have seen enough happen in courthouses with lawyers, with district attorneys that you count cases somebody mentioned number—the other day—like a pitcher would count how many games he won pitching ball or how many home runs you have made. That's what I've heard in the courthouse, but you are talking about sending people to Angola. You don't know nothing about Angola and yet you can sit down and talk about fifteen years, or I won this many cases or that many cases. I do believe I am talking to the issue. I intend to talk further on it. I support this amendment.

Further Discussion

Mr. Stinson Mr. Chairman, fellow members, I wouldn't take your time if I could have asked a question of Mr. Staggs. My question was, this man that you worked for and after six years cleared him, freed him, you said if you have a good lawyer, you can do it will Bill of Particulars. I have an idea that that man though stayed in jail for six years while Mr. Staggs was freeing him. Now you know six years is a long time. I don't ask Mr. Staggs wasn't it a fact that I'm sure that it was, that that defendant stayed in jail for six years while Mr. Staggs, who had never heard a criminal case, was trying to learn something about criminal law. Now that is not justice, I don't think. I want you to know that from a Bill of Rights we are not supposed to be here protecting the district attorney's office; they've got the protection. It is the individual, the common everyday person that walks down the street and is picked up and arrested; he should know what he is charged with. I want to tell you a lot of you say you have never been arrested. Well I was supposedly arrested once and the state policeman, I asked him a question when was he going to let the traffic by, there was a wreck and he says, "You are under arrest; I'm going to handcuff you and put you in my car." I said, "That will be the last arrest you will ever make," and I sort of told a story. You know as a legislator you are exempt from arrest. I used to be, but at that time I wasn't, and I asked one question. I said, "Do you make it a habit arresting members of the legislature?" I didn't think I was. He said, "No, sir, I apologize. Will you please go and I'll let you pass through." Now that's not justice. If I hadn't raised that one point, I would have been handcuffed and hauled off to Opelousas, which is in the Lake Parish area. Mr. Burson would have been prosecuting me for interfering with the state policeman performing his duties. I was as innocent as most everybody else is when they are often times arrested, a lot of people. But I say in this case, and as I said it first, Mr. Staggs, when you say "reasonably" in there, I don't think you can come into court with a Bill of Particulars and get particulars because you are only going to say you have to reasonably tell him what the charge is. I would rather not have anything in there than "reasonably". I would rather have it delete "precisely" or "in particular" or anything would be better. This "reasonably" is going to ruin the rights of the people, and I don't think that the court is going to allow you a Bill of Particulars. I still say you are entitled to know what you are charged with, the innocent person as well as that one that might later be found to be guilty. If we can't protect the everyday citizens and guarantee his rights, that is just as important as protecting a criminal. I say one innocent person, my book, I think a lot more important, his rights, than what maybe ten or fifteen or twenty criminals, really criminals. We

have got to think of the individual, the innocent person that doesn't know how to protect himself, never been involved and can become involved. I ask you, let's pass this amendment. If we don't as far as I'm concerned, I would rather have the whole thing knocked down.

Questions

Mr. Burson Mr. Stinson, do you think that the way to provide for the rights of innocent persons is to make it impossible to administer the system of criminal justice?

Mr. Stinson Mr. Burson, if that wasn't so ridiculous, I'd answer your question.

Mr. Burson Well....

Mr. Stinson We have done everything to give the district attorney, you even have special investigators—I don't know how many you have in Baton Rouge—we authorized that. We increased your pay. The Sheriff's department has had to help you, the city police and everybody with one poor little innocent fellow that has nobody to help him unless the court can appoint a man, an outstanding lawyer—if he had been appointed for a civil case, it would have been fine appoint a man who had never had a criminal case and at that time a capital punishment. Now if that's justice, that poor fellow didn't get it....

Mr. Burson Am I to assume that my ridiculous objections are now added to the frivolous objections to the committee proposal that other uninformed delegates have been making all afternoon....

[Previous question ordered.]

Closing

Mr. Grave Mr. Chairman, ladies and gentlemen of the convention, I think that this matter has been rather fully covered. I do believe that the points have been made which justify your consideration. I want all of you to keep in mind that this convention already has provided that a district attorney or his designated assistant shall have charge of every criminal prosecution by the state, shall be the representative of the state in his district before the grand jury and it's legal advisor. That means that exclusively, the district attorney and the district attorney as the advisor of the grand jury with the grand jury, has complete say-so over criminal charges that are made against citizens of the State of Louisiana in any serious...No, I won't yield, Mr. Burson...in any serious offense. The district attorneys make from thirty to thirty-nine thousand dollars a year. They've got investigators, they've got secretaries, they've got staffs, they've got lawyers, they've got assistants to help work for them. Is it too much to ask that in the performance of their duties...I'm talking about that same secretary that Justice Tate was talking about; we'll get to her again in just a moment. What I'm saying to you and Mr. Burson you can vibrate all you want to—I'm saying that is it too much to ask that the prosecution arm of the State of Louisiana inform its citizens fully with respect to charges that are pending against them, factually. Is that too much to ask in this constitution? Justice Tate says, "Let's don't monkey around with this because after all we may have to reverse some case because a secretary filled out this Bill of Indictment, or filled out this Bill of Information, just a piece of paper. A piece of paper that permits the law enforcement officials of the State of Louisiana to come arrest you, put you in jail and require you to test the solvency of your entire lifetime, requires you to hire a lawyer, requires you to get whatever legal assistance you can, but shouldn't that piece of paper say why you were arrested, why you've got to submit to bail, why you are going to be charged, why you are going to be prosecuted? Is that too much to ask of the State

of Louisiana constitutionally? A piece of paper, a piece of paper that might deprive a man of his liberty and might even deprive him of his life. Is it too much to ask of the prosecution arm to the State of Louisiana that the facts be set forth in that charge that will justify that kind of action by the state? That's all that this is all about. All this amendment does, ladies and gentlemen, all that it does is to say in simple language that before you are arrested, before you are prosecuted, you have to be told with particularity what were the facts on which this charge has been made, what was the nature of the offense. Is that too much to ask? We've written a lot so far in the legislative article; we've written a lot in the judiciary article; we've written a lot in the executive article. Now to quote from the title of a book written by a great southern governor, "Now what about the people?". This Bill of Rights is not a prosecutor's manual, this Bill of Rights that we are trying to pass here is one that will accord to the citizens of the State of Louisiana the right to be dealt with fairly and justly. If their lives and their property are going to be endangered, let them know why at the very beginning....

[Record vote ordered. Amendment rejected:
53-62. Motion to reconsider tabled.]

Announcements [1 Journal 441]

[Rules Suspended to allow the Executive Committee to meet. Adjournment to 9 o'clock a.m., Friday, September 7, 1973.]

43rd Days Proceedings—September 7, 1973

Friday, September 7, 1973

ROLL CALL

[Mr. Stinson present and Mr. Staggs absent.]

PRAYER

Mr. De Bileux Almighty God and Father of us all, we thank Thee again for the privilege of gathering here. We hope that our service today will be to Thy liking and will. We ask that You give us the wisdom, the grace to do the job as You think we ought to do it. Make us be charitable to one another in our remarks and our words and our actions. We ask all of this in the name of Jesus our Savior. Amen

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

Personal Privilege

Mr. A. Jackson Mr. Chairman, ladies and gentlemen, as Chairman of the Committee on Bill of Rights and Elections, I want to express my appreciation for the committee for the full consideration that you are giving to the sections that we have proposed, and I want to tell you that the committee, again, appreciates the wisdom and the genius of this body as it relates to the sections before you. I think up to this point we have done a very fine job with the Declaration of Rights Article, and the committee is not distressed nor exasperated over the proliferation of amendments. But I do think that it's in the interest of this body and of this state that I should say that on yesterday we did arrive at a point where everybody was yelling and shouting at each other, including myself. I want to apologize to the body for my ill-considered remarks because they were not germane and didn't add anything to the consideration before us. I think that is also true of a lot of other remarks that were made from this place. As the chairman of this committee, I have the responsibility, I think, to say to all of us that I think that if we are going to write the kind of constitution that's going to be in the interests of the people of this state, that it behooves all of us, members of this committee and members of committees that will follow, to try and give our full attention to what is before us and what is in the interest of this state. It's not a white issue, it's not a black issue, it's not a red issue, not is it a brown issue. It's a people's issue. It's the people of Louisiana that we are concerned about. I think to do that that we would leave the shouting matches for the wrestling matches on Wednesday night. Somebody said we have them here all day, but I think that this is not an appropriate place for us to take out our own personal feelings on other delegates who are working here to try and produce a set of organic law that will guide and direct this state. So I would ask, as the chairman of this committee that we would again return to the business before us, and with the kind of precise and calm deliberation to give the people of this state a document that will enable them to usher in a whole new creative atmosphere that will not only be humane and just, but that will insure a secure quality of life for all of the people of this state. Thank you so much, and we ask for your consideration again this morning.

Personal Privilege

Mr. Staggs Mr. Chairman and fellow delegates, when I was last at this microphone yesterday, I described a criminal case about which I said I had been involved for six years. Mr. Stinson's question was not answered, so he took the microphone and he stated that the court system gave to the defendant I was representing, a lawyer who had never tried a criminal case. Well, that was erroneous. What I did say was that I had never defended a capital

criminal case; that is, a man whose life was in jeopardy. Yet, that man, after all my efforts, stayed in jail for six years. Well, on the seventeenth of September, 1965, to September 17, which is Monday week of 1973, that man is still in jail except that he is now in Angola instead of in Caddo Parish because after a trial by jury, he and his codefendants were found guilty of the crime with which they were charged. There were three trips to the Louisiana Supreme Court by his appointed defense counsel. There was one application for writs to the United States Supreme Court which was successful, and by means of which the Louisiana conviction and the action of the Louisiana Supreme Court was reversed by the United States Supreme Court, and a new trial was ordered because of the deficiencies of the trial they had received in the beginning. The point I'm making is that what Mr. Stinson might have believed that man had less than justice, it is my contention that he got the fullest measure of justice which our system can provide, and that is where the system is deficient. The last time I came to this microphone I told you, on one previous occasion, we were talking about a public defender system in this state. Mr. Gravel, yesterday, made a very dramatic speech, wherein he talked about the power of the district attorney and his numerous assistants and his numerous investigators. He asked, "Couldn't we do more?" Later in this day, you will have the opportunity to talk again about the public defender system for this state which will instill into the criminal justice system a defense system at least somewhere in the same ballpark with the prosecution system. This is what the case of State v. Anderson did for me; it taught a lawyer who had not had a great interest in criminal justice to have a sharper interest in the system of the delivery of criminal justice, that where that system was deficient, how it could be bettered. That's where the conversation itself can make a massive contribution to the Louisiana system of criminal justice, is to try in some measure as we can to place into the scale of justice something in the equivalent of defense to match that of the prosecution. Yes, Mr. Stinson had told you the whole story, he would have told you where my client is now, but why he is there, and of the scale of the efforts that were made to prevent him from being faced with the electric chair. He is no longer faced with that problem, but he is still in jail.

Personal Privilege

Mr. Stinson Just one second. Now, Mr. Staggs, if you had listened correctly to me yesterday, I was not just telling your efforts. I merely said that if they had set forth in detail, you would not have had to do so much work to try to get it. That was the point. I had no way of knowing where your client was at the present time. I tried to find out. That one point that you would have been told is that if it had been set forth in particularity so you could see, but you had to work and work to get it.

PETITIONS, MEMORIALS, AND COMMUNICATIONS

[Mr. Stinson 444]

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Poynter Committee Proposal No. 25, by Delegate Jackson, Chairman on behalf of the Committee on Bill of Rights, which is a substitute for Committee Proposal No. 2, by the same delegate on behalf of the committee.

A proposal to provide a Preamble and a Declaration of Rights to the constitution.

The status of the proposal at this time is that the convention had adopted the proposed Preamble, had adopted Sections 1 through 6 as amended, has voted to delete, at the present time, Section 7 and Section 8 from the proposal. It has adopted as amended Sections 9, 10, and 11, and presently has under consideration Section 12, which at this juncture

Mr. [unclear] stated:

Amendment

Mr. Poynter The next amendment is sent up by Delegate Kelly and Jack. Amendment No. 1. On Page 4, line 15, delete Amendment No. 1 proposed by Delegate Burson and adopted by the convention on September 6, 1973.

Mr. Chairman, I might say there has been some question as to the full implication of the amendment. On basic interpretation of the amendatory process, the effect of this would be to delete any reference to the word either "precisely" or "reasonably" so that the portion of the sentence would read, "the accused shall be informed." The present word is "reasonably" which was added after taking out the word "precisely" by the amendment proposed by Delegate Burson. The effect of this amendment, by deleting the word "reasonably," in effect, would be to have neither word there.

Explanation

Mr. Kelly Mr. Chairman and ladies and gentlemen of the convention, this has been kicked around quite a bit and I'm not going to take a great deal of your time on it. First, this amendment would simply remove the word "reasonable" which has been inserted. . . On line 15 of page 4, it presently reads, "shall be reasonably informed of the nature and cause of the accusation against him." This amendment will do nothing more than delete Delegate Burson's injection of "reasonable" in there. Now, I might say that we're not trying through this amendment, and it's my understanding from the Clerk that this will not restore the word "precisely." We're not trying to put "particularly," "completely," or anything else. What I think we have done, at this particular point, is reduce the rights of the individual in this particular case by putting "reasonably informed." I'd like to refer you to Article I, Section 10, of the 1921 Constitution, and this is what it reads: "In all criminal prosecutions, the accused shall be informed of the nature and cause of the accusation against him." Now, that's the law that we've been operating under, and that's the law, I think, that if we are going to do anything, we are going to continue operating under that particular language. We know what it means. I might add that this is not, by way of introduction of this amendment, has no intention of trying to write free trial discovery devices in criminal cases into the constitution. It's been in the constitution, I assume, since 1921. The convention has apparently emphasized, over the past day or two, that they do not want to write discovery devices in criminal cases into the constitution, and this is a matter that can be left to the legislature. All this does, it simply says what I think we want to say. It says, "In all criminal prosecutions, the accused shall be informed of the nature." We're not going to say he is going to be precisely informed, reasonably informed . . . I meant you are either informed or you're not informed, so I submit this to you.

Questions

Mr. Tate Mr. Kelly, in restoring the language of the previous version, from the debate yesterday, I do not understand you to mean to reinstate the very technical jurisprudence under that language that said the Bill of Information or the indictment had to contain a certain amount of details that couldn't be cured. Is that . . .

Mr. Kelly And, too, that's not the intention.

Mr. Tate It's not the intention to reinstate that jurisprudence?

Mr. Kelly That's correct.

Mr. Roemer Delegate Kelly, if I understand what you're trying to do, you are trying to get around a similar incident to saying like "reasonably

accurate," what does that mean to you, "reasonably accurate"?

Mr. Kelly Well, of course, buddy, that's less than accurate, that's for sure.

Mr. Roemer That's exactly right, so you are saying that "reasonably informed" is less than informed. Isn't that what you are trying to say?

Mr. Kelly That's what we are trying to get around.

Mr. Gravel Mr. Kelly, as I understand your amendment, it would, of course, delete the amendment of Mr. Burson that was adopted yesterday. Now, if we vote in favor of your amendment, just as a point of clarity I'd like to have this determined, in favor of your amendment, it would restore, would it not, the word "precisely" to the place where it was before the Burson amendment was adopted?

Mr. Kelly Now, I discussed this, Mr. Gravel, with Mr. Poynter on this particular point. I am informed by the Clerk that it will not. In other words, if my amendment passes, the language on line 15 of page 4 will now read, "shall be informed." It will not restore the word "precisely."

Mr. Gravel Well, this is one of the very few times, I guess, in my life that I have disagreed with Mr. Poynter, but I think if we delete the Burson amendment, unless I'm not clear on what he provided, that we are then reinstating the committee language. I would suggest as a technical matter, and in an abundance of precaution, and in order to be fair, that we add to your amendment, Amendment No. 2, which would then delete the word "precisely" after the restoration of the language that was deleted by the Burson amendment. I think that may be necessary.

Mr. Kelly I have no objection to that, and I meant if the convention is willing to do that, well, that's fine.

Mr. Gravel Mr. Chairman, may I ask for a ruling from the Chair? Then, one way or the other we can be sure what we are doing here because I do have some confusion about it. If there is a clear ruling and that's what the result of it will be, then, okay. Either we have to have a clear ruling from the Chair, in my judgment, or we have to have an Amendment No. 2 to accomplish what Mr. Kelly wants to do.

Mr. Henry Why don't I just rule? I'm going to rule that we'll withdraw the amendment and we'll make the change. There is nothing wrong with it, but that will . . .

Point of Order

Mr. Jenkins Point of order, Mr. Chairman. Wouldn't we be setting a dangerous precedent by presuming now that a clearly established rule of parliamentary procedure is not the rule, and that we have to make such an amendment as Mr. Gravel suggests? When we take off an amendment, it's standard parliamentary procedure that it does not reinstate the former language. If we start thinking that we have to do that, I see in the future all sorts of dangers that might arise. Now, there is no doubt about Mr. Poynter's interpretation of this procedure, is there?

Mr. Henry There is no doubt about Mr. Poynter's interpretation of this or most any other thing, but I think it will clear up everybody's mind to go ahead and withdraw it and resubmit the amendment, Mr. Jenkins.

[Amendment withdrawn.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Kelly].

43rd Days Proceedings—September 7, 1973

Page 4, line 15, delete Amendment No. 1 proposed by Delegate Burson and adopted by the convention on September 6, 1973, and on page 4, line 15, after the word "shall be" strike out the word "reasonably." Strike out the word "precisely," excuse me.

Explanation

Mr. Kelly Well, I think everyone understands the intent of the amendment, and the only other thing that I have to add is that I have talked with Mr. Burson, who was the author of the amendment that inserted the word "reasonably," and he says he has no objection to this particular amendment. It is my understanding from talking with Mr. Stinson and Mr. Roy, and I assume they have polled the Committee on the Bill of Rights, that the committee has no objection to it. I have nothing more to add.

Point of Order

Mr. Deshotels Mr. Chairman, I raise a point of order, please. My question to the Chair is would not Amendment No. 1, I'm not talking about Amendment No. 2, but Amendment No. 1, would it not be a reconsideration of Mr. Jack Burson's amendment?

Mr. Henry Not at all, Mr. Deshotels, because it does not accomplish the same thing as did the Burson amendment.

Mr. Deshotels But, Mr. Chairman, doesn't it accomplish the same thing that would have been accomplished if his amendment had failed?

Mr. Henry Not in my judgment, no, sir.

Mr. Deshotels Well, the word "precisely," you ruled would still be there.

Point of Information

Mr. Jack I want to state in the first part of the question, I think Mr. Poynter is correct, but if we are going to do what we are getting ready to do now, we are sure enough going to be in a mess. If we are going to change this instead of going right like Mr. Burson's and my amendment, I suggest we take out the whole sentence, take out all words beginning on line 14 with the words "in all criminal prosecutions," and go through the period on sixteen and insert therein the following words, "in all criminal prosecutions, the accused shall be informed of the nature and cause of the accusation against him." That way, you spell it out--third grade; everybody should get it. How about that, Mr. Poynter?

Mr. Poynter Mr. Jack and members of the convention, I, frankly, my understanding would be that the amendment as originally drawn would have had the effect of doing what the author wanted to do. I, personally, have no problems and an abundance of clarity and assurance to the delegates of drafting it any way that you all are most satisfied that you have said what you want to say. But a set of amendments, in essence, constitutes nothing more than a set of instructions to me and to the enrolling room, so that when this proposal is in fact enrolled, your intentions and desires will be effected. I can assure you that either the way it was drawn the first time or the way now that Mr. Kelly has amended it as suggested by Mr. Gravel, or if you prefer, the way that Mr. Jack has suggested, all three will instruct me, if I understood Mr. Jack correctly, anyway, to do the same thing: that is, namely, have line 15 read "shall be informed of the nature and cause of the . . . I'm satisfied, at least by the first two, and if I understood Mr. Jack correctly, by his method that the effect would all be the same. Now, I didn't hear everything that Mr. Jack said.

Point of Information

Mr. Leigh As a point in connection with the discussion, would it be in order to frame the amendment

as an amendment to Mr. Burson's amendment so as to delete from that the word "reasonably"?

Mr. Henry No, sir, it would not be appropriate, Mr. Leigh.

[Inaudible comment]

Closing

Mr. Burson Mr. Chairman, ladies and gentlemen of the convention, I don't want to take your time up unnecessarily. I simply wanted to indicate that I'm in favor of this amendment because it would do what Mr. Kelly said it would do, which would be to leave the law in the state that it is under the present constitution and require that a defendant be informed of the nature and cause of the charge against him. We want to try and make the record clear, however, that we would like to try and get away from the hypertechnical jurisprudence that exists at the present time and we would encourage, if that does any good, the legislature to look at this area. There are some changes that could be made in the code [code] of criminal procedure and in the statutes in general to insure, statutorily, better information to the defendant. Now, of course, the virtue of doing that by statute rather than by the constitution is, if something doesn't work, then you can come back and change it--you don't have to submit a constitutional amendment. But, basically, this amendment will leave the law in the condition that it is in at the present time and the legislature will be free to move from there to do what, in its wisdom, it deems appropriate. So I support the amendment and urge you to accept it.

Questions

Mr. Pugh You are not suggesting that it wouldn't be appropriate for this Constitutional Convention to charge the legislature with the responsibility of drafting criminal discovery statutes, are you?

Mr. Burson Not at all. In fact, Mr. Pugh, in our office we have started a procedure as of this year, in connection with the Twenty-seventh Judicial District Court, of criminal pre-trials wherein we have rather full discovery. I think that a lot could be done in the system of criminal justice in this direction, which would help everybody concerned.

Mr. Pugh Well, the reason I asked is I was going to have an amendment providing for criminal discovery to submit to this constitution and he said a while ago that he believed the consensus was against it being in the constitution, and that surprised me.

Mr. Burson The only thing is, I think you would want to simply leave the terms and conditions of that to the legislature rather than trying to set them out in the constitution.

Mr. Pugh Do you have in mind, perhaps, tracking the Jencks Act?

Mr. Burson Sir?

Mr. Pugh Would you have in mind that the legislature might adopt the Jencks Act in Louisiana?

Mr. Burson Frankly, I'm not familiar with it, Mr. Pugh.

Mr. Pugh That's the discovery act, the federal discovery act.

Mr. Burson I'm not familiar enough with it to comment.

Mr. Jenkins Mr. Burson, despite the fact that you said that you don't care for the prior jurisprudence on interpreting this language in the 1921 Constitution, it is a fact that with the adoption of this amendment, the language will be exactly the same as the 1921 Constitution. Isn't that true?

Mr. Burson The jurisprudence would remain the same, but this would still not preclude the legislature from statutorily going in and doing different things. I think clearly this could be done. It could be done either by amendment to the court [code] of criminal procedure or just simply by another statute.

[Amendment reread and adopted without objection.]

Amendments

Mr. Poynter Amendment No. 1. (There are several sets of Derbes amendments; these have two amendments to them and add some language.)

Amendment No. 1. On page 4, line 12, after "Section 12," delete the remainder of the line and delete line 13. On line 14, at the beginning of the line, delete the words "and punishment" for "for his detention." [Amendment No. 2.] On page 4, line 12, after "Section 12," insert the following: "When a person has been detained for the commission of any offense, he shall be advised of the nature of that offense, his right to silence and against self-incrimination, his right to the assistance counsel and to court appointed counsel, if indigent."

Explanation

Mr. Derbes Ladies and gentlemen, I had a couple of amendments on this section, and all of them have been withdrawn except for this one. I've learned in the brief period of time that I've been at this convention that when there is a conflict between my heart and my head, it's a better practice to follow the head rather than the heart. I happen to believe that all people who are accused, and certainly anybody who is detained by virtue of the commission or alleged commission of an offense, should be afforded the same rights and warnings. But I think that the committee's language is too general. It says that when a person has been detained, he shall be advised of his legal right. Now, I can tell you, as an attorney with a small amount of experience in criminal law, that the legal rights of an accused are many and various and go much further than the Miranda rights. It's not that a person should not be fully informed of his rights; it's just that the committee language, in my opinion, is so vague and general. To name a few rights that any defendant in any criminal proceeding has, he may have a right to a trial by jury, a right to an appeal, a right to be present in court when his trial is occurring, a right to a verdict rendered by a certain proportion of the jury, a right to bail, a right to all sorts of things... literally by scores and scores of things available to any defendant in any criminal proceeding. Now, the committee language, to my mind, sets forth this principle so generally that it could reasonably be construed by the court to mean that whenever any individual is detained, he should be given a law enforcement officer, he should be fully informed of all of his rights. That, to me, is not the intention, of my interpretation of the committee's intention, and that, to me, would create such an onerous burden on law enforcement and such a tremendous amount of difficulty that I frankly think it would be impractical. So, I suggest as an alternative that this direct, explicit language be included in the Bill of Rights. Now, I realize what the committee is doing here. They are trying to establish a conduit, a conduit which is going to say that whenever a new right of the defendant is created, that the constitution of the State of Louisiana requires that that new right be explained to the defendant. Now I say that that's just too vague to be efficiently and practically operative. I further say to you that people who are detained within the purview of this particular committee proposal are not only people who are being detained for questioning at the outset of criminal proceedings, but people who are, in some cases, being detained upon conviction, people who are being detained for reasons of mental health.

Now, I don't quite know what their rights are. I don't know whether their rights have indeed become a matter of constitutional law, but to create the obligation on the part of the detainer for advising these people of their legal rights, without defining legal rights, is so vague and overbroad as to create, in my mind, a duty upon law enforcement which cannot easily, thoroughly, and efficiently be exercised. Thank you, and I urge the adoption of the amendment.

Questions

Mr. Lanier Mr. Derbes, you and I discussed a certain couple of matters concerning your amendment yesterday, and I also discussed it with some of the members of the Bill of Rights Committee with reference to their language and your language that says, "when a person has been detained." Is it not true that people can be detained by other than police officers?

Mr. Derbes Yes, they can.

Mr. Lanier For example, a private person can make an arrest for a felony pursuant to the provisions of Article 214 of the Code of Criminal Procedure. Is that correct?

Mr. Derbes That's correct.

Mr. Lanier Storekeepers and their authorized employees can make detentions of shoplifters under Article 215 of the Code of Criminal Procedure. Is that correct?

Mr. Derbes That's correct.

Mr. Lanier Now, would I be correct in saying that it is your intention, here, to make this requirement of law enforcement officers to give this warning and that it is not intended to apply to nonlaw enforcement people like private citizens or shopkeepers.

Mr. Derbes That's my intention, yes. I'd like to point out to the convention that where this comes up when a defendant goes into court and says, "A statement taken from me cannot be properly used in furtherance of my conviction because I was not properly advised of my rights." Now, if the only term used in this constitution is "legal rights," a defendant could go into court and say that "a statement taken from me, even though I was advised of my right to counsel, my right against self-incrimination, my right to court appointed counsel, that that statement cannot be used against me because I was not advised of my right to trial by jury or my right to a jury verdict based on a certain proportion of the number of jurors, or I was not advised of my right to bail," or any of the scores and scores of legal rights provided by the Louisiana Code of Criminal Procedure. I'm trying to simplify this language so that the committee intended, but I don't think you can establish a conduit for all legal rights in this constitution without being overbroad and general and thereby jeopardizing the relationship of law enforcement to the individual defendant.

Mr. Jenkins I have a couple of questions, James. You said that this might apply to people after conviction or people detained in mental institutions. Isn't the title of this section "Rights of the Accused," and aren't all these sections on criminal justice in chronological order when we say "Rights of the Accused," in Section 12, "Initiation of Prosecution" next, "Grand Jury Proceeding" next, "Fair Trial" next, and "Trial by Jury," then "Right to Bail" and then "Punishments"? Are they all in chronological order, and doesn't this clearly apply to the rights of the accused?

Mr. Derbes Mr. Jenkins, it's not clear to me, frankly; no, it's not clear to me.

Mr. Jenkins When it says "Rights of the Accused"

43rd Days Proceedings—September 7, 1973

as the title of Section 12, it's not clear to you that you are talking about someone who has been accused rather than someone in a mental institution or after a conviction?

Mr. Derbes This section, like so many sections of this article, I think, is not drafted as clearly as it could be. Unfortunately, I don't derive and don't infer the same ready and clear definition of it that you do.

Mr. Jenkins Let me ask you this, also. You say "...you leave out the committee's language which said, 'When a person has been detained, he shall be immediately advised,' for one thing, 'for the reason for his detention—he shall be immediately advised of the reason for his detention.' Now, you haven't included that language in your amendment. Shouldn't people who are detained be told why they are being detained?

Mr. Derbes Mr. Jenkins, it says, "he shall be advised of the nature of that offense."

Mr. Jenkins No, but that's in the prosecution. That can be much later in the proceedings. We're saying when he's detained.

Mr. Derbes No, Mr. Jenkins, it says, "When a person has been detained, the committee of any offense, he shall be advised of the nature of that offense." Now, how do you argue with that?

Mr. Jenkins Well, of course, what the committee is talking about here is detention, and detention meaning something compulsory—you are being kept by the police. Couldn't you be detained simply to be a witness, and shouldn't you be told that you are being detained to be a witness?

Mr. Derbes I guess so, and maybe I've left out witnesses. But I think that the scope of your original provision is much more dangerous in the way that it is going to affect the problems of adducing statements in court than whatever problem I may have overlooked in treating witnesses as a result of this amendment.

Mr. Gravel Mr. Derbes, I'm inclined, first of all, to agree with you about the overbreadth of the language in the committee proposal but I do pose this question to you. Isn't it a fact that in your amendment that you have not provided for situations where persons have been lawfully arrested when it may not yet have been determined that a crime or an offense has actually been committed, and to that extent wouldn't you say that your amendment probably is lacking to some extent in providing for the rights that you would seek to provide for persons who are arrested or detained?

Mr. Derbes Let me try to narrow this issue. Mr. Gravel, isn't it true that whenever anybody is arrested, he's arrested for the commission or alleged commission of an offense?

Mr. Gravel Not necessarily, he could be stopped on suspicion for investigation of the possibility of an offense has been committed. That's done, you know, by investigators many, many times.

Mr. Derbes Well, then he's not being detained, is he?

Mr. Gravel No, he could be arrested.

Mr. Derbes Well, then if he's arrested, he's arrested for the commission...

Further Discussion

Mr. Roy Mr. Chairman, ladies and gentlemen of the convention, we rise in opposition to this amendment. Please keep in mind that when you talk about a Bill of Rights, you're talking about the rights of the citizen against the state. It does not involve private conduct between two citizens at

any time. It involves the rights of a citizen against the state with respect to state action and that includes, of course, your sheriffs and everybody else in the state structure. First of all, just getting to the amendment right away, Mr. Derbes' amendment limits for all time the rights that an accused or an arrested person may be entitled to which the courts may say are too limited as his proposal does. We use the language "legal rights". Everyone knows that when you're arrested you don't have to be given your rights about pleading guilty and waiving your right to a trial by jury and all those other matters. You merely have to be given your rights with respect to an arrest that you don't need to make a statement; any statement you made may be held against you and those fundamental rights that most lawyers, unfortunately there are not all lawyers here, know who we're talking about, but in any event it allows the court in the year 2000 to look at this issue and to see whether there are other legal rights that we don't contemplate at this time. The due process laws of the United States Constitution says that "nobody shall be denied the protection of the law". Now broad can one make a statement by saying the equal protection of the law and that has metamorphosed as the years have gone by to things that were never considered by the people in 1869 when the due process laws were written into the constitution. All we are saying is we've got an intelligent, sane, Supreme Court of the State of Louisiana that is elected by the citizens of this state to interpret our constitution. Let's let them in the year 1989 and 1990 decide what legal rights an accused is entitled to and let's not freeze into this constitution something that may not be enough in the year 1990. That's all we're saying - I move the previous question at this time.

Questions

Mr. Fontenot Mr. Roy, I don't necessarily agree with Mr. Derbes' proposal either but I would like to ask you a question. If we don't adopt Mr. Derbes' proposal concerning this language "when a person has been detained", suppose you have a person, I mean...I'm talking about a committee proposal...he shall immediately be advised of his legal rights and the reason for his detention. You have certain situations where a juvenile or somebody might be shoplifting in a store and you don't have a police officer or anybody, are you going to require the owner of a corner grocery store or somebody to advise him of his constitutional rights? Doesn't this language require that?

Mr. Roy Mr. Fontenot, I just answered that. A Bill of Rights is a statement of rights of the people against the state and not against other citizens. A citizen does not have to inform you if he catches you robbing his house or burglarizing his home. I don't have to start saying "I'm Mr. Fontenot" before I take you to the police station. I want to inform you of your rights. I am not the state, I am not engaged in state conduct activity and therefore, your rights are not violated when I catch you and don't inform you of anything.

Mr. Fontenot Well, why don't you say "state." You say "he shall immediately be advised", you don't say who is going to advise him. You're implying by leaving out words that it is going to be a police officer but I don't take it the same way you do.

Mr. Roy Because, Mr. Fontenot, it's my judgement that it's implicit in any constitutional law and Bill of Rights that you're dealing with rights against the state conduct and activity and not against individuals and if you don't understand that, I don't want to be nasty, but I'll never make you and you'll never make me believe that that's not what's meant.

Mr. Lanier Mr. Roy, one thing that concerns me

about Mr. Derbes' amendment and the committee proposal is suppose a police officer, and of course the way this thing is drawn this would apply to, as I understand it, to even misdemeanor such as game violations, speeding tickets, and other types of things. Suppose a police officer or game warden or whoever he is...constable, did not advise the person of these rights. What would be the consequence? Would that mean the whole prosecution would be thrown out or would that mean that only any statements are given or any evidence seized pursuant to the detention would be quashed?

Mr. Roy Mr. Lanier, that's a valid question and I can only answer it this way. I can tell you what I feel would be...I think probably our court would follow present Jurisprudential interpretation on that and that the evidence used that would be gotten without the benefit of the warning would be suppressed and I would hope that's the way it would go, but I can't say what the court would do in the year 2000 and maybe if there were great abuses of that, the court would take a different tact and say "you know, we're going to impose a little more restriction on this". I just don't know, all I know is that we can't write a statutory provision in the constitution.

Mr. Lanier Well, would you agree that under the present law a violation of a constitutional provision like this would not, would not be a grounds for a motion to quash the charge?

Mr. Roy Yes.

[Previous Question ordered.]

Closing

Mr. Derbes Ladies and gentlemen, I'm merely trying to bring this thing within reason. What the committee is trying to do is to establish a conduit here for all legal rights and I'm really in favor of that but it's just going to create an undue burden I think, so let's be specific in this particular part of the constitution or let's say nothing about it in the constitution. Now, you have a choice, you can leave it up to the United States Supreme Court and the courts of this state or you can be specific and say something about it in the constitution, let's be specific, otherwise I think we run a terrible risk here. Thank you.

[Division of the Question ordered. Amendment No. 1 reread and rejected: 5C-58. Motion to reconsider tabled. Amendment No. 2 reread.]

Point of Information

Mr. Munson Mr. Chairman, do we not now have a situation that if this amendment passes we have two first sentences; one on top of the other? We did not delete the first sentence, this puts it on the same line.

Mr. Henry No, not in my opinion, no. Mr. Clerk, explain why, in my opinion that's incorrect. You got me into this.

Mr. Poynter I don't think I can get you out either.

Mr. Henry In my many years of presiding, I have concluded that Mr. Poynter has finally been wrong and the amendment is not going to fit and the question is not divisible, and Mr. Poynter you're overruled.

Why do you rise, Mr. Derbes? You can't withdraw the amendment because the previous question has been ordered. Does that answer your question?

[Rules Suspended to allow withdrawal of Amendment No. 2.]

Further Discussion

Mr. Derbes Mr. Chairman, I would like to point out that Mr. J. Gravel has a better amendment than mine, and I move to withdraw mine.

Mr. Henry Well, I certainly hope so and I have decided again that Mr. Poynter was right and I was wrong because this amendment could have been done in the same way, and I will read it to you the way it could...just to prove that it wasn't as bad and that we were right in the first place, Mr. Stinson. You've just got a lot of repetitive language but it would read "when a person has been detained for the commission of any offense he shall be advised of the nature of that offense, his right to silence and against self-incrimination, his right to the assistance of counsel and to appointed counsel if indigent. When a person has been detained he shall immediately etc. etc., so it would work."

[Amendment withdrawn.]

Amendment

Mr. Poynter Amendment No. 1, go the Jack amendment, page 4, between lines 19 and 20, in floor amendment No. 1, proposed by Delegate Avant and adopted by the convention on yesterday at the end of line 3, place a comma after the word "record" and add the following: "without cost to the state." I'm sorry, "without cost to him." Right.

Explanation

Mr. Jack Mr. Chairman and members, yesterday we passed the amendment of Mr. Avant that provided "no person shall be subjected to imprisonment or forfeiture of his rights of property without the right of judicial review based upon a complete record of all evidence upon which such judgment is based." This right may be intelligently waived. That amendment was passed by a 2-1 vote. I like the others and I was in agreement except for one thing. I feel strongly and have always, when a person is tried...remember everybody that is tried is not guilty, plenty of people are innocent that he should get a full and impartial trial and I don't think he should have to pay for his defense by having to pay for a record. Now, the Supreme Court in that Illinois case held that if you are indigent you are entitled to a record. There are many people that cannot afford the record but they don't fit what the term of the court would be as indigent so I have an amendment that simply provides that this record, regardless of who is being tried, is to be furnished where there is an appeal without any cost to that defendant. I think it is perfectly fair. It will be left up to the legislature as to how they work it out as to whether the parish pays for it or the state pays for it. Personally if I was in the legislature, I would say the state should be the one to pay, not the parish. When people are charged with crime they're not all necessarily from the parish where I read it. They may be a person...South Louisiana charged with a crime...North Louisiana...vice versa. It's a state problem and criminal cases...the law is, you only have an appeal on areas of law, you reserve Bills of Exception. You would be paid for taking what little evidence the court rules has a direct bearing on that Bill of Exception but that is a joke, an absolute joke because even though you have an error under a Bill of Exception unless there is prejudicial error the court can't reverse it. How in the world are you going to tell whether it's prejudicial error unless you have a complete record of the testimony? I've had, I would say, every reversal except a few that I don't know whether it was proper to reverse it or not. There was a lot of doubt but because it wasn't the record. The court has to...when you go to reverse on an error of law, you've not to know what the whole case was about or else you're just taking a guess at it, and what you are doing if you don't pass my amendment, ladies and gentlemen, what you're doing, you're going to be saying "a person that's plumb

indigent, no if's and's...he gets a free record, but if a court rules he's not indigent and they might rule one place one way and the other because it's going to be a question of fact whether that person is indigent. If it's ruled he's not, he is not in the position to pay...now these records...I know in Caddo cost a lot, they cost a dollar over a page. That's a lot of money, depends on how much evidence. If it's a weeks trial you're looking at a bill between five and six hundred dollars and many a person has been hiring a lawyer, he may have been in jail without bond, they have no income in the family but yet still not an indigent in getting a free record. I'm just saying that if we're going to protect the rights of people that we're saying we are, let's don't say some people get a full opportunity to present their case all the way from the lower court with the jury to the Supreme Court and they get a record but they people do not get a record. If I ever heard of discrimination that would be. Now, I know you're going to hear for the amendment of Judge Dennis and I will take that up when it comes but it doesn't provide for this, it leaves it to the legislature. The legislature has never done it; I tried to get them to do it when I was there and they're not going to do it because the police jury is afraid they will have to pay for it, and certain people of the state, and certainly somebody's got to pay for it and the state should pay for it. So I just say "there it is": if you believe in affording a person a complete fair trial, I treat everybody the same, pass my amendment, if you don't believe in it go on and kill my amendment. Thank you.

Vice Chairman Alexander in the Chair

Questions

Mr. Weiss Delegate Jack, I'm a little concerned about this amendment but it is contingent upon a matter that has already been discussed by the committee and that is what do you consider an indigent case?

Mr. Jack I just went over that, doctor. The courts can be different...I don't know, they used to say...call them paupers though.

Mr. Weiss Are we discriminating if we...are we subsidizing crime in the indigent and not in those who can afford it with your amendment?

Mr. Jack I don't say you're subsidizing but I'm saying if you just...let's just take an example...if you're a person that's no good, won't work or anything, and I'm not low rating any particular people but if you don't do anything and you beat the heck out of your wife and you're a no good citizen...everything and you're broke, you can get the transcription; no if's or and's on it. But if you're a borderline, you work hard and you've got a certain number of children, then the court may rule you are not an indigent and you don't get the transcription. Let me tell you, you know until recently you could get electrocuted for a crime and yet you couldn't get a transcript of the evidence. You'd get life, twenty to thirty years but if you're broke or if you're an indigent, whatever that may mean that pleading hard to see, hard to find, here it is, there it goes, you're not indigent, you don't get that right.

Mr. Weiss Well, if we're going to provide free justice for all why should we just limit the free cost of jury trial to the indigent and why not provide it then for all people?

Mr. Jack Free cost of jury trial.

Mr. Weiss Well, free cost of proceedings of the accused.

Mr. Jack You don't have to pay for the jury in a criminal case. If you lose in a civil case you do.

Mr. Stinson Mr. Jack, considering the cost of all

this, your's even though a man is convicted...his conviction is upheld, he still wouldn't have to pay it. Don't you think maybe you could work it over and say "if he is acquitted and is innocent he would not have to but otherwise would". I think there's a distinction there, an innocent person shouldn't have to pay all of that but if he is convicted and guilty, well, I just don't see how the state can pay all that expense.

Mr. Jack Mr. Stinson, I'm going with it this way. It's nothing personal to me; if you ladies and gentlemen want to draw a distinction between a different people and whether they get a fair trial or don't or get full trial that's your business but you can have that amendment. That just further shows how horrible it is. A man could get, before they stopped the death penalty, could get electrocuted... turn out innocent, pay for his transcript, and his widow and children couldn't even get his money back for what he paid for the transcript after the funeral.

Mr. Smith Mr. Jack, won't this police jury have to pay all this cost? Won't it be considerable?

Mr. Jack No, I didn't leave it at that. I stated earlier, Mr. Smith. It will be up to the legislature on this thing, and I think the fairest way, as I said, and if I was in the legislature still, I said I would say the state should pay it because I repeat, you have crime committed in the various parishes or alleged crimes committed or people tried whether they are innocent or guilty that don't live in the parish.

Mr. Smith Well hasn't the legislature turned this down time and again?

Mr. Jack That's right. But they turned it down...nobody pays. This would make them have to do something about it because the court reporter wouldn't do it without it.

Further Discussion

Mr. A. Landry Mr. Chairman, ladies and gentlemen, I rise in opposition to this amendment. Under the present Louisiana law, any person who is an indigent can secure a free transcript and there is no reason to put this in the constitution wherein every person would be granted the right of a free transcript at the cost of the taxpayers when he might be a millionaire. I feel that that would be discriminating and it would hurt those indigents because the parishes and the state would have to pay for all of these transcripts and I could tell you this, that as a clerk that everytime a person who is in Angola applies for a writ of habeas corpus, we furnish him free of charge, not only a copy of the indictment but all of the proceedings, and therefore there is no need for this in the constitution. It would place a terrific tax burden on the people of the State of Louisiana and it would exempt those who could pay from paying for the transcript and I urge you to defeat the amendment.

Further Discussion

Mr. Rayburn Mr. Chairman and fellow delegates, I rise in opposition to this amendment because we're talking about something that is going to cost someone a tremendous amount of money. I can see right now where the people, if we write this language in the constitution, are going to be at the legislature the next session and tell us to give every little court in this land, J. P. court or what other court you might be speaking of...money to provide a court reporter and if that is done someone is going to have to pick up the bill. I don't know whether it will be the guilty person or the innocent person. This matter has been before the legislature on many occasions and you are now speaking of a matter that is rather costly. When you talk about every little municipal court in the state and all other courts that do not have to do

that according to law at this time. I just wanted to call that to your attention. I think that if a person wants a transcript, they can get it under the present procedure but if you put it in the constitution you are going to create a tremendous amount of added expense to the taxpayers of this state and I just wanted to call that to your attention.

[Amendment ordered, recorded, and vote taken. Amendment rejected 29-79.]

Closing

Mr. Jack: Mr. Chairman and delegates, your attention just a minute. I want to answer one question. I knew as well as I'm sitting here when I introduced that amendment, who would come up and speak but my good friend "Sixty" Rayburn, well...we had the same thing in the legislature except in the legislature it was always a police jury. As I recall, would be the one having to pay for it. That's why in this one, it's left up to the legislature whether the state would pay for it or the police jury, that's the only two because the defendant is not to. This is just a fair bill to treat everybody fair and just and it belongs in this Bill of Rights thing. I've sat here ever since we came back this week hearing about giving people fair trials. Every race, color, creed, man, woman, child, everything, be fair to them, give them the same trial, the same justice, everything. Now, here is an opportunity to put your hand on the green button and do what you say you want to do. I've heard more talk about being fair under this Bill of Rights; protect everybody. Now, I thought for all those years in the legislature, a person was not protected in a criminal case and I fool with criminal cases aplenty. If you've got the money to pay for the transcript, no if's or and's, pay a dollar or more a page, you get it. If you are poor, and there's no doubt about you can't then you still get it. I'm talking about the mass of people in between, they don't get it so that is some kind of unusual justice; some have a record to appeal on; some don't have a record to appeal on; just like good government costs money. All things that are done proper, looks like this day and time cost money. You raise your children properly it costs you money...you want to raise them and let them run wild like a ragamuffin and juvenile courts get them and everything, it'll be the cheapest thing you do and you won't be raising them. So I say let the legislature be forced by this amendment to pass on it and somebody pay for it and I say the state ought to. Thank you.

Questions

Mr. Singletary: Mr. Jack, this is a friendly question. Isn't it true that in the original trial in a criminal proceeding that there is no charge to the defendant? It doesn't cost him anything, is that correct, except if he can afford to pay for his attorney, he has to pay....

Mr. Jack: No. In the criminal case, now we are not talking about the de novo, little city court, we are talking about where the appeal goes to the Supreme Court, where the fines over, I think, five hundred, or could be over that, and the punishment over six months. It goes up on bills of exception, an old, out dated thing. Now on a bill of exception, the only thing you can get taken at the expense of the state and, or parish, is what little evidence the court says is directly connected with that particular objection. Consequently, you don't have a record where it has all the evidence, then the Supreme Court says even though it's an error shown by a bill of exception, unless it's a prejudicial error, you don't get a reversal. Prejudicial means that if the error hadn't happened, you might have been acquitted instead of convicted. Now, how can you tell whether the error was prejudicial without having the whole record?

Mr. Singletary: Well, I agree, I agree with you, Mr. Jack.

What I'm saying is, that except if a man can pay for his attorney, if he's charged in a criminal proceeding, his trial doesn't cost him. Is that correct?

Mr. Jack: Oh, you mean....are you talking about an indigent?

Mr. Singletary: No, sir, I'm talking about....

Mr. Jack: All right, you'd say a man's got money.

Mr. Singletary: Yes, sir.

Mr. Jack: All right....

Mr. Singletary: If a man is an indigent or if he can afford to pay, the trial....

Mr. Jack: Now, that's right, if he's indigent or he's got money, he can get this record because if he can afford to pay it....

Mr. Singletary: I'm talking about the original trial.

Mr. Jack: Well, that's what we are talking about.

Mr. Singletary: All right.

Mr. Jack: But you don't get that record free.

Mr. Singletary: But if he appeals, it costs him a considerable amount. Is that right?

Mr. Jack: It certainly does cost.

Mr. Singletary: Is that fair?

Mr. Jack: It's terribly unfair, I think, to make anybody pay for these records of taking the testimony.

Mr. Singletary: Isn't this a chance to correct an inequity in the law?

Mr. Jack: It certainly is. A man...there's been people electrocuted that didn't have a record, and that's horrible.

Mr. J. Jackson: Mr. Jack, as you know, we're talking about this cost factor again. But is it not true that when you look throughout the state, that we are spending millions of dollars on highways, we've recently got...the legislature will probably have to deal with an increase in the cost of Superdome in New Orleans, we just spend millions of monies for capital improvement. We're talking about a recording that would allow for a better implementation of the criminal justice system, then we ought to weigh this cost in perspective, and we ought to look at it in terms of some of the other kinds of costs that we put into, not only nonjustice, but nonhuman needs.

Mr. Jack: You are correct. There's your life, liberty, is the most important...and your health, too...those are the most important things you've got. If you lose those, you are gone. Now, I want to further answer this, Mr. Stinson, even a man that gets convicted, not the innocent, but he got convicted, that record later could show mitigation for a pardon board and that's another reason everybody should have it....

Mr. Alexander: Your time is up, Delegate Jack. Thank you.

[Amendment reread. Record vote ordered. Amendment rejected: 29-79. Motion to reconsider tabled.]

Amendment

43rd Days Proceedings—September 7, 1973

Mr. Poynter Amendment No. 1 [page 10, paragraph 1], page 4, between lines 19 and 20, delete "Floor Amendment No. 1, proposed by Delegate Avant and adopted by the convention on September 6, 1973, and insert in lieu, thereof, the following:

"No person shall be subjected to imprisonment or forfeiture of his rights or property without the right of judicial review based upon a written or sound recording of all evidence upon which such judgment is based. The cost of the transcription of such sound recording shall be paid as provided by law.

This right may be intelligently waived."

Explanation

Mr. Dennis Mr. Acting Chairman and fellow delegates, this amendment is a clarification of what I believe is the intention of the convention and the intention of Mr. Avant and Mr. Kelly and others who sponsored the original amendment.

Mr. Jack's amendment has just been rejected. However, unless we adopt this amendment, I think that the present Avant amendments, the present language, could be interpreted to require the same thing that Mr. Jack had asked the convention to spell out more clearly. The Avant amendment says that "No person shall be subjected to imprisonment or forfeiture of his rights or property without the right of judicial review based upon a record of all evidence upon which such judgment is based."

As I read that, that could easily be interpreted to mean that you have a right to a complete record on appeal in every case whether or not you are indigent, no matter what the circumstances. I am attempting to clarify and do what Mr. Avant and Mr. Kelly, I believe, wanted to do which was to simply make sure that a recording is made of all of the testimony and then leave it up to the legislature as to who would get that transcript. I am at the cost to the state, who would have to pay for it himself. This makes it clear that a mayor's court can satisfy the requirements of the constitution by taping with a cassette recorder in an inexpensive manner the proceedings. It makes it clear that the legislature could require, as it does now, that indigents be provided a free transcription of such a record. It makes it clear that the legislature could refuse to provide a free record to someone who could afford it.

I see Mr. Avant is going to ask me a question. However, I'd like to say I discussed this amendment with him yesterday and it's my understanding that he has no objection to the spelling out of the cost being paid as provided by law. And it is my intention not to interfere with the basic concept, but to make it clear that the legislature may decide who pays for the cost of transcription which is where the big cost is involved in preparing a record for an appeal.

Questions

Mr. Goldman Judge Dennis, is it required by law, when on review for the record, that the record be typed out. When you say "transcription," you mean typed out by a stenographer? Or can that record be provided on a tape so that the judges, how many they are in the review, can listen to the tapes?

Mr. Dennis No, it is required that the part that is being considered in connection with the objection in the criminal proceeding be typed up.

Mr. Goldman Well, could the judiciary change that requirement to provide for the use of tape recordings to listen to the proceedings instead of typed out? If they could, the cost could be reduced tremendously because you can make five or ten tubs of a tape for about ten....less than ten dollars, four or five dollars.

Mr. Dennis Yes, sir, I believe that could be changed legislatively now, and I believe under this amendment it could still be provided by.

Mr. Goldman The reason I brought it up, there are

some legislation here. I thought maybe they could get an idea.

Mr. Dennis Yes, sir.

Mr. Lanier O. K. Thank you, Mr. Chairman.

Judge Dennis, the way this is written it could say that no person shall be subjected to forfeiture of his property without right of judicial review, etc.

Is this intended to apply in the cases of bail bond forfeitures which could either be surety or cash bail bond forfeitures?

Mr. Dennis Mr. Lanier, that is the, I have not added that language. That language was in Mr. Avant's amendment, and I am not attempting to change the basic concept that Mr. Avant's amendment set forth, and I do not wish to get into the merits of his amendment because it has been debated and adopted. All I am trying to do is to clarify that the legislature may provide a free transcript to indigents, but may refuse to provide a free transcript to those who can afford to pay for it themselves. That's all I'm trying to do.

Mr. Lanier Well, Judge Dennis, don't you think we should know what kind of transcripts we are going to be paying for, if it's going to be a transcript of a bail bond forfeiture, or another question would be, would it also apply in the case of a guilty plea?

Mr. Dennis My own viewpoint is that this would apply to you could satisfy this in a guilty plea or a bail bond forfeiture by simply providing the minutes of the court. But if there is testimony taken in a proceeding, and it is necessary in order for the higher court to review the case, then that would have to be transcribed.

Mr. Lanier So, the only way you could be safe on a bond forfeiture would be to transcribe it, because, I believe, you have up to six months to contest a bond forfeiture, don't you?

Mr. Dennis No, I don't think you need any testimony transcribed on a bond forfeiture. I think simply a minute entry of court would be sufficient there.

Mr. Avant Judge Dennis, in my discussion with you yesterday, I understood that you were simply inserting the words, "a written or sound recording," and, of course, the provision that the cost of the transcription of the sound recording shall be paid as provided by law, and I told you that I had no objection to that, because I thought that was what you were doing. But in checking the amendment more closely, and I don't think, and I'm not implying that this is any intentional thing on your part, you have deleted the words, "complete record of all evidence," and you say, "a sound recording of all evidence."

Now, to me that is a different thing, two entirely different things, a complete record of all evidence, and a sound recording of all evidence, and I wondered what reason did you have for making that change in the language?

Mr. Dennis Mr. Avant, I did not intend to make that change.

Mr. Avant Well, would you....

Mr. Dennis I think this is an oversight on my part. It should read, "upon a complete written or sound recording of all evidence,"....

Mr. Avant Well, would you make a technical amendment, then, to this amendment to make it read, "a complete record of all evidence" to make it a "sound...."

Mr. Dennis Yes, sir, I would be happy to do so if the convention would allow me to withdraw it and add that word.

[Amendment withdrawn.]

Recess

[Quorum Call: 99 delegates present and a quorum. Oath of Office.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Dennis], it's been substantially redrafted just to amend the prior amendment.

On page 4, between lines 19 and 20, in Floor Amendment No. 1, proposed by Delegate Avant and adopted by the convention on September 6, 1973, on line 4, at the end of the line, add the following:

"the cost of the transcription of such records shall be as provided by law."

Simply add the sentence, "the cost of the transcription of such record shall be paid as provided by law."

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, after Mr. Avant pointed out the problem that he did, we agreed to change the amendment to make certain that it does not do violence to the concept originally set forth in Mr. Avant's amendment.

My amendment now simply says that "the cost of transcription of the record shall be paid as provided by law." This would allow the legislature the freedom to require that persons who are not indigent, persons who can afford to pay for transcription of the record, would have to pay for it themselves. But, under the present law, as you know, the legislature has already provided that indigents shall be provided a free record. This would not disturb that rule of law.

Questions

Mr. De Blieux Judge Dennis, under the Avant amendment as we presently have it, wouldn't the legislature have to provide that, anyway? Isn't this...words that you want to add to it just merely surplus verbiage in the constitution? The legislature would have to do that, anyway, under that amendment.

Mr. Dennis Mr. De Blieux....Senator, I would not have offered the amendment had I thought it was surplusage. I think it's extremely necessary, and I want to clarify the intention of the convention.

I think that the...Mr. Avant's amendment as it presently stands could be interpreted either way, and I am making certain that it's interpreted one way, and that is, that the legislature may provide who pays for the cost of the rec...of transcribing the testimony.

Mr. De Blieux Well, I just want you to get...get you to think about this amendment a little while because I feel like it's just additional words that are not needed in the constitution. I just ask you to do that because that's what I think.

Mr. Dennis Senator De Blieux, we considered this problem, this issue, for at least twenty hours in the Judiciary Committee. I have thought about it a whole lot, and I do feel that this amendment is necessary in order to clarify the intention of the convention.

Mr. Stinson Jim, I'm concerned about the sound recordings. Now, I believe you answered a prior question there that the legislature would tell the Supreme Court to revise your rules and accept a cassette, or any other type of recording device. If, under the present rules, they wouldn't accept it, would they?

Mr. Dennis I'm not sure I understand your question.

Mr. Stinson You say a written or sounding recording. A sounding recording is a tape recorder.

Mr. Dennis Mr. Stinson, I apologize for the confusion, but I have withdrawn that amendment and the one I have now does not say anything about sound recording.

Mr. Stinson I'm sorry. Thank you.

Mr. Pugh I wanted to see a copy of the amendment or have somebody read it, or something.

Mr. Dennis Well, I can read you what it is if....

Mr. Pugh I want to see it.

Let me ask you one question, if I may.

You say the cost of the transcription of such sound recordings.

Mr. Dennis No, sir. I apologize again for the confusion. I have withdrawn that amendment. The amendment I am offering now simply says "the cost of the transcription of such record shall be paid as provided by law."

Mr. Pugh Well, now, wouldn't that preclude the use of video tapes because you wouldn't transcribe a video tape, and that obviously is the coming thing in reproduction of evidence in cases.

Mr. Dennis I don't think so, Mr. Pugh, I think "transcription" would cover a reproduction of a reproduction of a video tape.

Mr. Duval Judge Dennis, is it....I realize part of this goes to the Avant amendment which you are, in essence replacing here, but is the thrust of these words to do away with trials de novo?

Mr. Dennis No, sir.

Mr. Duval In other words, you are still going to have your...it's your intent to still have the right to trial de novo. If it's not, what's the use of having a transcript if you have a trial de novo is what I'm getting at.

Mr. Dennis Well, as Mr. Avant pointed out when he sponsored his amendment, the judiciary article we have adopted does allow for us to get away from trial de novos. It doesn't require it. But if we do get away from trial de novos, Mr. Avant wants to make sure that everyone has an effective appeal, everyone who is endangered of being incarcerated has an effective appeal, and of course, you don't have an effective appeal without a record.

Mr. Duval So this would primarily come into play, then, in the event the legislature does away with trials de novo.

Mr. Dennis In other words, to clarify...the Judiciary article would allow the legislature to go either way, trial de novos or not. If they don't, Mr. Avant is saying, "You've got to provide the man a record."

I'm coming along and I'm saying, "The state can say who pays for the record...the transcription of the testimony." That's what's happening.

Mr. Duval All right.

Point of Information

Mr. Avant Mr. Chairman, I didn't have a question I had a point of order. All I wanted to do was make a request, since there appeared to be some confusion in the minds of certain persons, certain delegates, that the Clerk read the section, or my amendment, as it would read if Judge Dennis' amendment was put on it so that everybody can listen and then everybody can understand. Because the business about the sound recording and all that has been taken out, and if you just read the way it will read if Judge Dennis' amendment is adopted, I would appreciate it.

43rd Days Proceedings—September 7, 1973

Mr. Alexander Just one...
The delegate requests that the Clerk will read the amendment if adopted, as it would read. That is the Avant amendment plus the Dennis amendment. The Clerk will make that correction...one moment, please.

Mr. Boynter Delegate Avant and read as follows, your amendment begins first sentence, "No person shall be subjected to imprisonment or forfeiture of his rights or property without the right of judicial review based upon a complete record of all evidence upon which such judgment is based."
Add the sentence, "The cost of the transcription of such record shall be paid as provided by law. This right may be intelligently waived."

Questions

Mr. Perez Judge Dennis, isn't it true that if this amendment is not adopted, the legislature would have the authority to do what is provided in your proposed amendment?

Mr. Dennis Would you restate the question? I'm not sure I understand.

Mr. Perez Isn't it true that even if this amendment is not adopted, that the legislature would have the authority to do what is provided in your amendment, that is, provide for who shall pay for the cost of of transcription?

Mr. Dennis As I said, earlier, Mr. Perez, I think it could be interpreted either way. I think it's ambiguous as it stands. For that reason, I am offering the amendment. Otherwise, I would not offer the amendment. I would not take up the time of the convention.

Mr. Perez Well, could you tell me how effectively we can mandamus or force the legislature to adopt any law?

Mr. Dennis Well, Mr. Perez, as it stands, I think that if a man took an appeal and the state didn't provide him a written record, the Supreme Court might interpret it to say that he had to be released from imprisonment.

Mr. Perez Well, in the absence of the legislature passing a law, even with your amendment, isn't the same danger there?

Mr. Dennis No, sir, I don't think the Supreme Court could interpret it the way I just stated with my amendment. With my amendment here, the Supreme Court can readily see that it was the intention of the convention that the legislature be allowed to say to someone who can afford a record, "No, we are not going to transcribe the record for you."

And when he takes an appeal, then he's not entitled to be released from imprisonment simply because he doesn't have a record.

Mr. Perez My question is, until, unless the legislature does provide, what position, then would the defendant have or the convicted person on appeal?

Mr. Dennis Well, Mr. Perez, the legislature has already provided that an indigent is entitled to a free record, and those who are not indigent are not.

Mr. Champagne The only question I had is your amendment, is designed to insure that not necessarily the state has to pay for all these transcripts? Is that right?

Mr. Dennis You're right, Mr. Champagne.

Further Discussion

Mr. Jack Mr. Chairman and members, this is entirely window-dressing. I'm against the Dennis amend-

ment. The Avant amendment that we passed, I think, because I voted for it was I had instructed Mr. Glassell that draws the amendments to draw my amendment without cost to the person that's the defendant, provided Avant's passed. Without my amendment, which was defeated, the Avant amendment is purely window-dressing.

The legislature, to my knowledge, back since 1940 when I became a member of the House of Representatives, has always had, still has the right to pass the law about this transcript and to say who pays for it. I saw twenty-four years and ever since they are not going to pay for it except where they are made to do it. We passed other things in this constitution that say what the law is. That's self-operated. You can't mandamus the legislature. You pass all the constitutional amendments say for them to do it, they won't do it, maybe. They were all here.

But if you had passed that little simple amendment, without cost to the defendant, then they would do it for the simple reason if a man took an appeal and you didn't provide him with a transcript, he'd get a new trial. The legislature is putting money before complete justices of allowing everybody to have the same kind of trial.

If you pass the Dennis amendment, you are putting window-dressing in the constitution that don't mean a continental. And it's not fair to people, and remember, when we are talking about trials, there have been many a person that's innocent that's been tried and more now days, percentage wise, than they used to.

Now, if you were tried, just think how you would hate if you.... the judge said you are not indigent, but you couldn't pay for it. All right, you wouldn't get the transcript. Some fellow that clearly had nothing, he would get it. You've got two yard sticks of justice. Now, let's just be frank and don't put this window-dressing in here.

Now Judge Dennis, or someone discovered, maybe under the Avant amendment, there was a slipup and that anybody could get a transcript under it. I would rather leave that there, the possibility, than to have this one that's going to leave it up, under the Dennis amendment, to the legislature who you know good and well is not going to order the state to pay for it or the police juries. So that is pure window-dressing, pure, simply, unconditionally, and I just don't believe in trying to fool people something's not true, don't say it is, and let's just decide this thing. And I hope somebody smarter than I am, and there are plenty of you are, that can switch language around if we defeat the Dennis amendment, so that we can get another floor amendment in and leave it up to the state to pay for it.

Further Discussion

Mr. De Bieux Mr. Chairman and ladies and gentlemen, I'm going to be very brief because Mr. Jack made my talk for me except he didn't say it in the manner in which I would have said it.

The only thing I can say is, this amendment is entirely unnecessary. The legislature would have to implement the Avant amendment anyway, and they can't do it without legislation, and so, therefore, this language is entirely unnecessary. It's additional verbiage which we don't need in the constitution. If we are going to shorten the constitution, let's don't put words in it that mean nothing, and these words would mean nothing insofar as that is concerned.

I ask you to vote against the amendment.

[Proceedings Continued, 87-12.]

Closing

Mr. Dennis Mr. Chairman and fellow delegates, this amendment simply clarifies what I believe was the intention of Mr. Avant and the convention earlier. Mr. Avant has agreed to it. Mr. Stinson has told me that the Bill of Rights Committee does not have any objection to it.

The only reason you'd vote against it would be

to leave the section ambiguous. I submit to you that those who are against it are hoping that it would be interpreted to require the state to provide everyone a free record.

I'm simply making it clear that the legislature can say, "No, if you can afford a record, you have to pay for it, but those who can't afford it, the state will pay for it."

So I ask for you to adopt the amendment.

Chairman Henry in the Chair

[Amendment adopted: 92-20. Motion reconsider tabled.]

Amendment

Mr. Foghter Amendment No. 1 [Ju. Mar. Velazquez, et al.], on page 4, at the end of line 19, add the following: "the legislature shall provide for a uniform system for securing counsel for indigents including qualifications and compensation." I would appreciate that this language would go in front of the language of the Avant amendment and that it was inserted between lines 19 and 20, and this instruction says at the end of line 19. So this would be at the end of line 19 and before the Avant language as now amended by the Dennis amendment.

Explanation

Mr. Velazquez Mr. Chairman, fellow delegates, basic to the American concept of justice is the concept of a fair and an adequate defense. The most glaring problems in this field occur in the situation where the defendant is indigent. The purpose of this amendment is to help all those segments of society in the greatest need of help. I don't believe anyone at this convention wants any citizen to be railroaded to Angola because that citizen happens to be poor. The need for adequate counsel should extend beyond an unwilling attorney drafted by an overworked judge. None of us would want to stand before the bar of justice accused of a crime and defended by a lawyer who didn't want to be there, who wanted to be somewhere else making some money. This is not an attempt to suppress or supplant Section 12; it's rather a supplement. It puts the exact mechanism in the hands of the legislature where it belongs. It only mandates the legislature to provide for a uniform system. This uniform system could be a mixed system. It could be a combination of the old and the new. It could be a completely old system. It could be a completely new system. The key word is "uniform." This is a bill to help poor citizens who have been accused of crime. If the poorest citizen of this state can't receive justice, then no citizen is safe. I urge your consideration and your support for this amendment.

Questions

Mr. Lanier Delegate Velazquez, you and I discussed this matter previously, but to make sure the record was what your intention is, I'd like to ask you a couple of questions. As I understand your amendment, it is not intended to require either the public defender system or the indigent defense system, but would authorize both systems to exist simultaneously in different parishes provided there was an overall uniform system for the state. Is that correct?

Mr. Velazquez That is exactly correct, Mr. Lanier. It puts it in the hands of the legislature to set a uniform system either including some of the old, some of the new, or whatever they feel the system should be.

Mr. Lanier In other words, in Lafourche Parish if we wanted to have the indigent defense system we could have that, and in New Orleans if they wanted the public defender system they could have that providing there was uniform legislation establishing

both systems.

Mr. Velazquez That is exactly correct.

Mr. Stinson I believe your answer to the question was that a uniform system would permit a mixed system. When you say the legislature shall enact a uniform system, doesn't that mean that they are one and the same for every parish and every district?

Mr. Velazquez Mr. Stinson, you can pass an ice cream law that covers chocolate ice cream, vanilla ice cream, fudge ripple, and chocolate walnut, and it would still be a uniform ice cream law.

Mr. Stinson But it's not a uniform color ice cream law.

Mr. Velazquez I'm not passing a uniform color law. I'm trying to leave color out of this, Mr. Stinson.

Mr. Stinson But I'm afraid though that when you have it, it's not going to be what we want by your amendment.

Mr. Velazquez I feel it will be, Mr. Stinson.

Mr. Jenkins Mr. Velazquez, if this is going to allow Indigent Defender Boards to exist in some parishes and then in other parishes you'll have a Public Defender System, why are you even proposing this thing? I don't understand. What's the meaning of "uniform system" if it's not to put all parishes under the same sort of system?

Mr. Velazquez In the first place, you are trying to put words in my mouth. I'm trying to set-up a "uniform system." "Uniform system" doesn't mean everybody's got to wear a green uniform and wear a clown hat. Nor does it mean that everybody has to do everything exactly the same. It provides for a "uniform system." Uniform in that justice is given to indigents. This is the basis of the uniformity, and the method is left to the legislature of which you are a member; and I'm sure that if you want that particular system, then you go to the legislature and you stress it.

Mr. Jenkins Then what is the purpose of the amendment? What does it accomplish that we don't already have?

Mr. Velazquez As important as the letter of the law, is the spirit of the law. Indigents and the concept of indigent defense deserves constitutional treatment.

Further Discussion

Mr. Duval Mr. Chairman, fellow delegates, I rise in support of the basic concept set forth in Mr. Velazquez's amendment. Let me tell you right now how the system of justice for indigents works. In various parishes we have what's called an Indigent Defenders Board, and just a few lawyers get on this board, a lot of whom have never practiced criminal law. They don't know anything about it. They get an appointment for some indigent who's been in jail maybe two or three months. They're very busy with their practice. They get distracted, and they somehow forget this fellow is up there in jail, and they go see him every now and then and ask him how he's doing. But I can tell you, I've seen people stay up in the parish jail for a year or longer because his lawyer was appointed and then finally withdrew because he felt like he wasn't doing a good job. Then they tried to appoint another one, and there was no lawyer available. Then the court had to appoint a lawyer not under the indigent defender panel, and it's a very unworkable system, and it's very unfair to people who get attorneys appointed who really don't care or really aren't able to handle the job properly. I think what we really need in Louisiana is a public defenders system.

43rd Days Proceedings—September 7, 1973

This is the best way that people who are indigent can be defended and won't have to stay in jail for a long time, we'll get people who are lawyers in the field and won't have the disadvantage of the state having the expertise and the defendant not having it. I think it's ... that this is the basic thrust of Mr. Velazquez's amendment, and I think that this convention should go on record mandating the legislature to establish some type of uniform system with the hope that we will ultimately end up with a public defender system for indigent persons accused of crime. This is the only way they will be fairly represented although many lawyers conscientiously attempt to represent indigents when they are appointed in the indigent defense panel. A lawyer does not do proper justice to his client under those circumstances. I urge you to adopt this amendment with a basic mandate to mandate the legislature to establish a public defender law.

Further Discussion

Mr. Burson Mr. Chairman, fellow delegates, I rise in support of this amendment. I am the former chairman of the Indigent Defendant Board in St. Landry parish, when this system that we're operating under now was first started. I echo Mr. Duval's sentiments in that I find that a great many lawyers are reluctant to undertake the defense of particularly serious crimes, not so much because they are not willing to undertake to perform their duty as a member of the bar, but simply because they are somewhat fearful of their lack of knowledge in the field of criminal law. I support Mr. Velazquez's notion however that what we need is not necessarily a pure public defender system, although I will frankly state that I think every parish in this state ought to have a public defender, but I think that it would be good to retain a mixed system for this reason: it seems to me that it would help the overall understanding of the legal profession of the system of criminal justice and engender the kind of understanding that makes for a better system of criminal justice, if we continue to allow, and indeed require in some cases, members of the bar at large to have contact with the problems of criminal defense. I think that by and large my experience has been that some of the best jobs of defending indigent criminals that I have seen done were done by people who were not criminal lawyers, but they were good lawyers and when they got appointed, they took their appointment seriously, and they did an outstanding job. I had the responsibility by appointment, myself, of defending someone in a capital trial for murder. It lasted nineteen days, and I think it's still probably the longest trial that was ever held in St. Landry parish. My counsel in that case were two lawyers who were not specialists in criminal law, in any sense of the word, and they did an outstanding job. So I think that it would be a mistake for us to pin ourselves to either system. Let's do what Mr. Velazquez says we can do in his language, and I agree with him. Let's opt for a combination. However, I think that the requirement that we have a uniform system would require some type of public defender in each parish, and I am for that because I will frankly state that the only right that you can give criminal defendants, none of them mean a thing without the right to counsel. In my own personal opinion the Gideon v. Wainwright decision which gave criminal defendants in felony cases the right to counsel, absolutely was the most important landmark in establishing the rights of the accused in our constitutional law. I urge your support of this amendment.

Questions

Mr. Jenkins Mr. Burson, so then you disagree with Mr. Velazquez. You believe that this will require a public defender to be appointed for each parish. Is that correct? Is that what you said?

Mr. Burson The language doesn't say that. I

don't want to read into it anything that it doesn't say. It says "a uniform system." I'm saying though, Woody, that my own personal opinion is that each parish ought to have a public defender.

Mr. Jenkins Well, if a uniform system would permit some parishes to have public defenders and others to have boards, what does the amendment accomplish?

Mr. Burson I think that if you mandate the legislature as you do in this language to create a uniform system, I have enough confidence in the legislature that through the legislative process they will work out a uniform system that will meet the needs that exist.

Mr. Jenkins But under the section without this amendment the legislature has all the authority it needs to do the same thing, doesn't it?

Mr. Burson Well, I'm not real sure that they are mandated to do this under the ... in fact, I'm sure that they are not mandated to do it under the present constitution, and I think that it is appropriate that we would include such a mandate in the new constitution. I might point out that the legislature has made significant strides in this area. When I first started practicing law, when you got appointed to defend a criminal case, you didn't get paid for it. I participated in a week-long defense in a murder case for nothing, but the legislature then set up the Indigent Defendant Board and the Criminal Defense Fund ...

Further Discussion

Mr. Jack Mr. Chairman and ladies and gentlemen, I am cosponsor of this amendment although on the copy my name somehow or another happens not to be here. The first thing I want to mention to clarify it is the use of the words "for uniform system" that doesn't mean that every parish or every judicial district, if you said it that way, would be the same. You know you can go by, for instance, you could provide for cities or districts over a certain population. For instance, you could have a public defender system. You could provide if the legislature thought so. Another one might have some type of indigent defense group, or the lesser ones a system that's in vogue now where individual attorneys are appointed. It might decide who would pay them and how they would be paid. But the fact that it says "for uniform system" does not mean that the poor parishes would have to support the public defender system. It might ... under this ... would legislature ... if they want it, it could make state pay for the whole thing. They would be the ones to decide all that. Now, I have seen actual cases too many times for this thing to happen again, not exactly on a bigamy, but I'm just going to show you examples. It's not enough where you can afford it to have a public defender system or a proper indigent defense board. I've seen cases in many cases where a lawyer is appointed, and he just confers with the defendant. They do not explore every possibility of guilt even though the person says they were guilty. Now, here's an interesting case. I wasn't the attorney for this lady, but I handled Pardons and paroles cases. She wrote me, would I see her at Angola? She told me in the letter the facts. Now, here were the facts, and I immediately got in touch with people in east Texas and found it to be the truth. Now this lady, at that time had done, being married. She was enamored with a man while he was still married, in her opinion, and she'd seen her husband from whom she was separated over in east Texas just the day before she got married. She went on anyway and she told him she was going to get married. She got married. Now, somebody turned her in. She pled guilty; it was not in Caddo, in another parish. She pled guilty to bigamy, was at Angola. A friend over there in Texas discovered after getting back from a vacation, reading about this lady going up for bigamy, wrote her, and let her know she was turned out, three hours before this lady who was serving

time for bigamy got married, three hours before she got married, unbeknownst to her, her husband was killed in an auto accident over there in east Texas. She intended to be a bigamist because she loved that man so, and he wanted to marry her, but actually she wasn't guilty of bigamy because he had been killed in a wreck. Now you can say that lawyer, I know, must have felt bad afterwards because he didn't check out. Because you cannot be guilty of bigamy if your spouse was dead even a second before the marriage ceremony that would have made you a bigamist. I'm saying all people should have adequate counsel. The small parishes are unduly burdened trying to make those lawyers take care of all of that. This is a good bill that Mr. Velazquez has here and I think I've explained about the question of "uniform." Now, if anybody doesn't understand it, I'll try to answer any questions if I have any time.

[Previous question ordered. Record subsequently closed. Adjournment. Motion to reconsider tabled.]

Amendments

Mr. Poynter Amendment No. 1 [by Mr. Derbes]. on page 4, line 12, after Section 12 delete the remainder of the line, delete lines 13, and 14 at the beginning of the line, delete the word and punctuation "for his detention."

Amendment No. 2, on page 4, line 12, after "section 12" insert the following: "When any person has been arrested or detained in connection with the investigation or commission of any offense, he shall be advised fully of the reason for his arrest or detention, his right to silence, his right against self-incrimination, his right to the assistance of counsel, and to court-appointed counsel, if indigent."

Explanation

Mr. Derbes Ladies and gentlemen, this hopefully makes up for any of the deficiencies in the earlier amendment. Again, it sets forth with particularity the various rights of an accused and the rights of the subject in an investigation. It does so specifically rather than generally because, I feel that the general provision of the committee's proposal is too vague, and may in fact be too onerous for efficient and consistent administration. I urge the adoption of the amendment.

Questions

Mr. Lanier Mr. Derbes, is it your intention that this would provide to the provisions of our stop and frisk law in Louisiana, which is Article 215.1? Because if it would, would it be your intention to overrule the case of State v. Amphy which provides that you don't have to give a Miranda warning in this stop and frisk situation.

Mr. Derbes Mr. Lanier, the word "arrest" has specific connotations and the word "detention" has specific connotations. The requirements of this section do not vest until there has been actual detention or actual arrest.

Mr. Lanier So would it be your intention, and this is for the purpose of the law enforcement people who would have to operate under this provision, is it your intention that this provision would not apply in a stop and frisk situation under Section 215.1?

Mr. Derbes That's my intention but I'd also point out that the scope of the amendment, with respect to the circumstances of its administration, is equivalent to rather than more restrictive than the original committee proposal.

Mr. Pugh I'm very much in favor of your amendment, but I ask whether or not it's possible to make a technical change--instead of "his right to silence" "his right to remain silent."

Mr. Derbes I have no objection to that, and with permission from the Chair I would be happy...

Mr. Henry What kind of technical change do you want to make?

Mr. Pugh Instead of "his right to silence," "his right to remain silent."

[Amendment withdrawn and resubmitted with substitution.]

Questions

Mr. Roemer Jim, as to this matter of equivalence with the committee reporting with your first amendment, would you not say or would you not direct your remarks to the point, the contention that your second amendment, the one we're considering now is more expansive than your original amendment, but less expansive than the original committee proposal.

Mr. Derbes Well, I'm talking about, and I'd like to draw this issue rather narrowly, I'm talking about the circumstances in which it would be applicable, not necessarily the rights that would be administered but the circumstances in which it would be applicable. As I understand the original committee proposal it used the words "Whenever a person is detained," and I believe that what the committee's intention was, in that instance, to say that whenever a person was detained by a law enforcement officer as a subject of an investigation or as an arrestee, that he should be advised of his legal rights. So I think to that extent they are equivalent. Now, perhaps, and I can't interpret all the committee's intentions, but perhaps the committee wanted it to go further than that, but I haven't been able to discern that from speaking to the committee members.

Mr. Stinson Mr. Derbes, of course, you didn't speak to me. I don't know who you spoke to. But in my opening address as you heard and I'm sure, is that different words come of different lawyers' mouths, and they usually mean the same thing. Now, would you please make another technical amendment, and say "and any other legal rights?"

Mr. Derbes Absolutely not. Mr. Stinson. That's the reason why I'm up here. If you don't understand that ...

Mr. Stinson I understand what you're doing. Isn't it a fact that you're locking in these, and if they decide later on that he has other rights, he'll be denied those rights?

Mr. Derbes Mr. Stinson, can you please spend about fifty ... I tell you what, you take five minutes, and you tell us what the rights of a criminal defendant are. I tell you you can't say that in five minutes; it'll take you a course in criminal procedure or a course in criminal justice to explain all the legal rights of a defendant in any criminal proceeding.

Mr. Stinson I don't agree with you. I have taken those courses, and I have practiced for thirty or forty some odd years, and I still say when you don't know, you shouldn't try to name them. You should say "legal rights" and the courts would interpret that.

Mr. Derbes That's the reason why I'm up here, Mr. Stinson, because I think "legal rights" is too broad and too vague and almost insusceptible of efficient, professional administration.

Mr. Stinson Well, I'm sorry, but you don't agree with the committee after much research, and I'm sure you must be right and the rest of us wrong

[Previous question ordered. Amendment adopted. Motion to reconsider tabled.]

43rd Days Proceedings—September 7, 1973

Amendment

Mr. Hardin [Amendment moved]. [Amendment by Mr. Pugh]. On page 4, line 16, after the word and punctuation "him" delete the remainder of the line and delete lines 17 through 19 both inclusive in their entirety.

Explanation

Mr. Drew Mr. Chairman, ladies and gentlemen of the convention, my objection, and the reason I have to do this last sentence in Section 12 and the reason I offer this amendment, is because of the words "by imprisonment." Practically any offense that I know of from speeding on up and down is subject to jail, and therefore this would make it mandatory that they have assistance of counsel in the most minor misdemeanor cases. Now, of course, part of the argument is that the Fifth Circuit Court of Appeal has so recently ruled. That does not mean that that is going to remain the law or that it will be affirmed by the Supreme Court. I think that we're going overboard. I think this is a matter that we are locked in with federal decisions, and I don't think it's a matter that should be in our constitution. We do provide counsel under the federal cases. We do provide the counsel that is required under those cases, and I think this matter should come out of our constitution. You might see in the very near future that we're in direct conflict with federal law instead of in accord with federal law on the subject. I ask adoption of the amendment.

Further Discussion

Mr. Pugh Mr. Chairman, fellow delegates, I only rise to advise you that Mr. Drew said, "that case has not been affirmed." On June 12, 1972, the United States Supreme Court in the case of Hamlin felt that every person who might, as a result of the charge, spend so much as five minutes in jail, was entitled to counsel. The law is that if you may be imprisoned, regardless for the term involved, you have the right to counsel, and I'm in favor of the section as it reads and opposed to the amendment.

Questions

Mr. Lanier Mr. Pugh, is it not true that under Louisiana law and particularly Article 884 of the Code of Criminal Procedure, that even if an offense was set up as punishable only by a fine, that the law requires that in default of payment of the fine that imprisonment is authorized whether specifically put in the penalty clause of the statute or not?

Mr. Pugh That's in the section that you had reference to ... the Hamlin case was a Florida case. I didn't want to imply that it was a Louisiana case.

Mr. Perez Mr. Pugh, if you say that is what the federal courts have ruled, why do we need this in the constitution? I thought that we were trying to write a brief constitution.

Mr. Pugh I can't tell you what the committee had in mind. All I'm doing is opposing this amendment.

Mr. Roemer Bob, in line with Delegate Lanier's questioning, would that in effect mean that every case whether it had original punishment, incarceration in its term, or ultimately if you had to default on payment would require counsel? Is that not true?

Mr. Pugh Yes, sir. The law as I appreciate it and as enunciated by the United States Supreme Court in that decision, was if the person may as a result of the offense with which he's to be charged or is being charged, may be required to spend so much as five minutes in jail if he's convicted. It doesn't make any difference what you give him.

The mere fact that he might have that as a punishment entitles him to counsel.

Mr. Roemer All right, but let's take it a step further for us country boys and tell me the answer to this question if you could. If we had a penalty and not a punishment but a penalty, in regard to crime, but in default of payment of said penalty, you had to spend time in jail then you'd be entitled to counsel under this provision. Is that not correct?

Mr. Pugh That's correct. I see nothing wrong with that, quite frankly.

Mr. Roy Mr. Pugh, as I understand it, you believe that whether you are going to be in jail for three days because of a crime on thirty days or three years, that you're still in jail, and you do believe that people are entitled to counsel and not ... just they are entitled to the assistance of counsel if they choose or if they are indigent they should have it. Isn't that true?

Mr. Pugh It doesn't make any difference to me how long a fellow may stay in jail. Five minutes for me would be too long, frankly, but it's not a question of how long, it's if.

[Previous question ordered. Amendment rejected. 10-11. Motion to reconsider tabled. Previous question ordered on the Section .]

Closing

Mr. Stinson We close. Thank you for your patience, and let's go ahead and adopt it. I think it will be helpful to everyone. Thank you.

[Section passed: 98-11. Motion to reconsider tabled .]

Recess

[Quorum Call: 101 delegates present and a quorum.]

Personal Privilege

Mr. Jenkins Mr. Chairman, delegates, a young lady from my district has brought honor to the State of Louisiana. I wanted to call it to your attention, because you may find it of interest. Miss Debbie Ann Ward, who is a twenty-one year old senior at L. S. U., whose parents are Mr. and Mrs. Bennett Ward of Dayton Street here in Baton Rouge, was the preliminary winner in the talent competition of the Miss American Pageant in Atlantic City, New Jersey. I think if you will tune into your television sets, I believe it's tomorrow night, perhaps we can all root for her in hopes that she will be successful in winning the Miss American crown.

Reading of the Section

Mr. Poynter "Section 13. Initiation of Prosecution

Section 13. Prosecution of felonies shall be initiated by indictment or information, provided that no person shall be held to answer for a capital crime or a felony necessarily punishable by hard labor, except on indictment by a grand jury. No person shall be twice placed in jeopardy for the same offense, except on his own application for a new trial or when a mistrial is declared or a motion in arrest of judgment is sustained."

Explanation

Mr. Guarisco Ladies and gentlemen of the convention, we now begin the sections dealing with the person, the accused, after he has been arrested and the method or the procedure by which the prosecution is initiated against the individual. Of

course, you know we have two types of crimes - felonies and misdemeanors. What we provided for in this section is that a capital crime of which there are five now in the State of Louisiana and those felonies which necessarily are punishable by hard labor shall necessarily be on indictment by grand jury and by no other method. That is, the district attorney cannot bill a person for a capital crime or a felony necessarily punishable by hard labor merely by filing his certificate of probable cause to bring this person to trial. You have to be indicted by a grand jury. The section goes on that "no person shall be placed twice in jeopardy"; that's in line with the present constitution. It is also in line with the state constitution, insofar as once a person is put in jeopardy for a crime, then if he is acquitted of that crime or the D. A. or someone drops the charges or for some reason he's found not guilty or nol-pros, then he cannot be put in jeopardy for that singular crime once again.

I'm open to questions.

Questions

Mr. Lanier Mr. Guarisco, is it not true that under the present constitution and under Article 437 of the Code of Criminal Procedure that the only offenses for which a grand jury is presently required is capital offenses?

Mr. Guarisco That's correct, but, Mr. Lanier, there are some...I have enumerated twenty different crimes in the State of Louisiana, including capital cases of which there are five, that are necessarily punishable at hard labor.

Mr. Lanier Isn't the crime of simple burglary necessarily punishable at hard labor?

Mr. Guarisco That's correct.

Mr. Lanier Do you have any idea what it would cost the different parishes to have to have grand juries in all of these types of cases?

Mr. Guarisco The answer to that...I'm not particularly interested in the cost if it's going to suspend the rights of an individual. Are you familiar with the case of Pugh v. Rainwater?

Mr. Lanier I've seen the report that Mr. Roy had in the newspaper. I have not read the text of the opinion, but as I recall it, that went off on the question of whether or not there was a magistrate's hearing or whether or not a Bill of Information served to supplant a magistrate's ruling on probable cause. Is that correct?

Mr. Guarisco That's right.

Mr. Lanier So, what does that have to do with whether or not there should be a grand jury indictment in a simple burglary?

Mr. Guarisco Well, I think it's very simple. I think that a person that's detained at the time of arrest and before arraignment or his trial. And then he should be afforded some opportunity by a detached body, either a committee magistrate or a grand jury, of whether or not a probable cause exists.

Mr. Lanier Now, one further question. If you couple this provision with the provision in Section 14 that requires that the transcript of the testimony of the witnesses appearing before the grand jury be given to all defendants, wouldn't that pretty well mean that in all of these cases you would have discovery?

Mr. Guarisco That can be construed that way. The accused should have a right to the transcribed testimony of all witnesses before the grand jury, yes.

Mr. Derbes Mr. Guarisco, isn't the real protection

for a defendant at the outset of a criminal proceeding, the preliminary hearing rather than the grand jury indictment?

Mr. Guarisco I'm sorry, I didn't understand your question.

Mr. Derbes I said isn't the real protection of a criminal defendant at the outset of a preliminary hearing, at the outset of a criminal proceeding, a preliminary hearing rather than a grand jury indictment? Which is to say, isn't the grand jury more or less the handmaiden of the district attorney and to require a grand jury indictment in all cases punishable by hard labor is really just kind of window dressing?

Mr. Guarisco I agree with your statement that the grand jury is the handmaiden of the district attorney's office. Also, however, we have other protections for that later on in the section.

Mrs. Warren I just want you to explain briefly to me what mistrial means.

Mr. Guarisco Well, a mistrial generally speaking is some reason...there are procedures that happen during the trial that may cause it to be prejudicial against the defendant and that way the judge would say what he calls a mistrial: that is, the trial is called off for what was done improperly.

Mrs. Zervigon Mr. Guarisco, in order to try and vote intelligently on this section, I would like to know what percentage of cases that are brought before a grand jury by a district attorney does the grand jury fail to return an indictment?

Mr. Guarisco I don't know the percentages, but I don't think there is hardly any cases that the D.A. is hell-bent on getting a true bill on, that he is not successful.

Mrs. Zervigon Well, it's my understanding that the committee stuck this grand jury provision in this particular section as a protection for the accused. Isn't that correct?

Mr. Guarisco Supposedly, yes.

Mrs. Zervigon Well, if the district attorney gets an indictment through the grand jury almost every time he asks for it, I was wondering, what sort of protection that is?

Mr. Guarisco Well, Mary, I think this section has to be read in conjunction with the following section, which gives the defendant and the accused certain protections that he does not now have, that would make the grand jury a more impartial body than the arm of the district attorney's office.

Mrs. Zervigon But, it's your feeling that as of now, and we can only consider this section by section as we vote on it, going before the grand jury the percentage of cases in which there isn't an indictment might be lower than the percentage of cases nol-prossed by the district attorney just on his own.

Mr. Guarisco The district attorney can nol-pros the case even if the grand jury comes back with the true bill. He can always nol-pros the case. That's no problem, but in the first instance if the D. A. just has to certify by a Bill of Information, then he is the prosecutor. I don't think he is a detached person. At least he has to go before the grand jury and they may be detached if we put these other safeguards that we intend to do in "14" to make it a more independent body.

Amendment

Mr. Poynter Amendment No. 1 [by delegate Burson]. On page 4, line 23, place a comma ",", after the word "crime" and delete the remainder of the line and at the beginning of line 23 delete the words

and punishment "punishable by hard labor."

Explanation

Mr. Burson. Delegates, I want to try as much as possible to discuss this subject as simply as I can. I would like to do so first of all by agreeing entirely with what Mr. Guarisco said about the necessity for reading Sections 13 and 14 together. The reason for that is—and your vote might be governed intending by what you want to do on Section 14—the reason for that is this: under the present law, Constitutional Article I, Section 9, which you can look at in your book, it says "that a prosecution for an offense which may be punished by death shall be instituted by indictment by a grand jury." Nobody questions that and there were some amendments up here which would have said "by life imprisonment." I agree and simply delete "or a felony necessarily punishable by hard labor" and leave it "capital crime" because the present interpretation is a "a capital crime includes those crimes which are punishable by life." The old article said "other criminal prosecutions in a district court shall be instituted by indictment or bill of Information." The chief proposed in Section 13 from the present law would be to bring into "the necessity for a grand jury indictment" all felonies necessarily punishable by hard labor. I had the staff make a list of felonies punishable by ten years or more, most of which are necessarily punishable by hard labor. The problem is that even with the present grand jury system, that in parishes—and I'm going to use an example of a man who's here—such as Jefferson, where there are two hundred felonies per month—it would be a practical impossibility to bring all of these cases before the grand jury, and you wouldn't want to get them to trial. I'm going to speak for the situation I'm familiar with. The primary use of the grand jury in my parish is on those cases which are (a) either of such a serious nature, such as homicide, aggravated rape and so on, that prudence dictates you ought to have a grand jury indictment, or secondly, on those cases where, in some, where the district attorney is really not quite sure in his own mind whether or not the evidence justifies bringing them to trial. In that event, he wants to run them by these twelve men from his parish. I think while it's popular to say that the grand jury is a tool of the D.A., that crime prosecution, for instance, I think it is a much more greater protection for the defendant, that is a grand jury indictment procedure. The reason is because you have a judge there that knows the law. You have a defense attorney present who can object to any introduction of evidence by the state and who can get some evidence suppressed at the point and may well get the case thrown out of court. This right to preliminary examination is set forth in the Louisiana Code of Criminal Procedure. It's in the statutes. Under the Louisiana Code of Criminal Procedure, it is a mandatory right if the charge against you is by a Bill of Information. That is, if the D.A. bills you and doesn't bring an indictment, he's got to give you a preliminary examination if you request one. I bring that to your attention, because I think it's necessary that you would understand that in order to deal with this whole topic. You have seen these little discussions that have been going on around here. I think you will find no disagreement among most D.A.'s that there are other crimes of a sufficient gravity that you ought to have a grand jury proceeding. In most of those cases, there are grand jury proceedings today by the will of the district attorney. But the practical problem, when you try to define them by a capital crime, is one that so far we have been unsuccessful in dealing with, because on the whole host of cases that you have before you, the legislature has prescribed penalties of twenty and thirty years.

they have a range between one and twenty, or twenty and thirty. This would include all of the narcotics cases which is one reason why we could not, without more study, agree to an amendment which would have required grand jury prosecutions, grand jury indictments on all prosecutions which could require a sentence of up to twenty years, because at the present time that would mean that every single "narcotics possession with the intent to distribute" would have to come before the grand jury. The point is, there are some practical problems involved here that again, as I said earlier this morning, might better be left to the discretion of the legislature. The legislature has required in the Code of Criminal Procedure that you have a right to preliminary examination if you are charged on a Bill of Information. By the same token, they could go into the criminal procedure article and they could require in addition to the constitutional minimum, that you also need a grand jury indictment on other specific crimes. But it is a very difficult thing for us to do here in the constitution today. For instance, if we set a minimum of twenty years, what would then keep the legislature from turning around and reducing all the penalties to nineteen years? You would be playing a game. This is too serious a business to be playing a game with. Now you consider Section 13, you have to consider also that what I've been talking about up until now is the grand jury as it operates at present. But under Section 14, the grand jury process would be greatly complicated. I think, and all the district attorneys I've talked to think, that it would be complicated to such an extent as to make it virtually useless as a tool of investigation in examining the accuracy of accusations made. Why? Well, it would give the right to compulsory process for presenting witnesses the grand jury for interrogation. If I were a defense attorney and I had a client that I wanted to slow down the prosecution of, I'd have a hundred subpoenas served for character witnesses. The grand jury, I guess, would have to listen to all of them. What would that do to your average grand jury term? You couldn't bring the cases forward. You couldn't get them in a posture to bring them to trial. The transcribed testimony of any witness appearing before the grand jury is provided for. If we are going to provide for the transcribed testimony of witnesses, then I think we have killed the secrecy of the grand jury. What would that do in an organized crime prosecution, for instance? It would have been authorized because of conversations that I've had with Ossie Brown, who's the district attorney here in East Baton Rouge Parish, who is charged with the obligation of prosecuting corruption in state government, for instance, to say that, in his view, that grand jury provision would make it impossible for him to prosecute corruption in government. Why? We've already required that any witness before the grand jury has to have an attorney. Well, now if you are investigating one department, it's a simple thing for the man at the head of the department to get one lawyer and have him stand in there in line, ready to represent every single witness who appears before that grand jury. The grand jury is not going to hear from those witnesses what it otherwise would have heard and if the attorney happens to miss, then under this article he would have the right to have a transcribed testimony of any witness appearing before the grand jury. I urge you in considering these things, don't confuse in your mind some of what I would agree are abuses in the system, and especially in the federal grand jury system, about which we can do nothing in a state constitution. By the way, before a federal grand jury, you have no right to counsel. I urge the staff research it and there is not a single state in the Union that guarantees anybody the right to counsel before a grand jury. There is one state which does it by statute, Washington. Again, I want to get back to the point that I'm making over and over again, that it may be that you can do this well by statute....

Point of Order

Mr. Tapper. I think Mr. Burson is not talking on the subject. He's asking about an amendment that was passed to the judiciary a long time ago, which incidentally was mine, and he's talking about a counsel before the grand jury, and in this amendment it deals with something altogether different.

Mr. Henry. Well, it's first one thing and then the other. The same idea interrelated, whatever you want to call it, a grade deal of latitude.

Go ahead, Mr. Burson.

Explanation continued

43rd Days Proceedings—September 7, 1973

Mr. Burson I'm just trying to make the point we can't consider Section 13 in isolation. We have to consider it both with what has gone before and what has come after, what will come after. We don't know what decision we're going to make yet on what comes after. My amendment would leave the present law alone. I want to state here and now that if, before the day is over, we could come up with some manageable way to define those crimes which are serious enough that we could all agree ought to go before a grand jury, that we could go with that. Well, so far as I know, nobody has been able to come up with that definition. So, until we can come up with that definition, then let's leave that question open where it should be to the state legislature to deal with in their own good time and in their own proper deliberations. Let's not freeze into the constitution something that we will find we can't live with later on and then be in a bad position to come back and try and change it.

I'll answer any question....

Questions

Mr. Roy Mr. Burson, are you seriously telling the truth to this convention when you say that after asking for a preliminary examination, if a district attorney bills you on his own, that you are still entitled to the examination and not merely to a question as to the amount of the bail or bond? Are you trying to tell these people that?

Mr. Burson Mr. Roy, if you will wait a minute, I'll get the code....

Mr. Roy No, no, don't get the code; get the Louisiana Supreme Court case that decided that. I know what the code says. But isn't it a fact that the Louisiana Supreme Court recently held that once the district attorney has billed and you have asked for your preliminary examination, the examination is with respect to the amount of bail or bond only and not as to whether a charge should have been filed [filed] in the first place? Isn't that what the Supreme Court held, Mr. Burson?

Mr. Burson The Supreme Court held that in such cases it was discretionary with the court. Article 296 of the Code of Criminal Procedure says, "if the defendant has not been indicted by a grand jury for the offense charged, the court shall, at the preliminary examination, order his release from custody or bail, if from the evidence induced it appears that there is not probably cause to charge him with the offense or with the lesser included offense."

Mr. Roy Yeah, but you're evading my question, and I'm asking you to tell the truth. Isn't it a fact that it's discretionary with the court? When you told this convention you were absolutely entitled to a preliminary examination before your judge after... even after the D.A. billed you that that is incorrect and the only thing the Supreme Court said you're absolutely entitled to is the amount of bail or bond. Now, isn't that the truth?

Mr. Burson Mr. Roy, in my experience I have never seen the court refuse to grant someone a preliminary examination when the person was charged with a Bill of Information.

Mr. Roy You're not answering my question, Mr. Burson. Don't you know, as the astute lawyer that you are, that when you told this convention that you are absolutely entitled to a hearing on the issue of the charge, that that is incorrect? The Louisiana Supreme Court has interpreted that article you have just read and to say that the court may limit it to a question of bail or bond only.

Mr. Burson Mr. Roy, I am indebted to you for the knowledge of the fact that this matter has been ruled upon by other than the Louisiana Supreme Court when you pointed out to me that the Fifth Circuit said, that a man could not be held in jail in such cases without a preliminary examination. I believe that the federal law still applies to us in Louisiana.

Mr. Roy Well, I'll let you read that Pugh case. It doesn't exactly say what you think it says. But you do admit that you were a little inaccurate in your statement previously?

Mr. Burson Not in the totality of the criminal law, which I think we've got to consider. We can't consider just the state provisions without considering the federal requirements.

Vice Chairman Casey in the Chair

Mr. Guarisco Mr. Burson, you said earlier that you didn't know whether or not you had a criterion by which a crime would be serious enough to go before a grand jury. Is that correct?

Mr. Burson I said that no criteria that I had seen proposed today was manageable and workable, that in lieu of that we should leave this matter for the legislature and leave the law alone, not venture into something that we don't know what the outcome will be, except that we do know it will further clog up the court system and make it impossible to bring criminal cases to trial.

Mr. Guarisco Do you think the criterion... the committee proposal of "a capital crime is necessarily punishable by hard labor" is a criterion?

Mr. Burson Yes, sir.

Mr. Guarisco If you are out there cutting that cane, that's a criterion to have a grand jury indictment. Don't you think?

Mr. Burson But, of course, Mr. Guarisco, all of this presumes that the grand jury is going to do something more lenient in favor of the defendant than the district attorney will do, which is an assumption that I have found not to be borne out in practice.

Mr. Pugh Isn't it a fact, Mr. Burson, that this is the only state in the Union, the only one that knows of that allows a district attorney to quash an indictment once it's been rendered by a grand jury?

Mr. Burson As far as I know.

Mr. Pugh This is the only state that will allow that?

Mr. Burson Yes, sir.

Mr. Pugh Well, is it not a fact that if this grand jury doesn't do what you think it ought to and it indicts a man, you can still quash the indictment?

Mr. Burson Yes, sir.

Further Discussion

Mr. Roy Mr. Acting Chairman, ladies and gentlemen of the convention, I rise in opposition to this amendment for several reasons. Let me tell you that I'm not so wedded, right off the bat, I'm not so wedded to the section proposed by the committee that reasonable changes would not be tolerated as far as I'm concerned. Mr. Burson does more with this amendment than meets the eye. I have been, in a sense, concerned and I've declared it before, with the fact that so many people in here who are not attorneys and the lawyers get involved in a mumbo jumbo of jargon and language, that you're not familiar with, and you're all in the dark as to what's really being said. I want to tell you that what was stated with respect to an absolute right to a preliminary examination by the previous speaker is incorrect. It is absolutely incorrect. One does not have the right to a preliminary examination by the trial judge after the district attorney bills him on his own Bill of Information. You can say it like you want, but if you are in any way influenced by that previous statement, discard it. Ask any attorney who practices in Orleans Parish how many times a person who is in jail, for whom one has been appointed to represent and files a motion for a preliminary examination. The morning of a preliminary examination the district attorney walks into the courtroom, files a Bill of Information charging the guy with armed robbery or whatever have you - it makes no difference and at that moment the judge on many occasions discharges the preliminary examination and the issue is only one of bail or bond, not whether you understand you should be charged or not whether there is probable cause for you being charged that way. Now, that's right, Mr. Burson is right when he says that we are trying to make the grand jury something more than the arm of the district attorney, and our Section 14 goes a little way to doing that. But let me tell you something else that was misstated. We don't guarantee to any person the right to have his witnesses appear in the grand jury room and interrogated by the grand jury. We simply provide, and we believe, that an independent body of citizens, this person's peers, should have the right to have brought there witnesses whom a poor indigent man may not be

able to get to the grand jury otherwise. The grand jury does not have to listen to the witnesses. It may say, as it has done in many occasions in the past, we don't want to hear your witnesses and there is nothing that one may do about it. That's absolutely the truth, ladies and gentlemen. Our committee never intended, and the language there does not say that you're entitled to have your witnesses interrogated by the grand jury. It only allows you, you see, the right to subpoena those people who have the knowledge, is that asking so much, that instead, if I have witnesses who know that I'm not guilty of a crime, that I was in Shreveport when the burglary took place in New Orleans and I'm some poor guy that has nothing, is it so wrong that I should be able to subpoena witnesses to present to the grand jury? Then the grand jury can say, "Mr. Roy, we don't want to hear your witnesses." I believe that twenty or twelve honest, fair, impartial grand jurors would say, "Well, let's hear that man's witnesses," and the witnesses are heard...

Question

Mr. Roemer Chris, could you address yourself to the problem raised by Jack in regard to Jefferson Parish, the example he used with two hundred felonies a day or week or something...

Mr. Roy I hate to say that I really find that kind of exaggerated. It doesn't necessarily... it may be felonies, but our provision deals with felonies necessarily punishable by hard labor. Let me tell you a couple of things, no better, there are two types of juries when you are tried. There is a twelve man jury that can convict you nine out of twelve and you can be sentenced to Angola. There is a five man jury, which is a relative felony. It would not apply to those many relative felonies at all, so there are not two hundred cases over there. But what is the argument? The philosophical argument to me is not that we...

Further Discussion

Mr. Gravel Mr. Acting Chairman, ladies and gentlemen of the convention, I want to speak briefly in opposition to the Burson amendment. I think that it is far too restrictive, just as I feel that the proposal by the committee maybe goes too far in the other direction. I honestly believe that there is a fair middle ground that we ought to reach with respect to when it is and when it is not mandatory for a grand jury to indict.

Mr. Casey Mr. Gravel, I'm sorry; let me just interrupt. I have a request from a couple of the delegates that they cannot hear. Delegates, please have your seats.
Please proceed, Mr. Gravel.

Mr. Gravel I'm not going to speak much longer, Mr. Acting Chairman, thank you. I just want to point this out to the convention, and I think that maybe that the delegates may well be aware of it. Regardless of whether the Burson amendment that's before you now is passed or rejected, there will come before you next a proposal by Mr. Pugh and myself, wherein we ask that a provision be adopted in the constitution which will require that in all capital cases (of course those are cases where the death penalty may be imposed) and in all cases of offenses, the conviction for which would justify the imposition of twenty years or more at hard labor, that in those cases that the grand jury indictment be essential. All I'm saying to you is this. It can be far one side of this particular problem, we have those that don't want any intervention at all by the grand jury. That is, any required intervention at all by the grand jury in any cases whatsoever except capital cases. The committee proposal, on the other hand, says that all felony cases must be the subject of grand jury indictment. Ladies and gentlemen, there is a fair, middle ground that I think you should consider. It's set forth in the next amendment and for that reason, I would urge the rejection of the Burson amendment that's before you, in order that we can consider and hopefully adopt the amendment that Mr. Pugh and I have submitted.

Question

Mr. Deshotels Mr. Gravel, you have been talking about a

middle ground. You state that Mr. Burson's amendment does not evidently strike a middle ground. Doesn't Mr. Burson's amendment bring the law exactly where it is today, in other words, that only capital crimes need be brought before a grand jury?

Mr. Roy It maintains the present Louisiana law that requires only that the grand jury be necessary in capital offenses; bring that's correct. Now the federal system, as you know, requires a grand jury indictment in any federal offense. That's correct, Mr. Deshotels.

Further Discussion

Mr. Drew Mr. Chairman, ladies and gentleman of the convention, I'll just take a minute. But let me point out to you one of the inconsistencies of the committee proposal and the reason that you should adopt this amendment that has been offered. Of course there is a difference in the size of the jury that hears that case that is punishable with or without hard labor, which means it may be jail or penitentiary, and the jury that hears those that are necessarily penitentiary offenses. We say, in the committee proposal, that we are trying to protect the individual. Just one example, if you will look at the statute on aggravated criminal damage to property, that is a crime that is punishable with or without hard labor from one to fifteen years, one to fifteen years either in jail or in the penitentiary. But that would not be subject to grand jury consideration under the committee proposal. It would only be those that are mandatory penitentiary. You have aggravated battery, which can carry up to ten years in the penitentiary. That would not be mandatory to be considered by the grand jury. You have thefts when the taking amounts to a value of five hundred dollars or more. You can be imprisoned in the penitentiary for ten years; that would not have to go before the grand jury. I think that the Burson amendment is a good amendment. Let us not bog down our criminal justice to such an extent that a speedy and fair trial is an impossibility. When you start talking about grand jurying, putting before the grand jury the number of cases that would fall within the category here, and as I just stated, you are subject to more imprisonment for the other offenses in many instances than you are the ones that are necessarily punishable by hard labor, it just doesn't make sense. I think we have done enough already to the criminal justice system, this state without further bogging it down. We would have our district attorneys and their assistants tied up day in and day out with grand juries and it is not necessary. One thing that the proponents of this committee proposal have not taken into consideration: the grand jury indictment is nothing more than an accusation. The grand jury is an accusatory body. The district attorney with a Bill of Information is nothing more than an accusation of the commission of a crime. Let me tell you from my experience, ladies and gentlemen, if I have a defendant to represent, I had much rather go into court representing him on a Bill of Information than on a grand jury indictment because, I can assure you that, although it should not do it, that a grand jury indictment does carry a little heavier stigma toward guilt. I think it's probably the proponents of this committee proposal of doing exactly the opposite from what they intended to do with the exception of our provision requiring that the witnesses have the benefit of counsel and the summoning [summoning] of witnesses. What this will do will be to make a grand jury an adversary hearing and it was never intended to be an adversary hearing. It is a means where your peers, your fellow men decide if there is enough evidence to where that individual should stand trial and that is all in the world a grand jury indictment is.

Questions

Mr. Roy Mr. Drew, if it's a forum to determine whether you should be indicted or not, don't you think that the grand jury should have the opportunity to hear your witnesses, if you get them there?

Mr. Drew I don't think that it should be mandatory because you might just as well carry it one step further, Mr. Roy, and say that the district attorney couldn't file a Bill of Information until he had talked to the defendant and all of his witnesses. It would be just as logical as what you are saying now.

43rd Days Proceedings—September 7, 1973

Mr. Roy: Have you read the provision to mean that you are entitled as an absolute right to have your witnesses in the grand jury room itself? Is that the way you read this whole section?

Mr. Drew: No, I don't read it that way. But you have that right now if the district attorney wants to hear them, and in most parishes they will hear them if they see fit.

Mr. Roy: Suppose you can't get them there for the district attorney in his gracious manner to allow the grand jury to hear, Mr. Drew. What do you do about that?

Mr. Drew: Mr. Roy, I think that you have an entirely different concept of a district attorney from what I do. I have never seen a district attorney that wanted to go to trial without a case that he didn't think he could win.

[Previous Question ordered.]

Closing

Mr. Burson: You will have another amendment to vote on in Mr. Gravel's, but I urge you, first of all, to approve my amendment, because by so doing I think that you will purge from Section 13 what I deem to be an essential error. I point out to you that the discussion that I made earlier about the 200 felonies a month was simply something that was told to me by the district attorney of the parish involved. But, I can tell you of my own personal knowledge that we've had as many as 600 felonies a year in St. Landry Parish, not all of them punishable by hard labor but a high percentage of them. The point is, in many of these cases, let's take a burglary case where you catch a man inside the building. A grand jury indictment in that case would be merely proforma. All of these arguments, it seems to me are based on the tacit presumption that all of the district attorneys in the state are operating in bad faith, and I don't think that that presumption is justified. I think that these men are elected public officials, and I think they operate in good faith. I cannot, for the life of me, think of why a district attorney who, after all, would have to prosecute the case would want to take a bad case to court and get his brains beat out. That just doesn't make sense to me, because remember the jury or the people ultimately make the decision in this case. I have seen a few cases where able defense counsel walked the guilty man out and convinced the jury to let them go, but I wouldn't want to do away with the jury system on that account. So, let's turn that argument around. Just because there have been people, perhaps one in a thousand; I think it's a lot less than that, unjustly accused by grand jury indictments or bills of information, let's not throw out the baby with the bath water. We don't throw the jury system out because a few guilty men get off, because that's the best way we've ever found of determining guilt or innocence. So, by the same token, let's now throw out the system that has worked as far as bringing criminal cases to trial in this state and substitute one that we don't know how it's going to work in the constitution. Now, I'd be the last one to get up here and tell you that we had a perfect system of criminal justice. God knows that is not true, but I am asking you and pleading with you, that let's leave these technical changes to be made where they ought to be made in the legislature. If you're sure that you understand the technical change that's being proposed by the committee, what its practical effect will be, and you agree with that practical effect, then vote for it. But, if you are in doubt, as I am in grave and serious doubt as to what the practical effect of this would be, and I think the practical effect would gravely, seriously diminish the ability of bringing criminal cases to trial to find out the guilt or innocence of an accused then I ask you to vote for my amendment and let's leave this question where it belongs... the amendments in the code of criminal procedure. Even though we establish a minimum necessity of a capital crime grand jury indictment, the legislature could still come back and enumerate any number of other crimes that would require grand jury indictment.

Questions

Mr. DeBlieux: Mr. Burson, I just wanted to see if I understand you right. If you're saying by this amendment of yours that it would allow the legislature to determine what crimes they wanted to bring before the grand jury other than capital cases?

Mr. Burson: Yes, sir.

Mr. DeBlieux: Now, if we don't pass your amendment, then the legislature would have no choice in these matters whatsoever.

Mr. Burson: That is correct, sir. They would be bound to bring any felony necessarily punishable by hard labor. You know what I can imagine happened? I imagine right behind adopting this constitutional provision, the legislature coming in and making all cases with or without hard labor, which would render this thing absolutely meaningless. That's what I'm talking about playing games. This is too important to play games with statutory material in a constitution.

Mr. Willis: Mr. Burson, we haven't made the distinction between a grand jury which is an accusatory body and a petty [petit] jury which is a body that hears the case where it's a contradictory proceeding. Now, with that in view, isn't it a fact that all the witnesses and the accused can have his attorney to defend his case before the petty [petit] jury?

Mr. Burson: There's no question about that.

[Record vote ordered. Amendment adopted:
84-24. Motion to reconsider tabled.]

Personal Privilege

Mr. Roy: Mr. Chairman, ladies and gentlemen of the convention, I'm not going to take much time. I've never respected this before but I just think that I ought to respond to maybe some insinuation that was made that I disagree with. I don't think that public officials are no good. I don't think that they are dishonest. It doesn't mean that I don't believe that when we're dealing with a Bill of Rights that I'm not going to stand up and do my utmost to make sure that in all cases possible we obviate the chance of some public official sometimes not doing his job. Now, we're dealing with a Bill of Rights here. I sat on this committee since January. I know personally how I feel about basic rights. I voted for everything with respect to flexibility for judges, for the legislature; I'm giving the D.A.'s every right they have. I want to go out and go out clear that I don't accuse any district attorney nor any judge of any misconduct. But, I do say that when we deal with the Bill of Rights, it doesn't answer the question to say that this is technical in nature and let the legislature deal with it at some other time, because you're dealing with a Bill or Rights. You're trying to say that no matter how much I believe in everybody in here there comes a time when we must stand pat for citizens. Now, I just wanted to make that clear because I'll put my record against anybody in here with respect to a good citizen. I have military service. I've done my job every way I can. I just think that I don't want it misunderstood that I have any misconception about any views and what have you. Thank you.

Chairman Henry in the Chair

Amendment

Mr. Poynter: This is the Gravel-Pugh amendment.

Amendment No. 1, on page 4, line 23, immediately after the word "for" delete the remainder of the line and insert in lieu thereof the following: "any capital offense, or any felony in which punishment at hard labor for 25 years or more may be imposed upon conviction."

There is no longer a necessity for Amendment No. 2, as those same words were stricken by the Burson Amendment.

Explanation

Mr. Pugh: Mr. Chairman, fellow delegates, by way of what would be a technical amendment, I call your attention to the fact that there should be a comma after the word "conviction" so that if you see fit to adopt this amendment the language will properly flow within the section. I am pleased that Mr. Burson was able to make the changes he did in the present section to the extent of eliminating the manner in which the committee had presented it. I do not disagree with Mr. Burson when he said the committee had gone too far. I do suggest to you that anytime that a person is to be charged with a serious crime that the basis of that charge should be upon an indictment by a grand jury.

43rd Days Proceedings—September 7, 1973

You and I both know that the retraction never catches up with the lie. You and I both know all due respect to Mr. Burson, but there are a lot more cases than one out of a thousand when somebody was wrong. Now, our amendment will do these things. It will provide that where there is a capital offense ... for your information a capital offense is one that may be punished by death or in any instance where a felony may call for hard labor of 20 years or more. I say to you, ladies and gentlemen, that anybody that's faced with a possibility of losing his life or faced with a possibility of spending 20 years in a penitentiary ought to have that matter first set in action by more than a sheet of paper signed by any one individual. I don't care who he is. I say to you that if you're going to put somebody to death, I'll say to you that if you're going to put somebody in the penitentiary for 20 years, let it be by a grand jury indictment. Now, there's no doubt, as Mr. Burson said, that the district attorney, if he chooses to do so, and the grand jury goes berserk, he can quash that indictment. This is the only state in which he can, but he can quash that indictment. Therefore, we have no fear about runaway grand juries. What worries me, in all due respect, is the possibility of a runaway district attorney, where for no reason, be it political or otherwise, I cast no aspersions, be it political or otherwise, he decides to go after somebody. Well, he can do it with a single sheet of paper, and the man can be put to the test of having to defend himself. There's nothing comfortable about being charged and going to the expense of defending yourself and your name. If you're ever able to successfully defend your name. I suggest to you that this is a fair and reasonable amendment. I suggest to you that if you intend for a man to spend 20 years in jail or if you intend to take his life, then let it be initially started by a grand jury indictment. Are there any questions?

Mr. Henry Mr. Pugh you had said something in your opening remarks...you don't further propose to amend this amendment?

Mr. Pugh No, what I said was "I think there needs to be a comma after the word 'conviction' instead of a period". I was saving myself the possibility that someone would ask me whether or not it made sense when we got through with it.

Questions

Mr. Conroy When Mr. Poynter said this, I heard him say 25 years, but I believe Mr. Pugh said 20 years?

Mr. Pugh 20 years is what is in the sheet of paper that I have and what I intended.

Point of Information

Mr. Conroy Is that what's in yours, Mr. Poynter...20 years?

Mr. Poynter Yes, I must have inadvertently said 25; it is 20, Mr. Conroy, and I apologize.

Mr. Henry Are you ready for the question?

All I'm doing is asking, Mr. Gravel. You're too old to be jumping up and down like that. If you jump up too high, you'll get called to that higher convention in the sky. Would you like to speak, Mr. Gravel?

Further Discussion

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, first, let me say that I really would prefer for the Chairman not to refer to my age. I'm really conscious of it and if I wasn't, whenever I picked up the newspaper and I saw the photograph of the back of my bald head I would continue to be conscious of it, but age they tell me is not measured by the clock nor by the calendar but by the intensity of experience. Some of the experiences that I've had in the last few days have been real, real intense. I must confess that I am beginning...

Mr. Henry If you're going to waste our time, why don't you talk on the amendment?

Mr. Gravel Well, Mr. Chairman, I haven't been doing too good with logic. I'm trying to drum up a little sympathy. I will adhere to the direction of the Chair and proceed to talk on the proposed amendment. I'm very, very serious about some observations that I would like to make to you. Now, please hear me well. We've already provided at the

request of the district attorneys' association that they be given not only one grand jury but the authority for multiple grand juries in their parishes. We've also passed, and I think correctly and properly, as I pointed out to you yesterday, a provision to be inserted in the constitution that makes the district attorney the single most powerful man in his judicial district by completely and totally insulating him in the discharge of his duties from any interference by any judge or by the attorney general of the state of Louisiana. Now, let me pause right here to remind each and every one of you that the district attorneys, if this constitution passes, will have at this particular point, at the point where we are now, practically no restraint of any kind with respect to the kind of action that they might take against any citizen except those charged with capital offenses. That means that for any offense other than capital crimes, the district attorney without any restraint and without any supervision in this constitution passes, will have the authority to file a bill of information. I won't yield right now. What this amendment proposes to do is to ask you delegates to the convention to insert in this constitution a provision to this effect. That before any person can be charged and prosecuted with an offense for which he might forfeit his life or might be imprisoned in the state penitentiary for 20 years or more, that there be the intervention and consideration of the grand jury selected from the people in order that that particular body can determine with the district attorney, it's legal adviser, whether or not a charge shall be made of that magnitude. Now, that's what this amendment asks that you do. I submit to you ladies and gentlemen of the convention that it is tremendously important that with respect to the massive and major crimes to which this amendment would apply that you do have some sort of insulation and let it be that which we have already provided for...the grand jury or the grand juries within the jurisdiction in which the district attorney has supervision and control. I urge that you adopt this amendment. I will now yield to any questions.

Questions

Mr. Roemer Delegate Gravel, I find it somewhat ironic, do you, that those who are proposing to expand the mandatory grand jury provisions are the very ones who had been at the mike for two days saying that they don't believe in the integrity of the grand jury system, that is, they've often said at least on three occasions that I've heard, that the grand jury is nothing more than a tool of or a hand-maid of the district attorney? So, what kind of game is this?

Mr. Gravel I really don't know that I can answer that question, Mr. Roemer, but I do think that we're talking about a grand jury which constitutes in every instance a fair cross-section of the community, and that that body should be in a position to work with the district attorney in the massive power that we've given him before crimes of great magnitude can be visited upon the people of this state or upon the people of the district in which the district attorney is involved. I think that there were two others that wanted to ask questions in advance of Mr. Burson, who I'd like to respond to also.

Mr. Burson Mr. Gravel, would you agree that even if we left the constitutional minimum at only capital crimes, that it would be the prerogative of the legislature to come in and specify other crimes at its will?

Mr. Gravel That's possible, but since 1921 they haven't done it, Mr. Burson.

Mr. Burson But, you would agree that they could do it by statute?

Mr. Gravel I would agree that there is that possibility, yes, sir, unless there is some prohibition in this constitution which I don't think exists at this point.

Mr. Conino Mr. Gravel, in your amendment it states "for 20 years". On a fair reading of that, would it be that that could possibly mean from zero to twenty or up to twenty years?

Mr. Gravel No, sir. This clearly means, to me, Mr. Conino, that it would be those offenses in which the statutory authority for sentence would be 20 years or more. In other words, I think it's very clear to me that we're talking about felonies in which punishment at hard labor for 20 years or more may be imposed upon conviction.

[...]
vote ordered. Amendment adopted:
58-55. Motion to reconsider tabled.]

Amendment

Mr. Poynter Mr. Duval is going to go with his amendments here.

They read as follows: Amendment No. 1, page 4, line 25, immediately after the word and punctuation "jury," and before the word "no" insert the following: "no person shall be denied the right to a preliminary examination unless previously indicted by a grand jury."

He has no further amendments deleting anything. That's just an additional sentence there.

Explanation

Mr. Duval I'd like to point out that this amendment does not delete any amendment that's been previously adopted. It merely adds to the section. I'd like to explain this very carefully as I think it's important. When Mr. Burson first made his remarks, there was some discussion about a preliminary examination. Perhaps, all of you do not know what a preliminary examination is. An indictment...the purpose of a grand jury indictment is to determine probable cause. If a person is arrested and a bill of information is filed against him, he can be held in custody without probable cause as to his...whether or not he should be incarcerated ever being determined. Right now, under the present law, when a bill of information is filed your absolute right to a preliminary examination becomes discretionary. I think that is wrong. I think your right to a preliminary examination should always be absolute unless there has been a determination of probable cause by a grand jury. I think, as a matter of fact, I feel like a preliminary examination is a better form than a grand jury proceeding because in many instances a grand jury is merely a rubber stamp of the district attorney whereas in a preliminary examination you have a judge. As it now stands you can't even get a preliminary examination in many parishes if a bill of information has been filed. That means that the D.A. merely files a bill...your right to a preliminary examination becomes mitigated. I think the purpose of this amendment is to guarantee your right of a preliminary examination, have it not be discretionary unless there's been a grand jury indictment. I think it's beneficial. I think it's what's intended and I move for its adoption.

Questions

Mr. Burson Mr. Duval, I have two questions. Really, I agree with you as far as the desirability of a preliminary examination goes, but don't you think that this language would fit real well into an amendment to Article 296 of the code of criminal procedure?

Mr. Duval It might fit there, but I think if we're going into this thing as we are, I think we ought to make it clear here in the constitution.

Mr. Burson Do you know of any other state constitution that has such a guarantee in it?

Mr. Duval I have absolutely no idea.

Mr. Derbes Mr. Duval, I've just been arrested for disturbing the peace and I'm about to be arraigned in municipal court where the fine is ten dollars. According to your amendment, I'm entitled to a preliminary examination. Is that correct?

Mr. Duval Yes, and I wish you'd try to keep order a little more, Mr. Derbes.

Mr. Derbes And I've just been arrested for the crime of driving while intoxicated. Now, I'm entitled to a preliminary examination in that.

Mr. Duval Yes, and as you know, if that's your third time you can go to jail for a good many years on that, Mr. Derbes. You might well want that preliminary examination.

Mr. Derbes So in all minor offenses and all petty misdemeanors in all city courts as well as state courts even though imprisonment may not necessarily be mandatory and even though imprisonment may be considerably less than six months. I

would still be entitled to a preliminary examination based on your amendment. Is that correct?

Mr. Duval That is correct, yes sir. If you want it you can have it.

Mr. Lanier Mr. Duval, at a preliminary examination to establish probable cause, doesn't the state and the defendant both have the right to subpoena witnesses and present their evidence with reference to the case?

Mr. Duval That is right. One reason about this amendment is I hope it will be used to substitute for Section 14. I don't think we'll need Section 14 if we adopt my amendment.

Mr. Lanier But, if you do this and a determination of probable cause is made, then you still have to go back and do this all over again for the trial of the case, don't you?

Mr. Duval That's right, Mr. Lanier, but right now you have an absolute right...if people were informed of their rights, and Mr. Derbes and you know this, they have an absolute right to a preliminary examination immediately upon arrest. But most of them don't know what the heck they're doing and don't ask for it, and the D.A. slips his bill of information there and it becomes discretionary. You will know that right is absolute. As a matter of fact, under the law, until such time as the information is filed.

Mr. Lanier Let me ask you this, Mr. Duval, if the judge determines there is no probable cause, it does not dismiss the charge, does it?

Mr. Duval No, sir. It doesn't dismiss the charge but the D.A. sure sees the handwriting on the wall, I imagine...and also, the man is not incarcerated.

Mr. Lanier He can go ahead and have the trial, can't he?

Mr. Duval Oh, he can do it, if he so wishes.

Mr. Lanier That would mean in every speeding case, or no driver's license, or no fishing without a license, in all of these cases, you'd have to try each one of these things two times, is that right?

Mr. Duval You wouldn't have to try it two times. As you well know, Mr. Lanier, a preliminary examination is not a full trial on the merits, by a long shot. All you have to determine is probable cause, moreover, as you well know, every person arrested has a right to be advised of his right to a preliminary examination. Now, he just isn't.

Mr. Pugh Mr. Duval, incidentally I'm for your amendment, not for the purpose of knocking out the section, but I am for your amendment. I want to ask you if, in your opinion, this will prevent what happens so often...is that when a man asks for a preliminary injunction...I mean a preliminary examination, the D.A. rushes in and gets a grand jury indictment. Now, is it your understanding of this when he asks for it, then that itself is the timing factor as to whether or not there's been an indictment?

Mr. Duval That's right.

Further Discussion

Mr. Burson Mr. Chairman, ladies and gentlemen of the convention, I hope that after we get through with the Bill of Rights that I don't have to come up here as often as I do now. I'm sure you hope that much more than I do. I would be remiss in my duties as a delegate if I failed to point out the inherent error that I think that we're making as a convention in a wholesale, wholesale revision of the code of criminal procedure in the constitution. I said yesterday that we were making nine major changes, but I believe that's up to about eleven now. I'd like to contrast what the legislature did in adopting this code of criminal procedure. A law institute committee formed of defense attorneys, district attorneys, and esteemed members of the bar studied for ten years, took testimony, had meetings, read cases, and then came up and proposed a code of criminal procedure to the legislature. The legislature adopted it in 1966. It's been amended quite a few times since then. But, we are here today, going to do in one afternoon, on floor amendments, what the legislature has not seen fit to do, yet. I submit to you, if these projects are worthwhile and I think that probably it

is worthwhile to provide for a preliminary examination, but we need to get down in a statute somewhere and set out the whys and the wherefores, not just set something up here when we don't know what the consequences of it are going to be, except this: that we do know that in every single case here you are adding an additional delay, you are making prosecution of criminal cases more difficult, you're making it more difficult to get these cases to trial where the guilt or innocence of the accused can and should be determined. I'd like to point out to you that if we can continue in the trend that we're going in, we're going to put those who have the avowed responsibility for enforcement of the law in this state in the same position that they find themselves in in New York State now, where in New York City last year there were 50,000 felonies committed and only 900 of them were able to be brought to trial. Now, if that's what you want then by all means go ahead with it. But, when you are finished, I want to assure you you're going to be looking at a total document that many, many people of good will who feel that we need a new constitution very badly will simply not be able to swallow.

[Previous question referred. Amendment suggested: Amend Section 1, Paragraph 1, established.]

Amendment

Mr. Poynter Delegate Burson send amendments.

Amendment No. 1, on page 4, delete lines 23 and 24 in their entirety including all floor amendments previously adopted thereto, and insert in lieu thereof the following: "held to answer for any capital crime or any crime punishable by life imprisonment, except on indictment by a grand."

Explanation

Mr. Burson Mr. Chairman, ladies and gentlemen of the convention. We are not going to play any game about this amendment. I'll be frank to say that if you adopt it, you are going to set things approximately back in the same place that you did when you accepted my first amendment, because I think that life imprisonment would be included under capital crimes today. Now I think it's worth one more shot at it, though, because I want you delegates who are not lawyers to pay attention, please, if you have listened to anything that I have said in this convention, to show you the consequences of adopting floor amendments which change the Code of Criminal Procedure without the means that the Legislature has at its disposal to study these matters.

Look, if you will, at the language of Mr. Gravel and Pugh's amendment. It says that "you have the right to a grand jury indictment in any felony in which punishment at hard labor for twenty years or more may be imposed." "May be imposed." Now, I submit to you, we are going to have to know here, won't we, what the difference is between this and what the committee proposed? The committee proposed that only felonies necessarily punishable by hard labor would require a grand jury indictment. And I suggest to you that the change of one word from "necessarily" to "may" makes Mr. Gravel's amendment broader than the committee proposal because the committee proposal required a grand jury indictment only if, only if it was a felony necessarily punishable by hard labor. And Mr. Gravel's amendment requires a grand jury indictment for any in which a penalty of twenty years or more at hard labor may be imposed. And there are many crimes under our law which provide that punishment is with or without hard labor.

The committee proposal didn't include those. It included only those crimes defined in terms of necessarily punishable at hard labor. So we have included here, with one word, one word, mind you, a whole new category of crimes within this new-found right that is a drastic change in our present law.

Now ladies and gentlemen, I ask you in all sincerity, is this what you want to do? I don't think so, and I don't blame in any sense of the word, the proponents of this amendment. I understand their philosophical position. I respect it. And under different situations, if we were talking about working out the mechanics of a statute, I think something could be worked out in this area. But I submit to you that this offhand fashion is not the way to do it. It simply isn't the way to do it. Let's do that kind of thing in the way that that Code of Criminal Procedure was adopted after due and deliberate study of the consequences of what we do. Let's not do that kind of thing by a floor amendment. Let's give new-found delays, new-found so-called rights which

have nothing to do with the guilt or innocence of the accused. How can people get up here and keep talking about the grand jury as the rubber stamp of the D.A. and then raise so much cane [cain] about requiring a grand jury indictment for everything. Where is the logic in that position? I don't follow that argument. It just doesn't add up.

And I'm requesting to you, urgently, that you realize that unless we know the penalty for each and every crime at the present time, when we put twenty years or ten years or fifty years in the constitution, we don't know what we are including. We don't know what we are leaving out. You may get home and have one of your constituents say, "Well, you mean to tell me that before, the district attorney used to be able to prosecute a simple rape by a Bill of Information, and now you are going to require him to go through a grand jury hearing? I'm surprised at you. You say, 'Well, I didn't know I did that.'" But you are doing it when you adopt this kind of language without realizing the consequences. This is properly statutory material.

For goodness sakes, let's quit legislating in this constitutional convention in the area of criminal law when we don't know the consequences of what we are doing.

I'll answer any questions.

Questions

Mr. Pugh Can you give me the crimes now that would be applicable in the event that the people saw fit to vote against your amendment and leave the so-called Gravel and Pugh amendment standing?

Mr. Burson Mr. Pugh, I had the staff prepare this memorandum which is in the hands of the delegates. I asked that it be passed out. I have not checked the accuracy of it, and I would not want to verify it one way or the other.

The only thing that I can say is I know it would include an enormous number of crimes that are not presently susceptible to the requirement of a grand jury indictment, this rubber stamp of the D.A.

Mr. Pugh This list that I have, which I assume is the same that you had prepared, has twelve crimes.

Do you have any reason to believe that there are more than twelve crimes that would fall under that category?

Mr. Burson Unless I actually did the research myself, I would think the staff usually does a pretty good job.

Mr. Pugh Well, now, they said aggravated kidnapping was a maximum sentence with hard labor for life, that's death under the present statute, isn't it?

Mr. Burson Yes, sir.

Mr. Pugh All right. May I ask you one other thing? Did you not say at the beginning of your argument that you thought capital crimes would have life imprisonment? Is that what you said?

Mr. Burson I said that I put life imprisonment in there because I think that when the death penalty was outlawed by the U. S. Supreme Court, that the old category of capital crimes would, now, in my opinion, and I'm certainly not a U. S. Supreme Court Justice, probably include those crimes which are now punishable or would be punishable under the changes that the legislature would have to make in the law to bring the law in line with the U. S. Supreme Court decision, to life imprisonment rather than death.

Mr. Pugh Which are the four crimes right now that call for a death penalty?

Mr. Burson As far as I can recall, that would be aggravated rape, would be murder, would be aggravated kidnapping, and treason.

Mr. Pugh Thank you.

Mr. Willis Mr. Burson, we have provided in the Judiciary plan whereby we can call a grand jury or grand juries.

Mr. Burson Yes, sir.

Mr. Willis Now, with the statistics, that you have supplied us with respect to your parish, which are somewhat the same as in my parish, and with no exemptions for grand juries except those set by the Supreme Court, and with crops to

harvest and with the grand jurors in session only six months out of the year, or two grand juries per year, how long do you think it would take your office to handle the indictments under the Pugh and Gravel amendment for a six-month period?

Mr. Burson I see no practical way to handle them, at all, if you want to be frank about it. We have a very difficult time right now in trying to catch up on a tremendous backlog that we have. We have brought ninety cases to final determination in the first three months of this year...ninety felonies of the nature that would be defined here.

Mr. Willis And if you add the Gravel-Pugh type of crimes, how long will it take....could you do....could you handle the business with the....

Mr. Burson I would say, that of those cases which we brought to trial in that period, which represented a maximum effort on the part of our office, we would not have been able to bring to trial more than a third, at the most, of those crimes.

Mr. Willis Now, additionally, what would be the cost to the local government of those grand juries and the waste of time of district attorneys.

Mr. Burson Well, of course, the police jury has to pay for the cost of the grand jury, and I don't think there's any question but what the cost would be multiplied tremendously. It would have to be. The cost to the sheriff's office operation of issuing all the subpoenas. But cost is not the issue. Those that say there should be no price tag on justice, fine. All I'm asking is, let's not give the people who are responsible for the enforcement of law, something that's impossible to operate in an offhand manner with a floor amendment. Let's let the legislature work these problems out.

I have never heard in the time that I've been concerned about those matters, any person request the district attorney's office to try fewer cases.

Mr. Willis One more question, Mr. Burson, finally. What do you think would be the humor of the grand jury who had to serve from July through December, what type of grand juror would he be in terms of neglecting his business for six months? And think about what we are doing here.

Mr. Burson I would think that the humor in that case would be rather poor....

Further Discussion

Mr. Gravel Mr. Chairman and ladies and gentlemen of the convention. Mr. Burson has made a statement that I suggest to you is absolutely and totally inaccurate. The proposal by the committee would be that there be required a grand jury indictment in every felony case where it was necessary that the offense was necessarily punishable by imprisonment at hard labor. There are a lot more cases encompassed by that language....a lot, Mr. Burson. And I certainly would have thought that he would have known that when the cases that would be encompassed by the proposed amendment that this convention adopted and that Mr. Burson now seeks to have you reverse.

Just so you'll have it clearly before you what this amendment proposes to do, that is the amendment that you have already adopted is to require that the grand jury indict in the most serious offenses, where the legislature has prescribed the most serious penalties. Those crimes, there's been no secret about it, those crimes have been listed by the staff as being twelve in number. I am going to read them out to you: Murder of the first degree, murder of the second degree, the serious sale cases involving narcotics, manslaughter, aggravated rape, simple rape, aggravated kidnapping, aggravated arson, aggravated burglary, armed robbery, abortion.

Those are the cases in which a person can either be condemned to death, there are three of them, or in the other nine cases where he can be sentenced for more than two decades into the state penitentiary under the law.

Mr. Burson is wrong when he tells you that the amendment that you've already adopted enlarges upon the committee proposal. And I would be willing, if Mr. Burson wants to accept this challenge, I would be willing for his amendment or my amendment to stand or fall on a determination by the staff of the accuracy of the statement that he just made to you. I challenge him, challenge him to justify the statement that he made by the report of the staff of this convention.

I say, I don't suggest for one moment that he did it deliberately, I say that his statement was misleading to you. The proposed amendment that Mr. Pugh and I had, I think was clearly understood by each and every one of you at the conclusion of the debate and discussion with it. This is a second shot. This is the kind of situation that Mr. Burson is employing now that Mr. Champagne referred to the other day as being that kind of a case where people just won't give up.

Ladies and gentlemen of the convention, I implore you, don't undo something that has been done for the benefit of people who have been charged with the serious offenses defined by the legislature of this state. Keep in mind what I told you before, that if this constitution is adopted, the district attorneys are going to be the single, most powerful people within their judicial district, which, to some extent, they should be. But let's have between that power, a fair cross-section of the community of the people of the district in those instances where man, as a consequence of a criminal accusation can lose his life or his liberty for more than two decades.

Further Discussion

Mr. Gauthier Mr. Chairman, members of the delegation, I rise in support of the Jackson amendment, Burson amendment. I'm sorry, I rise in support of the Burson amendment and let me point out why....this was a legislative amendment in a number of offenses, a grand jury indictment would be required, and this is good and fine with some exceptions.

Presently, which Mr. Gravel forgot to mention, possession of marihuana on the third offense, for instance, carries with it zero to twenty years which would mean, under the Gravel amendment, possession of marihuana, third offense, would require a grand jury indictment. I oppose this. Why? Why? Harmon Drew made a good point that a lot of people missed. As a defense attorney, I feel that going before a jury with a grand jury indictment hanging on to my client, it produces a serious disadvantage. I would rather that he have been charged with a Bill of Information.

Another reason that Burt Willis pointed out adequately, you're going to need full-time juries in a number of parishes to cope with the drug problem which many of them carry life, or over thirty years. Under the Gravel amendment, they would all his have to get grand jury indictments. The workload of a grand jury would triple. It's just....I don't think it's reasonable, I don't think it's practical.

Now, if I understand Mr. Gravel right, he contends that we are providing for those crimes that the legislature feel are of a necessity serious enough for a grand jury indictment. Let me make this point. Some years ago, a couple of years back, the judges were having a hard time contending with marihuana on a first offense. They approached the legislature and said, "The penalties are too harsh. Lower the penalties so we can deal with this problem." The legislature did so, and what happened, the wrath the people fell upon and they had criticism, they were criticized publicly, they were criticized at home, and I have legislators who have told me they will not again lower penalties, but rather, would raise them, would raise them.

Therefore, you put them in a bind, and I say to Mr. Gravel, that if you want to isolate these serious crimes, then we are going about it in a backwards way. It seems to me that we are not being reasonable when we require that a third offense of marihuana go to a grand jury. It's just not reasonable, and I beg of you, think of the expense, think of the cost of it, and also, a lot of offense attorneys feel that we would rather go before a jury with a Bill of Information rather than a grand jury indictment. So don't think it's just the defense arguing one way. I beg of you, consider the Burson amendment carefully, and I ask you to support it.

Thank you.

[Discussion about the Burson amendment.]

Closing

Mr. Burson Mr. Chairman, ladies and gentlemen of the convention, when Mr. Gravel said that I was absolutely and totally inaccurate, I hope that he did not mean to say that I was intentionally lying. I may mislead you unintentionally from ignorance on my part. But I promise you that anything that I tell you from this podium is either true or I sure think it's true or I would not say it.

I want to point out to you that the cases embraced in my amendment that would require grand jury indictments under the present law, would be murder, aggravated rape, aggravated kidnapping, certain narcotic sales, treason, and abortion and

43rd Days Proceedings—September 7, 1973

any other crimes that the legislature later decided to define in terms of a death penalty or life imprisonment. That should be clearly understood. Now, that gets us to a problem that I've probably not discussed enough, that Mr. Willis brought out.

When you've used that simple term, "grand jury," don't forget you are talking about the requirement that people be produced to man that grand jury. And those people are going to be your constituents. They are going to have to come from your parishes. They are going to have to be paid for by your grand jury. Now, we've got a devil of a time, a serious problem right now in trying to keep our jury venire for petit jury service intact. It's commonplace at home for us to draw a petit jury venire for criminal jury term where we'll have a hundred names and wind up in court with all but fifty excused for medical reasons, or excused for one reason or the other. Now what in the world, if we have that hard a time getting people to sit for a week, maybe, or maybe a day to hear a criminal jury case, are we going to do when you're going to give us the problem of having to have four or five grand juries in session in some large parishes like Jefferson, at least three in my parish? Where are we going to find the people to sit on these grand juries for six months at a time? Is it the kind of practical problem that epitomizes the difficulties that you get into when you try to legislate in this constitution. I implore you, think of these practical things. Just because something is practical doesn't mean that it's inherently of less value or less weight than a philosophical ideal.

You know, these practical problems are going to be there regardless. We can't wish them away. Now all this talk about the D.A.'s being the most powerful people in the.... if the constitution is adopted, the language we've got in there about the district attorneys is a watering down of language that was in the statutes prior to this time. And as far as I am concerned, the only reason we had to put it in the constitution is because we had a determined move on by the attorney general of the state to use up powers that have traditionally been those of the local district attorney. On the basis of the thought that I have, I purely believe simply that I thought that the administration of criminal justice should be kept a local matter and not a matter of centralized control, because that created the greatest danger of a police state that you could have. Now I don't know whether that's an illiberal argument or not, but I still think it's valid. The point don't decide an issue like this, for goodness sakes, on whether or not you like the D.A., you like me, you may be aggravated to death by me by this time. You've heard from me far more often than you would like to have heard. But don't dismiss the validity of the arguments that I make because of that because these arguments are legitimate, practical problems that would present an insurmountable barrier to the administration of criminal justice at this stage of our development. And I ask you, just ask yourself one question, "When, in your campaign, did you hear anybody in your district say that they wanted less efficient and less efficient criminal justice? When did you hear anybody say that they wanted fewer criminal cases to come to trial? And if you heard that, then by all means vote the way that your constituents want. But I doubt that any of you heard that.

[*Revised vote ordered. Amendment adopted: 99-55. Motion to reconsider tabled. Previous Question ordered on the Section. Section passed: 100-14. Motion to reconsider tabled.*]

Personal Privilege

Mr. Lennox Mr. Chairman and fellow delegates, for those of you who feel the convention has made little progress in recent days, I'm pleased to announce that there are at least two exceptions to that conclusion.

The Chairman has announced earlier in the day that more comfortable chairs will be made available soon, perhaps next week. This results from endless and diligent negotiations with the administration of Louisiana State University concluded successfully by the Chairman of the Legislative Budget Committee with his pipe wrench in his hand.

Secondly, our coffee boys have, since July 5 been supplied with sugar grown in Hawaii and refined in California. When I brought this to the attention of our esteemed Chairman, he immediately brought the weight of his position to bear on those responsible for the catering and an immediate improvement was noted. We now have a beet sugar grown in Utah and

refined in Illinois.

Mr. Munson, Mr. Flory and I are still hopeful that someday we might enjoy that delicacy known as Louisiana cane sugar, grown in Louisiana, refined in Louisiana, using Louisiana labor, paying Louisiana taxes.

Thank you.

Reading of the Section

Mr. Poynter Grand Jury Proceedings. Section 14, at all stages of the grand jury proceedings, after arrest, the accused, if permitted to testify, shall have the right to the advice of counsel while testifying to compulsory process for presenting witnesses to the grand jury for interrogation, and to the subscribed testimony of any witnesses appearing before the grand jury in testimony.

Explanation

Mr. Roy Ladies and gentlemen of the convention, Mr. Chairman, this section may be even too late to think about, because we felt that if we were going to continue with grand juries, we wanted to make the grand jury more independent of the judiciary and the district attorney and once again bring it to that status that it once held and originated as a bulwark against crimes charged by the Crown against citizens.

Now, before I get into it, I have... I am somewhat concerned because even with Mr. Duval's amendment for a preliminary examination that I thought every district attorney and assistant district attorney in here wanted, you, in your wisdom, voted it down.

The present grand jury system is nothing more than an extension of the arm of the district attorney. I have with me Law Review articles that make up this entire file by scholars all over the United States, gotten by the staff, criticizing the present grand jury system. What our section seeks to do, if you will only read it, and if you will not be influenced by this district attorney paper that was put out, page 10 of it, and just read and think about what we have said and you will see that we do not violate the secrecy of the grand jury in any way, shape or form as is suggested in the first paragraph of the second page of their article. We do not violate it with respect to allowing a transcript of the testimony to be disseminated to the other party because, as a matter of fact, once the district attorney's office chooses to transcribe the records, then the secrecy of the grand jury, of course, is out of the window since the D.A.'s secretary is actually doing the transcribing.

But that's just nit-picking. What we seek to do are three things... I'll yield to your questions, Mr. Lanier, as soon as I've finished cause I'm anxious to answer yours.

The first thing that we do is, if the grand jury permits a person who is going to be charged with one of the crimes for which you have now said that there will be an indictment necessary, then that person may have his attorney present in the room while he is testifying. Now notice it says, "If permitted to testify," on line 31. The grand jury doesn't want to hear me and they are thinking about indicting me, I have no right to testify before them. If they do, my attorney will be in the grand jury room with me. Now, we already passed that any witness may have his attorney with him, so it would seem to me that the prospective accused should certainly have his attorney in the grand jury room. It merely obviates the necessity of the attorney sitting outside of the grand jury room who can neither question nor ask any witnesses about anything, it obviates the accused having to go up out of his chair when asked the question, go outside, ask his attorney should I answer, "yes" or "no", come back in "yes" or "no" he answers and what have you. It eliminates a mechanical step. That's all it does.

The compulsory process of presenting witnesses to the grand jury for interrogation, you will notice the grand jury still has the absolute right to refuse to hear these witnesses. It only allows some poor Joe Blow who doesn't have any strut with anybody, who the D.A.... who can't get the D.A. to subpoena a witness involved in a case in which he is involved, it merely allows him to subpoena the people and have them appear. You know some people may not want to appear as an alibi witness even though they know that I'm innocent, they may not want to go. It allows me to subpoena them and get them there. Now in my judgment, a fair-minded grand jury of citizens would hear the witness even though they don't have to. I just have the belief that, good, I believe people would allow a witness to testify if he comes to testify about a particular matter, at least if for nothing else more than out of curiosity.

The third thing that we allow is that if the district attorney chooses to transcribe the testimony of any witness in a case at the time he does, he must submit it to the person who is indicted. Now, let me tell you how that works as a practical matter. The D.A. doesn't have to transcribe the testimony of the witnesses. In fact, it's so, this provision is fixed so that the D.A. can selectively choose which witnesses' testimony he will get transcribed and at that time he would have to give it to the defendant. We think that's only fair. It does not allow the defendant to get the testimony of any witness that the district attorney has subpoenaed before the grand jury, only those the D.A. transcribes. You have to understand that in a grand jury hearing or proceeding, the district attorney does the questioning of all the witnesses. He sits in there and questions, or his assistant does. A recording is usually made. That recording can be listened to by the district attorney or his assistant at any time to which the defendant or the accused has no right. But, if the district attorney chooses to transcribe, then that means common, ordinary English, taken from the written word and put down in print, then the individual accused or indicted is entitled to a copy of it. I'll yield to any questions.

Questions

Mr. Champagne Mr. Roy, would you agree that most of the delegates here are pretty independent people?

Mr. Roy Most, probably, yes, sir.

Mr. Champagne Mr. Roy, do you know that having served on the grand jury, every time you and some of your other people get up here and say that the grand jury is a tool of the district attorney that you aggravate me seriously?

Mr. Roy I don't know if I aggravate you, Mr. Champagne, and maybe you weren't one of the tools, but I'm telling you and everybody knows whoever has written about it, that the grand jury is an investigative arm usually of the district attorney's office in most cases, not in all.

Mr. Champagne Mr. Roy, I'm only suggesting that possibly one of the reasons, or do you know, that possibly one of the reasons you are having so much trouble with your legislation in this constitution is that you are rubbing people the wrong way, Mr. Roy.

Mr. Roy Mr. Champagne, if any delegate has come here and is going to engage in personalities rather than principles, then there is nothing I can do about it, and I hope you are not one of them.

Mr. Lanier Mr. Roy, are you familiar with the principles that are set forth in Article 434 of the Code of Criminal Procedure dealing with secrecy of the grand jury meetings?

Mr. Roy Yes, sir, Mr. Lanier. I'm familiar with that.

Mr. Lanier And doesn't it state that only certain authorized persons can be in a grand jury?

Mr. Roy That's right.

Mr. Lanier And isn't one of those authorized persons the reporter who is to record and transcribe the proceedings of the grand jury?

Mr. Roy That's correct.

Mr. Lanier And isn't this reporter sworn in court to obey the secrecy of the grand jury?

Mr. Roy That's right.

Mr. Lanier Did you not state in your remarks that this was done by the D.A.'s secretary?

Mr. Roy I said, "If the D.A. chooses to have his secretary transcribe some of the stuff, or get copies and make copies of what the reporter has transcribed, it is no longer secret."

Mr. Lanier Well, Mr. Roy, if the D.A. did that, wouldn't he be in violation of these provisions of secrecy and subject to contempt as provided by Article 434?

Mr. Roy No, I don't think so, Mr. Lanier, because by the

same token, if the D.A. may use that testimony in court to make sure that a witness remembers exactly how he said it before the grand jury, he is certainly disclosing it at that time.

Mrs. Zervigon I'm saying you have in here "at all stages of the grand jury proceedings after arrest", that phrase, "after arrest", modifies everything that follows it.

Mr. Roy That's correct, I'm glad you brought that out. Which means that if they want to be investigating me right now for Mafia influence or whatever they want to, they can be doing it and I am not entitled to anything.

Mrs. Zervigon Well, would you inform the delegates that if we adopt this and do not reconsider the grand jury section in the judiciary section, exactly what sorts of procedures we'll have. It's confusing to me what rights you would have in an investigatory procedure as opposed to which rights you'd have only after arrest.

Mr. Roy Well, Mary, I'm catching some of your language and missing others and it's a....

Mrs. Zervigon Well, as I understand it, what we adopted in the grand jury section of the judiciary article, applies to all the grand jury hearings? Is that correct?

Mr. Roy Mr. Tapper's amendment? Yes, I understood it did.

Mrs. Zervigon Well, I think we could vote on this and feel a little bit more informed if you would describe to us what we'd have if we adopted this section considering what we already have in the judiciary section.

Mr. Roy Mr. Tapper's amendment simply provides that every witness who appears before the grand jury has the right to counsel being present in the grand jury room, which is what we give to the accused. If the grand jury allows the accused to testify in this case.

Mr. Avant Mr. Roy, this is neither a friendly nor an unfriendly question. I'm simply seeking information.

The words, "if permitted to testify", in this section, are they intended to apply to three of the rights that you give the accused, or only the right to have counsel present. It's not clear to me the way it's drawn.

Mr. Roy It's permitted to apply to all three. That is.... if you're talking about....does the wit....do you have the absolute right to have a witness in the grand jury room? You do not. Only if the grand jury chooses to hear your witness.

Mr. Avant Well, that's what bugs me, it says....

Mr. Roy If permitted to testify refers to the accused, that you have the right to counsel with you.

Mr. Avant Well, now, let's look at the accused, is not permitted to testify, he has no absolute right to testify.

Mr. Roy That's right, he has none.

Mr. Avant So, the grand jury says, "We don't want to hear the accused." Does he then have the right to compel other witnesses to appear and testify?

Mr. Roy Yes, sir, he would have the right to compel witnesses by compulsory....by subpoena to appear there and at least tell the D.A....unless they are going to be charged with aggravated....with armed robbery, I've got three witnesses here. I wish you'd make it known to the grand jury. The foreman can say "We don't want to hear your witnesses, they can go back home." That's it. But, he has the right to get them there by judicial process.

Some witnesses may not go on their own, you know, Mr. Avant.

Mr. Avant I understand. And then the right to the transcribed testimony of any witness is an absolute right, it's not dependent upon whether the accused has testified or not.

Mr. Roy That's correct. If the D.A. chooses to transcribe it, he gives a copy.

Mr. Derbes Mr. Roy, it seems to me that a lot of "accused"

43rd Days Proceedings—September 7, 1973

are required to appear before grand juries although they are not, necessarily, arrested. Isn't that correct?

Mr. Roy No. What we try to

Mr. Derbes Wait a minute ... wait a minute. ... At all stages of the grand jury proceedings, after arrest, the accused, if permitted,

What about all those people who are indeed a subject of a grand jury investigation and who are indeed in danger of being deprived of their rights who are not necessarily arrested?

Mr. Roy That....we knew we could not deal with that, Jim. I wish we could have, but we couldn't because we knew the convention wouldn't go along with it because that would impair the secrecy of the grand jury if they had to let people know who they were investigating for the crime of, let's say, armed robbery, as we now have just....amended our section, then you would be that "accused" who would be permitted to testify and have the right to counsel if the grand jury heard you.

Amendment

Mr. Hardin [Assistant Clerk]. Mr. Arnette sends up the following amendment.

Amendment No. 1, on page 4, delete lines 29 through 31 in their entirety. On page 5, delete lines 1 through 3 in their entirety.

Explanation

Mr. Arnette Well, this just seems to be in the nature of a technical amendment, though actually, it is fairly technical in nature when you listen to the explanation. It deletes the entire section, but let me explain to you why I thought it would be wise to delete this section.

The first clause which gives the accused the right to have his attorney present in the grand jury room while he is being questioned, has already been solved by Section 37 of the Judiciary Article which we have already adopted which says, "Anyone testifying in such proceedings shall have the right to the advice of counsel while testifying." So there is no need, whatsoever, to put this in this article since we have already taken care of it and gone even farther than that in a preceding article.

Now the last clause has to do with the transcribed testimony of any witness saying the accused has a right to this. Well, we have already adopted in the same Section 37 of the Judiciary Article, an exact opposite, exactly opposite point of view which stated, "The secrecy of the proceedings, including even the identity of the witnesses appearing, shall be provided for by law." So, we have already decided this once in this convention. We've reconsidered, laid it on the table. Let's not dig up old things.

Now the only other thing that appears in this particular section that could have any meaning at all is saying that the accused would have a right to compulsory process for presenting witnesses to the grand jury. Well, it's my understanding of the way the grand jury works is that the person who does the questioning is the district attorney or his assistant. No other person may do any questioning which means his counsel could not ask him questions to present a case in the grand jury or something of this sort. If the district attorney just simply chose not to ask him any pertinent questions, he would not have to. So there would be no reason to have this particular person there, so it's an empty right at best.

So, therefore, I don't see why we need to have any of this section in there, whatsoever.

Questions

Mr. Brown Mr. Arnette, do you believe that the judicial article provision, that secrecy shall prevail, would apply to the accused, also? In other words, this particular provision states that the accused shall have a right to the testimony, and as I read that, I got the impression that "Yes, everything would remain secret, but the accused, himself, probably through his attorney, would be entitled to a transcript of the proceedings." And you are making a major point of the fact that this is a direct conflict. I don't see the conflict. Would you explain a little bit more, why there is a conflict between the two articles?

Mr. Arnette Well, the reason I think it's a conflict, is that anyone who is not present while the testimony is being taken, will not know of any of that testimony.

In other words, the district attorney is present. He has a right to that testimony. He has a testimony in his possession. But no one else who is not present has a right to that testimony. And that's exactly what we said. We wanted to protect the identity of these witnesses who are appearing before the grand jury for reasons that are obvious. Because grand jury subpoenas, sometimes, in cases of investigation, shed a bad light on people. And we wanted to prevent this. But if we let certain people know what witnesses are appearing and things like this, I don't think.... I think we ought to decide that we didn't want anybody to have that information.

Mr. Brown Well, but the thing I'm asking is, the only person allowed to get this information is the accused under this provision. Is that not correct? Only the accused, and so I'm trying to differentiate from what you are saying. I don't see the conflict. I don't see a direct conflict with the section you mentioned in the Judiciary article. Only the accused will be allowed to get this information. See what I mean?

Mr. Arnette Well, all I'm saying, Senator, is that we have already decided that no one should have that information, and that's what we decided. We did not make an exception for the accused. He does not presently have a right to that information, as I understand it. And I don't see why we ought to give it to him. The whole purpose of Section 37 as we adopted it, as I understand it, was to keep even the identity, definitely the testimony, but even the identity of the witnesses secret.

Mr. Stinson Mr. Arnette, did I understand you to say that the only one that asks questions in the grand jury room was the district attorney or his assistant?

Mr. Arnette Well, the grand jury does, also.

Mr. Stinson Well what....you didn't say that, though, did you?

Mr. Arnette No, I neglected to say, Mr. Stinson.

Mr. Stinson Well, your reasoning then, would not follow through. You said that they, naturally, would not ask the defendant or his witnesses any questions....

Mr. Arnette I did not say "naturally." I said "If he so chose, he wouldn't have to," and possibly the grand jury would not be guided to ask him any questions, either.

Mr. Stinson Don't you think that a grand jury of twelve, true, impartial people not obligated to the district attorney, are going to want to hear both sides of the picture and should have that right?

Mr. Arnette They might want to, then again they might not. They are guided by the district attorney, they are guided by his assistants, they do ask questions, but it's....

Mr. Stinson Now, you don't mean they are guided by them. You mean they are advised by them.

Mr. Arnette They are advised by them. That is correct.

Mr. Pugh Mr. Arnette, are you aware of the fact that the existing...

Mr. Arnette Mr. Pugh, when you smiled at me I knew it was going to be an unfriendly question.

Mr. Pugh Ah, no. I have got two of them in fact.

Are you aware of the fact that the existing jurisprudence in the state not necessarily where there is a requirement for a transcript, but where it is transcribed that the defendant is entitled to a copy of it?

Mr. Arnette I really don't know Mr. Pugh. I am not aware of that.

Mr. Pugh Yes.

One other question. Would you agree or disagree with this statement made by a Justice of the United States Supreme Court in a decision rendered on January 22, 1973, when he was talking about the grand jury. "This great institution of the

past has long ceased to be the guardian of the people for which purpose it was created at Runnymede. Today it is but a convenient tool for the prosecutor too often used solely for publicity. Any experienced prosecutor will admit that he can indict anybody at any time for almost anything before any grand jury" from the United States Supreme Court.

Mr. Arnette Mr. Pugh, I definitely agree with that. That is exactly why there ought to be the testimony of the witnesses secret. We ought to keep the identity of the witnesses secret. You are speaking in favor of my amendment.

Mr. Pugh As I understood your amendment, it was not to allow....

Mr. Arnette It would delete anyone having a right to this information and I think what is happening is people are being crucified in the papers for things that happen at grand juries and even witnesses that have....

[~~proposed amendment not adopted. Amended~~
~~and adopted. Amendment adopted.~~
~~repealed. Motion for reconsideration tabled.]~~

Mr. Henry Then that does away with the effect of the section.

Reading of the Section

Mr. Poynter Section 15. Fair Trial
"Section 15. Every person charged with a crime shall be presumed innocent until proven guilty, and shall be entitled to a speedy, public, and impartial trial in the parish where the offense or an element of the offense occurred, unless venue be changed in accordance with law. No person shall be compelled to give evidence against himself. An accused shall be entitled to confront and cross-examine the witnesses against him, to compel the attendance of witness, and to present a defense, and to take the stand in his own behalf."

Explanation

Mr. Stinson Mr. Chairman, and fellow delegates, this is very little if any change from our present constitution. Now if any questions, I first want to at least have an opportunity to read this and briefly explain, which I did not do before. I'll answer any questions at the end of that. First, it says "every person charged with a crime shall be presumed innocent until proven guilty, and shall be entitled to a speedy, public, and impartial trial in the parish where the offense or any or...element of the offense occurred, unless venue be changed in accordance with law." Now certainly I don't see how there could be any objection to a statement of that type and naturally it follows that the legislature in its wisdom will provide any additional change as to venue, as to ... it is not barring the legislature after due deliberation to change, but it is guaranteeing those elements which certainly under our form of government the individual is entitled to and that's that says "no person shall be compelled to give evidence against himself." That is in our present Constitution, it is in the United States Constitution and the jurisprudence of all courts have held that you can't be required to testify, but of course as it said later on you do have the privilege and right if you so wish. I could see how there could be no objection to that statement. "An accused shall be entitled to confront and cross-examine the witnesses against him, and to compel the attendance of witnesses in his behalf to present a defense and to take the stand in his own behalf." Now I take it there are about three features there. First, on his trial naturally the state has to prove with their witnesses confronting the defendant as he is guilty and he through his counsel has the right to cross-examine those witnesses in his behalf. Certainly there could be no objection to that. Likewise to compel the attendance of witnesses. That means that any witness that the defendant wants in his behalf he

has the right to go to the Clerk of Court and have them summoned to testify when the defense presents their side of the question and then to take the stand in his own behalf. As you know he cannot be called by the....

Mr. Henry Mr. Stinson, wait just a minute let me get you a little order, please.

Mr. Stinson We cannot be forced at the present time to testify against himself and the fact that he fails to do so cannot be commented on by the prosecuting attorney. It is a reversible error if he does. But if he does wish to testify he has the right to testify and of course be subject to a cross-examination by the District Attorney. I would like to urge the acceptance of this recommendation. It's very little change; however, it goes more into detail in some of the instances but one thing we did not go into as to the venue person in the present Constitution because it is a statutory matter and the legislature can go into detail if it feels necessary in that instance.

Question

Mr. Derbes Mr. Stinson, I was wondering if you and the committee wouldn't voluntarily remove the language "take the stand" and put in the word "testify" which seems to me accomplishes the purpose....

Mr. Stinson No, sir, I think that does the purpose. There is a witness stand and there is no other stand that he could possibly get on except the witness stand.

[~~Motion for the second question~~
~~is not seconded.]~~

Point of Information

Mr. Gravel Mr. Chairman, I would like to object. I have ... I didn't know we were going to move that fast. I have an amendment.

Mr. Henry But Mr. Gravel these are the same things that we have been going over and over already.

Mr. Gravel No, sir. Not my amendment, it is not.

Mr. Henry Well it looked like it to me. Now the convention has spoken on this don't you think Mr. Gravel in all honesty?

Mr. Gravel Are you talking about the amendments about furnishing statements to the defendants?

Mr. Henry Well in effect the convention has spoken on that don't you think?

Mr. Gravel Absolutely not. Has not.

Mr. Henry All right.

Mr. Gravel We are talking about the amendment that reads

Mr. Henry ... prior to his trial....

Mr. Gravel No, sir the convention has not spoken on that, Mr. Chairman.

Amendment

Mr. Poynter Amendment sent up by Delegate Gravel as follows:

Amendment No. 1. On page 5, line 13, at the end of the line, add the following:
"Prior to his trial, every defendant shall be furnished with the transcribed testimony of witnesses for or against him, of any witnesses appearing before any official or employee of the state or any of its political subdivisions or any grand jury which participated in any investigation of the case for which he is being prosecuted."

43rd Days Proceedings—September 7, 1973

Point of Information

Mr. Gravel Mr. Chairman, if I am correct I would like to address a question of the Chair before I proceed. My understanding that the amendment of Mr. Arnette's deleted all of Section 14.

Mr. Henry That is correct.

Mr. Gravel Then I think that technically this instead of being the amendment that I had prepared it to be to come at the end of Section 14 would have to now be technically changed so that it would be Section 14.

Mr. Henry Mr. Gravel, we are on Section 15.

Mr. Gravel Oh, I beg your pardon. I beg you pardon I'm in error. I beg your pardon.

Mr. Henry You are just creating another paragraph aren't you?

Mr. Gravel That is correct, yes sir.

Mr. Henry All right. So it will be in Section 15.

Point of Order

Mr. Burson To raise a point of order, Mr. Chairman, I think that we have adopted a rule which requires that amendments be germane to the section under consideration. Am I correct or incorrect in the view of the Chair that the amendment which is proposed would have been germane to Section 14 which we just threw out and in its entirety since it concerns exactly the same subject matter?

Mr. Henry It is a germane amendment Mr. Burson because it has to do with the parish...you could say it has to do with the fair trial so I would rule it...it is germane.

Explanation

Mr. Gravel Mr. Chairman, first of all let me say this that when the Chair suggested that this matter had been covered by previous amendments I stated that that was not correct and I want to respectfully restate that position. This proposed amendment I hope it has been distributed, does everyone have a copy of it? This proposed amendment has not been covered by this Convention nor has it been discussed at all. Although I must confess that there may be some things that we have touched upon in relation to prior amendments that have been acted upon that may have some bearing on some parts of the central theme of this proposed amendment. I won't yield until I get through Mr. Chairman. Now I can't understand really Mr. Burson's suggestion or that this is not germane because I respectfully submit to this entire convention that this amendment goes to the very heart of the concept of a fair trial. I wonder if those of you who are interested in listening to what I have to say would stop and realize at this particular point where we have left a person charged with crime under a so-called Bill of Rights. Where does that person stand at this moment in our deliberations at this period of our achievement? He has no rights. He has not yet been accorded any right that is in anyway meaningful to him. You have taken away his right to ask that witnesses go before the grand jury that might indict him. What right and I ask you to think of this, what right have you given to the potential defendant under the Bill of Rights that gives him any insulation or protection or right of any kind and I submit none. The heading of this section is a Fair Trial. Now let's talk for just a minute about what might be encompassed by a fair trial. Most defendants, practically every single defendant comes into court as a consequence of an indictment or a bill of information which has been the results of a full scale investigation by trained law enforcement officials throughout the state of Louisiana. Most indictments, most bills of information come to

the defendant as a complete and total surprise. Some of them hear about it first when they read about it in the newspaper. A great deal of work has been done by the prosecution arm of state government in order to get to that point and yet the defendant or the potential defendant must then and there start from scratch. All that I am asking you to consider in this amendment is this. Now listen to me very carefully and then I want you to search your conscience and see if you can vote against it. All I am asking you to do is to remember that this potential defendant who has got to go to trial now this amendment takes into consideration nobody else but one who is charged and must stand trial. It says constitutionally that well if you have got to go to trial then you are entitled to the statements both for and against you of those witnesses that were interrogated by the professional enforcement arm of state government by the formal grand juries that have been impaneled and you are entitled to know what those witnesses said for and against you. Does that right comport ladies and gentlemen of this convention with the concept of a fair trial? Or is it right to say that the district attorney can retain within his records and within his files information that might be helpful to the defendant but nobody under the sun knows about it except the district attorney? What this amendment would propose to do would say to the State of Louisiana that you must treat a defendant who is going to be tried and who is going to possibly suffer as a consequence of that trial you must treat him fairly and let him know what is good and what is bad in the official files of the state. Now that's what this amendment proposes to do. Keep in mind, keep in mind that this section, Mr. Burson, deals with a fair trial. You know a lot of the delegates have gotten up like Mr. Staggs and Mr. Burson and many others and have told you about the cases that they have and how this consequence flowed from some action or that consequence flowed from some other action. I think you too Mr. Lanier to some extent [extant] I think. But let me tell you about a case that was handled by the president...present president of the District Attorneys' Association, Mr. Mamoulides, Mr. Ed Ware. Let me tell you about a case Mr. Staggs who appears to be present that I have defended. Where a colored man was charged with the aggravated rape of a white girl, was tried and sentenced to death and for seven years, not six we fought that case and asserted that man's rights throughout the state and federal courts and let me tell you that in that seventh year, in that seventh year when he had been granted a new trial by the federal courts because the courts of Louisiana did not accord to him his constitutional rights, Justice Tate. When time came to consider whether he was going to be tried again for the same crime a new district attorney found in the file of the state a sworn affidavit, sworn affidavit by the prosecution's witness that had testified at the first trial that she could not under any circumstances identify her assailant whom she had identified upon the trial that took place in Louisiana. I think in the disposition of the death penalty and let me say in fairness to that district attorney he had the courage to... after finding the false basis for the prosecution to walk straight forward into the courtroom in Rapides Parish and dismiss the charge and let that man free. Now how many times, think of this, how many times do you think it happens that an investigator working officially for the prosecution gets a statement from a witness or from somebody who purports to know something about the offense that is exculpatory and helpful to the defendant? Many times and you know it, but how many times does that information surface? I have tried and I have handled as many criminal cases as I suppose as almost anybody here. Never yet, never yet not one time have I gotten from the state any exculpatory or helpful statements for the benefit of the defendant. Ladies and gentlemen of this convention, read this amendment carefully; it hasn't been covered before, read it carefully. After you have read it, don't listen to anybody tell you that this is going to clog the courts and that it is going to cost the parishes a lot of money. Listen to your heart and your conscience and see if you

don't believe that it is right for us to say in this constitution that a person who has got to go to trial should be entitled to the written, transcribed statements of those witnesses who in the course of investigation said something for him or against him. Just keep looking at this amendment and see whether in your heart you can't comport this concept with the idea of the title of this section "Fair Trial." Thank you very much.

Questions

Mr. Burson Mr. Gravel, would you agree that up until now while we may not have given the defendant any new rights other than this new right to counsel while testifying before the grand jury that we have not taken away a single right that he has under the present law?

Mr. Gravel I don't think that I could truthfully say that we have taken away any constitutional right spelled out in the adequate [antiquated] Constitution of 1921 but we have not accorded to him Mr. Burson the rights to which he is entitled under an enlightened modern society.

Mr. Sandoz Mr. Gravel, could you tell me the names of any states which have a similar provision in their Bill of Rights?

Mr. Gravel I don't know of any although there may be some.

Mr. Sandoz Now don't you think Mr. Gravel that...

Mr. Gravel Let me just say this. There may be some states that have it. Actually this concept of course is one that very well would fit in any state's Bill of Rights.

Mr. Sandoz But you do not know of any that have this as a precedent at this time?

Mr. Gravel I didn't take it from any other state.

Mr. Sandoz All right. Now my next question sir is this. Could not this be well taken care of in a legislative act?

Mr. Gravel It could be taken care of but it could not be safeguarded Mr. Sandoz.

Mr. Sandoz Isn't this really statutory material, Mr. Gravel?

Mr. Gravel No, sir, it is not. This is a right to a fair trial. I can't think of anything that more properly belongs in the constitution and particularly in this constitution than this particular provision.

Mr. Derbes Mr. Gravel, wouldn't this amendment require production by the state of virtually all police reports?

Mr. Gravel It would require the production of police reports or statements of witnesses that police reports were statements of witnesses that had any information about the offense for which this man was being tried either for him or against him, it would require it. In my judgment sir, it should be required.

Mr. Derbes In other words if the police reports were for example a summary of observations made by the police officers in the investigation of the offense. It would require production of that would it not?

Mr. Gravel If it was a statement of a witness, I don't think....

Mr. Derbes A police officer can also be a witness.

Mr. Gravel Well I don't think he can be a witness to hearsay testimony. It would depend on the nature of the statement.

Mr. Derbes He could be a witness in direct evidence and in direct support of the conviction and wouldn't it also require if in the police report any summaries of witnesses' statements were made in other words, "I, police officer spoke to Deshotel's and Deshotel's said, Gravel was seen on the corner of Tulane and Broad doing something." It would require production of that as well.

Mr. Gravel No question about it in my judgment. In other words if there was anything from a police officer who was a witness at the trial or a witness in any respect it would have to be produced and Mr. Derbes, my point so there will be no misunderstanding is that it should be produced.

Mr. Lanier Mr. Gravel, is my understanding of the Fifth Amendment of the United States Constitution correct that this type of information could not be ordered produced from a defendant?

Mr. Gravel What, this particular....

Mr. Lanier This type of information, the statements in his files of the witnesses that he has from a defendant?

Mr. Gravel It would depend on the nature of the statement. This provision is for the rights of the defendant and would have nothing to do with what he would have to do.

Mr. Lanier No, but I mean the state could not get this type of information from the defendant just the defendant could get this type of information from the state, is that correct?

Mr. Gravel Well we are getting into something entirely different and I am sure you are sure of it. You know it.

Mr. Lanier I think we are talking....

Mr. Gravel Wait a minute let me answer your question. If we are talking about getting from the defendant self incriminating statements that in my judgment would be barred by the Fifth Amendment to the Constitution.

Mr. Lanier The state cannot discover from the defendant is that not correct?

Mr. Gravel Not self incriminating statements that would be correct. Now it might be exculpatory statements but not self-incriminating statements.

Mr. Lanier Can the state discover anything from the defendant or his counsel.

Mr. Gravel Well not under our existing law.

Mr. Lanier So that would mean that....

Mr. Gravel Nor can....now just a minute nor can the defendant discover under existing law in a criminal case anything from the prosecution.

Mr. Lanier In that way they go in even, right?

Mr. Gravel Well they are not supposed to go in. They are supposed to go in with the presumption of innocence based upon you know that constitutional concept.

Mr. Lanier But with yours then the defendant can get this information from the state.

Mr. Gravel Obviously, Mr. Lanier. Obviously, that is what this is all about.

Mr. Stinson Mr. Gravel, if under the present law and under yours too, if the defendant himself appears before the grand jury and he has witnesses that the district attorney summoned, the district attorney has recording of those witnesses, doesn't he?

Mr. Gravel Would have that, yes.

Mr. Stinson So therefore it would be fair to both parties?

Mr. Gravel No question about that.

Mr. Stinson Now Mr. Gravel, really the person that your amendment is going to help is the man of lowly means that can't hire investigators to sit outside of the grand jury room and see what witnesses come in and then investigators check out isn't that correct, a fact it's the poor man that this is going to help.

Mr. Gravel That would certainly be a by-product of it but it is not limited to that it is the concept primarily, Mr. Stinson, would include that but mainly the concept here is that whatever is available to the state by way of evidence of testimony from witnesses that that should be made available to the defendant who's going to be tried if you are going to have a fair trial.

Mr. Stinson Now isn't it also a fact that this secrecy that goes against, in my opinion, the rights of the defendant, in fact that the witnesses that are summoned by the Clerk of Court is secret and you don't have access to who has even been summoned to testify isn't that correct?

Mr. Gravel Yes.

Further Discussion

Mr. J. Jackson Mr. Chairman, ladies and gentlemen of the convention, I have somewhat intentionally attempted to observe our proceedings today and because I am not familiar with the intricate proceedings of criminal justice but I have seen the effects of it and some of the loopholes of it I have somewhat just chosen to take the position of voting my convictions and asking people who shared my convictions to vote with them. But as I look at this section called the Bill of Rights, I have to somewhat agree to Mr. Gravel, I think that when we talked about the Judiciary Department and particularly when we talked about the Executive Department that we provided expanded powers in terms of protecting life, safety, and well-being of the citizens of this state through the district attorney's office. I think when you talk about a section entitled "Fair Trials" and the lead out sentence says that every person and I don't have it with me but to the effect it says that "every defendant is presumed innocent until proven guilty." It says to me that whether this person is criminal and you know that he committed the crime that we cannot violate which is more sacred than our present grand jury system. We cannot violate the constitution and national concept that every man is presumed innocent because... until proven guilty and I suggest to you that based on arguments that I have heard that we are getting away from that. I think that we are getting away and we are just presuming that if a grand jury hears a defendant or hears testimony that that person is automatically or until some presumably the degree to which I think Mr. E. J. Landry brought a very keen example of the kinds of possibilities that can happen. We talked about the cost involved in the transcript and the availability of information to a witness, to a defendant. I suggest to you is that you strongly believe that of some of the sacred basic fundamental principles even though it may at some point provide a thin line in terms of a criminal but that when if you really... if you are really concerned about that sacred principle and the infringement that we are closely coming into then I suggest that without the adoption of Mr. Gravel's amendment that you leave that door open. I think that up to this point that that is what we have basically done. Now I don't know if that's being germane to the amendment but I have heard things about cost involved and I suggest to you that if we are talking about the adoption of the Bill of Rights Section and I stated the other day and I strongly feel this about it. I think that there ought not be any cost on justice. I think we have said there is no cost on the prosecution

and I am not anti D.A. I have supported D.A.'s. I have talked to them. I understand that we must have law and order in this country, that we must have law and order in the state but I am also cognizant of the fact of many of my constituents and many people who have said that the criminal justice system has not been under the present constitution has not provided adequate redress that people who are falsely accused and I suggest that if things are so perfect at this point in terms of our deliberation and we ought not provide, expand or attempt to tighten up the guarantees to a defendant and keep the presumption that a person is innocent until guilty. Then why do we have these various state commissions on law enforcement and criminal justice? There must be some problem wrong. You are constantly having reports coming out this by these various commissions throughout the United States recommending certain changes in the criminal justice system and I suggest to you that they who are very concerned about criminals being illusive from justice. I don't see and nobody has fully explained to me how that is possible. I contend again that the whole matter of trials is the matter of legal technicalities. We are not going to have every loophole that exists and I think that if we want it and we were so concerned about the problems that would arise, then we had the Executive Department proposal. We have had the Judiciary proposal. We are in the article that deals with the fundamental rights of a citizen and I want to suggest to you very sincerely that I am kind of afraid because when speakers get up here it is an automatic assumption and I don't know if you feel the same vibrations that I do that everybody that goes before a grand jury is guilty. I agree with Mr. Burson that as you know we sometimes get very confused when we talk about a criminal defendant and a defendant in criminal court. I am more inclined to believe at this point that we are talking about criminal defendants rather than a defendant in court because it is becoming very obvious that we are making the presumption that persons are guilty until proven innocent and that if we do anything drastically to change the present procedures then what we are doing is allowing criminals to go free clogging up the judicial system and I say that that's the way I feel about it. Why didn't we recommend in this constitution an abolishment of all these state commissions and city commissions and parish commissions on law enforcement and criminal justice.

Further Discussion

Mr. Guarisco Ladies and gentlemen of the convention, we had a chance to make some innovations in this country on the criminal's jury system on the criminal justice system in the last section and we deleted it and I think we made a big mistake. We have a chance to make up for that mistake with the Gravel amendment while it doesn't go as far as I would like it to go, it's the best we can get and I think we should pass it. I'll tell you why. On the one-hand you have the state, the sheriff's office, the police department, the F.B.I. the district attorney and come what may on the other hand you have got reasonable doubt. That is all we have got. I am not a prosecutor and I am not a defense attorney although I am a lawyer. I handle very few defense counsel... defense cases. In fact right now a black boy is standing trial for the attempted fire bombing of my parish home so I am sure that a prosecutor or a defense counsel but I believe in fairness. Now what is so horrible about allowing the defense just to know what was written down and what was transcribed? Why can a district attorney not make people... you don't see this is a secret. You find out where we try the case what is so bad about discovery. Mr. Burson will come up here and say "ah, but it costs a lot of money." Money, that's a good reason to suspend the rights of an individual. It takes too much time, or it's going to involve too many people. That's another good excuse. I won't accept any of that. I feel that if we just pass this amendment and I think we will make some contributions to the criminal justice system in

... something we can go back and say, "look, we made a change and we did something or the better." I can't for the life of me see how this is going to get somebody off. I yield to any questions.

Questions

Mr. Pugh: Can't you agree, Mr. Guarisco, that the facts of a case are the facts and they can't be changed? There is nothing wrong with the presentation of facts either today or next week or the next month and that the jury will determine the case on the facts.

Mr. Guarisco: That's correct, absolutely.

Mr. Juneau: Mr. Guarisco, this troubles me greatly. The amendment says, "any statement before any official, employee of the state, or any of its political subdivisions." How in the world would a prosecutor know in time eternity when this individual would have given a statement which wouldn't have been at the direction of the grand jury and/or the prosecutor? How would he know that he's got all that information and then three months later he comes up, "look, you didn't give me all the information?" The prosecutor said, "I didn't even know about it; it never was used." He said, "Well, an employee of the highway department in Lafourche Parish took a statement from him."

Mr. Guarisco: Mr. Juneau, if he has it, I want him to give it. That's all.

Mr. Juneau: He doesn't have it, Mr. Guarisco. The question is if he doesn't have it, but there is a statement, what happens under that amendment?

Mr. Guarisco: He can only give what he has.

Mr. Juneau: It's reversible error, is it not?

Mr. Guarisco: I don't know. No.

Mr. Juneau: You don't know? The second question that I have, Mr. Guarisco, we're providing, as I appreciate this amendment, a discovery statute for the defendant. Why... don't you think it would be appropriate then, we would put discovery statute in for the state to put it back in balance? Would you agree with that?

Mr. Guarisco: No. The state is not going to go to jail, Mr. Juneau.

Mr. Juneau: You wouldn't give the state the equal discovery rights that you would give a defendant? I'm merely asking for discovery.

Mr. Guarisco: Of course not, the state is not in the crack.

Further Discussion

Mr. Pugh: Mr. Chairman, fellow delegates, I don't want you all to get the impression I'm a criminal lawyer because I'm not. I'll only handle a criminal case if it involves due process. Now, I only rise to answer two questions that were propounded. One question was "How many states have adopted, substantially, the same provisions as these?" I'll tell you that in these states, the same provisions are there: Illinois, New York, California, Pennsylvania, New Jersey, Wisconsin, Minnesota, Delaware, Arizona, Nevada, Oregon, and New Mexico.

In answering the other question, a question was "whether or not the district attorney had the right to compel any information from a defendant?" Let me tell you that the Code of Criminal Procedure has an Article No. 66. Under Article No. 66 of the Code of Criminal Procedure, the district attorney has the right to subpoena a person into his office for testimony. I am of the opinion that the man does not have to answer the questions, but coupled with that same section is one that provides that he must, under a subpoena, bring with him such documents as

may be subpoenaed. He's got an absolute requirement under the law, in my opinion, to bring those documents. So to say that the district attorney has no possible discovery is wrong. Let me say this, that the recent legislature gave the same power to the attorney general.

Questions

Mr. Kean: Mr. Pugh, the list of states that you just read off that had a substantially similar or similar provision as this, was that in the constitution of those states?

Mr. Pugh: No sir, I just said that they had the provisions. Now, I can give you every case that cites what I gave you, if you want it.

Mr. Kean: Well, I just wanted to make it clear that the list of states you referred to dealt with this problem by a statute. Is that not correct?

Mr. Pugh: No, I have read all the cases; it's been two years since I read them. I can't tell you whether they are constitutional provisions, statutory provisions, or jurisprudential rules nor did I imply or indicate that they were. All I said was these same provisions were, at this point, in these various states.

Mr. Kean: I'd like to pursue the question that Mr. Juneau raised briefly, previously, and to which he got no response. That is, and it bothers me as well, this amendment, as I read it, goes farther than asking for statements that the district attorney might have or statements that might have been made before the grand jury. It speaks in terms of witnesses who appear before "any official, or employee of the state, or any of its political subdivisions." Suppose the parish of East Baton Rouge made some kind of investigation and got a sworn statement from a witness. That witness and that fact of that statement was not known to the grand jury or to the district attorney and they, nonetheless, indicted a person and they went to trial. Would that person have a right to quash that case on the grounds he hadn't been furnished statements that the district attorney nor the grand jury even knew existed?

Mr. Pugh: Well, first of all let me answer you by saying I did not draft Mr. Gravel's provision. I appeared here for the purpose of answering two questions that were asked. It may well be that the district attorney may or may not have knowledge of some of these statements, and if you ask me whether that goes beyond the Jencks Act, I think it does. Incidentally, in addition to the thirteen states that I read out, the Jencks Act has been applied or has been adopted by Congress and it also provides for discovery.

Mr. Kean: I understand that. I'll get back to my point. If the district attorney had no knowledge of a statement made by a witness before an official, or employee of the state, or some political subdivision under which circumstances he did not, could not furnish that statement to an accused, would the result of that be a dismissal of the charge by reason of the fact all such statements were not given to the accused?

Mr. Pugh: Obviously, the man, the district attorney can't give you any more than what he's got.

Mr. Kean: Well, that's what bothers me about this amendment because it would seem to imply that he would have to give something that he doesn't have. Would you not read that into the amendment?

Further Discussion

Mr. Burson: Mr. Chairman, fellow delegates, I suppose it's no use to even bother apologizing for getting up here again. I'd like to point out a few things that I think are wrong with this proposed amendment. The first thing is, it not only provides

for what was in the last sentence of Section 14 that we just voted on in its entirety. And since that the defendant had a right to the transcripted testimony of grand jury witnesses, let it put much further than that. In addition to the grand jury witnesses, he would now have the right to any statements, and I want to point out to you that this amendment does not say that those statements have to be written. I don't know, it could include oral statements or transcriptions of oral statements. Now, we don't know exactly what this amendment means. We're right back in the same place we've been wallowing in all afternoon. This is a statutory matter. Mr. Egan, who is knowledgeable in this area, got up here and told you that there are twelve or thirteen states that have discovery provisions; they've all got it in the statutes. The Jencks Act that he referred to, which is a federal discovery statute, it's not in the United States Constitution. Mr. Pugh told you, and I assume, that he knows, that this amendment would go further than the Jencks Act; this amendment would go further than the federal discovery statute. Now, ladies and gentlemen, is that what you want to vote for today? I ask you, is that what you want to vote for? Let's not be setting up loopholes' dreams in the constitution. Now, Mr. Gravel, I must say, was in error when he said that we had not given the defendant any rights that he didn't have under the old constitution. I assure you there is no right in the old constitution about advising a defendant of all of his legal rights when he is detained and we adopted that this morning. There is nothing in the old constitution about providing for an indigent defender system; we adopted that; I supported that. Say again, I hate that if you provide a constitutional right to counsel that's effective, you have done more than anything else you can do to insure the rights of a criminal defendant. It's possible to insure constitutional rights without tying the hands of law enforcement. Now, just take the transcription of grand jury testimony. Don't take my word for it. Read the last paragraph on page 6 of this PAR analysis. Now, here is an unbiased view. This is not the District Attorney's Association. They say that the right of an accused to obtain a transcript of testimony of witnesses would also hamper the grand jury by frightening away witnesses who might have some small bit of information bearing on the case, but would be intimidated by the knowledge that their words could become available to the defense. This increases the possibility of increased danger for witnesses testifying in such cases as those involving organized crime where the possibility of reprisals against themselves and their families could be great. Now, ladies and gentlemen, it's not just organized crime. I hate to get overly dramatic, but I don't know how I can overly dramatize the problems that you'd be setting up here by an indiscriminate provision like this without statutory safeguards. Everybody is talking about cases that they've seen. I tried a simple rape prosecution and the victim was a black girl who had an I.Q. of less than one who is mentally retarded, by the testimony of the psychologist. There were ten assailants involved. They were attempting, the codefendants were attempting, to intimidate witnesses out in the hall at the courthouse. What do you think I would have done if they would have had the statements of each and every person as given to the grand jury before the case ever came to trial? Let's be reasonable about this thing; let's think a little bit before we vote. Now, all of this thing has been discussed as though we were talking about a game, and we're not talking about a game. We're talking about a process which in the end is supposed to free the innocent and convict the guilty, let's hope.

Further Discussion

Mr. Segura Mr. Chairman, fellow delegates, I'm not going to say very much, so please listen to me. It seems like on most of these matters in this Bill of Rights we have a lot of people at the representing the district attorneys. We have a lot of people who are on the sides of the defense

attorneys, and they are all interested in getting their side of the story, and that will help them win these cases. Two sides of the coin, as it were. This is all an effort to make sure that now, it's very important, when someone is accused, it's important that they get a fair trial. I've been suggested on this subject, I made a mistake finger because I've been shot through the finger. The guilty ones were never caught and were never convicted. But had they been caught, I would have shot at night if I would think that a guilty man had been convicted and approved of the way we're either on the side of the government, or being sent to prison or being condemned to death. Let's give them a fair trial. It seems to me--now, I'm not an attorney and I can't read those words and have one word to mean something else, like the attorneys seem to be able to twist everything around--but it seems like if you can give somebody some information that will help prove an innocent man innocent, and if the man is guilty, hiding some of this information I don't think will hurt. Thank you.

Further Discussion

Mr. Stovall Mr. Chairman, ladies and gentlemen of the convention, let us remind ourselves that this is the Bill of Rights with which we are dealing at the present time. I rise in support of this Gravel amendment. I do it because power is easily abused, and justice has often been elusive in our judicial system. I think this is a provision which will guarantee justice to many persons. Our system of government is based on checks and balances. Our forefathers gave to us this provision, not because they felt that all men are good, but rather because they recognized that there is a selfishness and that because this is true of our human nature. There needs to be some check and some balance. So, we see this provision throughout our form of government. Now, this provision that we have before us at this time, I think, provides the kind of balance for justice that we need to consider. The opening sentence of the section states the basic principle, "Every person charged with a crime shall be presumed innocent until proven guilty," and to provide him with this information of which he is going to be tried does give to him information which, in many cases, will help to prove his innocence. I submit to you that this is a high moment in the life of this convention for here, we are in the life of this basic principle which can give justice to those who have been accused. A few moments ago, Mr. E. J. Landry came and said to me, he said, "This is the most basic human right, and he said, "I would like for you to go and speak in favor of this amendment." Before Mr. Landry, who is one of the most highly respected members of this convention, came to me and asked this of me, I had already decided that I would do so. I think he did it because he felt that in some way I symbolized and represented our Judeo-Christian faith which gives to us a basic belief in man's dignity and in our basic human rights. What I feel is that many of you have been very adequate spokesmen of our Judeo-Christian faith in the excellent way in which you have spoken in favor of maintaining and extending man's, our basic faith in man's human rights and in man's dignity. I say to you that one greater than any of us said, "You shall know the truth, and the truth shall make you free." I submit to you that many innocent persons will probably be set free because they know the truth of that of which they are going to be tried, and they too might be set free because we give support to this amendment. Mr. Burson says, "This is statutory." Well, I submit to you that the legislature has not made it statutory. You and I are responsible individuals; the decision is now with us. I say let's take a chance on human rights and human dignity, and let's give support to this amendment. Thank you.

Further Discussion

Mr. DeBlieux Mr. Chairman and ladies and gentlemen, I haven't appeared on the mike today up till this time, so I don't think I've been abusing the

privilege. But I think that this is important enough that I should make a few statements about it. This particular section regards fair trials. There is one thing that you need to decide with reference to criminal laws. First, I want to state this: I am not a criminal lawyer, I'm not connected with the D.A.'s office nor do I engage in criminal practice. So, therefore, I have no interests to tell you about in this particular case or any trials that I have engaged in except that I'm interested in fairness and justice for our laws. There is one thing that I think that's more important. I think Mr. Segura brought that out when he says, "It's not a question of who wins or who loses." There is another question too, that we have to decide, that I hope that you will take into consideration. I have a firm belief that everybody who has been acquitted in a case is not always innocent. I have another belief that everybody who is in Angola is not guilty of the crime for which they were sent there. So, it comes down to this question. It depends upon how many innocent people you want to convict in order to be sure that you get the guilty one, or how many guilty ones you want to turn loose in order to be sure you do not convict innocent people, or let out too many innocent people or too many guilty people, as the case may be. That's what it amounts to. We are human beings and our courts make mistakes, our juries make mistakes just like anybody else, because we are dealing with human nature and the frailties of human nature. Now, I just want you to think about this. If you want to be sure that you give the innocent a fair trial, you'll vote for this amendment. That's the reason I rise here in support of it. If you want to be sure that you get the guilty and the few innocents too, then you can go ahead and vote against it because you are certainly going to convict a whole lot more innocent people without this provision than you will with it. It's a choice that's just like that. If you want to favor the innocent, let's give them a fair trial and give them the right to find out what kind of a right or evidence they have against him so he will know what he has to meet. You have read in papers, and I have, day in and day out, of cases where somebody has come up and found that they were turned loose because they found somebody who was guilty of the crime for which they were charged. If this is a Bill of Rights, let's give the right to the person to know who his accusers are, and what they are going to try to say against him, so he can prove his innocence. I think it's fair that we support this amendment, and I ask your support of it.

Questions

Mr. Burson Senator, as a member of the State Legislature, would you be willing to investigate into and sponsor a proper criminal discovery statute?

Mr. De Blieux Yes, I would do that, Mr. Burson. I might say this, that under our present procedures we have, as you well know, that we have courts... There is no difficulty for a rich person to exercise his rights of discovery or than the D.A. already has all the facilities and investigators to do that. What this amendment will do, it will help and protect that poor person who does not have the chance to hire those investigators and they get out and discover this evidence.

Mr. Burson Don't you think that if you were to introduce such legislation in the State Legislature, that you could work it out and get it passed in an acceptable form?

Mr. De Blieux Well, I hope so. I don't know, but I hope so. I'm not a criminal lawyer, as I say, so I don't know what's good and right about that. All I know is the poor gets penalized.

Further Discussion

Mr. Jack Mr. Chairman and ladies and gentlemen, I rise in opposition to this amendment. I want to point out to you that a grand jury is not a trial

place for defendants and the prosecution. It's an investigative body. Now, since certain amendments have been defeated and all, there is one thing left for a grand jury to investigate where it has to start by them. They can investigate others, but to prosecute you'd have to have an indictment on a capital case or life sentence. Now, I'm a defense attorney, but let me tell you, I like to live, and I want to talk to live. Now, a lot of people say there has been a hoodlum killing or a gang killing, or what kind of killing--those type of things. You are not going to have people volunteering to come to a grand jury if they know a transcript of that is going to be handed out to everybody. Now, I do think this amendment is very bad, but I do think that there should be some form of criminal discovery rules, which is a legislative matter. But I don't think you should be given a copy of the testimony before the grand jury. If you do that, you're going to have people not willing to volunteer and that's where you get people to help solve killings; lots of times they'll come forward on that. Now, by discovery, you could have rules set up in law. You've got them in civil cases where from the opposite side you can side with the named names and addresses of witnesses known by the other side, whether they were eye witnesses, whether they were present, whether you have written statements, and whether you talked to them, had investigators or what not. You can take it from there. Now, this is a lot of this group has been gone over. About the only amendment that I can think of to be left to introduce here--and if anybody is going to introduce it, I think they ought to get it next and get it through--I've seen about every amendment to do with grand juries and grand juries get to a defendant and/or his attorney to eject the district attorney from the grand jury room. That's how ridiculous some of this is getting, and I say, let's defeat this amendment, let's get along. The time is late. We're not making the progress we should. Thank you.

[Previous Question ordered.]

Closing

Mr. Gravel Mr. Chairman and ladies and gentlemen of the convention, let me just briefly state, as clearly as I can, what I believe is absolutely wrong with the observations made by one or two of the delegates, and I believe an effort to either present this amendment in a different light than the way I presented it. I asked you to please carefully read the amendment and I ask you to do it again. What we are referring to in this amendment would be the statements of witnesses who appeared before any official, or employee of the state, or any of its political subdivisions, or any grand jury which participated in any investigation of the case for which the defendant is being prosecuted. Now, that's as clear, I believe, as anybody can put it and anybody that suggests that there may be some far-flung statement that may have been made by somebody is somebody not concerned with the investigation is just not getting to the heart of what I hoped to do by this amendment. Now, what I am saying to you is that this language is clear and covers the right of a person to know exactly the basis upon which the prosecution is being conducted. Let me ask you to pause for one moment and think about this possibility. It may be you, it may be one of your loved ones, it may be one of your friends or acquaintances who gets to be the subject of an investigation conducted by the prosecution arms and fingers of the State of Louisiana. Now, don't you forget at all but that that investigation is being conducted with your tax money by the people that are employed by you--the taxpayers of the State of Louisiana--who are supposed to be acting, Mr. Perez, in the public interest. Let's keep that in mind. I suggest to you that when that function is being performed, it's being performed in the public interest and that when any definitive statements are developed or obtained in connection therewith, that they ought to be made available to a person presumed

to be innocent that the state says it's going to prosecute for a criminal offense. I know that you can't get up here, no matter how strongly you feel about an issue, no matter how firm you are in your conviction and belief, and change the minds of some people who don't want to have their minds changed. I address all of my remarks to those of you who will look at this proposal dispassionately, clearly, and in good conscience and decide whether it's right and necessary to accord a fair trial to a defendant. I ask you to judge this proposal by that test, not by a suggestion that maybe a certain sheriff or a certain district attorney or somebody else doesn't like it because it may cause a hardship or may cause a problem, but by the overriding test of whether or not this is a good proposal for the benefit of a person presumed to be innocent, who must defend himself, and who does not have the forces and the facilities of the prosecution arms of state government in order to develop his defense. Ladies and gentlemen of this convention, does a defendant have an opportunity to exercise, exercise his right to a fair trial if there is going to be retained, hidden, or suppressed evidence that has been obtained that would help him establish his innocence, or even more importantly than that, that would present before the jury, summons to determine the rightness or the wrongness of his position or, whether or not the totality of the evidence justifies conviction or acquittal. At the very outset of our consideration, we considered a Preamble to a Bill of Rights. I thought then that we were talking about a Bill of Rights for the individuals as stated in the Preamble. What, ladies and gentlemen of this convention, did you mean when you said, by adopting the Preamble, that all government of right originates with the people, is founded on their will alone, and instituted to protect the rights of the individual? Are we protecting those rights when we do not afford to the individual a full statement and disclosure of the evidence that has been collected for and against him. Thank you very much, Mr. Chairman.

[Record vote ordered. Amendment rejected: 43-45. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Derbes]. On page 5, line 13, after the word "to" and before the words "in his own behalf," delete the words "take the stand" and insert in lieu thereof the word "testify".

Explanation

Mr. Derbes Technical in nature with all due reference to Mr. Stinson on my left, "testify" is, I think, better phraseology and I urge the adoption.

Further Discussion

Mr. Stinson In view of the fact that Mr. Derbes knows more than anyone else here, we have no objection to it.

Mr. Henry I didn't hear that sir.

Mr. Stinson In view of the fact that apparently he is the learned member of the convention, we have no objection to it.

[Amendment adopted without objection. Previous Question ordered on the Section. Section passed: 108-2. Motion to reconsider tabled.]

Announcements [1 Journal 452]

[Adjournment to 9:00 o'clock a.m., Saturday, September 8, 1973.]

September 8, 1973

ROLL CALL

[* * * * *]

PRAYER

Mr. Fries: Let us pray. Dear God our heavenly Father, let the light of Thy divine wisdom direct the deliberation of this convention and shine forth in all the proceedings and laws planned for our rule and government. Give us security to accept, give us serenity to accept what cannot be changed, courage to change what should be changed and wisdom to distinguish the one from the other. Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Committee Proposal No. 25

Reading of the Section

Mr. Poynter "Section 16. Trial by Jury in Criminal Cases"

Section 16. Any person charged with an offense or set of offenses punishable by imprisonment of more than six months may demand a trial by jury. In cases involving a crime necessarily punishable by hard labor, the jury shall consist of twelve persons, all of whom must concur to render a verdict in capital cases or cases in which no parole or probation is permitted, and ten of whom must agree in others. In cases not necessarily punishable by hard labor, the jury may consist of a smaller number of persons, all of whom must concur to render a verdict. The accused shall have the right to voir dire and to challenge jurors peremptorily."

Explanation

Mr. Roy: Mr. Chairman, ladies and gentlemen of the convention, I guess the faux pas may have been an omen for what may happen again today. Let me explain what this particular section seeks to do. I'm going to get into some basics of what I think are constitutional law issues and then you can decide them for yourselves. If you believe that conviction beyond reasonable doubt means something more than just convicting; and I say to you that where one can be convicted and twenty-five percent of those who try him believe he is not guilty, then that is not beyond reasonable doubt. The first sentence of this section, of course, does nothing more than give to the accused the right to ask for a jury trial, if he may be sentenced to six months imprisonment or more. That's to track *Duncan v. Louisiana*, which was a United States Supreme Court case that held that whenever you have a fine or imprisonment which may impose six months or more, you are entitled to a jury trial. The second sentence "in cases involving a crime necessarily punishable by hard labor, the jury shall consist of twelve persons." Presently there is no statement in the constitution with respect to the number of jurors. We want to constitutionalize twelve persons in those cases necessarily punishable by hard labor. Now those are the cases, ladies and gentlemen, that involve twelve-man jury trials at this time and involve all cases where the judge must sentence to Angola, but of course may suspend it. There are things called relative felonies, like negligent homicide, where you may be sentenced to a term of imprisonment with or without hard labor. Those cases are presently tried by five-man juries. We do make a change here, in that we say that, of course in capital cases you must have unanimity in the jury, twelve out of twelve to convict. In cases in which no parole or probation is permitted, you must have twelve out of twelve. We are attempting to change the law there. Presently under the armed robbery statute,

one may be convicted by nine out of twelve people, which is only seventy-five percent and in my judgment not beyond reasonable doubt and may be sentenced to as long as ninety-nine years in the state penitentiary without benefit of parole or probation. So in that type of case, and that's the only case presently that we have that the legislature says that no parole or probation will be permitted, then it would require twelve out of twelve to convict. In all other cases where there may be nine out of twelve to convict, we now provide ten out of twelve. Please give me your attention for just a moment on this issue. Louisiana and the State of Oregon are the only two states again in the whole United States and in the whole federal system that allows one to be convicted by nine out of twelve votes of a twelve-man jury. Ladies and gentlemen, nine out of twelve is three-fourths, three-fourths of a hundred is seventy-five. If a hundred of us here today are asked, did you and so do something beyond reasonable doubt and twenty-five out of a hundred say he did not, I submit to you, he has not been convicted beyond reasonable doubt as I appreciate the term. Now mind you, we are the only other state in the Union besides Oregon that permit that. All we seek to do here, you see, is to say in those cases where nine out of twelve may apply, that it be ten out of twelve. That's five-sixths, that's approximately sixteen and two-thirds percent instead of twenty-five percent. So that then you are making the formula, if you want to call it any formula, to use figures that way, but at least then eighty-four percent or more of the jury would feel that you were guilty and could return a verdict that I believe would be beyond reasonable doubt. There are not many D.A.'s in my judgment who are opposed to this really on any philosophical basis because most of them get their convictions generally with unanimity. My point and the committee's point is that if the rest of the United States can require unanimous verdicts and the federal system can require unanimous verdicts, why can't we in Louisiana require at least five-sixths to convict? We do not need a jury and I think that maybe we should have spelled it out a little more in detail, that in those cases not necessarily punishable at hard labor, that the verdict --- the jury may consist of less than twelve and requires unanimity. In jury cases at this time, it requires five out of five to convict or acquit. I would not personally be upset to see that the same formula be applied with respect to a smaller jury size. That is, that we would reduce the jury to no less than six in certain cases and have five out of six convict or acquit. I think it would be logical and would make sense. Now, ladies and gentlemen, Robert Kennedy once said that, "The only people to whom justice is administered are poor." Or the poor are the ones that only get justice. He had, good point. Because if you check with any of the staff, you will find the statistics show that generally ugly, poor, illiterate and mostly minority groups are those people who are convicted by juries. Juries don't generally---that's particularly in murder cases---juries just generally don't convict nice-looking, intelligent, well-dressed, decent people like all you folks here in this convention. But remember that you represent maybe only .0003 of one percent of the people of this state. I urge you to accept the section. Let's not get off on any harum-scarum tactics. I've had enough of it, I've had to bring with me---let me show you a picture, this fellow here...

Mr. Henry: We know you got your picture in the paper, Mr. Roy, you...

Mr. Roy: No, this is not me, fortunately. Wilbur McDonald of Illinois was convicted and sentenced to life imprisonment for rape and murder of a woman who was killed in a park, in which he was found dead drunk lying on his back. Three years later after a very heftily fought battle, according to him the real culprit came up, a man with a prior record, and admitted his guilt. This man spent three years in a state penitentiary for something that he didn't do. Now let's talk about statistics because I have had them coming out my ear, but not anything like what I've got from the Louisiana Supreme Court. We

44th Days Proceedings—September 8, 1973

have all these opinions from these assistant U.A.'s. Are we going to run into trouble with a criminal jury trial? Well, let's look at particularly District 27, which is St. Landry Parish. I'm sorry Mr. Burson is not here this morning. I don't see him. He's here, good. Each criminal case per judge terminated in St. Landry Parish was 2,993 in 1972. Do you know how many trials, criminal jury trials, Mr. Burson and them had to go through? It says here, eight. Eight criminal jury trials in 1972 in St. Landry Parish according to the Supreme Court Judicial Administrative Statistics. The number of criminal cases disposed of by trial by judge was 818, you understand. The percentage of those pleading guilty in St. Landry Parish, and that's the reason you don't have that many, was seventy-nine percent in 1972. Don't be mislead [misled] with harum-scarum tactics. In West Carroll Parish in 1971, one hundred percent of those charged pled guilty, one hundred percent, they didn't even try any cases. My district attorney, Mr. Ed Ware, who raised Cain about all what we were going to do—they tried twelve little criminal jury trials in 1972 in Rapides Parish and they disposed of, by judge, 175 criminal cases and without trial in Rapides Parish they disposed of, each judge, 2,993. I said this because you have been getting these self-anointed statements about statistics that are inaccurate. We ask you to consider what "beyond reasonable doubt" means. If it means to you, that it takes only seventy-five percent to send a man to Angola or anywhere else for ninety-nine years for any case except you understand capital crimes you may convict with only nine out of twelve - if that's what you want to do, then do it. But let's not say that you weren't told. Let's not argue about ten out of twelve being too much to ask for.

Questions

Mr. Burns Mr. Roy, what disturbs me in this section, it provides that in cases not necessarily punishable by hard labor, the jury may consist of a smaller number of persons without designating the number. It could be a jury of two or three...

Mr. Roy Mr. Burns, you're right. You understand that under the present constitution there is no requirement of any number. We kind of went along with the thinking that the legislature would keep the five-man jury. I think you've got a valid point. I think we ought to specifically say, no less than X number of people. I agree with you.

Mr. Staggs Chris, are there any words that you or your committee could suggest to replace the words in the bottom line of this article or the Latin term "voir dire". Can you not give a committee amendment that could be instantly acceptable to this body? I don't like trial de novo. I don't like voting viva voce. I don't like voir dire because the constitution we promised the people in our district would be easily understood and readable by every citizen without difficulty. If you guys keep packing those Latin legal terms in there, you are violating Staggs' rule of Style and Drafting.

Mr. Roy Tom, you've got a good point: Mr. Willis could answer that but voir dire just means literally in French, to see and say... And we could put interrogate, I guess.

Mr. Staggs I'm going over here and prepare an amendment. I want it to be with the committee sanction and I need your help.

Mr. Roy It's alright if you can change "voir dire" probably to "interrogate" and get a better word. I think you'll have...

Mr. Staggs Beautiful. I'll do it. I would do it with unanimous consent, but I don't think the Chair would accept that.

Mr. Munson Mr. Roy, Mr. Staggs asked one of my questions because I didn't know how to pronounce those two words, much less know what they meant. Would you explain to me again what they mean?

Mr. Roy Mr. Munson, it's a real common term in legal parlance. It means to literally question and to see and hear the responses between you and the prospective juror, so that you can maybe determine any prejudice for which you would want to challenge him. You know just for peremptorily, just say "I don't want you because he kind of snickered when he answered or something." It's literally to view and see.

Mr. Munson One other thing, I believe you said that in Mr. Burson's parish they had tried eight capital cases last year.

Mr. Roy No, sir, not eight capital cases—eight criminal cases.

Mr. Munson Eight criminal cases.

Mr. Roy Excuse me, eight criminal cases before criminal juries.

Mr. Munson Well, he has told us about one of those three times. Is that case listed more than once in those eight?

Mr. Roy It could be that the figure is actually inaccurate and it should be less than eight.

Mr. Burson Mr. Roy, do you know that I didn't become an assistant district attorney until 1973 and those statistics are from 1972? Do you know that I've tried five jury trials in two weeks early this spring? But seriously, isn't it true that the United States Supreme Court last year in the case of State v. Johnson was confronted with the issue that you've raised as to whether or not the Louisiana Constitutional Provision permitting the jury nine out of twelve to return a guilty verdict in other than capital cases was, in fact, guilty beyond a reasonable doubt? Didn't the U. S. Supreme Court uphold this as constitutional?

Mr. Roy Mr. Burson, I never lie about facts, you're correct. But my point is that it does not amount to beyond reasonable doubt in my judgment and hopefully in the judgment of the rest of these people here.

Mr. Burson But your judgment in that case would be at variance with the judgment of the United States Supreme Court.

Mr. Roy Well, it certainly is and I'm the delegate here, and I'm not in the U. S. Supreme Court. I want to say that I think there will probably be a lot more criminal trials in St. Landry Parish since Mr. Burson is there.

Mr. Lanier I note in the PAR report it says that there was a minority report to this section, urging the deletion of the requirement of unanimous twelve-man verdicts in cases in which no parole or probation is permitted. Is that correct?

Mr. Roy Walter, I would think that maybe somebody did say, it might have been Woody, I just don't remember. I don't think we had any trouble on the vote. I really can't answer you. I'm not trying to dodge it, because I don't want to appear that way up here. But I'm sure if they reported there was, there was one.

Mr. Lanier Your committee have a rule that it took three to file a minority report?

Mr. Roy We later dropped that rule and let it go by with just anybody...

[Action in Court is suspended.]

Reading of the Section

Mr. Poynter Section 17. Right to Bail
Section 17. Excessive bail shall not be required. Before and during a trial, a person shall be bailable by sufficient sureties, unless charged with a capital offense and the proof is evident and the presumption

is great. After conviction and before sentencing, a person shall be bailable if the maximum sentence which may be imposed is less than five years and the judge may grant bail if the maximum sentence which may be imposed is greater. After sentencing and until final judgment, persons shall be bailable if the sentence actually imposed is less than five years, and the judge may grant bail if the sentence actually imposed is greater."

Explanation

Mr. Stinson Mr. Chairman, members of the convention, this is a very important section of our Bill of Rights and that is the fact of bail. Now as we have repeated a number of times, everyone is presumed to be innocent until proven guilty. Therefore, the premise that we got to operate on is that a person who is presumed innocent should not be imprisoned unless he has been proven guilty and that is after a trial. Of course, in cases within the discretion of the courts where it's a dangerous person involved in a dangerous crime there are prohibitions against that. But I would like to read from this and I will point out as we go through the changes from the present law, there are very few changes from our present provisions of the Constitution of 1921. "Excessive bail shall not be required (that's a repeat, the same thing). Before and during a trial a person shall be bailable by sufficient sureties unless charged with a capital offense (that's the present law) and the proof is evident and the presumption is great (that's a restatement of our present law, and I know of no objection, it was done before our committee or on our committee; and I have heard none from anyone in this convention). It says, 'After conviction and before sentencing,' those of you who are not lawyers may not appreciate the meaning of this. That means that you are convicted, you can ask that your client be remanded for sentence for two or three or four weeks, whatever a judge decides. Now if a man gets out on bond it seems to me a logical for him to continue on bond until he is sentenced as to some term or given a suspended sentence or whatever it maybe [may be]. At the present time, automatically he is entitled to be continued on bond, if his sentence that can be imposed is less than five years. Now he is added it says, 'the judge may grant if the maximum sentence is to be served is greater.' The judge has the discretion and judges usually in arriving at that decision as to whether you will be continued on bond usually refers to the sheriff's department or the district attorney or someone as to whether this person is the type that will not be dangerous to be continued on bond. Now our judges in my district, and I've checked with Judge Dennis, our judges have repeatedly said that they wish the law would allow them this permissive discretion in this case, but it's prohibited. I know of no objection our judges - I checked with them last week - all three of them urged it. Judge Dennis says the judges' association is in favor of it when it's within their discretion. So we would like to continue that to what it is now. He says, also, 'after sentencing,' that's after you go up and the judge sentences you 'and until final judgment.' Now that means if the person wants to take an appeal or if there is going to be a presentence investigation and pleas of guilty or convictions, the same thing, it automatically - under the present law he can get out on bail or bond if it's less than five years, and over five years, it's discretionary with the judge. Judge Dennis advises me that these judges' associations have never taken a position on this; he knows of no objection and there is no objection from Judge Dennis. Now the reason for this last permissive continuation on bond is this, after the judge sentences him oftentimes, especially with first offenders....

Mr. Chairman, I'll make it short. I hope the inner tension is the fact that there is no objection. But this last provision is especially important and in most cases that I've handled and other lawyers, it's some young person who is still in high school. He is charged with something and we know, because he hasn't been in any trouble, that the judge is going to give him a suspended sentence. But the

judge has to ask, usually asks, for a presentence investigation by the probation department and it's so clouded with that type of work it usually takes, more than likely, about six weeks. If this is a young boy, man or woman who is still in high school or in college and they have to now - been out on bond all of this time - under the present law, they have to go to jail for six weeks. At the end of the six weeks when they get a clean bill on their bail record, the judge says "you now are given one year suspended sentence, one year probation." They have served six months in jail with hardened criminals - our parish jails can't separate like we try to at Angola - they have lost out one year's schooling because they've missed six weeks of schooling. It is a blight on them, the fact that they have served in jail. This applies more to the young people than most anyone. This says that the judge again, at his discretion, can continue him on bond until a suspended sentence or not. Now I'll say this, a man is not any more guilty or harmful after he is convicted than he is before. So if you have the same bond, you're doing I think our people really do justice and not act as a judge. It's entirely within the discretion of the judge, you can't force him to, the judge himself says you shall continue on bond or you have to go to jail. I would like to urge the adoption of this. I think it's fair to everyone. Certainly after a young person has gone astray and realizes what he has done is wrong, he's not given an extra penalty if he is going to try and straighten up and become a good citizen. If there're any questions, I'll be happy to try and answer them.

Questions

Mr. Burns Mr. Stinson, I'm not against this section but there is one thing that does concern me a little, as to whether or not it's here. Now if I'm just suggesting this to exempting a person with a long criminal record from this discretion on the part of a judge. I thoroughly agree with you in the case of a first offender who may have temporarily...but, for a confirmed criminal. If I think through his twenty-four years as district attorney that a sorrier a man is the more people he can get to help him. I'm just afraid that some judges might be influenced by that constant knocking on their front door and give a person of that type, bail just to go out and commit another crime.

Mr. Stinson Well, Mr. Burns, of course as I've explained, we are placing the faith in our judiciary. It may be some judges you say—I have no objection, I'm not trying to keep a confirmed criminal out on bond...if you have any amendment, I would not have any objection. I would like to also point out that this is a matter that, while a member of the legislature, I have worked on for years with Dr. Dale Bennett from L. S. U. Law School. He recommends this. He is in favor of it. I think through his Law Institute, I believe, also is in favor of this type of discretionary with the judge. Of course now as Mr. Burns says, you may have some judge that wants to let them out anyway, but frankly, there are some judges that disregard the law and let them continue at the present time. I want to make it permissible for those judges who are ones that follow the line of the law and see this need.

Mrs. [Miss] Wisam Mr. Stinson, I'm concerned about this section which states, "After conviction and before sentencing, a person shall be bailable if the maximum sentence which may be imposed is less than five years." Now who is going to determine whether the maximum sentence is going to be less than five years and how can they do this before they know?

Mr. Stinson That provision that you receive after sentencing. Now that means after the judge says you get six years. Now and until final judgment that means that if he wants to appeal it to the Supreme Court, it may take it to the Supreme Court. He has to go to jail for a year and then if

44th Days Proceedings—September 8, 1973

the Supreme Court upholds it, then the judge can give him a suspended sentence, but he has been imprisoned for one year.

Mrs. [Miss] Wisam I understand, thank you.

Mr. Burson Mr. Stinson, on your proposed section isn't the only real substantive change you are making other than the ones you've discussed already, to allow the judge to have the discretion to grant bail if the sentence is more than five years, which he doesn't have under the present law?

Mr. Stinson That's the only thing he does, yes, sir, entirely...and left up to the discretion of the judge. And thank you Mr. Burson...

Mr. Willis This is a friendly question, Mr. Stinson. In this provision is not the passage, "a person shall be bailable by sufficient sureties," exclusive of allowing a person to be released on his own recognizance?

Mr. Stinson Well, yes, sir. But I feel that if he has been convicted, and he had to be on bonds which would be continued that he shouldn't be released on his recognizance. I think he should continue on bond.

Mr. Willis Well, it says "before and during a trial a person..." but before trial, before a trial, a person shall be... I'm reading in the pertinent language. "Before a trial, a person shall be bailable by sufficient sureties." I have two questions. Does not that exclude his own recognizance, number 1, and number 2, what or how many sureties do you mean?

Mr. Stinson Well, that's left up usually to the court depending on the value of the property of the surety. And I believe the present law says that the judge has to...

Mr. Willis I'm not talking about the quality of surety; I'm talking about the quantity of sureties.

Mr. Stinson Well, the...I think it's in the statutory law that takes care of that...

Mr. Willis Oh, I know it's in the statutory law. But if we are going to put it as a fundamental part of our law, notably a constitution, I don't think we should equivocate.

Mr. Stinson Well, we're not. We are tracking the 1921 Constitution which used the word "Surety."

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Gravel], on page 5, line 31, after the word "presumption" and before the words, "is great" insert the words "of guilt".

Explanation

Mr. Gravel Mr. Chairman and ladies and gentlemen of the convention, I think probably it's necessary to insert that the presumption we are talking about in this particular instance is the presumption of guilt. Those words, I think, were inadvertently left out of both the 1921 Constitution and the proposal suggested by the committee. I discussed this with a number of people, and I don't believe there is any objection whatsoever to the insertion of these two words. And in order that the sentence can read as follows: "Excessive," well, excuse me, "before and during a trial a person shall be bailable by sufficient sureties unless charged with a capital offense and the proof is evident and the presumption of guilt is great."

Mr. Chairman, I move the adoption of the amendment.

[Amendment adopted without objection.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Gravel], on page 6, delete lines 1 through 7, both inclusive in their entirety and insert in lieu thereof, the following:

"The maximum sentence which may be imposed is imprisonment of five years or less. The judge may grant bail at the maximum sentence which may be imposed as imprisonment in excess of five years. After sentencing, and until final judgment, persons ... and this is the change, strike out the word "may", insert the word, "shall". Strike out "may" put "shall". "persons shall be bailable if the sentence actually imposed is five years or less and the judge in his discretion may grant bail if the sentence actually imposed is in excess of five years imprisonment."

Explanation

Mr. Gravel Mr. Chairman, and ladies and gentlemen of the convention, the argument that I wish to make to you in support of this amendment is that it's sponsored by Gravel and Burson. I move the adoption of the amendment.

Mr. Henry What was that?

Mr. Gravel I've finished my argument.

Mr. Henry You have finished your argument?

Mr. Gravel Yes, sir.

Mr. Henry Good grief. I find that hard to believe. I want you all to look at that amendment carefully because anytime Burson and Gravel get together somebody's in for trouble.

Mr. Gravel And I might even say that Mr. Mamoulides likes it.

Mr. Henry That ought to kill it.

Mr. Gravel I just want to free the Jefferson delegation.

[Record vote ordered. Amendment adopted: 100-3. Motion to reconsider tabled. Previous question ordered on the Section. Section passed: 104-0. Motion to reconsider tabled. Action on Section 16 resumed.]

Amendment

Mr. Poynter Amendment is sent up by Delegates Lanier and Bergeron.

Amendment No. 1, on page 5, delete lines 15 through 26, both inclusive in their entirety and insert in lieu thereof the following:

"Section 16. Criminal cases in which the punishment may be capital shall be tried before a jury of twelve persons, all of whom must concur to render a verdict in cases in which the punishment is necessarily confinement at hard labor. render a verdict. Cases in which the punishment is necessarily confinement at hard labor; shall be tried before a jury of twelve persons, ten of whom must concur to render a verdict.

Cases in which the punishment may be confinement at hard labor; or confinement without hard labor of more than six months shall be tried before a jury of six persons, five of whom must concur to render a verdict; except in capital cases, the defendant may knowingly and intelligently waive his right to a trial by jury.

In all criminal prosecutions tried by a jury, the accused shall have the right to full voir dire examination of prospective jurors and to challenge jurors peremptorily. The number of challenges shall be fixed by law."

Explanation

Mr. Lanier Mr. Chairman and fellow delegates, this

amendment is the result of a synthesis of ideas by various of the proponents and opponents of different shades of the way this thing should be handled. I'm authorized to state that this is another proposal upon which Delegates Gravel and Burson are in agreement. That seemed to be quite successful on the past proposal, so I'd like to bring that to your attention on this one.

This amendment makes three changes in the present law and four changes in the present constitution. And I want to explain to you the differences here.

The present law, in our constitution which is Article VII, Section 41, and also, in Article 780 of the Code of Criminal Procedure, provides that in cases necessarily punishable by hard labor the jury shall be composed of twelve persons, nine of whom must concur to render a verdict.

We have changed this to ten. This proposal of having less than a majority to reach a verdict in the case has been approved by the United States Supreme Court; this issue of whether you need a unanimous verdict in all cases has been reviewed by the Supreme Court, and you may have less than a unanimous verdict. It then becomes a question of degree...at what point do you draw the line? Do you draw it at eight, or nine, or ten...we felt, after putting all of our heads together, that ten was a reasonable amount on this. It leads to a situation where you'll get a definitive action in more cases rather than have a hung jury. Because if it required twelve out of twelve to render a verdict, that means if you had anything less than twelve out of twelve, either for innocence or for guilt, you would have what's called a hung jury, and that means that you would have to go back and do it all over again. And this is one of the modernizations of our criminal procedure, quite frankly of which Louisiana is one of the leaders in the field.

The second change in the present law in the present constitution is providing for the so-called botaillied jury of six persons rather than five.

Under the present law with a relative felony...now a relative felony is one in which the punishment may be confinement at hard labor, but it is not necessarily confinement at hard labor. In other words the judge could impose parish jail time, or he could impose penitentiary time. It is within his discretion. It is not mandatory penitentiary. Or in cases of serious misdemeanors...these are misdemeanors where the punishment is greater than six months or the fine more than five hundred dollars.

The present law is that you have a five man jury all of whom must concur in order to render a verdict. This is also Article VII, Section 41 of our present constitution and Article 779 of the Code of Criminal Procedure. We have provided that the botaillied jury shall be composed of six persons, five of whom must concur in order to render a verdict. And the rationale of the five out of six is the same for the ten out of twelve.

The issue of whether or not you can have less than a twelve man jury has been passed upon by the United States Supreme Court, and this is in accordance with law.

The next change is with reference to the waiver of your right to trial by jury. Under the present law you can waive your right to trial by jury in cases which are neither capital nor necessarily punishable by imprisonment at hard labor. This is Article 780 of the Code of Criminal Procedure. We have changed this to provide that you may waive in an absolute felony, that is a case that is necessarily punishable by imprisonment at hard labor in the penitentiary. Of course in a capital case you do not wish to allow a defendant to waive because that would then mean that one man, the judge, would have to make the decision of guilt or innocence and life and death for the defendant. And quite frankly, we feel that this would be a very bad social policy, and should not be adopted in this state and is not adopted in most states. You would almost be allowing a man to commit judicial suicide in front of the judge without a jury.

However, in other cases that are not capital actually this will probably facilitate the administration of justice, because a trial in front of a judge is generally much swifter and not as bound

with technicalities as a trial in front of the jury. And the defendant would have the option in his discretion to intelligently waive this particular right.

Now, the other change, and it's not a change in the law but it is a change in the constitution, is the...providing that in a jury trial, the accused shall have the right to full voir dire examination of prospective jurors. This particular subject has very recently received extensive litigation in our Louisiana Supreme Court. It is my understanding that this is the present law. At the present time, the voir dire is provided for in Article 786 of the Code of Criminal Procedure. We felt that it would be advisable to include the existing jurisprudence into the constitution so that this will be absolutely clear as to what your rights are at the trial of a jury case.

Now, at this time it's my understanding that there are quite a few delegates who would like to join in sponsoring this amendment. And if I might, I have been advised by the chairman of the committee that the committee has no objection to the amendment. I'd like to ask the Chair if we would be permitted to open the board to allow cosponsors.

[cosponsors added to the amendment.]

Questions

Mr. Champagne Mr. Lanier, are you aware that I'm fully in favor of your proposal because it sounds like good constitutional law, but even if I didn't know anything about it, it has the only two words in French that I have yet seen in the constitution. And I will be able to tell my many constituents and good friends that Bobba Henry voted for it and I did and this is acknowledging the French tradition in Louisiana.

Mr. Lanier Mr. Champagne, in answer to your question when this issue was brought up by the State Parish, Mr. Landry and Mr. Bollinger, and it was our feeling that this language would be perfectly understandable in our parish.

Mr. Alexander Mr. Lanier, I notice in the sense of "knowingly and intelligently waive," how can you explain how would a functional illiterate knowingly waive, when he may not know what the word "waive" means? How would you handle that kind of case?

Mr. Lanier Well, I'm going to tell you. Of course, this would ultimately have to be decided by the judge as to whether this man was capable of knowingly and intelligently waiving. And if he could not, of course, the judge would not accept his waiver. But of course he would be entitled to counsel. I happen to know some people who are not literate, but just because they are not literate does not mean they are not intelligent. In fact they are quite intelligent and I am sure you will also agree, on the other hand, sometimes you have some educated people that might not be as intelligent as the illiterate when it comes to intelligence. So there is a difference between education and knowledge, I believe, or native intelligence. This would have to be a judgment call that would be made by the judge in any case.

Mr. Chehardy Mr. Lanier, you have sixty-six co-authors. Why don't you call for the question and get the vote on the issue?

Mr. Lanier Well, I was thinking, Mr. Chehardy, that if we wanted to fully explore this and debate it...

Mr. Chehardy Well, when you've got sixty-six, that means they understand. Otherwise they wouldn't be coauthors. Why don't you get it over with?

Mr. Lanier O.K. I move the previous question.

[Previous question answered. Amendment adopted.] AYES: 66; NAYS: 4. YEAS: 100.

Reading of the Section

Mr. Poynter "Section 18. Right to Humane Treatment."

Section 18. No person shall be subjected to euthanasia, torture, or cruel, unusual or excessive punishments or treatments, and full rights shall be restored by termination of state or federal supervision for any offense."

Explanation

Mr. Weiss Mr. Chairman, fellow delegates, the right to humane treatment is a very important section of the Bill of Rights. It is interesting how quickly we forget. The American colonists were drawn and quartered, were punished by being placed in the stocks, were nearly drowned in dunking chairs, so there was no question that they would support the Bill of Rights including the statement in the Amendment 8 to our constitution, the Federal Constitution, excessive bail shall not be required nor excessive fines imposed nor cruel or unusual punishments inflicted.

Only yesterday morning on the Today show in Joliet, Illinois, I'm sure many of you saw the prisoners that were in revolt. It's interesting that our neighboring state of Illinois, which has such a constitution that was accepted by the people, does not have this statement, the right to humane treatment, whether this would have influenced the guards or others who have punished these prisoners by unusual treatments, I do not know. But certainly we, in Louisiana, have a tradition of being humane and understanding to our brethren and to our fellows.

It seems that every generation has its tyrants, and there is no reason to think that cruel and unusual punishments will not be their allies and companions in the future as they are today and as they have been for centuries. It is for that reason this committee recommends that this section be adopted as presented, because of the fact that we have streamlined three old Louisiana sections, constitutional sections, namely Article I, Section 11 and 12, and Article VIII, Section 8. Article XI and XII [Sections 11 and 12] of the old constitution is concerned with confessions and reads as follows: "No person under arrest shall be subjected to any treatment designated"...or "designated", rather, "by effect on body or mind to compel confessions of crime." Section XII [12] reads, "Nor excessive fines imposed nor cruel or unusual punishments inflicted." And this, of course, parallels the United States Supreme Court.

There are two new sections that are added. One is the matter of euthanasia, and this I think can best be described by another party who I'll call upon in a moment, and we'll skip this for the moment, but secondly, the "full rights" to be restored. The last phrase reads, "full rights to be restored by termination of state or federal supervision for an offense," and refers to Article VIII, Section 6 of our present constitution. Here it is to be noted that on federal offenses there is no punishment as regards removal, that is for felony and an individual being placed in a federal penitentiary; that when they have served their time, they may return to life...to civilian life and assume their rights, including that of the right to vote. In Louisiana, that is not now the case. As a result, the governor has to pardon, and this issue of pardons has come up before us in the past, has to pardon an individual who has served his time for punishments...served completely his time. But still does not and has not the right to vote. It is for this reason that we have recommended full rights be restored to those who have served their sentence and who have terminated their supervision for any offense. And so we recommend to you that these two new sections be adopted, that is the portion concerned with full rights being restored to individuals having served their terms for any offense.

And secondly, I call upon Mrs. Brien who would

like to comment to you briefly on the matter of euthanasia, which has already been commented in letter to you by Dr. Brian of the Louisiana State Medical Society, and Mrs. Brien who has had some personal knowledge in this regard I think can explain this better than I.

Further Discussion

Mrs. Brien Mr. Chairman, delegates, I come before you to speak a few words in support of this section. Especially, I ask you not to remove this word "euthanasia" from this section.

Euthanasia means "good dead". But I think you all agree with me, we wouldn't push anyone to death. Believe me, I remember what happened in Nazi Germany. They were saying, "What is useful is good." German medicine sent two hundred seventy-five thousand so-called unworthy Germans to death. The extremes of the utilitarian mentality, rampant today through medicine, the drug industry, and government will be checked by our press, lawmakers and doctors, lawyers and clergymen holding to their traditional ethics. The Germans wasn't blessed that way. So please, don't let it happen here in our great state what happened in Germany.

I ask you please to accept the committee proposal and don't delete euthanasia.

Questions

Mr. Roy Mrs. Brien, this is a friendly question. Are you aware of the fact that in the State of Florida only last year or two years ago, the legislature tried to pass a euthanasia law, and it was killed in the legislature in Florida?

Mrs. Brien Yes, sir, I read that but I hope it stays in this section.

Mr. Roy You understand that if we put it in this constitution that there never shall be any euthanasia in this state, the legislature may never pass such a section. Is that right?

Mrs. Brien That's right.

Mr. Roy Mrs. Brien, one last question. Do you know the quote about...in Germany they said, "First they came for the Communist and I did not protest because I was not a Communist, then they came after the trade unionist and I did not protest, because I was not a trade unionist..."

Mrs. Brien I don't understand you good, Roy, you'll have to talk louder.

Mr. Derbes I just address this question to any member of the committee who can answer it. What is unusual treatments? What is unusual treatments?...I don't know.

Mrs. Brien Mr. Weiss will answer your question.

Mr. Weiss This is a good question, and the word is new in this section. There have been some questions raised and I think it has been the opinion of the majority of the committee that the word "treatments" might best be deleted, and an amendment is ...

Mr. Derbes Do you administer unusual treatments at your office, Doctor?

Mr. Weiss Yes, and that's right. And it's necessary to delete that word, and an amendment is forthcoming in that regard.

I appreciate that suggestion.

Mr. Willis Dr. Weiss, I'm loath to find fault, and I may be at fault, but why was the word "rights," and "full rights be restored" instead of "full citizenship be restored." Why was that used?

Mr. Weiss Well, it was the intent of the committee, both in answer to the previous question, that treatments, unusual treatments to extract statements to

the contrary, that the individual may feel as a treatment was intent there...

Mr. Willis I'm not talking about treatment, I'm talking about full rights be restored.

Mr. Weiss The same goes true for the rights: The committee was under the impression that all rights, as determined by the declaration of rights should be restored in a humane attitude to those people who have served their time and punishment. In other words, if they have been punished adequately, have met the...

Mr. Willis I understand, I understand. My only quibble is with the use of the word "full rights" in lieu of "citizenship." Does not citizenship adumbrate all rights that you talk about in the Bill of Rights? And would not citizenship be a more appropriate word.

Mr. Weiss You're right, sir, I know I'm not an artist in words, but my understanding is that citizenship and rights are equivalent. There may be some difference.

Mr. Willis My next question, you use the word "excessive punishments." Would that not allow me to appeal and have the judge review a sentence on the grounds that the sentence is excessive and so the punishment excessive?

Mr. Weiss Yes, but it was not the intent of the committee to question this aspect, but rather "excessive punishments"....

Mr. Willis But the prospect is present, is it not?

Mr. Weiss Yes, and here again an amendment is forthcoming in this regard.

[Quorum Calls: "No delegates present and a quorum"]

Mr. Weiss Delegate Willis, your point is well taken. Believe me, it was the intent of the committee not to create any confusion although, apparently it has in this regard, and there are amendments forthcoming in answer to your question. The point being in the light...in the eyes of the committee, that excessive punishments might be questioned at one time, and if Mr. Roy would like to answer that, I'd be happy to have him answer.

Mr. Willis Now, I am loath to any form of immoral killing. And I note that the word "euthanasia" is used, and the words "guillotine, hanging, abortion, electrocution," are not used. Why should a person not be subjected to euthanasia and be subjected to the guillotine, or hanging, or abortion or electrocution?

Mr. Weiss I think that legally this has been well established that this is a type of cruel and unusual punishment in this country. Even today, capital punishment is being questioned by the federal courts as to being cruel and unusual.

Euthanasia is not in the same category in that it is a type of treatment; a physician must render this type of murder. And this mercy killing, as it is called, is the obligation placed upon physicians, primarily as a result of state action. And, therefore, this is a monumental step, I think, in stopping this type of killing.

[Amendment suggested by Mr. Mr. Committee on Euthanasia and Euthanasia Act, 1973.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Dennyery], on page 6, line 10, delete line 10 in its entirety and at the beginning of line 11, delete the word and punctuation "treatments," and insert in lieu thereof the following: "torture, or cruel (and a change here), insert the word 'excessive,' or unusual

punishment," -- "torture, or cruel, excessive or unusual punishment."

Explanation

Mr. Dennyery The purpose of this amendment is to remove only the words "or treatments" at the end of line 10 and at the beginning of line 11. The reason for this is that we're talking about euthanasia in the first line, and then we talk about treatments down here. Frankly, I wouldn't be here had it not been for some very unusual medical treatments, and I don't want to take the risk that the legislature may bar doctors from unusual treatments. The committee advises that they have no objection to that. The balance of it would remain the same except that I've switched the words "unusual" and "excessive" which means nothing.

[Amendment adopted without objection.]

Amendment

Mr. Poynter Amendment sent up by Delegate Zervigon. Amendment No. 1, on page 6, line 9, immediately after the word "to" delete the remainder of the line.

Explanation

Mrs. Zervigon Ladies and gentlemen of the convention, mine was one of the amendments Mr. Henry was complaining about that was prepared late, and that's because it takes a little bit of nerve to get up here and move to take out a word that many of us believe doesn't belong in the constitution. My main reason for moving to have this word deleted from this section is that I'm not at all sure what it means. It seems to me that murder is already a crime in this state. Any doctor that would shoot somebody full of a medicine that he or she didn't need, or give extra strong medication, strangle her with a cord because he thought she was on her last legs anyway, would be liable to be charged with murder. What scares me to death about this word "euthanasia" is that a doctor following his conscience who doesn't believe in an iron lung or doesn't perform some sort of surgery that has a ninety percent chance of failure but might succeed, in his professional judgment if he didn't think that it would be useful, would be liable to a charge of euthanasia in the courts, because nobody really knows what it means. I wouldn't get up here unless I felt very, very strongly on this subject, and I'll tell you why. When my grandmother died, she was eighty-seven years old. She'd been a widow for seventeen years. Up to a month before her death she was beautiful to look at. She always wore bright colors, wouldn't wear black or dark blue, was entertaining company. She had always said to us when we were growing up, "look, if I get sick, lock me in the garage. I don't want to be any trouble to anybody." But she was in the hospital for a month, and she said to her doctor, "I don't know, I've had a full life. I'm dying of cancer, and everybody knows it. Please don't prolong it for me. Don't put those tubes down my nose. Let me keep my little bit of vanity to the end of my life." And she said it so movingly that he acceded to her wishes. Under this provision with no definition attached, would that man have been guilty of euthanasia? I had another friend, a woman who was also dying horribly of cancer as her sister had died five years earlier, and she said to her doctor, "I want the world to know what causes cancer. Do any kind of test you think you need to do to find out the causes and the possible cures for cancer. I'm dying anyway. Do whatever you think would be useful to you." Would that doctor, following her wishes have been guilty of euthanasia? I don't know. He wasn't guilty of murder, that's for sure. Let's keep murder as a crime and let's not put this word euthanasia in there. There isn't anybody here that wants old people slaughtered wholesale. Nobody here wants that. Legislators don't want that. Some of them are old themselves. I don't want to see old people take this word out, and let's don't get carried away by emotions. Let's be certain exactly what

we're doing here today. I'll yield to any questions.

Further Discussion

Mr. Roy I want to say let's not get carried away with emotions and understand that what we're saying here is that the state may treat pass a law through the legislature which allows some other person or some other people to say that you are going to be allowed to die, or you are going to be put to death. That's very simple. I don't know about Mary's issue, but there is nothing in this section that would prevent the person who's ill from stating in writing to a physician or anyone else that "you will not treat me, you will not administer certain things to me," and that is not prohibited at all. If a person chooses not to undergo treatment, he has that absolute right. All we're trying to say is that never, never will the legislature of this state say that some other person or persons may decide that you will be put to death or allowed to die without your permission. Now, euthanasia, the staff points out is very well-defined in Webster's New Collegiate Dictionary as "the act or practice of killing individuals that are hopelessly sick or injured, for reasons of mercy." The act or practice of killing, not, not the opportunity or the right of a person injured or dying to say, "Don't treat me." It doesn't say that. Now, there's no question but that in my judgment this is needed. Florida had an act introduced to allow euthanasia. I don't see under any circumstance—I don't want anyone ever determining, no matter how sick I am, except me, that anybody can say two out of three in my family, three out of four plus the doctor, that I should be put to death. I urge the rejection of this amendment. Thank you.

Questions

Mr. Fontenot Mr. Roy, I'm not exactly sure...I listened to your definition of "euthanasia." Would abortion come into this thing at all, or was it the intent of the committee to say anything about abortion at all, or are we just concerned about mercy killings?

Mr. Roy No, we are talking about individuals who are put to death through some state conduct, and it doesn't address itself to abortion.

Mr. Fontenot You don't consider a fetus, or an embryo, or anything a person...subject to mercy killing.

Mr. Roy Mr. Fontenot, if ever the courts decided that a seven month old fetus is an individual, then it would apply, and I think it should, but...abortion, I just can't answer that.

Mr. Abraham This is a friendly question, but I need an explanation, Chris. Now, you said that this does not prevent a person from requesting a doctor to do something to them, this type of thing, but the language as it states here now says, "No person shall be subjected to any change like we've discussed. They want it or not, and I would ask you, does this language actually say what you intended for it to mean?

Mr. Roy Yes, it does. It means that the legislature may not subject, but, Mack, you have to understand that a Bill of Rights is designed to prevent state action and not to stop an individual from saying, "I don't want certain treatment."

I'll yield to any other questions.

Mr. Chehardy Chris, now I have a very serious problem on this issue. Now on euthanasia, in my particular case, I'm opposed to it. I'm opposed to it principally on religious grounds. I'm a Catholic; we're against it. Now, we're making it, but you know things are subject to change like we've discussed. What about the problem all of us, of all of the deceased Catholics who eat meat on Friday and went to hell, and now they're sitting up there

watching us eat meat on Friday. So, there could be a change in the precepts of my religion which would make me accept euthanasia. So is it something that you really should put in the constitution as a permanent thing? I'm throwing that out for your consideration. Eddie D'Gerolamo raised the issue with me, and I thought it was good to raise it for everybody else.

Mr. Roy Lawrence, I'm a Catholic, and I don't see it as a religious principle necessarily. I see it as a personal, philosophical one that no state law should ever be passed. Now, if it ever comes to that time we think we should have euthanasia...

Further Discussion

Mr. Jenkins Mr. Chairman, delegates, I think this is a very serious subject. I can hardly think of many more serious subjects that we'll consider, and I think that it's important that we reconsider Mrs. Zervignon's remarks because I think that she doesn't understand this whole proposition. I think she's made an analytical mistake. There's no way that anyone can be charged with euthanasia. That's not the way the law works. Right now under present law if you commit murder, or manslaughter, or negligent homicide, you are charged with those offenses if a law on euthanasia were passed through the legislature, it would make an exception to our murder, negligent homicide, or manslaughter laws. It would say that under certain circumstances, the killing of another human being is not murder, manslaughter, or negligent homicide. No one will ever be charged with euthanasia because that's not a crime under any criminal statute ever passed or considered. Euthanasia laws make an exception to our murder laws. Now what this provision does is one thing. It keeps our law like it is now. It says that you can not [cannot] in the future have a law passed through the legislature making an exception to our murder, negligent homicide, or manslaughter laws to permit the killing of another human being intentionally. Now, there are several instances where killing of another human being is prohibited under law. If it's an intentional killing, if it's negligent killing, a euthanasia law makes an exception to that. We want to prohibit such laws in the committee proposal. Laws which make exception to our murder, manslaughter, or negligent homicide laws. A law, if passed through our legislature, will not prohibit euthanasia, so no one would be charged with it. A law passed through will permit euthanasia. It's a great conceptual difference. There's no crime of euthanasia. You can't be charged with it. You can only be charged as now with murder. Now it was said that we have laws against murder and negligent homicide now, manslaughter now. That's true. We want to keep it that way, and that's all this does. It keeps the law as it is now, and it makes sure that exceptions can't be made in the future. It's very simple and clear. So I urge the defeat of this amendment.

Questions

Mr. Lanier Mr. Jenkins, you say that putting this in the constitution keeps the law as it is right now. Would you please give me the citation of where I can find this thing about euthanasia in either the constitution or statutory law?

Mr. Jenkins The law right now in Article 30 of the Criminal Code prohibits this type of criminal activity, namely the intentional killing of another human being. That's the law now.

Mr. Lanier Let me ask you this. Under the law, is not a child viable at the age of six months?

Mr. Jenkins Well, I don't know what particular law says that. There may be some law that says that.

Mr. Lanier At what point in time does a child become a person in the contemplation of the law? Right, an embryo, when does it become a person in the contemplation of the law? When does it become

Mr. Jenkin. Well, it varies in different areas of the law depending on the situation you're talking about. It may be one sense in the case of abortion. It may be others in the case of inheritance. It may vary from state to state as well.

Mr. Lanier. Well, what I'm getting to is suppose you get into a circumstance where it is necessary to either kill the mother to save the child or kill the child to save the mother. What would that be?

Mr. Jenkins. In those circumstances if you need to kill one or the other, in some cases it is abortion under our law. In other cases it is not, depending on the definitions...

Mr. Brown. Mr. Jenkins, I read in the newspaper about a week ago about something that happened down in Florida where a young boy was in an automobile accident I believe, and seven or eight doctors were called in and said, "look, his brain is dead; there is no response in his brain." But a machine pumped air into his lungs that kept his heart going, so by use of the machine the heart functioned and there was breath coming in and going, but the conclusion that I read was very conclusive. The brain was dead and that only the machine was keeping this function going. So after a great deal of soul-searching, the parents decided to have the machine cut off and donated his two kidneys to recipients. Well, how do you define that? Would the cutting of that machine off in a case like that when the brain is dead, where only the machine is pumping the oxygen, would that be prohibited if this provision is allowed to stand?

Mr. Jenkins. Jim, what you have to do is look at our present law now. If that is murder under our present law, then it will be murder still. If that is negligent homicide, it will be negligent homicide still. If it's manslaughter, it's manslaughter still. If it's none of those it won't be changed by this provision. This provision doesn't change our law in that regard. It only prohibits making exceptions to it in the future.

Mr. Brown. But why should it be there? Then why is it necessary if it only reflects the present law that we already have, when it is kind of cloudy. I don't really understand.

Mr. Jenkins. The reason that it's there is that it's...

Further Discussion

Mr. Drew. Mr. Chairman, ladies and gentlemen of the Convention, I rise in support of Mrs. Zervigon's amendment, and I can very vividly tell you why, and I think Senator Brown brought out one of the arguments that's definitely in favor of Mrs. Zervigon's amendment. I have unfortunately been put in that very position twice during my lifetime. One, when my father had been suffering from cancer for six months, and I was called at 1:30 in the morning by the nurse that it appeared that he had passed away, and I immediately went to his home. He was there. I was advised by the nurse that she could call the doctor and they could possibly prolong his life for another few hours or maybe a few days at the most. It's a rather difficult decision to make. I said, "Do not do it. He has suffered enough." Apparently, he was dead. I don't know. And then only two years ago, I saw my sister lie there gasping for breath for several days, dying with cancer in the Schumpert Sanatorium in Shreveport with Dr. Holoubek as her doctor, and finally she stopped breathing and was for all intent and purposes dead. Dr. Holoubek said, "I could perform a quick emergency operation and possibly prolong her life for a few hours or possibly a few days if you want me to do it." Again, I with heavy heart said, "Don't prolong her suffering any longer." Mr. Roy and Mr. Jenkins tell you that this says that no law shall be passed. Ladies and gentlemen it

does not say "no law shall be passed." If you will look back at Section 9 and Section 10, they say, "No law shall be enacted," but there is nothing in this provision about the state taking any action. It says that "it shall not be permitted" is what it amounts to. I think that this is something that is serious. It has to be considered. I am not in favor, and I hope no one interprets my remarks as being in favor of wholesale mercy killings. I don't go with that concept at all. They say there is no law against it, that you have done nothing if you commit it. If they have not prohibited it by some law, or have not mandated the legislature to enact a law which would make it a criminal offense, what have they accomplished by this? I don't know. Maybe under some interpretations of the law, maybe Mr. Jenkins is right; maybe I am guilty of murder because I didn't prolong the suffering of two people I loved very dearly for a few hours or a few days. I asked you to carefully consider Mrs. Zervigon's amendment. I think it is well thought out, well considered, and by all means should be adopted. I don't think that this provision is a provision for the constitution. If we need to outlaw it, to prevent the wholesale mercy killings as there is some movement to authorize and legalize, I would go with that in the long run. If I am asking the people to support the family, the loved ones of those who have seen their loved ones suffer for days and for months, to say that "no, under our constitution it says you must try to let them suffer a little while longer." Mr. Roy says don't get emotional. Well, let me tell you this is something that is awfully emotional when you are called upon to make those types of decisions. I sincerely hope you will support Mrs. Zervigon's amendment, and let's take this out of the constitution.

Question

Mr. O'Neill. Mr. Drew, what distinguishment do you make between killing a person intentionally and letting a person die a natural death? Please make that distinguishment because in my mind it's clear, but I'm not sure it's clear in the minds of the other delegates.

Mr. Drew. I see no difference between intentional killing and deliberately letting someone die. I guess if that's what you want to say, Mr. O'Neill, I don't know that there is any particular distinction in the law.

Further Discussion

Mr. Comar. Ladies and gentlemen, I'll be brief, and I just want to add one thing to what Mr. Roy has said with regard to the need for this, and he indicated what had happened for instance in Florida. They came within a very few votes of passing a euthanasia bill in Florida. I just wanted to mention to you that one of the arguments made in behalf of that bill by the doctor who sponsored it was that if it were passed, they would be able to permit fifteen hundred retarded children to die in the hospitals in Florida. Before, say, I state many millions of dollars a year. I hardly think that the dollars mean much when you're trying to save the lives of children. Thank you.

Questions

Mrs. Warren. Mr. Comar, Mr. Kelly made a statement about the machine being removed from the patient in Florida. I'm wondering what would happen if you had a person in that condition and you carried him to a hospital and your money ran out. Who would provide this type of care?

Mr. Comar. Well, this would happen in any type of case where your money runs out in the hospital. I assume the state would take over the obligation. It would happen in any other type of case also.

Mrs. Warren. Thank you.

44th Days Proceedings—September 8, 1973

Mr. Comar But, I urge you to reject this amendment.

Further Discussion

Mr. Champagne Mr. Chairman, ladies and gentlemen, I accept the idea that this committee offered this section. Because I am against killing; I am against abortions; I am against all of these things, and the law was passed in this state that would subject people of this state to mercy killing. I personally would be one of those to chase those individuals out of this state, but I honestly feel that this constitution is not the place for this statement, and I have my reservations also. Many of you can remember when the people of the other people of this state had to die at home because they simply could not afford better treatment, and I wonder if I become incurably sick, would this require, and I have this reservation that it would subject my wife to prolonging my life for six months or longer in excessive pain, even though I would not be willing to do so. I know of two doctors suffering from incurable cancer who would not commit themselves to the hospital, because they felt that in so doing they would deprive others who had a chance to live; when they knew if they stayed at home, they would not be prolonged by going to the hospitals. Those are decisions that we cannot make until the occasion presents itself, and Mrs. Brien, I'm sure, feels strongly about euthanasia. I was in Germany and I saw these places and I spoke to a doctor who is Jewish, who was there with the infantry before he was a doctor, who fought those people fiercely. But he told me in a frank discussion that he felt that this should not be in the constitution. I trust his judgment. I have thought long and hard about this, and I have had long and conscientious thoughts on the matter. I honestly feel—I also spoke to a judge who said, "All we'll have to do is define what is a person, and then we shall be guaranteed that there shall be no further abortions." I want to be sure that most doctors just about tell you how long you're going to live with this terminal cancer, regardless to...so where does this prolongment of life come in at?

Questions

Mr. Hayes Mr. Champagne, on this prolonging of life isn't it true that most doctors just about tell you how long you're going to live with this terminal cancer, regardless to...so where does this prolongment of life come in at?

Mr. Champagne In discussing it with this same doctor whom I consider a professional man, he told me that it would be possible in the very near future in his estimation, to prolong life to the point that any family would become penniless. He feels that with the advances in medicine it can be prolonged almost indefinitely.

Mr. Hayes This had nothing to do with cure, did it?

Mr. Champagne With killing?

Mr. Hayes With cure. You know, prolonging it, he didn't say he would cure the disease.

Mr. Champagne No, sir. He was hoping for that.

Further Discussion

Mr. De Blieux Mr. Chairman, and ladies and gentlemen of the convention, from some of the statements I've heard made up here, it seems to be that some people are misunderstanding what the word "euthanasia" has been accepted to mean in our English language. In fact I heard one of the speakers say that he didn't know the difference between the intentional killing and the letting of a person die by natural causes. According to my understanding the word "euthanasia" means mercy killing, mercy killing, not letting a person die but putting that

person to death. That's what we're trying to prevent the legislature saying, just as Mr. Jenkins stated very unequivocally, letting someone die from natural causes is not euthanasia. Euthanasia is putting the person to death, and if you permit this type of killing, you'll have to except it from our usual definition of murder or homicide or whatever it may...there may have been a few people who considered a crime. Let's don't have any misunderstanding about that. One of the things I'm fearful of...this is the next step insofar as those people who are advocating this kind of a super race or something of that sort. We have already seen in our law by the Supreme Court decision, or those who promoted it, that we have permitted abortion to a certain extent. Then we are going to mercy killing to another extent. Sooner or later, all of those that they feel like are incompetent for one reason or another will be put to death, at least put out of society. Is that the type of rights that we are talking about here? Is that what we want to permit in our society? I think we ought to put as many stopgaps as we possibly can between that sort of a society, and I ask you to vote against this amendment. Let me tell you this: I know a person in this city who just had a stroke. That person had good doctors, some of the most reputable doctors in the city of Baton Rouge, and they told the relatives of that person that that person would be a vegetable the rest of their life, that they didn't know how to help that person would live. I want to tell you that that person who the doctors stated would never be able to rationalize any more and that would die shortly, overcame that disability, regained the full faculties, got up and tended to her affairs. Not too much longer after that, she had another stroke. The doctors told them, well, they know that there is no further possible chance of her ever getting up. In fact of the business, if I remember correctly, some of the relatives even started dividing some of her assets. But she recovered from that and her mind is just as good today as yours and mine. So don't say that we know when a person ought to be put to death. You're interfering with God's purposes on that, and what man has a right to except for a punishment for crime, to decide when another person shall live and when a person should die. That's what we're talking about. We're trying to let men decide when a person should live and when a person should die; that is when you kill them. I'm not talking about prolonging the life. This does not take into consideration the illustrations given by Mr. Drew. That is not euthanasia. That is not euthanasia. Euthanasia is what we call and refer to as mercy killing, when you put somebody to death.

Vice Chairman Casey in the Chair

Mr. De Blieux I just want to tell you this is a bad amendment, and let's take care of it.

Further Discussion

Mr. Jack I arise in favor of Mrs. Zervignon's amendment. Now, I just...this is a serious thing; I don't think it belongs in the constitution. If the time ever came that a breathing tube was to be pulled out of my throat, if I had an injury where my brain was destroyed so that would ever happen, I would expect of physicians, excellent ones, from ever being able to come to consciousness, to have any intelligence, lying there like a vegetable...I would like for my loved ones to make that decision whether or not that would be removed from my throat for my breathing, and not you, ladies and gentlemen. It would be my life. Also, suppose I was lying there in pain; I was alive...excruciating pain...I was a hundred years old or a hundred and five. Everybody I knew was dead and I wanted...I was suffering. Shouldn't that be my right to tell them to quit, to artificially feeding me to quit artificially making me breathe, to quit having me in some kind of breathing apparatus...just keeping me there against my will in pain regardless of what kind of pills they gave me. But let me tell you if you had this here you got a different thing, that is a decision that was to me. This is a new field; let's just don't

44th Days Proceedings—September 8, 1973

keep stuffing things in this constitution that we don't know what's going to be; so I'm for...

Mr. Casey Will you yield to a question from Delegate Drew?

Mr. Jax I'm not going to yield to questions because nobody is an expert on this thing. We just... everybody is going to have to vote like they feel. That's just the trouble with this material having the word in there. Nobody's an expert. Somebody put on my desk, and all of ya'll's, the thing to try to tell us what it was - in detail, like we didn't even know what the word meant - mercy killing. That showed that certain people here figured we didn't even know what it was. Some of us don't know, don't know it all... so I in all deference, good friends, and I ordinarily would yield, but I don't think that anybody should have me try to answer a question and maybe get something wrong. I'm trying to, as best I can, explain how I feel personally, and I think my members of the family would feel; so that's the reason I'm not yielding to a question.

Personal Privilege

Mr. Ours One reason I rise is that every now and then we would like to be recognized over here by you and the Chairman, because we're going to have to get us a flag to be recognized. Looks like everything is coming from that side over there. I imagine ya'll have a crick or something in your neck. Second of all, I know you didn't recognize me for a motion, but if we're going to sit up here and listen to how everybody lost someone in their family, and how many people died, and how they're going to die; we're all going to die... everyone's going, so I'd like to move the previous question.

Mr. Casey Just a minute. Delegate Ours, I did not recognize you for that purpose. I have a list of speakers here. I'll be glad to put you on the list of speakers. I realize that most of the heavy-weight speakers are on the other side of the room, and I try to recognize as many of the delegates who wish to speak as possible. If you would like, I'll put you on the list of speakers. O.K. Please proceed, Reverend Landrum.

Why do you rise, Mr. Chehardy?

Further Discussion

Mr. Landrum Mr. Chairman, and fellow delegates, I was hoping that I would not have to say anything today. Go through a whole day as I did yesterday without saying anything. But, I believe that this particular amendment is a very bad and dangerous amendment. The very case that you mentioned about Florida the other day; we live in an area where transplant is being done. Very real thing, and how many people will lose their lives because somebody needs a lung; somebody needs a kidney; somebody needs something else. What basically... my argument is this; that no machine will keep a man alive forever. No amount of pills will keep a man living forever. He has a set time to live. Now, if we don't believe that man has a set time to live. Then we have to start back over with the Preamble where we talk about God in the Preamble. We don't believe in God... if we don't believe that man has a set time to live; we have no right to say that somebody get them out of their misery. Who are we to say that we're going to get somebody out of their misery? I agree with them, but when you talk about pain... three years ago, my Mother with three hundred... with three blood pressure... up to the three hundred, a heart condition, a very bad heart, poor circulation, and sugar... the doctor didn't want to do nothing for her but my Mother is here today. My Mother is alive today. Now, she may not be here no longer than today. How many times has the doctor said that this person will not live? They cannot live. If we believe everything, and I have a great deal of respect for doctors, but I don't believe in doctors that much that because of the condition right now I'm going to put this person to death. I wish you could

have been with me at a meeting here in Baton Rouge with one of the delegates who brought me to lunch one day, and where a leading doctor right here in Baton Rouge... he told the people at that luncheon that seventy-five percent of all medicine, of all cures that we are using today was just brought about in the last fifteen years; so we never know when something new will be invented. God bless you, and thank you.

Questions

Mrs. Brien Reverend Landrum, does man have the wisdom or the right to decide whose life is meaningless?

Mr. Landrum Mrs. Brien, I'm sorry, I didn't quite understand you.

Mrs. Brien I said, does man have the wisdom or the right to decide whose life is meaningless?

Mr. Landrum No, I don't believe he does.

Mrs. Brien Does man have the right to trespass on the very will of the Creator who gives life and takes it away?

Mr. Landrum My dear, every time I take a body to the grave I say, "The Lord give, and the Lord has taken away," not man. Thank you.

Further Discussion

Mr. Juneau Mr. Chairman and fellow delegates, I'll make these remarks very brief. I'd like to point out one fact to you. Not one, not one of the fifty states in this union has such a provision in their constitution, and I think the reason for that is obvious. We're talking about a very delicate matter, and I don't think there is anybody in this convention who favors mercy killing; at least I don't know of any. That's not the issue. The question is when you're dealing with an intricate, scientific, medical problem that we have, do you want to put that in the constitution? I favor the amendment. I think that it ought to be taken out. Insouciantly put, it's just simply a question; do you want to do... do you want to stretch out in an area we've never stretched before, and take that away from the legislature which is a responsive body to the needs of the people, especially in an emotional area like this? For that reason, and that reason alone, I support the amendment for taking it out and leaving it in the legislature; and as Mr. Jenkins said "we know what the law is today, and I don't look for any change in that regard" so why tamper with it, and why venture into an area that I don't think we know where it's going to be chartered in the future.

Questions

Mrs. Brien Do you know what could happen in the future?

Mr. Juneau Ma'am?

Mrs. Brien Do you know right now what could happen in the future?

Mr. Juneau I really don't know what can happen in the future. Mrs. Brien, nor did the people in the past know what could happen when we were talking about capital punishment and non-capital punishment. I'm for leaving that for the legislature.

Mrs. Brien The people in Germany didn't have it before either. It never happened before, but it did happen; so don't you think it maybe could happen here too?

Mr. Juneau Anything can happen, Mrs. Brien. I'm content with the present system. I'm not even talking about a very delicate scientific matter, and I don't think that I want to be in a position to prejudice the next hundred years of this state from a medical science standpoint.

44th Days Proceedings—September 8, 1973

Mr. Willis I have more problems, Mr. Juneau, that it says "no person shall be subjected to euthanasia." Now, who prevents the subjugation, the state or another person? where does the prohibitus come from?

Mr. Juneau I don't know, that bothers me, Mr. Willis. But I might add, the arguments going to be made, and let's get the issue clearly before the floor right now. You're going to have a subsequent amendment which is going to come back and say "no law shall prohibit." That's better than what they have, but I still say that ultimately we still ought to not stick it in; nor has any other state in this union, obviously, for the same reason.

Mr. Willis Well, that prompts me to this question. Isn't it more apropos to put whatever is prohibited in Section 12 of the legislative article and wait until that time because we've not settled that one yet—general inspection laws? Isn't that the place for that if we have to put it, now I don't believe we should? I'm for the amendment.

Mr. Juneau If you would be so inclined, I would agree with you.

Further Discussion

Mr. Fontenot Mr. Chairman, let me read the definition of this particular word everybody is so concerned about. I know somebody just read it previously, but Mr. Staggs just showed it to me. "The painless putting to death of persons suffering from incurable diseases." This is just one definition of it. There's probably a lot of medical definitions for every doctor, probably in the nation who might have a different philosophy as to what exactly this word means. There were several speakers that mentioned cases where certain individuals were in such serious conditions that it was probably the only thing that they do let these certain individuals die. I'm sure everyone of us here have been faced with the same situations and I'm sure somebody has made the comment previously, "This person is suffering so much, probably the best thing that could happen was that this person would die." All of us have been put in these certain situations. I don't think that we could be subjected to murder for thinking this or for letting a person die who has an incurable disease. If you don't put some language in this constitution concerning this particular word, and I'm not in favor of the Bill of Rights Committee section as it is now; but I'm in favor of the amendment Mr. Roy has proposed on behalf of the Bill of Rights Committee. I think it's necessary language. If you don't put in language, you might have what happened in Florida happen with our own legislature. There were certain individuals in Florida that proposed certain bills on this particular topic, and it was voted down, but I don't know what exactly could happen with our legislature; there's no telling what could come out of that particular body. Certain bills in Florida had something to do with, I'm just reading something that I was passed out this morning, a bill would not only commit voluntary euthanasia but would also allow three physicians to decree and execute a death sentence with the approval of a circuit judge on anybody whose life has become meaningless as the bill expresses it. Now, what I'm concerned about is not those individuals who would like the doctor to quit treating them and let them die. I'm concerned with those individuals who have some kind of disease or some particular physical or mental aspect—physical defect, if you want to call it, that may be classified their whole life...their lives may be classified meaningless; but suppose these individuals want to continue to live. What about these individuals? Are you going to let three doctors and a judge say "well, your life is meaningless; go ahead and let's execute you or let's do something with you?" What about those individuals who want to continue living? What about the individual who has incurable cancer hoping that they next day some research scientist might find a cure for it? He might want to continue living. Are we going to let

a legislature perhaps pass a law saying that you can go ahead and three doctors and a judge can decree a man meaningless...a man's life meaningless...and let him die? I'm not for this. I'm for these words that the Roy amendment proposed, "no law shall subject any person to euthanasia, torture, cruel, excessive, or unusual punishment." Like I said, if you vote for the Zervignon amendment, you're going to do away with this particular issue we're talking about. I'm in favor of keeping it in the constitution, and if there's no other speakers on the issue, I move the previous question.

[Motion withdrawn.]

Further Discussion

Mr. Weiss Mr. Chairman, fellow delegates, I'm sure many of your minds are made up, I can't confuse you with the facts. Emotion is a very strong feeling; it runs through me hot and furious at this time. Let me tell you why. This is no old issue, this has been since time eternal, and it's amazing to me that we cannot pass in this body a statement to the effect "Thou shalt not murder." The sixth commandment, the meat of the Holy Bible; but let me explain to you even more so why I'm concerned about this, and that is, I challenge any of you...Judge Tate and those who are congregated in the back, and those who are congregated here and there, and those who are listening patiently and kindly—to cite more than one, two, three, four or five examples where I over the past twenty-eight years have been repeatedly faced with the decision on whether to prolong the act of living and prolong living or to prolong the act of dying. These are the issues: prolong life or prolong the act of dying. I say to you, euthanasia is killing, mercy killing, ridiculous adjective terminology to murder. This is what we're talking about here today, and it's very imperative that it be in this constitution. Now let us go back to you, the British Lord of Commons, for thirty-four years, have debated this on three lengthy occasions and have defeated it. There are four legislatures, possibly six, in this country that are now facing this problem; but let me let you know what the young people, some of us not as young as they are today. Approval of mercy killing rises; fifty-three percent of people under thirty accept the proposition. Euthanasia idea grows - euthanasia is likely the next great moral debate in the United States; right to die has majority support. If this isn't confusing, right to die...

The right to die is not yours or mine alone. We pray every morning to God that we may finish this day, and I pray nightly for all of us and myself and my family, and I'm sure you do. We are not omnipotence, but we have the right to define laws and that's what we're here about. I ask you to defeat this amendment and put the word "euthanasia" in and make Louisiana a forward, progressive state willing to face the issues and ashamed of what our world and country has done. Millions have been murdered in the name of mercy - in the name of anything you want to call it, but this is downright murder. I am sure that those of you that oppose this do not interpret it this way, and the issue is a very simple one in the medical mind. Let the Supreme Court decide, as our Chief Justice has said, on these issues; but euthanasia by the dictionary is mercy killing - the active act of killing. If I may draw an analogy, since I'm no attorney, is rape as active? Is there a passive type of rape? There is no such thing as passive euthanasia; if you agree to die and stop medication, you are entitled to it; you are entitled to discuss with your doctor these issues; you are entitled to die. As Mr. Drew pointed out when he was responsible for the unconscious Mother or sister, where he had the power of an attorney to speak, but even more, he had a compassionate position. These issues never reach the courts, but what does reach the courts are cost analysis - faulty individuals, insane, idiotic. We've had people in prison because of their beliefs; now, we're simply asking you think, that they not be killed for mercy.

Questions

Mr. Kelly Doctor, I am in sympathy with what I think the committee is trying to do, but the thing that bothers me about the wording of Section 18 as it now exists is the situation where the man is on the machine and the doctor...he makes no injection, he does nothing; but the man on the machine or the family, say if it's a child involved, decides it's hopeless and they say "unplug it." Now, is that situation going to be in conflict with Section 18 as it is written?

Mr. Weiss I see no conflict whatsoever, and I'm glad you asked the question because euthanasia is mercy killing. When you, as a father of that child, agree, or you, responsible for an unconscious mother, agree, or you with terminal cancer, agree to stop having medications given to you, that's one thing; but when you ask me, as a physician, to kill you that's something else.

Point of Information

Mr. Cannon I would like to know...somehow as a layman I don't feel that mercy killing as such, a two word definition, is a satisfactory definition of this word that we're discussing, "euthanasia." Could some learned counsel here...or...give me a better definition than purely mercy killing?

Mr. Casey Delegate Cannon, I can't, as Chairman, answer questions that you may have about the interpretation of contents of a section or an amendment. I would have to refer you to a learned counsel on the floor who can answer that question. The job of the Chairman is to answer questions of order and points of information.

Yes, Delegate Weiss, why do you rise?

Mr. Weiss Point of information. Who is a learned counsel on that, sir?

Mr. Casey Are you a learned counsel on that, Dr. Weiss?

Mr. Weiss Yes, I think I am.

Mr. Casey Why don't you talk to Delegate Cannon then.

Also, Delegate Duval has been pointed out as a learned counsel.

Mr. Weiss I would be happy to.

[Previous question ordered. Record vote ordered. Amendment adopted, 40-36. Motion to reconsider failed.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Jack], this is how it reads when you have to change it in light of the prior amendments...Amendment No. 1, on page 6, line 11, immediately after the word "treatment," and then we need to change this to read as follows: page 6, line 11, immediately after the word "punishment" added by convention Floor Amendment No. 1, proposed by Mr. Denney and adopted by the convention on today. Change the comma to a period and delete the remainder of the line and delete line 12 in its entirety.

Explanation

Mr. Jack The purpose of this amendment is to take out the words "and full rights shall be restored by termination of state or federal supervision for any offense." Ladies and gentlemen, what that is, is to automatically after a person terminates a sentence...he's placed in the position of all of his rights just before he ever went to the pen in his life or was convicted of a felony...Now, we have already gone into this thing of restoring rights and citizenship to people. I hope you will listen to this because unless you do, you might be misled and misled and have a conflict in what you're doing and what

you've done. Now, on page three of the executive material, executive department, that we finished way back under F stated, and here's the law regarding the pardon board and first offenders, multiple offenders, and all. "Pardon, commutation, reprieve, and remission, board of pardons. 1. The Governor shall have the power to grant reprieves to those convicted of offenses against the state and upon the recommendation of the board of pardons may grant commutations of sentence, may pardon those convicted of offenses against this state and may remit fines and forfeitures imposed for such offenses; provided however, that each first offender who never previously been convicted of a felony shall be eligible for pardon automatically upon completion of his sentence without the aforesaid recommendation." Then it goes on and sets up "the board of pardons shall consist of five electors appointed by the governor, subject to confirmation by the Senate. Members of such board shall serve a term concurrent with that of the governor appointing them" Now, ladies and gentlemen, I have just finished talking with my district attorney in Shreveport. I knew what the law is here, but I wanted it confirmed because Mr. Dornes and I disagree. I state that this section here, that you would restore full right at the termination of state or federal supervision for any offense...that is restoring all his rights, and if that man was a first offender, second offender, third offender, fourth offender, meaning those times he had been convicted prior to that of felonies and/or gone to the pen...that if a wife goes out...if he was in any further trouble, when he took that witness stand...the district attorney to impeach him could not bring out, which is the law, that he had been in the pen before. Now, the law is, it's the case law in Louisiana; I just talked to Mr. Richardson. I said is our district attorney...that law is, if you get a pardon, you get a restoration of citizenship, whatever you want to call it, you get your full rights restored which this material here provides for, that I read you...that we are study...going over now in Section 18, the last line. If you get those rights, if you pass this and don't pass this amendment, then no matter how bad a man is that's been in the pen one, two, three, four, five, six, seven, and I've seen the eight at times, because I handle pardon board and parole matters, as you know. Now if those people finish their term under this material here, a full right shall be restored by termination of state or federal supervision for any offense no matter how rotten they were in the pen; even if they finish every day...didn't get any good time...automatically under this, they are restored. Now that is a dangerous thing. We have a well thought out section that I read you in the executive material. Protects first offenders and provides for the others, and it's a well screened thing. You better think on these kind of matters, so I ask you to adopt this amendment to strike out that language in this proposition.

Questions

Mrs. Soniat Mr. Jack, isn't it true that no matter how bad a person has been, no matter how many times he served a sentence, if he has enough money, he can get a pardon and his rights are restored?

Mr. Jack I don't...I wouldn't say that because that would be a horrible reflection on the pardon boards, on the governor, and I certainly do not believe any of those people that I've ever known as governor and members of the pardon board, which has been the attorney general and lieutenant governor and the trial judge, would be subject to doing something for money, so my answer is no. I think those gentlemen...you could not bribe no matter how much you offered them.

Mrs. Soniat O.K. Another question. Do you know how many pardons are issued, say each year?

Mr. Jack No, but they can give you the statistics. They keep them on the pardon board. Now, we have in the law a constitutional amendment passed several years back where a first offender, that means a per-

and he did not say that this section was in conflict with the multiple offenders law. It is not contained anywhere in this section that I hold here which bears his testimony as it relates to Section 18, Right to Humane Treatment. So, I do not believe that anyone can say that this section violates the multiple offenders law. I also point out to you, ladies and gentlemen, that in other state constitutions we have this section, so in the interest of prison reform, in the action of humane treatment for individuals who have paid their debts to society, I would ask that you would defeat this amendment. If there are no other speakers, Mr. Chairman, I call for the question on the amendment.

[Previous question ordered. Record
and a quorum.]

Questions

Mr. Singletary I believe the law is that when you're convicted of certain crime you lose your right to own a weapon. Now, wouldn't the committee proposal stop that? Wouldn't it make that law illegal?

Mr. [A.] Jackson Yes.

Mr. Willis Mr. Jackson, isn't this provision... that last clause sought to be stricken...solely a device whereby a person who has paid his debt to society can go get his receipt from the constitution instead of going to the governor?

Mr. [A.] Jackson That's exactly right, sir. That's all it is, sir.

Mr. Denny Mr. Jackson, I wanted to ask this question of Mr. Roy and possibly he will listen also; in the event a lawyer such as Mr. Roy or me were convicted of embezzling funds from our clients we would go to jail and we would also be automatically disbarred from the practice of law. Under the language of your amendment when full rights are restored, does that automatically restore my right to engage in the practice of law?

Mr. [A.] Jackson No, sir.

Mr. Denny How do you distinguish that? That is a right I had.

Mr. Roy Well, you have forfeited your right as a lawyer under the provisions of the Louisiana State Bar Association which are proper laws on it.

Mr. [A.] Jackson Well, not only that, Mr. Denny, that's not a right. That's a privilege to practice law, to practice medicine, to engage in the profession of teaching is a privilege and when you abuse that privilege you lose it. I move the question, Mr. Chairman.

[Previous question ordered. Record
and a quorum.]

Closing

Mr. Jack All right. Now, I'm great believer in rehabilitation. I've said before if I had an independent income I'd devote my life, long ago, to rehabilitation.

[Voice vote quorum will affirm.
98 delegates present and a quorum.]

Closing

Mr. Jack All right. As I said, and I've mentioned before here that I'm a great believer in rehabilitation, and my law practice has included criminal law from the day I started. I've done all I can to help rehabilitation. This proposal that reads "and full rights shall be restored by a termination of state or federal supervision for any offense" does

not necessarily mean the prisoner has been rehabilitated and should be able to walk out of that penitentiary and pick up a pistol which he had a right to do beforehand. There are a whole lot of these things you're giving back, and I don't care what you say, anybody at Angola that's been there a year, they know what a pardon and what full rights being restored means. This proposal will do it. A three-time loser, let's say at Angola, that never voted and never is going to vote, not going to run for office; why does he want his citizenship back? Because it'll wipe out the first, second and third offense and because he cannot later be prosecuted if he commits a crime under a special prosecution of being a second offender or a third offender or a fourth offender. That's exactly...I won't answer until I finish. Now, anybody...they call them penitentiary lawyers, they know that of course. Most of the prisoners know that. Now, that is a fact of life. Now, if you want to let everybody to save a few cents as you say...now, I'm not advocating to have to hire lawyers...that's why we have in that executive material that a first offender doesn't even go to the pardon board. I've told you that in my opening statement. I'm telling you again. They want to check out these people. Now, the next thing on this business is one of the...I don't want to call people's names...one of the speakers was talking about...you didn't restore their full rights soon as they got out...if they went to apply for a job and they'd ask them about a questionnaire. The inference was...they didn't complete the thought but the inference was unless this passed or they had a pardon and restoration of citizenship, they'd have to answer...they'd been convicted of a felony. If this passes, they could answer no, and that is correct, just like if this is passed with this proposal then not only could they answer that...no, never convicted, because of this being passed but also if they were in court...try it again...without a pardon but if this passed they could...the district attorney could not bring up they had been convicted of a prior felony. Now, I talked to Mr. Richardson on the telephone just before this came up and he bore me out in this end and I've practiced law for 12 years and I've practiced pardon board and parole board law since 1940, and that's a long time. 1940, 1950, 1960, 1970, that's 32 years of those 41. That's a lot more than most of the lawyers here. This is your business. If you don't want to screen people...here down in Houston, people that had never been into the penitentiary killed 26 people...those sex fiends. Let's don't screen them. Let's just feel so sorry for them. Let's don't punish them. Men out in California kill all those people. Let's don't screen them. When they get out the pen, you say they're rehabilitated. Maybe they've killed twenty people...fifteen. This is going to treat everybody the same. If this ain't the limit to just say you're rehabilitated by having served the sentence...

[Record vote ordered. Amendment
passed. 24-15. Motion for
reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Roy], on page 6, delete lines 9 and 10 in their entirety and insert in lieu thereof the following...and I think we probably better get rid of the Denny amendment for clarity too.

"Section 18. No law shall subject any person to euthanasia, torture, cruel, excessive or unusual punishments."

Point of Order

Mr. Derbes Maybe I'm completely out of order, Mr. Chairman, but it seems to me that the section, as it presently reads, says "no person shall be subjected to torture or cruel, excessive or unusual punishment," and all that the Roy amendment does is put back euthanasia which we just voted on.

Mr. Henry I don't think that's right, but I'll

son never prior to that convicted of a felony... that person can apply direct to the governor... he don't go to the pardon board; when he's finished his sentence see...he's no longer on parole or probation...first offender for a felony...he can even go to his local Department of Corrections nearest to him...like if he's in Shreveport, there's one in the state office building...they will fill out a little simple form...has about five lines, that is sent down here to the department of corrections. He's a first offender. He don't need any lawyer, the other's don't either if they apply and ask how to do it. They furnish rules, but the first offender is very simple. But they want to check out to see what kind of man that was at the penitentiary, whether he behaved...Lot's of times they may overlook things and they discover them...what kind of prior life, and all that, and they go over it. Now, I represent people at the pardon board, but I'm also a citizen. I don't want people turned loose unless it looks like they are going to behave. I don't want a person to be granted a pardon and restoration of citizenship if he's still not worthy of it, that's the whole thing; but this thing would have nothing to do with that. It would give this person "full rights shall be restored by termination of state or federal supervision for any offense"...wouldn't matter if he had been to the pen four times, five times. Now, I told Mr. Derbes that in my interpretation, and I tried to get the attorney general's office and nobody answered...I did get my district attorney, and this is going to grant the same rights if they go through the pardon board now. Everybody, once they are through with their sentence, it's going to wipe the slate clean no matter how bad they were and that; and I just think that's bad, and I think you should knock this out of this material here...this proposal. Any other questions?

Mr. Tapper Mr. Jack, isn't it a fact, though, that if they're not the first offender, Mr. Jack, don't let them out? Their sentence is extended. They have bad time. They have to have good time in order to get out, isn't that true?

Mr. Jack No, Mr. Tapper, you're wrong. If a person was sentenced to ten years, you couldn't keep him there on and on and on, even though he was bad, unless he got another conviction. That's the maximum...say a man is sentenced for a year...make it say fifteen years. You just can't keep him there after that because he's incorrigible. His total sentence is fifteen. Unless he was sentenced in court to additional...like if he escaped or if he knifed somebody, but they don't have time to prosecute for some of those things they would on the outside.

Further Discussion

Mr. Roy Ladies and gentlemen of the convention, I know that you're getting tired of seeing me up here, but I don't think I'm boring you. I'm just absolutely wrong with his conclusions that if you receive a pardon that the slate is wiped clean with respect to your prior multiple offenses. It just doesn't do that. It simply...a pardon simply restores your rights to vote and to citizenship, but it doesn't change the fact that you committed a crime. It doesn't change the fact that you're white or you're black or orange or red or whatever have you. It simply restores you to your rights that you had before. You didn't have a right before to commit a crime, so you still don't have one in the future to commit it. It has absolutely nothing to do with the multiple offender law and Mr. Richardson, in his comments before our committee, never was able to show anything with respect to that. Now, all we do here, and I think, and think that you ought to know, is that when a man...let me tell you one other thing; anytime you're found guilty or convicted of a felony or you plead to it, even if you don't go to Angola and are given a suspended sentence because you're first offender or something like that, you are deprived of certain citizenship rights. Most poor, ignorant, honest...folk don't

know that their citizenship has been removed. They don't know that they have to go to the governor for a pardon. Secondly, they don't have the money to get a pardon, and thirdly, they don't know a lawyer to go give them the money to get the pardon. Now, all we're trying to do is to say that if we believe in rehabilitation and we believe that when a man has done his time and paid the state back for his crime, he should automatically get his citizenship restored, which means in certain cases, the right to hold certain types of jobs. There are certain jobs now that you can't hold if you've ever been convicted of a crime without being pardoned. This simply provides that vehicle. The amendment is not correct. It doesn't do what Mr. Jack says it does, and it doesn't address itself to the question that's involved here.

Questions

Mr. Lanier Mr. Roy, you don't mean to imply in your statement, do you, that all persons who are released from the penitentiary having served their sentences are rehabilitated, do you?

Mr. Roy Oh, no, obviously not.

Mr. Lanier Now, with reference to your comments about the multiple offender law, is it your contention that a pardon would not preclude the imposition or use or exercise of the multiple offender law?

Mr. Roy That's right.

Mr. Lanier Is there some jurisprudence on that?

Mr. Roy Mr. Lanier, it's...I don't know that there's actually...is there jurisprudence against it if you have a case...say it, but I don't think there's any and I don't think that anybody would logically argue that the fact that you've been pardoned erases the crimes that you actually, in fact, committed. It has nothing to do with the multiple offender law, because it simply restores you to rights of citizenship which are the right to vote, etc. and not the right to commit a crime or to be absolved of having committed crime.

Mr. Lanier Does not the effect of a pardon put the person back in the same position as if the crime was not committed and he was not convicted?

Mr. Roy No, it does not. Only with respect to his rights as a citizen, but it does not take away the fact that he was guilty of the commission of a crime.

Further Discussion

Mr. Jackson Mr. Chairman, ladies and gentlemen, I rise in opposition to the amendment before you, because I think that the committee was trying to address itself to a rather serious problem that is now described by a few of the members before you. I think that when we talk about prison reform in this country, when we talk about some degree of rehabilitation, we certainly have to recognize the serious problems that confront individuals who have been incarcerated and to recognize that they're coming back to their way again in a free society. Now, all of us know the problems that face individuals who have been released from prisons. All we are saying here is that an individual ought not to have to pay the rest of his life, time and time again, that he ought not to have to face the fact that everytime he asked to be employed that he is faced by the fact that he once went afoul of the law. Now, I know that it's a practice in this state for individuals to receive pardons, and I know what the law provides, but I also know that it's awfully expensive to receive a pardon in this state. I do not believe that it's fair to take from a man his basic rights of citizenship, to have them pay time and time again, once he has paid his debt to society. Now, I heard someone allude to the fact that the district attorney from Caddo Parish was opposed to the language in the constitution. I have in my hand the transcribed record of the district attorney's appearance before our committee,

44th Days Proceedings—September 8, 1973

ask the Clerk to read it as it presently stands."

I'm advised that the new language is "no law."
Do you agree?

Explanation

Mr. Weiss Mr. Chairman, fellow delegates, we do not want to delay the convention. The wishes have been expressed. There are two matters to discuss here. The fact that many delegates voted for the Zervignon proposal because it involved, perhaps, some personal problems in which the committee used the words, "no person." The intent was that "no law"...that is no legislative act or law would permit or subject individuals to either euthanasia, torture, cruel, excessive or unusual punishment. Another point to make is that the voice vote indicated...and although these people may have been present...that seven people voted for the Zervignon that may not have been here. The other factor that we would like to point out is that this will answer the problems...I hope...that have been brought up and if there are any questions, we'll be glad to answer them. Otherwise, I move the previous question.

Questions

Mr. Singletary Doctor, under this amendment would euthanasia be permitted?

Mr. Weiss No law...no law, Delegate Singletary.

Mr. Singletary I know, but my question is...

Mr. Weiss ...could be enacted which would allow for euthanasia, that is, mercy killing.

Mr. Singletary So, under your interpretation euthanasia would not be permitted?

Mr. Weiss No law would be permitted to allow euthanasia.

Mr. Singletary Yes, but my question is....

Point of Information

Mr. Gravel Mr. Chairman, I'm very sorry to ask this question, but I wish the Clerk would read the amendment exactly the way it stands now.

Mr. Henry Do you think that there is something wrong with it?

Mr. Gravel I don't know that I understand what it does.

Mr. Henry Well, apparently the Clerk thinks there's something wrong with it. He's trying to clear it up here. Are you not, Mr. Poynter?

Mr. Poynter That's correct, Mr. Chairman.

Mr. Henry Is that what your problem is, Mr. Derbes? We're trying to get it straight. Just hold on a minute.

Mr. Derbes I've got another problem too.

Mr. Henry You've got more problems than any man I've known lately, Mr. Derbes.
Take your seat.

Mr. Weiss Mr. Gravel, the legislature could pass no law...

Mr. Henry Wait, Dr. Weiss. He understands it. He just wonders if it's written the way you're explaining it, don't you see? Like if he told you to take out the kidney, and you went after jugular vein...and you cut his tongue out.

Mr. Weiss Do you have a question, Mr. Gravel? I move the previous question.

Mr. Henry Wait, Dr. Weiss, I'll tell you when.

We've got to get it right.

Mr. Weiss This has been studied for centuries.

Mr. Henry Dr. Weiss, easy...steady as she goes...turn the front microphone please.

Mr. Poynter, read it the way it should properly be drawn.

Mr. Poynter Well, there would be two or three ways to do it. I think, at least the way that I intended, and probably the fastest way, make Amendment No. 1, striking out the Denny amendment. Amendment No. 1, just strike out the Denny amendment. Amendment No. 2, on page 6, delete lines 4 and 16, the entire and at the beginning of line 11, strike out the word and punctuation "treatments".

Mr. Henry And then how would that make the section read?

Mr. Poynter O. K. it would read as follows, Mr. Chairman:

"Section 18. No law shall subject any person to euthanasia, torture, cruel, excessive or unusual punishments. ...pick up on line 11...and full rights shall be restored by termination of state or federal supervision for any offense."

Mr. Henry Now, is that the way you wanted it to read, Dr. Weiss?

Mr. Weiss That is correct, with the advice of my legal counsel.

Mr. Poynter Well, you'd probably need a comma, Mr. Chairman, after the word "punishments", now.

Questions

Mr. O'Neill Dr. Weiss, Mr. Singletary asked you if euthanasia could exist. The question is not that. The question would be, would our murdering, that, manslaughter laws, etc., still be in effect with this and wouldn't you agree that they would be and that's the proper question?

Mr. Weiss Yes, and I think this is what Mr. Jenkins was trying to make the point....

Ms. Zervignon Just to clear up in my own mind exactly what it says; as I read the amendment presently before us, it says "no law shall subject a person to euthanasia." You explained it to say that no law shall allow euthanasia. In my mind, those are two different subjects.

Mr. Weiss The courts will have to decide these words. I'm not an expert on them, but I know what I mean, and I think I know what the word "euthanasia" today means.

Ms. Zervignon No sir. I'm questioning you about the difference of "subject or allow."

Mr. Weiss "Subject" implies to me an active process.

Ms. Zervignon "Subject" implies to me "requires." Is that the way you read it?

Mr. Weiss No, I don't think "subject" means "require." I don't read it that way.

Mr. Lanier Dr. Weiss, I'm trying to get at, I think what Ms. Zervignon was getting at. If this thing says "no law shall subject any person to euthanasia," would that then mean that private persons could subject someone to euthanasia.

Dr. Weiss No. According to the researchers who...an attorney...it's my understanding, that "subject" means no one can be required. The law may not require. It is an involuntary situation. They do not require that people be subjected to euthanasia.

Mr. Lanier Wouldn't we have this same problem with

all of these other things too, with the torture, cruel, excessive or unusual punishments?

Dr. Weiss You may not be subjected to it. That is...you may not request it. I believe, to draw an analogy, that you may not commit judicial suicide, was the instance you used this morning, so nicely to me when you go to court. You may not admit to guilty to a capital punishment, and therefore, you can admit to capital punishment with life imprisonment, but you may not commit judicial suicide and this is the same thing, gentlemen, who are attorneys. Thank you, Delegate Lanier for bringing that up to my attention this morning. Perhaps the attorneys will better understand it, in that light.

[Previous Question ordered. Record vote ordered. Amendment adopted: 59-38. Motion to reconsider tabled.]

Personal Privilege

Mr. Lowe Mr. Chairman, delegates to the convention, I won't take a great deal of your time. It just aggravates me a little to look at the fiasco over the record vote on a roll call at this time of day, and I know that some members are aggravated because of this. I'll give you an example right now. At a quarter to nine this morning, Robert Aertker was sitting at his desk, he voted every voice I listened to all of the arguments. At 12:20, he told me he had to go to L.S.U. to make a talk about the Constitutional Convention to the American Association of University Women and that as soon as he did that, he would be back to the convention. Now, it aggravates me to think that the delegates to this convention are taken and the amount of contribution that they are making to this convention is gauged by record votes here and record votes there. We saw that happen with PAR, and PAR's analysis had no more basis for who the delegates' contribution was or was not to a convention at that time than the number of trips that a delegate would make to this mike or the number of trips that a delegate would make to pick up coffee. That's about how well I thought out PAR's analysis was. Yet, on August 15, PAR wrote to their board of trustees and said, "the violent reaction," and I quote, "the violent reaction of certain delegates only added to the public's interest," which indicates that if a delegate is going to question PAR, it's a violent reaction. It only adds to the public interest and puts that delegate in a poor light. I submit to you that I would hate to see the press today, pick up the record vote that we had and gauge any delegate's interest in this convention as to whether he was present or absent at that particular time, and as to whether it was on Saturday at noon, because there are many reasons that a delegate can leave this convention. I'll reiterate again, Delegate Aertker's proposition. You could look at Delegate Aertker and say he is not interested, yet he's making a bigger contribution at this time...it took an effort to leave this convention, to hurry to L.S.U., to be there for 12:30 to make a talk before this group and to say that he will return because we'll probably still be in convention. I'm aggravated because I see many delegates to this convention putting forth everything that they can possibly put forth under a great deal of trial and tribulation to make the contribution that they make. It's for this reason that I rise, to say that any time that we take one record vote, or two record votes, or five record votes and try to gauge a delegate's contribution, we, some place down the line, are going to do a serious injustice to one or more delegates that they will never ever erase off of their record. Just as PAR says, I agree with them, "the violent reaction of certain delegates will only serve one purpose, and that is to add to the public's interest." It's not whether that delegate is doing a good job, but that the public's interest and what has been printed about that delegate, and that's all that it will accomplish.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Drew]. On page 6, line 11, immediately after the word "restored" and before the word "by" insert the words "for any first offender".

If anyone is still not real sure of everything I read out there, what, actually, you've got on this section is the last amendment and then add, after the last amendment, add...pick up with the word "and" on line 11. So you put the last amendment together with lines 11 and 12 and that's what's viable at this juncture.

Explanation

Mr. Drew Mr. Chairman, ladies and gentlemen of the convention, the reason I had asked that it be passed because there is an amendment pending which would change "rights" to "restoration of citizenship," which I think is necessary amendment that should be done. Basically, what mine does is instead of saying "for any offense," it says "for first offenders," which puts it in line with the article adopted in the executive proposal. The only difference between this, with this amendment and the executive proposal amendment that was adopted by this convention, is that the executive proposal shall automatic states...shall automatically be eligible," which is deleted from this section by the committee. So, this would put Section 18 pretty well in line with what the convention has already done in the executive proposal except, as I said, this says "for any first offender." The other executive proposal says that "the first offender shall automatically be eligible"—that is the distinction which I think that is some difference. Therefore, I ask the adoption of the amendment to limit this full restoration, and I'm hoping that the word "rights" will be changed to "citizenship." I ask for the adoption of the amendment.

[Previous Question ordered. Record vote ordered. Amendment adopted: 54-41. Motion to reconsider tabled: 52-44.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Derbes]. On page 6, in Floor Amendment No. 1 proposed by Delegates Roy, et al., and adopted by the Convention on today, immediately after the word "punishment" at the end of said amendment, strike out the comma ",", and insert in lieu thereof a period ".", and insert immediately thereafter the following: "Full rights of citizenship shall be restored upon termination of state and federal supervision following conviction for any offense." Amendment No. 2: On page 6, strike out lines 11 and 12 in their entirety (Mr. Chairman, in this ever changing convention we need to add the language:) including Convention Floor Amendment No. 1 proposed by Mr. Drew and just adopted.

Explanation

Mr. Derbes Ladies and gentlemen, I give you an opportunity to do in clear and concise terms what I feel the committee's original intention was. That is to restore to individual convicted persons, after they have discharged all of their obligations to society, two basic rights of citizenship. One, the right to vote, and two, the right to work. That is the right of employment and the right to hold office which are now denied them. I suggest to you that our current system of requiring an individual to go before a Pardon Board, to advertise in a local newspaper, and to finally and ultimately get what may frequently be a political favor from a governor of this state is unnecessary and does society no good. It is more a further discouragement and a further, I think, hurdle to the ultimate rehabilitation of the individual. This is an anachronistic and archaic Roman law concept which came down as capitis diminutio from the early developments of modern civil law. In my opinion, it has no place, it has no place in modern society. A person who

44th Days Proceedings—September 8, 1973

has fully discharged, by virtue of the termination of his sentence, the termination of his parole, the termination of his probation, all of his obligations to society need not go on his knees again, to those people in power and ask for the right to vote. I don't think that in the particular instance of restoring a right to citizenship that these onerous obligations should be placed on the individual regardless of the number of his convictions. I suggest to you that the present system is nothing more than an instance of patronage and an instance of further business and substantial income to some attorneys in this state, and does not provide, in my opinion, any reasonable benefit to society. I yield to any questions.

Questions

Mr. Burns Mr. Derbes, you don't think this right should be limited to first offenders?

Mr. Derbes No, sir, I do not. I do not think that this right should be limited to first offenders. I think that...I believe that when a...a conviction on a second offense or a multiple offense can result in extensive probation and extensive parole--long term confinement. The first offense can be taken into account when determining the sentence for the second offense. Why, after a person has fully discharged his obligation to society, should he then have to go on his knees to get the right to vote, regardless of the number of offenses?

Mr. Duval Jim, do you know this is a friendly question? This wouldn't prevent the right of the state to bring an habitual offender charge in the second offense, would it?

Mr. Derbes Absolutely not, it has nothing, in my opinion, to do with the conduct of trials for multiple offenders, the sentencing of multiple offenders, the probation and parole of multiple offenders.

Mr. Arnette Jim, this is just for information--for my own information. The full rights of citizenship would just entail things like the right to vote, possibly the right to hold office and things of this nature, the right to work?

Mr. Derbes Exactly, precisely, nothing more than that.

Mr. Arnette It would not prevent the legislature from say, passing a law that a convicted felon could not carry a weapon or cannot own a weapon or...

Mr. Derbes Absolutely not.

Mr. Arnette The same thing with licensing, of having a barroom license and things like this as the present law is.

Mr. Derbes Absolutely not.

Mr. Velazquez Delegate Derbes, do you know that I consider this the best thing that you have written so far?

Mr. Derbes Are you for it or against it, Mr. Velazquez?

Mr. Velazquez I'm for it.

Further Discussion

Mr. Drew Mr. Chairman, ladies and gentlemen of the convention, I rise to oppose this amendment, and I must make an apology to you when I mentioned this amendment in the earlier amendment that I just offered that was adopted and laid on the table by this convention. The reason I had asked the Chair to permit me to pass my amendment because I knew that Mr. Derbes had this amendment which puts it right back as the committee proposal. It would therefore, been more appropriate for my amendment to come after Derbes' amendment. I wholeheartedly agree with the first part of his amendment which

changed "rights," which is way too broad. There is no limit to what one's "rights" are, and to restore "rights," we don't know what we are talking about. I think that the intent, possibly, of the committee was "citizenship," and for that part I would have to agree with. I have to disagree and ask you to vote against this amendment because if you do, you are undoing what you just did and laid on the table in my previous amendment. Now, I have an amendment that is on your desk at this time that will change the word "rights" to "citizenship" which will take the good part of this amendment and incorporate it into the proposal. If you do adopt the Derbes' amendment as written, you are completely reversing your stand on the vote you just cast on my previous amendment to limit this automatic restoration of "citizenship or rights" to first offenders. Now, I'm not one that's much for humor, but in our law, it has been held that a dog is entitled to one bite. I rather doubt that a human being is entitled, with our intelligence, any more than a dog. So, I think we are entitled to one bite and that's all we are entitled to. I ask that you defeat the Derbes' amendment. My amendment on the table will change the word "rights" to "citizenship," and I will come with that as soon as possible.

Questions

Mr. Lanier Mr. Drew, did you understand Mr. Derbes to say that even though these persons would have full rights of citizenship that because of their convictions that certain limitations could be imposed upon them?

Mr. Drew I think it would be a perfect example of discrimination, Mr. Lanier, if they are restored to full rights and then turn around and say that the legislature could say they couldn't carry guns.

Mr. Lanier That was exactly my point. Wouldn't we, by that, then be creating a first class of citizenship and perhaps a second class of citizenship?

Mr. Drew Well, I don't know whether I quite understand you. In other words, if we leave the word "rights," which I am very much opposed to, I don't think you could make any distinguishing laws at all between those who may have been convicted and those who had not been convicted.

Mr. Lanier But, is it your position, and don't you think it is the best position that if you are going to reinstate somebody, say like the first offender, let's reinstate him to all rights?

Mr. Drew What does "rights" mean, Mr. Lanier? I think Mr. Denny brought up a very good question, that if you or I were convicted of a felony and forfeited our right to practice law, would we automatically be reinstated? I think it's too broad a term. I ask that you defeat this amendment.

Further Discussion

Mr. Alexander Mr. Chairman and delegates, I rise in support of the amendment for the following reasons: (1) I have had much experience in dealing with criminals, or ex-criminals, or ex-convicts, suppose I say. Let me see, what has happened under the terms of our laws in the State of Louisiana. The fact that crime is very high among us is due partly to those laws which I consider archaic. For example, if a man serves his time in Angola, when he comes out his record follows him. Now, I'm not particular about whether his citizenship is restored for the purpose of voting and/or running for office. I'm not concerned about that kind of man because usually the convict, the one who gets caught up in the law and goes to Angola is not a good citizen, or he may not be a voter, etc., etc., but he has to work. What happens is, once the judge sentences him for a felony, to Angola he is condemned for life, in Louisiana, and barred from employment. Now, let me give you one brief example. I had a man to come to me who had been to Angola. He applied to his former employer for work. The former

employer told him, "No, you are an ex-con. I can't employ you." He goes somewhere else for three or four times and he informs them because all...most applications, either under civil service--state, federal, or local--and private employers have a question, "Are you, or have you ever been convicted of a felony and served time, etc., etc?" He tells the truth. He doesn't get the job. Then, he decides to change his mind and lie, but they find out anyway after he is employed one or two weeks, or one or two days. So, the man is thrown back on the street, impossible for him to get a job, and what he does? He commits another crime, and that's why we have so many repeaters. So, I appeal to you to adopt this amendment and make it possible for an ex-convict at least to get a job so he can work and support himself and his family. He will not be forced back into crime and go back to Angola within the next six months. That's why you have so many thousands in the jails and in Angola in this state now. Thank you.

Questions

Mr. Riecke Reverend Alexander, if this Derbes amendment was passed, that wouldn't permit that man seeking employment to tell me, as an employer, that he has never been convicted if he'd been convicted four or five times, would it?

Mr. Alexander No, but I tell you what it would do, Mr. Riecke. It would...most employers, especially the various civil service systems investigate, and when they investigate, they would not find this in his record.

Mr. Riecke I know, but if he told me the truth, he had been convicted whether this amendment passes or not, and that wouldn't preclude my employing him.

Mr. Alexander That may be true, Mr. Riecke.

Further Discussion

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, I'm going to be brief, and at the conclusion of what I have to say, I am going to move the previous question. Let me make sure that there is no misunderstanding about what this particular amendment does. All it does, and I think Mr. Derbes has already said it, but I think it needs to be said again, is to say that after a person has served his time in the penitentiary or in jail, or after he has served his period of probation and/or parole, after, so to speak, his debt fully to society has been paid, society will then say, "Okay, we're going to restore to you a couple of limited rights, the rights that you, as a citizen have, and that is the right to vote and the right to hold a job, let's say with the state, or to run for office. It doesn't do anymore than that. It doesn't say that you can't be prosecuted as a second, third, fourth, or fifth offender in the future if you commit other offenses. It doesn't say that you are pardoned for the crime that you have committed and that your slate has been wiped clean." It simply says that we're going to give you back the minimum things that have been taken from you because you have earned them. You have served your time or you have responded to the duties and obligations imposed upon you by the order of probation or the order of parole, depending upon what the case may be. This gives some additional hope to the man who has really tried to and has done what society says he must do, and that is, pay his debt. He's done it. Now, that's all that this amendment does. Mr. Chairman, if there are no further speakers, I would like to move the previous question.

Questions

Mr. Tapper If you answer this question, I may not have to take up the time of the convention to speak. Mr. Gravel, isn't it a fact Mr. Drew made a statement a while ago that if we adopt this we are going to undo what we did with his amendment?

Isn't it a fact, however, that Mr. Drew's amendment went through rather rapidly and he was the only one that spoke on the amendment and there was no opposing side put forth on that amendment?

Mr. Gravel Well, that's correct. I think Mr. Drew had put something additional into the concept that doesn't belong there. What this amendment does not do, and I may have misunderstood Mr. Drew, but I thought he said that this would restore the language of the committee to the section. It does not; it limits the language of the committee. I'm not suggesting that he said that, but I thought he may have said it--somebody may have said it. It limits the language of the committee very appreciably, by saying that...instead of saying that "full rights shall be restored," by saying that "only the limited rights of citizenship shall be restored." So, to that extent it's a rather substantial departure from the broad sweep of the committee language.

Mr. Willis Mr. Gravel, this one is friendly, or these are friendly. Does not...this amendment does not give the former criminals now citizens to be again, a medal. It just gives them back what is tantamount to or in parallel, corruption of blood.

Mr. Gravel It gives them a taint of respectability, you are right.

Mr. Willis Thank you. Now, about this argument that in adverse to this proposition under consideration, the argument is four-time loser. Well now, what say you to a judge that a man can lose four times in his lifetime? What do you think about that judge?

Mr. Gravel Mr. Willis, don't ask me about the Judges, I'm in enough trouble with them already, please.

Mr. Drew Mr. Gravel, did you understand that when I was referring to the committee proposal that I was referring to the multiple offender portion? My amendment provided this applied to first offenders, the committee proposal, regardless of the number of convictions. Did you understand that was what I was speaking of about the committee proposal?

Mr. Gravel I think I understood you. All I'm saying is that if you suggested that this amendment restores the original committee proposal, I don't think it does. I don't think that's what you...probably that's not what you said. I perhaps misunderstood you, Mr. Drew.

[Previous Question ordered. Record vote ordered. Amendment adopted: 80-23. Motion to reconsider tabled. Previous Question ordered on the Section. Section passed: 88-16. Motion to reconsider tabled.]

* * *

45th Days Proceedings—September 12, 1973

Wednesday, September 12, 1973

ROLL CALL

[No members present at roll call.]

PRAYER

Mr. Landrum Our father in Heaven, in the name of Jesus we thank Thee for all Thy blessings and once again to be able to assemble in Thy name to try to do the things that are pleasing in Thy sight. Our Father in Heaven, we need Your help, Your guidance to show us what to do and to give us the courage to do those things that are pleasing to Thee. We pray the blessing upon each and every family here today. Bless the newsmen, bless the young people that we are working with and those who have gone back to school. In the name of Jesus we pray and ask of all Thy many blessings and for His sake. Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

Personal Privilege

Mr. Juneau Mr. Chairman and fellow delegates, I won't take up much of your time, but I do have some information that I thought that you and the people of this state would be interested in. You know, since January, we have been through some tumultuous times since this convention went into session. During this time of deliberation and debate we've all had moments of discouragement and worry over whether or not we were doing a good job here in Baton Rouge. Well, let me give you some interesting statistics on what we've accomplished since we came here in July. I guarantee you that it's going to bolster your spirits, and it will assure you that we are moving in the right direction and actually accomplishing what we were set down here to do. A review of the first three articles adopted by this body shows us that in the present constitution, the number of words on the legislative branch alone is 12,171 words, while the article which we adopted contains approximately 4,014 words. That's roughly one-third of the verbiage of the old constitution. In the 1921 version of the Executive Article, there are a total of 12,910 words, but in our Executive Article that we have proposed, it represents approximately 2,517 words, or one-sixth of the number used in the 1921 Constitution. It took approximately 3,000 words to cover the Judiciary Article which we adopted, but the present constitution or the old constitution contains over 30,000 words on the same subject, or ten times as many words as what we presently have. The total words in the three articles that we have gone through to date in the old constitution is 55,081 words as compared to 9,531 words in the very same three articles. Gentlemen of this convention, that represents approximately a reduction of eighty-two percent in words alone in the first three articles of the constitution. The 1921 Constitution has five hundred and ninety-nine sections contained within twenty-one articles. The document we are working on will contain approximately eight articles with two hundred and seven sections. We are more than halfway through the Bill of Rights and Elections proposal, but when we complete that article, we will have reached the halfway mark of the work to be done by this convention. If each article from here on out, say, will contain approximately four thousand words, it would be compared to 255,450 words used to cover the same subject in the old constitution. I think that these figures speak for themselves and they are really nothing all that I can add to tell you that we have made the kind of progress in trying to come up with a more manageable document which is brief and concise, and one that the average citizen can pick up and comprehend without difficulty. These statistics are a credit to our hardworking staff which has spent--and these statistics are interesting--49,485 person hours working on this constitution. Seven thousand six hundred and twenty-eight

of these hours, or fifteen percent, were worked over the regular workday week which you would normally encounter. They deserve our praise and our gratitude, and in closing, I may tell you that I commend this convention and I think the people of this state will be gratified to know that the convention is on the right track. Thank you.

RESOLUTIONS ON SECOND READING AND REFERRAL

UNFINISHED BUSINESS

THIRD READING AND FINAL PASSAGE

Mr. Poynter Committee Proposal No. 25 introduced by Delegate Alphonse Jackson, Chairman on behalf of the Committee on Bill of Rights and Elections. It's a substitute for Committee Proposal No. 2 by the same gentleman on behalf of the committee. A proposal to provide a Preamble and a Declaration of Rights to the constitution.

The status of the proposal at this date is the convention has adopted the Preamble, Sections through 6 as amended, has deleted Section 7 and Section 8, and thereafter has adopted as amended Sections 9 through 19, and presently has under consideration Section 20, the next section to be considered--"The Right to Keep and Bear Arms."

Reading of the Section

Mr. Poynter "Section 20. Right to Keep and Bear Arms."

Section 20. The right of each citizen to keep and bear arms shall not be abridged, but this provision shall not prevent the passage of laws to prohibit the carrying of concealed weapons."

Explanation

Mr. Guarisco I think this is very clear, "the right to each citizen to keep and bear arms shall not be abridged, but this shall not prevent the passage of laws to prohibit the carrying of concealed weapons." We went through the 1921 Constitution and I think the only difference is that it had reference to the militia, and of course, the militia had to do with historical significance insofar as the Continental Congress. The state really, in effect, has no standing army so we felt that that wasn't needed. Now, we had testimony from the people in the National Rifle Association and many of that sort, and I think we reached a compromise as to what we felt would protect the individual insofar as criminal activity and not abridge the freedom to have... for the people to have arms and ammunition. I'll yield to any questions.

Question

Mr. Champagne Originally, I think your proposal had "arms and ammunition." Could you tell us why you left "ammunition" out?

Mr. Guarisco Well, we thought it was tacitly understood that you could have ammunition if you had arms. It's always been interpreted that way, so we thought we wouldn't add the excess verbiage. I urge the favorable adoption of this section.

Amendments

Mr. Poynter Amendment sent up by Delegate Avant and many coauthors.

Amendment No. 1. On page 6, line 23, after the words "carrying of" delete "con-" and delete on line 24 in its entirety and insert in lieu thereof the following: "weapons concealed on the person."

Amendment No. 2. On page 6, at the end of line 24, add the following sentence: "No law shall require the licensing or registration or impose special taxation on the ownership or possession of firearms or ammunition."

Explanation

Mr. Avant Mr. Chairman and fellow delegates, first, I would like to ask that these amendments which are divisible be divided.

Now, the present constitution embodies substantially the same language as the committee proposal with the exception as explained to you by Mr. Guarisco of the reference to the militia. In essence, they both provide that the right of every citizen to keep and bear arms shall not be abridged, but that this provision does not prevent the passage of laws which would prohibit the carrying of concealed weapons. Now, the purpose of the first amendment to this section is to make it clear that the only law prohibiting concealed weapons will be a law which would prohibit the carrying of weapons concealed upon the person. Now, the reason for that is this, the legislature, of course, so far, under this provision of the Constitution of 1921, has passed no laws with reference to the carrying of concealed weapons which would prohibit the carrying of concealed weapons upon the person. But, the legislature could, in my opinion and in the opinion of a number of attorneys who have considered this issue, pass laws prohibiting the carrying of concealed weapons in places other than the person. More specifically, the legislature could constitutionally, under the language of the Committee Proposal and under the Constitution of 1921, pass a law which would prohibit the carrying of a handgun in an automobile, or in a boat, or in an airplane. Similarly, they could prohibit the keeping of a concealed weapon in a business place—such as, behind the counter or under the cash register. Now, other states have passed such laws, most notably of which is the State of New York, which has the most stringent gun regulations and gun control which I am aware. There are laws which prohibit the possession of a handgun or carrying it in the glove compartment or under the seat of an automobile. The purpose of this amendment is to make sure that the legislature of this state does not have the power to regulate the carrying of concealed weapons other than weapons which are concealed on the person, it being the opinion of the speaker and of many, many, many other citizens of this state that you should have the right to carry a firearm in your automobile, in your boat, or keep one in your place of business. Now, the purpose of Amendment No. 2 is simply this. The ownership or possession of firearms and ammunition is extensively and thoroughly regulated by the federal government. Without a doubt, it will continue to be so regulated and without a doubt, the restrictions will become in the future, in great likelihood, more stringent than they are now. The purpose of this amendment, and I don't want anybody to not understand the purpose of this Amendment No. 2, is to remove the state from the regulation of firearms for the reason that it is an area that is thoroughly regulated by the federal government to the most minute detail. Therefore, the only reason why the state would be interested in regulating or legislating in that area would be to adopt rules and regulations that are more stringent and more restrictive than those which have been enacted by the Congress to which the speaker and many, many other citizens are opposed. To give you a specific example of the type of thing that we are talking about, under the present federal law, a shotgun with a barrel of less than eighteen inches is an illegal weapon. Under the federal law, a rifle with a barrel of less than sixteen inches is an illegal weapon. Under the state law with respect to rifles, the law is the same. But, under the state law with respect to shotguns, the state law is more stringent than is the federal law because under state law, you have to have a barrel that is at least twenty inches long on a shotgun, or else it is an illegal weapon under state law. It is submitted that there is no need, absolutely no need for a whole maze of conflicting regulations on this subject in an area which is completely, thoroughly regulated by the federal government, has been for many, many years and is going to remain so in the future. Now, there has

been a lot of talk and speech making in this convention on the subject of crime and on the subject of law and order. Well, I want to submit something to you for your consideration. No criminal who is about to commit a crime such as burglary or armed robbery, as he sits there in those final moments before he commits this crime, is thinking about whether the penalty is twenty years, or ninety-nine years, or whether it's with or without parole, or whether he's going to have a trial by jury, or whether it's going to take nine or ten or all of them to convict him. Those are not the things that are going through his mind, and those are not the things that will deter him from committing the crime that he has under contemplation. You know what's going through his mind is the fact that that storeowner, or that homeowner, or that citizen is in all probability armed and prepared to defend himself. That's what he's thinking about—not "Am I going to get caught next week or next month and be tried and maybe go to Angola?" The thing that he is concerned about primarily at that moment is, "Am I going to come out of this little venture alive?" Now, you take away, you take away from the citizen, the decent, average, law-abiding citizen of this state, the God-given right to defend himself, and then you talk about law and order. You see how much law and order you have. You see what happens to your crime rate, and I can refer you to nothing more specific than the State of New York which, while having the most stringent weapons control laws in the United States, has the greatest, or one of the greatest, crime rates in the United States, and it's rapidly deteriorating every day. So, I urge you, I urge you to adopt both of these amendments.

Questions

Mr. O'Neill Mr. Avant, you were appointed to this convention, correct, sir?

Mr. Avant Correct.

Mr. O'Neill Who were you appointed to represent?

Mr. Avant Wildlife and Conservation.

Mr. O'Neill Don't you think that they would favor this amendment if those people were here to vote on it this morning?

Mr. Avant I think they would.

Mr. O'Neill Do you think that the laws of the United States are restrictive enough on gun controls that we need not impose any further restrictions on the state level?

Mr. Avant I certainly do.

Mr. Tobias Jack, I call you to the attention of the committee language which reads, "The right of each citizen to keep and bear arms shall not be abridged," and then it continues "In Section 18 of our committee proposal, this proposal, we adopted a provision that reads as follows: "Full rights of citizenship shall be restored upon termination of state or federal supervision following conviction of any crime." Now, I think that permit a former felon to carry firearms, under your interpretation?

Mr. Avant I don't think so because the right to citizenship is being referred to in that section are the rights to vote and the restoration of civil liberties. There is a federal law on the subject with which I am most familiar that prohibits the possession or transportation of a firearm by an ex-convict.

Mr. Tobias Mr. Avant, my next question is this. Presently, New Orleans has a firearm registration ordinance which would... which requires the registration of handguns. This would, in effect, outlaw that.

45th Days Proceedings—September 12, 1973

Mr. Avant It would, sir.

Mr. Tobias Do you believe that some sort of firearm, a handgun concealed weapon type of legislation is necessary in a large metropolitan area?

Mr. Avant I think that the present law which prohibits the carrying of a handgun concealed on one's person is a good law. It would not be affected by this provision, Mr. Tobias, in a large municipal area or in the middle of the Atchafalaya Basin.

Mr. Willis Mr. Avant, what is the only purpose of a weapon or a firearm? The only thing a weapon or a firearm, that is a gun or a rifle, can do is kill, isn't that correct?

Mr. Avant Yes.

Mr. Willis You can't do anything else with it.

Mr. Avant You can shoot targets with it, if you are so inclined.

Mr. Willis Well, the primary purpose of it is to, if you shoot targets, is to be skillful at killing, isn't that correct?

Mr. Avant To be skillful in the use of the weapon, yes, sir.

Mr. Willis Well, if we ultimately agree that the use of the weapon is to kill, then it is to kill. So, to go from there, would the omission of the second amendment that you have, "place the registration of weapons" and so forth, would not the omission allow the legislature to flex with the demand of the times?

Mr. Avant It would allow the legislature to pass a statute which says you cannot keep a firearm in your automobile, you cannot keep one in your boat, and you cannot keep one behind the counter in your business place. That's the purpose of the amendment. It would give them that much flexibility, yes, sir.

Mr. Lennox Mr. Avant, my one or two questions deal solely with the so-called "Saturday night special." I'd like to hear your views on why there should not be some registration device for that particular type of handgun.

Mr. Avant I see no reason why a so-called "Saturday night special" should be registered when a Smith and Wesson snub-nosed 38 revolver would not be registered. Now, the so-called "Saturday night special," Mr. Lennox, is a cheaply made, imported, foreign handgun. It is easily concealed, but it is no more easily concealed than many of the American handguns. But, most of those so-called "Saturday night specials" are just as dangerous to the shooter as they are to the shootee because they have absolutely no quality to them at all, and they are made to be mass-produced very cheaply so that people can get hold of them.

Mr. Lennox Why is it that your amendment would oppose the registration of any concealable handgun, be it a revolver or a "Saturday night special"? You must have some valid reason for proposing. . .

Mr. Avant Yes, sir, there is. There is a reason, and the reason is this. I believe it was in Greece when the military junta took over, over there. All weapons in Greece had been registered for years. The first thing they did was round up the owner of every registered weapon and take his weapons from him.

Mr. Lennox My final question: Do you know that the parish of Orleans has a handgun registration ordinance which, in fact, has been used as an effective tool in apprehending criminals or people charged with violent crimes?

Mr. Avant I understand that there is a law in Orleans. In what extent it's been effective, I don't know. But, my guess would be that it has had no appreciable effect on the crime rate in the city of New Orleans, based upon what I read in the newspaper.

Mr. Lennox In any event, your proposal, if adopted by the convention, would negate that local ordinance.

Further Discussion

Mr. Burson Mr. Chairman, ladies and gentlemen of the convention, I ask that my name be taken off this amendment, although it was originally on it, because as so many times in this convention I found that when I did my homework afterward that I was wrong. I think I would be wrong in sponsoring this amendment for one simple reason. We would, in my view, abrogate present, existing state laws and, as Mr. Lennox has pointed out, a city ordinance in the city of New Orleans regulating the carrying of handguns. Now the state laws involve more than that. I asked the staff just to sketch briefly what they do involve, and they involve primarily the defining of firearms which cannot be carried by a private citizen, including primarily, sawed-off shotguns or shotguns with a barrel less than so many inches in length, machine guns, silencers for pistols, etc. Now I have taken the position throughout here that when we were dealing in the area of criminal procedure, that we had not been seen here as a super legislature to change existing state law without proper study. I feel that I would be totally inconsistent to have taken that position with regard to criminal procedure and then to turn around here in the case of substantive criminal law and take the position that we want to abrogate it. I would be the last one in the district that I come from, where most farmers ride around legally with shotguns on a rack in the back of their pickup trucks to want to do anything to limit in any way the carrying of firearms by people legally and under the present law.

But, I do not feel that we would be warranted in abrogating present state legislation and present city ordinances in the city of New Orleans on this subject. I must confess that I have some grave personal reservations also, about a prohibition which would absolutely prohibit the legislature in some future time from requiring some sort of licensing or registration of some types of firearms. My own personal belief is that while I may have been an impressionable child when I saw it, that the old sheriff and the cowboy shows that I saw when I was a child who required everybody to check their six-shooters in when they came into town, probably had a pretty good idea. And my own personal opinion is that there have been more murders and manslaughters generated in this state or in this country by people packing pistols around in barrooms than anything I know. I don't know a better way to turn a barroom brawl into a killing than that. But that's my own personal belief. I simply mention it to give you some indication, perhaps of why I reconsidered this matter. The most important fact to me is that we have present state law on the books and we have a present city ordinance in the city of New Orleans which would be abrogated by the language, particularly of the second amendment offered here.

Further Discussion

Mr. Tapper Mr. Chairman and fellow delegates, I rise in support of the amendment. I'd like to point out that the federal law which regulates weapons hasn't curtailed murders in this country, nor has the ordinance in the city of New Orleans curtailed murders in the city of New Orleans. I believe the record will reflect that there have been a hundred and sixty-five murders in the city of New Orleans since January. Three of them occurred yesterday. One, I believe, was a priest.

If we restrict the possession of firearms and weapons for the defense of the innocent people so that a man cannot have a weapon in his business place to protect himself, so that you cannot have a weapon in your home to protect yourself, we are not fooling anybody, ladies and gentlemen. Those people who are going to kill are going to carry the weapons, who are going to carry them for unlawful purposes, will not register them. They are not the ones that you are going to control with this law. You are going to control the innocent law-abiding citizens with this law. Let's make no mistake about it. Let's don't hide our heads in the sand, talk about the Western type of turning your gun in when you come into town. This was a time, ladies and gentlemen, when there was honor among men. Today, we have killing and killing and killing on the street, and that killing is being done by those who will not register firearms. I urge that you adopt this amendment.

Further Discussion

Mr. Stovall Mr. Chairman, ladies and gentlemen of the convention, I rise to encourage you to oppose these two amendments that have been presented to us; because these amendments make it more difficult for us to maintain law and order and for the state legislature to respond to emerging situations in our state. Later on, Mr. Burson has an amendment that at least in us where we have in the 1921 Constitution. And I have an amendment which says that the control of firearms might be subject to the police power of the state.

So I encourage you to vote against these two amendments. It seems to me, ladies and gentlemen, that we are dealing here with something that gets to the very heart of whether or not we as a convention are going to maintain a certain integrity and independence, or whether or not we are going to be unduly influenced by some special interest group in the state. It is a question of whether or not we are going to provide a constitution that might respond to the common good rather than the wishes of some particular special interest. It's a question of whether or not we are going to maintain some flexibility and permit the legislature to respond to whatever the need might be in a responsible manner.

I submit to you that these two amendments are in opposition to the maintenance of law and order, because they simply provide that no restriction could ever be placed on any firearm. I'd like to say to you that Mr. Avant, in appealing to you for support of these two amendments, has stated that a store owner might be restricted in maintaining a firearm. This amendment does not in any way limit a store owner from protecting himself. Mr. Avant seemed to imply that if the store owner had his firearm registered, that this in some way would limit his ability to take care of himself. Mr. Tapper says that such registration at some future time might not limit murders; that the criminals would still... would not register. I think we realize that the legislature at some future time saw fit to pass such limiting legislation, that it would require that future sales of firearms, Mr. Tapper, would be registered. I think all of us here this morning have an appreciation of our wildlife, and we enjoy the sport of hunting, and I certainly am not in favor of our doing anything to limit this fine sport and recreation in our state. But I do feel that it is a mistake to assume that we should not give the legislature the authority and the power at some future time, if it sees fit, to respond to whatever a situation might be.

Therefore, I encourage you to vote against these two amendments and to consider the other amendment that will be presented to us.

Thank you.

Question

Mr. Tapper Reverend Stovall, don't you know that

most of the weapons with which murders are committed have first been stolen and have not been purchased, so that they would have been registered?

Mr. Stovall I'm not sure that your assumption is correct, Mr. Tapper. I don't think it is.

Further Discussion

Mr. Casey Mr. Chairman and delegates, I rise to oppose this amendment and I do so principally because I am from a municipality that does have an ordinance establishing a handgun registration law. It has been helpful in our area to have an ordinance of this type, and the statistics do show it.

First of all, our statistical information and our registration information goes back to the year 1900, and I know, and our police superintendent has said so on many occasions that a law of this type can be very helpful in tracing down the apprehension of criminals. Now I know one of the speakers indicated that we have a high crime rate in the city of New Orleans, that we just had three people murdered yesterday: We've had approximately one hundred and sixty-five murders in the city of New Orleans since the first of the year. Maybe, perhaps it could be, possibly there is a chance that we could have a hundred and eighty-five murders instead of a hundred and sixty-five murders, and any registration of weapons of this type that are dangerous to our community could possibly be a real lifesaver for a city such as ours. It's difficult to pinpoint the validity and the helpfulness of a law of this type. But our police department is well satisfied that it has been helpful to them.

I strongly urge the rejection of this amendment, and the adoption of a further amendment of the type that Mr. Burson has introduced which tracks word for word the law as it is today, and therefore, gives the prerogative to the legislature in instances that they might deem necessary and helpful to our community to impose further regulation, whether it be registration or licensing, we don't know today. But the whole key word behind a truly good constitution is the... and that key word is flexibility, and that's all that I urge you to maintain today is that thought in the back of your mind that we should have that flexibility if five years or ten years from now, it's proven that we need some regulation of some kind. That's all I ask you.

Questions

Mr. Avant Mr. Casey, did not the same superintendent of police, to whom you just referred, within the last month publicly state that in his opinion the greatest deterrent to crime was for the average law-abiding citizen to be armed and proficient in the use of that arm?

Mr. Casey I don't think that police superintendent wishes to disarm the public. We're talking about control of arms and knowledge of who possesses those dangerous arms and the ability to trace down arms that are used as an instrument in crime. And I think that same police superintendent would indicate my thoughts to you as being accurate, that he does believe in controls. But granted, I'm not disputing the right to own or bear arms, even.

Mr. Avant Did he not make that statement, though, publicly?

Mr. Casey I don't know, Mr. Avant, but I'm sure he probably would not dispute that. I don't think we disagree on that point.

Mr. Weiss Delegate Casey, isn't it true that many criminals use stolen weapons, and license and registration laws help the legitimate citizen to recover their stolen weapons, would you not say?

Mr. Casey That's certainly a help, one of the... that's the same reason, probably, why we license

45th Days Proceedings—September 12, 1973

bicycles, because there is a tremendously high rate of stolen bicycles, for instance, on the LSU campus. And licensing of bicycles is certainly helpful in tracing those bicycles down.

Mr. Reese: And would you say that the licensing and registration law on weapons impair the rights of citizens to bear arms at all?

Mr. Casey: Well, I think maybe, I don't know if you are intending that as a friendly question. I think you are, and I have to be honest with you. I'm not sure that it would. I need maybe a little bit further explanation on it. But I do have to be honest with you, I'm not sure that it really does.

I appreciate your friendly question very much.

Mr. Velazquez: Mr. Casey, are you familiar with the statistics that show that if you are going to be shot or killed, statistically speaking, it's much more likely you'll be killed by your wife or by an acquaintance than you will be killed by a shot by a stranger?

Mr. Casey: Is your question that statistically that.... I didn't understand the first part of your question.

Mr. Velazquez: Are you aware of the statistics which show that if you are going to be shot or if you are going to be killed, it's much more likely statistically that you will be shot or killed by your wife or by an acquaintance than you will by a total stranger?

Mr. Casey: I don't know if you are trying to give me a message.... whether I have that problem or not. But, no, I am not aware of the statistics. But I would imagine that that's correct.

Further Discussion

Mr. Lennox: Mr. Chairman and fellow delegates, two or three very brief points on the subject matter. I think there's been some.... there have been statements made here that may be somewhat misleading, and I think they should be clarified.

In the first place I see nothing in the committee proposal that in any way restricts the right of any citizen to own and house a firearm. "Item No. 1. The amendment, however, would prohibit the legislature at any time, from consideration of any registration or licensing of handguns." I believe that you should not close the door to that possibility in the future, and I live in an area where the incidence of crime is, perhaps, much higher than in any other place in the State of Louisiana.

Let me give you one example of how registration of handguns in Louisiana has worked to the benefit of law enforcement. An individual was arrested in New Orleans, in Orleans Parish, in the act of perpetrating an armed robbery of a service station. He was using, at the time of his arrest, a handgun that had been stolen from a grocer two weeks before who was murdered in the act of armed robbery of his store. The police were thereby able to bring evidence to bear on that individual in connection with a violent crime, which happened two weeks before. Now our law in New Orleans simply says that "any new handgun purchased after a certain date has to be registered with the detective bureau of the New Orleans Police Department." Now, I submit to you that you do not want to close the door irrevocably to the possibility that this might be in the best interest of all the citizens of the state at sometime in the future.

Thank you.

Questions

Mr. Stovall: Mr. Lennox, some people were talking to me and I didn't hear your illustration. Would you give that illustration again so that we can all hear that very carefully? Some people were

talking and I couldn't hear it all.

Mr. Lennox: This is an actual case in point. An individual was arrested in the act of committing armed robbery of a service station operator in Orleans Parish several months ago. The handgun he was using, in this armed robbery, was a gun that had been stolen from a grocer who had been murdered in the act of an armed robbery of his store just two weeks before. Now that grocer's handgun not been registered, the police could never have connected this individual with the murder of the grocer. Now this evidence may well not be fully conclusive in a court of criminal law. I'm not going to argue that point. But, I state to you that it has been a tool used effectively by the New Orleans Police Department in deterring violent crimes.

Mr. Stovall: You think these amendments, if they should be passed, would prohibit that kind of maintenance of law and order?

Mr. Lennox: I'm going to vote for Amendment No. 1. I'm going to vote against Amendment No. 2.

Mr. Smith: Mr. Lennox, don't you think we are going too far when we tell the legislature that they can't pass any law requiring a licensing of weapons?

Mr. Lennox: I do indeed, and I think the day will come in Shreveport or other parts of the state where you wish you had such a right.

Mr. Smith: You don't think this should be frozen to the constitution, do you?

Mr. Lennox: That's precisely my point. I'm going to vote for Amendment No. 1. I'm going to vote against Amendment No. 2.

Further Discussion

Mr. Jenkins: Mr. Chairman, delegates, our people in this country have three great protections for their freedoms: the jury box, the ballot box and the cartridge box. If we ever give up any of those three, then freedom in this country won't last very long. There is no more basic right than the right of self-defense, or self-preservation. A man cannot do away with that right and continue to exist, neither can a people. Some have come up here and talked about the deterrent effect of licensure laws and registration, how it will deter crime, and how it will help us capture criminals. But when we balance the two, on the one hand a well armed citizenry who possesses their weapons and their ammunition free of government control and knowledge; there is hardly a greater deterrent to crime than that. New York State is a perfect example with its stringent gun controls which New York State has had for many, many years, in fact almost fifty years. And yet, just about the highest crime rate in the nation.

The thing the criminals want is a disarmed citizenry, or a citizenry who has no right to possess weapons, or who is somehow restricted. But when the criminal knows that the citizen has his weapon, and knows how to use it, the criminal is far more reluctant to initiate a crime. One thing about licensure and registration laws of firearms is that such laws make criminals out of law-abiding citizens.... out of honest citizens. When a man is arrested for having an unregistered or unlicensed weapon who has committed no crime other than that, who has no evil intent other than to protect himself or his family or his property, to arrest such a man is in itself, I think, a crime. Yet that's what licensure and registration laws do. They say if you possess a weapon that happens to be unlicensed or unregistered, you are a criminal as though you committed a crime with that weapon. Licensure and registration laws only deter the law-abiding citizen, not the criminal. The man who wants to commit a crime can get a weapon. He will. It is only the law-abiding citizen who will be deterred. Government

should not know about our weapons. I know it's not popular to refer to other countries, but if you look at other countries you will find that where people have lost their freedom, it's always been where they didn't have weapons. The first thing Fidel Castro did was, he said, "Come on, campesinos, turn in your weapons for plows." And they did. And that was the end of that. He never had armed opposition; he knew that he could roughshod over the people of Cuba from then on. And he has.

In Czechoslovakia when the Soviet tanks rolled in, they were facing an unarmed citizenry who could do nothing but hurl stones. The same was true in Hungary, the same was true in Poland. We never want a situation like that to exist here. Now, let's talk about what the people want. You can hardly find a more popular issue than this. The people believe they have a right to keep and bear arms without registration and licensure laws. And if we expect to take this constitution to the people and give them a more positive, affirmative reason to vote for this constitution, we are going to have to have in there provisions like this, that show that we respect their wishes and respect their rights.

In my own district I hardly know a person who favors licensure or registration of firearms. People know that this gets down to basics. This is about as gut an issue as you can find, and they want to maintain their right to keep and bear arms without knowledge by the government, without restriction or control by the government.

Mr. Avant has a good amendment. It protects our rights. It protects our people in the future, and it's something the people of this state will stand behind and support fervently. So I urge its adoption.

Question

Mr. Stovall Mr. Jenkins, you tried to make the issue as to whether or not we believe in registration of firearms. This is not the issue in this second amendment presented by Mr. Avant, is it? Isn't the question whether or not the legislature might be permitted to respond to some situation at some time in the future, whether or not they might have the freedom and liberty to do so?

Mr. Jenkins The question is whether the legislature, in the future, could ever pass licensure, registration, or special taxation of arms. And the answer, I think, has to be no. The legislature shouldn't have that authority.

Further Discussion

Mr. O'Neill Ladies and gentlemen of the convention. It's amazing that we stand here this morning debating a right many people who are in favor of taking away, which our forefathers sought to give us long ago. The question then was not whether we should have the right to keep and bear arms, or whether they should be registered or anything of the sort. It was a right that they thought we automatically had. And I think that's the question we come to this morning.

I'd like to ask Reverend Stovall if he's in favor of giving the legislature so much flexibility if when it comes to gambling, he's going to be ready to give the legislature so much flexibility. I don't think he will be ready to give them flexibility. He's going to say, "No law shall allow gambling." And I think that's what we're coming to this morning on the right to keep and bear arms. And I think that right would be just stated as Mr. Avant's amendment has it stated.

I live in an area here in Baton Rouge where the incidence of rape is higher than in any other area of the state. Within this past summer, we've had nearly fifteen rapes in the LSU area. My wife has a gun, and it's registered, but I guarantee you the person who comes to rape her won't have a registered gun. No, he'll have a Saturday night special or some such gun, and that's what he's going to use as his weapon. And will it do my wife

any good that his gun is not registered? Will they be able to trace it any better? I don't think so. And what difference will it make that my wife has a registered gun? If she uses it, more power to her. If not, it doesn't really matter.

I think the average, ordinary man views the situation like Mr. Willis views the situation, dead is dead and guns are made to kill. The average man knows that a criminal will not have a registered gun in most likelihoods. The gun he has will be stolen. So what difference does registration make? The only person that it harms is the average individual, yourself, myself, who has a gun and wants to have it just for his protection and for his use.

I submit to you that we shouldn't be standing here discussing a right which most people think they automatically have. We are here discussing the right to keep and bear arms. Read that amendment carefully. It also says, "special taxation, no confiscatory taxes will ever be levied on firearms." And I think that's a very important clause in that provision. Those people here who would have you take that out think that registration will do some good. And I think in all sincerity they honestly believe that.

I submit to you that ten years ago the incidence of crime was far less than it is today. And I submit to you that back then, there wasn't any registration of guns and that today look at the crime rate. We do have registration of guns today and the incidence of crime is only just now beginning to turn around. I think in the future we are going to see it quadrupled compared to what it is today. And it will quadruple with registered weapons unless we pass this amendment.

Questions

Mr. Munson Mr. O'Neill, I wanted to ask Mr. Jenkins this question a few moments ago but he ran out of time. Perhaps you could answer it for me, because I want to reemphasize a couple of points that he brought out.

In case the legislature were to pass laws requiring the licensing of firearms, what type of citizen do you think is going to go down and have those firearms registered?

Mr. O'Neill Mr. Munson, the average law-abiding citizen who pays his taxes and lives just like the rest of us. Not the criminal, just the average man.

Mr. Munson In other words, you couldn't foresee a criminal going and having his gun registered.

Mr. O'Neill Not very likely, Mr. Munson.

Mr. Munson And in case then, to go a little further with that, that if laws are passed requiring registration of firearms, the only thing it could possibly do would be to take firearms out of the hands of law-abiding citizens. Isn't that correct?

Mr. O'Neill That is absolutely correct, Mr. Munson. A criminal will get his gun, and his firearm would be an absolute fool, and I think you would agree with that.

Mr. De Blieux Mr. O'Neill, I think you are bringing out a very good point there. So, you would imagine from your argument that the criminals would be opposed to registration of firearms?

Mr. O'Neill No, Senator De Blieux, I don't think they'd care one way or the other; they are going to have them regardless.

Mr. De Blieux And I think you said that most of the crimes probably would be committed with stolen guns. Wouldn't those guns have to be registered to start with? Couldn't it solve two crimes whenever they'd find the gun?

Mr. O'Neill Senator De Blieux, the guns used to make crimes, many of them are not registered and

45th Days Proceedings—September 12, 1973

I'd like to ask you a question. Who are you here to protect?

Mr. De Blieux I want to protect the law-abiding citizen. But I don't want to protect the criminals by refusing to register their guns.

Mr. O'Neill Well, you are protecting the criminal if you don't, or if you do, either way.

Further Discussion

Mr. Hayes Mr. Chairman, ladies and gentlemen of the convention, I think what we are saying is the right to bear arms should not be abridged, but it appears that all the discussion is centered around some means of abridging that right to bear arms. Passing some kind of law trying to abridge the right to bear arms is doing nothing more than making criminals out of law-abiding citizens.

I think the federal statutes or the federal law has a system where you have to register even ammunition when you buy it. I can't buy a gun. Every time I buy a bullet, I have to register. I have to show my driver's license, and when I buy a gun I have to register the gun under the federal laws. So I can't see any reason for after passing some other rights here, giving the state the right to call in and make criminals out of all the people ... I think that's all you're going to do. If I thought it would help curb crime, because I'm familiar with this Saturday night special I hear them talking about. They have people who use them on Saturday night, if you don't believe it, check with the undertakers. But I don't think it would help anything. Disarming everybody so the criminals could just have a heyday knowing that you have nothing to protect yourself with.

So I rise in support of the amendment.

Further Discussion

Mr. Weiss Mr. Chairman, fellow delegates. I will not repeat many of the things that have been said but only try and clarify the issue.

First of which that the majority of the members of the Bill of Rights Amendment have been polled as to this amendment, and that there is no support one way or the other as far as I know, and I am definitely opposed to this amendment and hope you will vote it down.

The issue is very clear. The section clearly states that no one will be deprived of the right to bear arms, so I think we can eliminate that originally and without question.

The issue brought forth by the multiple sponsors of the floor amendment before you are registration and licensure. As some of the arguments, I think, have been ridiculous. For example, more people are shot by their family members is certainly true. But more people die in bed. There's no question that the irrational or vindictive person is going to use some weapon to kill another person, and if you rule out guns, they'll use brickbats and other weapons. So this is not the issue. The issue is whether we are going to help the people of the state and protect them, and I think that this amendment if adopted will do more harm to the honest law-abiding citizen than good. And I think many people have been misled by emotional arguments rather than reason. The honest people have no fear of registration or licensure. Do you question that your license on your automobile is some method of stealing your automobile from you by the legislators of this state? There's no reason to question this. But when your car is stolen, you like to know who stole it. These are the issues that are before the people of this state. Licensure is not a problem for the honest person. It's for the criminal. It's for the criminal who will get caught when he has some weapon that is not in his possession, that is not his own and in his possession.

There were instances of foreign countries brought up, for example, Greece. Well, certainly

people there are not in the position that we are in this country. Very few people have firearms. And so, it's very likely that some dictator moving this power could come into the picture and murder one out of a thousand that bear arms in that country.

But let's take Switzerland where everyone has in his home a firearm—everyone is a member of the militia. Certainly these are registered firearms and everyone has a gun in their home in Switzerland. These scare tactics that are being presented to you, I think, are irrational, illegitimate and dangerous for the law-abiding citizen. Why should we allow anarchy to rule so that the criminal can be more effective?

Mr. Burson, I believe, has a question, Mr. Chairman.

Questions

Mr. Goldman Dr. Weiss, isn't it true that if we are so scared of our legislature that we think someday they might become like those revolutionaries in Greece or in Cuba, then our constitution wouldn't be worth anything anyhow, would it?

Mr. Weiss We'd better shorten the election period if we are that frightened, to perhaps one week or one year.

Mr. Burson Dr. Weiss, do you know that under Louisiana Criminal Law that there is a presumption that property recently stolen is found in someone's possession that that person is a thief, and that a professional criminal who is in possession of stolen property has been licensed and recently stolen would be presumed to be the thief, that this would be an aid to law enforcement officials in detaining that person?

Mr. Weiss In other words, there is if a weapon is stolen... power within the police force of the state to obtain that weapon from one who stole it. Is that what I understand you to say?

Mr. Burson The law would be that if he is in possession of a weapon which has recently been stolen, that he is presumed to be the thief, and the burden is on him to disprove that presumption.

Mr. O'Neill Dr. Weiss, don't you think your argument about Switzerland is kind of moot since the incidence of crime there is absolutely zero, so it doesn't matter much, anyway?

Mr. Weiss No, I think that we have a great problem in this country and throughout the world as to how to handle criminals, just as we have mental afflictions and mental incompetents, and I don't think the answer is going to be one simple problem like Switzerland has, which is an entirely different country than the great expanse of these United States.... and, incidentally, Louisiana is perhaps three times the size of Switzerland.

Further Discussion

Mr. Roy Mr. "Bubba" Henry, Chairman, delegates to the convention, I rise in support of No. 1 of the amendment and opposed to Section 2 on Amendment No. 2, and I'll tell you why.

I've been around guns all my life. I was in the military, I was in a special forces unit, I fired all type weapons, and every time one of the Kennedy's was assassinated, I cried like a baby and wanted handgun control law. When we started on the committee, I was of the opinion that we should have the same provision in the present constitution. We heard a lot of testimony, and I then realized that mostly federal law controls in any event, and the reference to the militia was outdated and outmoded, and I thought our citizens should have a right to have weapons. I think that Mr. Avant's first amendment is an improvement to our section which is pretty restrictive with respect to what the

legislature may do in the future about guns. And for that reason, I support it, because I don't want any legislative law passed then that when folks are going hunting, that they have to open up the trunk of their car and show their shotguns or whatever they own.

and about like John Lennox and others with respect to New Orleans, that there are certain areas where we could have some type of limitation of controls. Now what Jack says is true to the extent that our present section, that is what the committee has recommended, is not too far different from the present constitutional provision that the court should not be adopting our section that we automatically vitiate everything and all jurisprudence in the past that is court interpreted law.

If we adopt Jack's second amendment, in my judgment, what Mr. Burson has pointed out would be true that all jurisprudence, all former decisions with respect to carrying certain types of weapons, would be nullified.

For that reason, I think that in the future we ought to allow the legislature in special circumstances to deal with this problem. Now let me give you one final example, and then I'm going to move the question.

Now days, we have laws and the legislature may deal with alcoholic beverages with respect to minors, may deal with driving automobiles with respect to minors and what have you. And yet, it appears to me that the legislature would not deal with a 17 year old may own, it's alright to own it, but may possess and fire while hunting, a 30/06 which bullet goes at least five miles. It just appears to me that if the legislature felt that there were certain reasons why it might be desirable to restrict minors employing weapons or using weapons for hunting or whatever have you, that as long as the law were reasonable, that it would be a valid law. But I'm afraid under Jack's amendment, it would not be. Now we just had in Alexandria a young boy, who was 17 years old, and I'm not against kids hunting; I think it's a great thing; I hunted all my life. But I just feel that we should not constitutionalize something that is as broad and all encompassing as the second amendment. I think the allusions to the ballot box and to these things that just no longer pertain. And I move the adoption of section... of Amendment No. 1 and rejection of Amendment No. 2.

Question

Mr. O'Neill Mr. Roy, do you believe that the legislature will ever move in the future to decontrol guns or to take controls off of guns or do you think they will follow their usual course and put in more controls?

Mr. Roy Well, that's speculative. They may put on more controls, but there are no real controls at this time; so I wouldn't be opposed....It would depend on what the control was. I move the previous question, Mr. Chairman.

[Previous Question ordered.]

Closing

Mr. Avritt Mr. Chairman and fellow delegates, I wouldn't have come up here to close except for one statement that was made by my very good friend, Reverend Stovall, about vested or special interests. I want to tell you something. I started working on this amendment Thursday, and until this moment not a single human being has asked me to draft it or sponsor it. I believe in it. It's the way I think...It's what I think should be done and that's why I'm here.

[Motion for the above question ordered. Amendment No. 1 ordered and tabled. Motion for the question ordered. Question ordered and tabled. Motion for the question ordered. Amendment No. 2. Amendment No. 1 ordered and tabled. 37-64. Motion for the remainder tabled.]

Personal Privilege

Mr. Winchester. Mr. Chairman and fellow delegates, as a recruited assessor, I have been aggrieved. The rumor is going around that assessors have a concealed weapon in nickel, pencil, and a dollar eraser. This is not true. I do not have a nickel pencil, but I will open, but I do wish to stand here and pay honor and tribute to the assessing profession. I also more and particular do I pay tribute to the seven New Orleans assessors. The closing date to qualify for reelection was last day of November. Fifteen assessor candidates and the other two had only taken opposition. This reminds me of an incident that happened in the parish of East Baton Rouge a number of years ago. A new assessor had been elected and appeared before our meeting and outlined the new thing that he would do. He said that he would be the first in the East Baton Rouge Parish. An assessor friend of mine sitting next to me who had been an assessor a number of years leaned over and said, "Winnie, that is a one term dreamer." He was correct. He was only in office for one term. The last time I was with him he said to your attention is that no one loves an assessor but the people. I thank you.

[Previous Question ordered on the Section.
Section passed: 100-3. Motion to recon-
sider tabled. Quorum call: 95 delegates
present and a quorum.]

Reading of the Section

Mr. Poynter "Section 21. Writ of Habeas Corpus
Section 21. The writ of habeas corpus shall
not be suspended".

Explanation

Mr. Vick: Mr. Chairman and fellow delegates, ever since the Magna Carta the right to personal liberty among English speaking peoples of this world has been guaranteed. In this country, the rights of fathers and sons, not one of the highest, but the highest safeguard of liberty was the prompt and effective remedy for testing the legality of his or her imprisonment in the United States. That writ of habeas corpus shall not be suspended unless, when in cases of rebellion or invasion, the public safety may require it. I am sure that the committee, composed by constitutional experts before the committee...

Mr. Chairman, as I was saying, the Federal Constitution says "the writ of habeas corpus shall not be suspended unless, when in cases of rebellion or invasion, the public safety may require it." This is in the Louisiana Constitution in 1845, and the States' Rights experts considered it to be unnecessary because the Federal Constitution preempts the State Constitution insofar as foreign invasion, rebellion, etc.; and further that emergencies and other times of disorders are precisely the time when the writ is most needed by the citizens. And the writ of habeas corpus does not simply suspend the writ of habeas corpus shall not be suspended," and I yield for questions.

Amendment

Mr. Poynter amendment No. 1 [by Mr. Anzelone], on page 6, at the end of line 25, add the words "and preliminary examination". Amendment No. 2, on page 6, immediately after "pending" change the period to a comma and add the following: "and in all felony cases, except those indicted by a grand jury, the right to a preliminary examination shall not be denied."

Point of Order

Mr. Kean. Question for the Chair. Is this amendment germane to the original subject?

Ruling of the Chair

[Discussion continued p. 1187]

* * *

"The Legislature may enact legislation to enable the state, its agencies, municipalities and parishes and their agencies to comply with federal laws and regulations in order to secure federal participation in the cost of capital improvement projects." Nothing in the language before you has yet been thought out as to whether or not we might not be building the instant necessity for a new constitutional amendment before the ink on this constitution is dry. Now, Mr. Chairman, I've just been digging through the books trying to find Amendment No. 1 while the Lanier proposal was being drafted, to see if the Lanier proposal contained anything in it that would cause us to have to go back and have another great falling-out about adopting Amendment No. 1. If some of the smarter researchers and lawyers in this assembly can figure out a way to do this, and until they figure out a way to say we are covered or not covered, I would ask that the Chairman of the Committee on the Bill of Rights not put the clincher motion on the Lanier language and that we not, in haste, move to reconsider and to lay that motion on the table, because I think a real and present danger lies in this language where we have not provided for those funds which come by way of federal participation. Let's don't present ourselves with such a problem the day after this constitution is adopted. Mr. Chairman, that's all I wanted to say on this section.

Further Discussion

Mr. O'Neill Mr. Chairman, ladies and gentlemen, you know how when you dream things and then you wake up and you think that what you're living is just what you've dreamed? Well, that's the exact feeling I get right now. Two weeks ago on Thursday, Mr. Tobias got up here and called it "verbal garbage," and the motions were raised. So, I feel like I'm just kind of reliving a bit of the past. Well, we passed the property article that time, and I stand to ask you to pass it again right now. There were 81 votes on the amendment which constitutes this article right now, and I think that we should give it more votes than that in final passage. Mr. Tobias' conception of private property was adequately explained to us two weeks ago today, and I think it probably hasn't changed much today. I'd like to say that this section is not what everybody would want.

Mrs. Warren Mr. O'Neill, would you speak to the question that Mr. Stagb brought up about not, you know, being able to get federal funds? Would you speak on that?

Mr. O'Neill Mrs. Warren, I'm not sure that I'm qualified to speak on that, but I think if there is a problem, then we can follow Mr. Stagb's suggestion, perhaps.

Mr. Stagb May I read to you some language from the provision that will come to us from the Committee on Revenue, Finance and Taxation, since you are concerned about this, as I am? It says, in their language which will be presented to "The legislature may enact legislation to enable the state, its agencies, boards and commissions, and the political subdivisions and their agencies to comply with federal laws and regulations in order to secure federal participation in the cost of capital improvement projects." Now, in your opinion, Mr. O'Neill, do you think that that language, if it's contained in the Revenue, Finance and Taxation Article, would cover the problem that I raised?

Mr. O'Neill Yes, sir, I do, Mr. Stagb, I really do. I think that it should be brought up when this article comes back up, at that time, the same question.

[Previous Question ordered on the Section.
Section passed: 85-22. Motion to reconsider tabled: 76-32.]

Personal Privilege

Mr. Tobias Mr. Chairman, we are going to be in this convention for three and a half more months, and we're going to have to get along for three and a half more months. We are constantly using each others' names when we speak. The proper way, the way Congress does it is refers to an individual as the Honorable Delegate from St. Martin Parish, or something to that effect -- the proper way. You don't refer to one individual by name. When you do that, it provokes hostility. I would urge us, in order that we can get along because we're going to be here and tempers are going to be short, that we adopt this policy, break the habit of referring to an individual by name up here. As far as Mr. O'Neill's statement, which I just broke my own rule, please note, the Honorable Delegate from North Baton Rouge, as far as his statement is concerned, I will not defend it again here today. I'm not going to ... I don't call names in public. I'll tell him exactly what I think of him in private.

Chairman Henry in the Chair

Amendment

Mr. Poynter You all have got a number to pick from. It's a short amendment, about six lines long. The last line of which reads: "on age, sex, or physical condition."

Amendment No. 1 [by Mr. Gravel, et al.]. On page 7, between lines 11 and 12, insert the following:

"Section 25. Freedom from Discrimination
Section 26. (Mr. Gravel, do you have any objection to changing this to a 26 to keep the records... Okay? Between lines 15 and 16, and make it Section 26. Freedom from Discrimination)
Section 26. In access to public areas, accommodations, and facilities every person shall have the right to be free from discrimination based on race, religion, or national ancestry and from arbitrary, capricious, or unreasonable discrimination based on age, sex, or physical condition."

Explanation

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, first of all, let me say that this particular amendment only has to do with the question of access to public areas, accommodations, and facilities. It does not involve anything whatsoever with respect to employment or any other practice or any other situation. It really has two parts. It says, in effect, that with respect to race, religion and national ancestry, that there shall be an absolute right, an absolute right to freedom from discrimination. With respect to age, sex, or physical condition in the other part, the amendment seeks to recognize that there can be certain areas in which reasonable classifications or distinctions might be made. This, of course, would permit such classifications and distinctions to be made by the legislature. Ladies and gentlemen, I think that this amendment is clear; it's simple. There's certainly not any question about what is proposed by the amendment, and I urge its adoption.

Questions

Mr. Chatalein Delegate Gravel, I'm having a little problem with the last part of your amendment, "or physical condition." If a paraplegic, for instance, wants to go to the theater or some cafe, they do have to provide a proper facility for this man?

Mr. Gravel Well, I think that... I don't think that would necessarily be implied here, Mr. Chatalein. I think we're talking about access and availability to public areas, accommodations and facilities, and I don't anticipate that this would be construed to mean that some special arrangements would have to be made for the purpose of taking care of everybody who might be specially circumstanced. My answer to your question then, would be no.

Mr. Chatelain Well, the word "access" and "physical condition" was the one that frightened me quite a bit.

Mr. Gravel Well, if you'll notice, the freedom from discrimination that we seek by this amendment with respect to physical conditions would be an "unreasonable, capricious, or arbitrary discrimination."

Mr. Chatelain Thank you.

Mr. Roemer Mr. Gravel, let's make this point again. The amendment to which you address your remarks presently is the one that has nothing to do with the hiring, the firing, the promotion, is that correct?

Mr. Gravel That's correct.

Mr. Roemer Only public areas in access to them.

Mr. Gravel Yes, sir.

Mr. Berry Mr. Gravel, isn't it true that what we have done here is consistent with the 1964 Civil Rights Act that's already in existence?

Mr. Gravel But I think that the concept definitely stems from the Civil Rights Act, yes, Mr. Berry.

[Previous question ordered. Record vote ordered. Amendment adopted: 79-16. Motion to reconsider tabled.]

Point of Information

Mr. Jenkins Mr. Chairman, delegates, we have an amendment that has been passed out. The author is A. Jackson on behalf of the Committee on Bill of Rights and Elections and it deals with freedom from discrimination. It's a little bit different from Mr. Gravel's amendment, but the last sentence of that proposal says "nothing herein shall be construed to impair freedom of association." I'd like to offer that last sentence on to the proposal just adopted. If I could have a suspension of the rules for that purpose.

Mr. Henry Mr. Clerk, can you doctor that thing up and make a real nice amendment for these gentlemen?

Mr. Poynter Yes, sir.

Mr. Henry Well, would you read it the way it ought to read, please, sir?

Mr. Poynter O.K.

Amendment No. 1. On page 7, line 16 add the following at the end of the language added by Floor Amendment No. 1 proposed by Mr. Gravel, et al, and adopted by the convention on today. Just simply ---"Nothing herein shall be construed to impair freedom of association."

Explanation

Mr. Jenkins Mr. Chairman, delegates, because we are talking about public accommodations, facilities and things of this nature, it could be construed that certain private organizations and places could be considered, by some stretch of the imagination and some judicial opinion, as public and certainly we don't intend for this, I don't think, to apply to any private group or association or private meeting place and I think that this language would protect us some in that regard. So I would like to move the adoption of this amendment.

Questions

Mrs. Zervigon Mr. Jenkins, as I understand it, what you are really talking about is the freedom not to associate.

Mr. Jenkins Well, obviously that is, when you talk about freedom of association you are talking about

that just as when you are talking about freedom of speech, you are talking about the freedom to speak or not to speak as well as what you say.

Mrs. Zervigon No, sir, I believe this is a different thing because I believe the word that you are now laying before the convention for their consideration would mean to me that I could knock on the door of a private club and say, "Let me in; I want to associate with those people."

Mr. Jenkins No. It's ... freedom of association is not just the right to associate with a given person it's his right not to associate with him. If someone forces you to associate with him, then it's abridging your freedom of association.

Mrs. Zervigon Where is that defined, that the freedom of association really means the freedom not to associate?

Mr. Jenkins Well, I think you just have to understand the meaning of words. I think that's a clear meaning of that expression. Let me also state that that sentence was in the original committee proposal, and so we are just attempting to carry it over into this session.

Mrs. Zervigon Thank you.

Mr. Stovall Mr. Jenkins, you are an attorney, aren't you?

Mr. Jenkins No, I'm not. I have a law degree, but I am not an attorney.

Mr. Stovall Not an attorney. I'd like to ask you where in Mr. Gravel's proposal is there the possibility that it might be implied that you would be compelled to associate with anyone whom you might not choose to associate with?

Mr. Jenkins Well, the nature of the proposal as adopted is rather vague when you talk about what is discrimination, what is a public place, what is a public accommodation, what is unreasonable discrimination? These are all questions that I don't think any of us know right now and the courts are going to have to decide. I simply want to make sure that the courts don't go too far and interpret that certain truly private places are in fact public.

Mr. Roemer It is not unusual, Mr. Jenkins, that I am confused. I want you to know, or do you know that I am confused? You know that?

Mr. Jenkins I'm not surprised.

Mr. Roemer O.K. me either. Now, what confuses me is that you have tacked the line onto the amendment that we just passed, correct?

Mr. Jenkins I'm trying to.

Mr. Roemer O.K. The amendment that we just passed says "in access to public areas, accommodations and facilities." Now, what does your amendment do to that?

Mr. Jenkins Well, the question arises as to what a public accommodation is. For example, is a barroom a public accommodation? Possibly it is, possible it isn't. What if it is a private barroom, a private club; is that a public area? It...you come into some real touchy questions as for instance, whether...do you need a membership card or don't you for it to be a private club...

Mr. Roemer So be it.

Mr. Jenkins ...or is a country club a private place? Obviously, there are some private places and we want to be able to at least allow the court to make that distinction.

Mr. Roemer I understand your problem, Mr. Jenkins,

46th Days Proceedings—September 13, 1973

but I asked you does your amendment correct that problem? Does it define what a public place is, your amendment?

Mr. Jenkins No, it doesn't.

Mr. Roemer Thank you.

Mr. Fulco Woody, I'm a little bit frustrated myself. Do we have to have it in the constitution that I have to have freedom of association?

Mr. Jenkins No.

Mr. Fulco Do I have to have constitutional guarantees?

Mr. Jenkins No. We don't have to have this section in the constitution, Delegate Fulco.

Mr. Fulco I know, but ...

Mr. Jenkins But if we are going to have this section, I certainly think that we need this sentence in it to give us some protection with regard to this section.

Mr. Fulco I know, but what is it that prohibits us from association today? Why is it necessary?

Mr. Jenkins If you talk about access to public accommodations not being denied anyone, you have a problem with regard to private associations and private places and whether or not people who own those private places or have those private associations can continue to associate freely or whether they are going to be forced to associate with people they don't want to.

Mr. Fulco Well, Woody, am I going to be arrested for associating with some other person in these public places if I am not guaranteed that right in the constitution?

Mr. Jenkins No, but you might be denied, for instance, if you are denied the right to continue and maintain the integrity of your group and we want to make sure that that's not continued. This is not a new thing that is just being brought forward right now; it's from the original committee proposal, Section 7, been in there from the very beginning.

Further Discussion

Mr. Denny I am forced to speak against this particular amendment being placed in this particular place. The reason I raised the question originally as to whether or not it was germane to the subject matter and the question I wanted to ask Mr. Jenkins: as I understand it now, a private organization can rent a public location and once the public area has been rented by this private association it could then exclude these public areas, accommodations and facilities based on discrimination, on race, religion, national ancestry and so forth. Now, I don't believe that is what Mr. Gravel and Mr. Berry had in mind when they offered the original Section 26, but I believe that by some leisure domain, by putting this last sentence on as the tag into this, you might be destroying the very provision that was adopted by this convention. For that reason I ask you to vote against the amendment in this location. I would have no objection and I would support the amendment as a separate section, but in this section, it seems to me it just removes all the teeth from the section.

Further Discussion

Mr. Gravel I want to just extend a little bit the remarks that were made by Mr. Denny in opposition to this particular amendment. For all practical purposes, if we are going to adopt... maintain the amendment and the intent of the amendment that was passed, we cannot let the amendment by Mr. Jenkins destroy what was just done. Might just as well not

have anything. I join with Mr. Denny in saying that I would support a spelled out freedom of association provision in some other part of the Bill of Rights before we conclude it. But, if you are going to put this delimiting type language on this particular specific provision that, very frankly, I thought represented a reasonably good compromise among the divergent views that had been expressed heretofore, if you are going to adopt this amendment, however, then we might just as well recognize the fact that we are going to have to start all over and begin again and not conclude that we have reached a middle ground that most of the delegates could agree upon. I strongly urge that you don't continue to leave this section open for a great deal more discussion, debate amendments and so forth, but rather that we close it out on the basis of the amendment that you previously adopted, that we defeat the Jenkins' amendment, and then if he wants to propose that as in a separate section before we conclude the Bill of Rights, I can assure him that any reasonable proposal along that line, I would support it with him. I urge you to adopt... I urge you reject the Jenkins' amendment.

Questions

Mr. Stinson Mr. Gravel, I didn't think that Mr. Jenkins' amendment was very important, but from what you say, if it ruins what you have already done to the people, would you please answer two questions? First, what have you already done to the people and how would this ruin what you have already done to us?

Mr. Gravel I haven't done anything to the people. We have adopted by a rather bland but substantial vote a provision that says that "in access to public areas and accommodations, there shall be no discrimination." Now, I don't think that there should be built into that concept a freedom from association belief that may militate against the thrust of the amendment. Nobody, you don't know nor does Mr. Jenkins know exactly how the courts are going to construe that particular... this particular provision with that amendment attached to it and I think that if... we run the danger of having a confusing provision...

Mr. Stinson Well, Mr. Gravel...

Mr. Gravel ...if we had a clear one.

Mr. Stinson ...now you... I'm sure belong to the Knights of Columbus and you have a tax-exempt building and so forth.

Mr. Gravel Have a tax-exempt what?

Mr. Stinson ...building that you meet in and I go up there and knock on the door and say, "Listen, I belong to the Methodist Men's Club and you are in a tax-exemption building here and I want to come in and join and meet with the Knights of Columbus" --you wouldn't let me in though... don't you think you should be able to keep any Methodist out? That's what this does.

Mr. Gravel Well, I don't agree with you, that that's what it does because I don't think that the meeting place that you refer to is a public accommodation or a public facility. I don't think that we are talking about the same thing and that's precisely the problem. I think that...

Mr. Burson Mr. Gravel, am I correct in my memory that the United States Supreme Court only last year, I believe, ruled unequivocally that private clubs and associations were not public accommodations?

Mr. Gravel They did in the Moose Lodge case.

[Previous Question ordered. Record vote ordered. Amendment reworded: 50-40. Motion to reconsider failed. Previous Question ordered on the Section. See-

Amendment

Mr. Poynter Amendments sent up by Delegates Warren and Jack.

Amendment No. 1. On page 7, between lines 3 and 4, insert the following:

"Section 22.1. Right to Compensation
Section 22.1. The legislature shall provide for adequate compensation for persons convicted and imprisoned for crimes which they are proven subsequently not to have committed, provided the person did not by perjury contribute to his own conviction."

Explanation

Mrs. Warren I think that this amendment is almost self-explanatory, but some of the delegates want to add a method following the word "provides." I don't think it is really necessary, but I don't object. The important thing is that no innocent person should be imprisoned and not receive compensation for time spent in prison. Often people go to prison in the prime of their life and come out old and tired and not able to make a living for themselves and their family. What about the suffering of their families while they are imprisoned? They have no relief and they run from one lawyer to another trying to prove the innocence of the person. You can't know how a tight shoe feels unless you have to wear one; then you know how the pain feels. Death is a sad vehicle. Death is an everyday occurrence, but it has a terrible sting, yet in most cases one never gives much thought until it reaches into their immediate family and snatches one close and dear to us. Let us, as hard as it might seem, to try to imagine we are the victims of the circumstances. How did you feel when you were accused of something that you did not do? How would you want to be treated under the same circumstances? I want you to ask yourself that question. How would you feel and how did you feel when you were small if your parents accused you of something that you know you didn't do? Would you want them to do something about it and do nothing about it? Mr. Fontenot raised the question when I was up here once before and he said the person who has somebody lying dead in the street does not get any compensation. I wanted to answer Mr. Fontenot's question, but the point is this. The person lying in the street, the state did not kill them, for the state owes them nothing, and in the next thing persons who are killed,--- your family people are killed and laying in the street,---a person that serves time does not give anything to you; it only punishes that person for the wrongdoing that it has done. I say to you that try to look in your heart and think about this person who has innocently gone to jail and served time in prisons for something that they did not do and see if you don't want to do something about it. I mentioned to a person here concerning if a teacher has been taken off of her job, accused of something that she didn't do or he did not do, and then they are found that these teachers are innocent, they get paid retroactive. What is wrong with an innocent person being paid some compensation for the time that they have spent? Thank you very much.

Questions

Mr. Fontenot Mrs. Warren, again I am going to ask you: Don't you think this could probably be taken care of in the legislature without a constitutional section?

Mrs. Warren I don't think so, Mr. Fontenot; if I did, I wouldn't still be coming back up here taking the convention's time.

Mr. Fontenot Secondly, do you have statistics to show how many persons have been imprisoned, convicted and imprisoned for crimes when they were proven subsequently not...I mean how many actually...

Mrs. Warren No, Mr. Fontenot, I don't have....

Mr. Fontenot You don't have any statistics at all.

Mrs. Warren ... I gave you a picture of one and I don't have any statistics, but I am sure you could find them. But if it's just one person, I think they deserve some compensation.

Mr. Fontenot You think ... I mean this one person ought to have this constitutional right, but all these other persons don't need constitutional rights?

Mrs. Warren Under these circumstances, I do.

Mrs. Stinson Mrs. Warren, I am concerned about the last part that says "provided the person did not by perjury contribute to his own conviction." Now, what is meant by that?

Mrs. Warren I think if they have contributed to their own, they just told a lie and they are guilty.

Mr. Stinson In other...

Mrs. Warren I mean they could come back. I really don't want to go into hang-up there. This was added; I've tried to get it down to the point where it would be acceptable to most of the people of the convention.

Mr. Stinson Well, does that mean then that if a person pleads guilty and later...had found out that he really wasn't guilty, he wouldn't recover if he had lied and said he was guilty? Is that right?

Mrs. Warren I don't think so, I'll yield to Mr. Jack though.

Mr. Stinson Well, you think Mr. Jack would tell the truth on that?

Mrs. Warren I believe he would.

Further Discussion

Mr. Jack Mr. Chairman, and ladies and gentlemen, I am a coauthor of this amendment. Mrs. Warren has had this up several times, asked people for help, has a good idea. I've helped here to draft this and a number of others. Now, you are going to get an amendment that should have been passed out, will be passed out by Senator Rayburn, which is going along with this. Now, the way...his will simply add the words "a method" at the end of the first paragraph. Now, here's the way it will read: if you will look at the Warren---it's labeled Warren and Jack Floor Amendment with the words "a method" here's the way it will read: "The legislature shall provide a method for adequate compensation for persons convicted and imprisoned for crimes which they are proven subsequently not to have committed provided the person did not by perjury contribute to his own conviction." The way adding this section originally was I wouldn't have supported it, but I am glad to support righting a wrong by adequate compensation where an innocent person was convicted, went to prison and he did not add and aid in his conviction by committing perjury. This is done in lots of states, but the legislature shall provide the method for making this. Now, as to how you go about proving his innocence, many times it proves itself; the legislature will set it up. Many times a person has served time in prison, allegedly having killed another person, and the person has been proven to be alive by coming forward. Many other persons confessed, but the legislature will be the ones to decide what type of proof is necessary to show that the person was innocent who was convicted and sentenced. Now, I would not support such legislation unless it had that provision that the person that was convicted was innocent, he must not have committed perjury. Now, where you have these people at times that are charged with a crime---*

47th Days Proceedings—September 14, 1973

what will happen; well, there will be one bill that will be introduced in the next session of the legislature exempting all the things presently exempted from trial by jury but preserving the basic right so this won't cause any problems at all, will it?

Mr. Guarisco Certainly not, in the present one, anyway, the jurisdictional amount is a thousand dollars and the legislature can pass all its exemptions in a transition from the new constitution. That shouldn't be any problem at all.

[Amendment rejected: 22-93. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1, page 7, between lines 11 and 12, insert the following
"Section 25. Right to Preliminary Examination
Section 25. In all felony cases except those indicted by a grand jury, the right to a preliminary examination shall not be denied."

Explanation

Mr. Planchard I haven't....after that last vote. However, I think this is worthy of your consideration and I want to explain it to you.

What this does now, it changes the present status of the preliminary examination. Presently, a defendant or an accused has a right to a preliminary examination, but it's discretionary with the court whether or not it will be granted. You have to make application for it and it's within the discretion of the court.

What this amendment does is it makes a preliminary examination a matter of right for the accused. Of course the amendment as you have noticed, says "in all felony cases except those indicted by grand jury." Of course we have provided for the grand jury now to....that the accused can go before the grand jury and he can have his counsel in the grand jury with him. This is a preliminary examination and that's why it's excluded. However, for the other felony cases, a person should have that same right to a preliminary examination.

I was just handed a note asking me to explain what a preliminary examination is.

A preliminary examination is exactly what it is. You have a right to ask the court to grant an examination. You have a right to call the witnesses against you, and you have a right to do this in the court. The accused as they say, presently has a right to ask for it, but it is not an absolute right. The court could grant it for information or they can refuse it.

Now, I'm asking you, is it fair to have a preliminary examination in felony cases where a grand jury decides it and not when the individual is not accused by a grand jury?

I know that there will be objection because they'll say it will increase the number of cases in the preliminary examinations, that would be a burden upon the courts. That's a lot of poppycock. Sure there'll be more preliminary examinations. But a person accused should have that right to an examination. I think if the D.A.'s would be much more careful before they took a person to trial....if in the preliminary examination they find that his evidence is not as strong as he thought it was.

Questions

Mr. Kean A.J., I'm a little puzzled by the exception that you make with respect to a grand jury indictment, and as I understood your explanation, you indicated that you made this exception because the accused had a right to be in the grand jury room, etc., with counsel and that was in the nature of a preliminary examination.

But suppose you have an accused that is never brought into the grand jury? Suppose he is indicted without being in the grand jury?

Mr. Planchard Well, that is why I want the abso-

lute right for a preliminary examination in all felony cases, except that. I feel that if he has this right in the constitution, it raises it to the same status as the accused where the grand jury has indicted. You see what....

Mr. Kean In other words, the other section we adopted provides that if you are indicted by the grand jury, you have a right to preliminary examination?

Mr. Planchard Well, in essence that's what you have because the accused is brought before a grand jury. The evidence is presented to the grand jury. They are to make a determination whether or not the accused....there should be a true bill or not true bill.

Mr. Kean My point is, and there have been instances that I'm aware of where a person has been indicted by the grand jury who never got within two miles of the courthouse. Would he be denied under those circumstances a right to a preliminary examination?

Mr. Planchard It was not my interpretation, no. You're speaking of the exception....that we put in, "except those indicted by a grand jury." I appreciate your thinking on it. However, I still, with the exception....excepting the indictment by the grand jury that we have already taken care of it in another section of the Bill of Rights, and I don't think this is in conflict with that.

Mr. Munson Mr. Planchard, as you know, I'm not a lawyer. I believe you have cited that an individual, or the accused should have the right to a preliminary examination....that, in other words, that he should have that right indicating that it would be to his advantage to have a preliminary examination. Am I right?

Mr. Planchard I feel very definitely.

Mr. Munson Well, on the other side of the coin, a preliminary examination gives what advantage to the state, if any.

Mr. Planchard It gives this advantage. Just as the grand jury gives an advantage to stopping the proceedings at that point. If there is not enough evidence to convict a person, then he would not be brought to trial. It would end at that point. In that respect, it is helping the state.

Mr. Munson Well, wouldn't it also help the state that they would give some additional information that they wouldn't gain without a preliminary examination?

Mr. Planchard Ah....ask me that again, Mr. Munson. I'm sorry....

Mr. Munson I really don't know if I'm asking this right or not. I'm trying to find out if a preliminary....you have said that it would be to the advantage of the accused or the individual to have a preliminary examination. He should have that right. All right. That's in his favor. What I want to know, the other side of the scale. What advantage does the state gain against the accused by having a preliminary examination?

Mr. Planchard In that respect, they may not find out any more evidence, if that's what you are getting to. However,....however, in this instance, the accused is never made to testify against himself so you couldn't actually make him do so. But, as I stated before, the advantage on the other side of this coin is, if you can stop a proceedings before it gets started, there's really no merit to the charge because a person could be accused, say, of a theft, which they take it on an affidavit and the district attorney may take it all the way to trial before he really has all the evidence. And if, if he can determine before that time, then

it will be a savings financially to the state.

[Motion to withdraw amendment.]

Explanation

Mr. Munson Well, I know that in speaking of justice, we shouldn't always be considered also.... considering also, maybe, too much the cost if it gives justice. I believe you said that there would certainly be more preliminary examination. Would you, in your opinion, even though there would be more preliminary examinations, would you think there would be less trials and less cost as a result?

Mr. Planchard That would be pure conjecture on my part, Mr. Munson, and I wouldn't venture to say

Any further questions?

Mr. Abraham As I understand the preliminary examination, A.J., the prosecuting attorney and the defense attorney would be there in front of a judge and would be able to question witnesses or the accused?

Is that correct?

Mr. Planchard Just the accused....I mean just the witnesses against the accused....not force the accused to testify.

Mr. Abraham All right, then, who would then make the determination as to whether or not there is a case and it should go to court, trial or not? Would they just mutually agree on it, or would the judge make a determination or what?

Mr. Planchard I think that's up to the judge in this particular instance.

Mr. Abraham You mean the judge, whether he either says "Yes, tell the district attorney either to go ahead and prosecute" or he'd say, "No, you don't have a case. Don't prosecute."

Mr. Planchard That's right.

Mr. Gravel Mr. Planchard, I notice that this section does not provide for the right to a preliminary examination before grand jury indictment in a capital case. In other words, it would occur to me that it would be necessary to make this proposal as embrassive as it should be made, that we should insert in there the words, "capital and" before the word "felony" so as to make the first five....six words read "in all capital and felony cases." Would you have any objection to that particular amendment?

Mr. Planchard I think if I read you the definition of a felony, I think that would take care of the problem.

Mr. Gravel Read it to me.

Mr. Planchard "A felony is any crime for which an offender may be sentenced to death or imprisonment at hard labor."

Doesn't that take care of your question?

Mr. Gravel I was under the impression that it did not have the death sentence. You are correct. Thank you very much.

Mr. Stinson Mr. Planchard, I'm in favor of your amendment...section. But, I was wondering, some question was brought out about the person who did not appear before the grand jury, and your amendment presupposes that he has been there. After the jury there, if you would insert "after having personally appeared before such grand jury." Don't you think maybe that would help your amendment?

After "grand jury" insert, "after having personally appeared before such grand jury."

Mr. Planchard That may clarify, I think, Mr. Kean had that same....But I have no objection to amending it to....

Mr. Planchard Mr. Chairman, the amendment....or the purpose of the withdrawal, is to try to clarify the amendment and what we want it to do. In the attempt to clarify it, we have included the words after "except those indicted by a grand jury" have a comma after "having personally appeared before a grand jury, the right to a preliminary examination shall not be denied." I think that's acceptable to anybody and personally, I would like to be able to withdraw it, but it's not so there is no question about it because I think it is a very important amendment that has to be put into this constitution.

Further Discussion

Mr. Roy Mr. Chairman and ladies and gentlemen of the convention, let me explain what the purpose of a preliminary examination is for and then tell you why I'm for not removing this amendment at this time, and I think we ought to pass it....because as much as I'd like to go along with Mr. Kean because I think it may give even greater rights to an accused, and I know you all say well how in the world can Chris Roy say something different?...I do think that it destroys the real purpose of a preliminary examination.

The preliminary examination is a right that a person has under the present Louisiana law to have a judge decide whether there is sufficient evidence upon which he may be held at that time. Now, as it now exists, if you have absolute right to ask for it and get it, but in Louisiana you remember, except for those crimes which we....which are punishable by death, a district attorney may bill you on his own Bill of Information. So the way it works now is if a defendant, an accused, rather, is being held in jail with no charge against him yet, and he asks for a preliminary examination. He goes to court. The morning of the preliminary examination, the district attorney on his own motion then files a Bill of Information charging him with theft, let's say. At that time, the judge is no longer entitled to preliminary examination to determine whether he should be held on any charge....that is whether there is any probable cause for holding him because in Louisiana the district attorney may charge. Therefore, the judge may terminate the whole hearing, and the only issue he may consider if he wants to, is the amount of bail or bond.

Now, the U. S. Fifth Circuit just recently in Pugh versus Rainwater, a case that just came out last week, has held that Florida, which has a similar provision, whereby a district attorney may charge by a Bill of Information, that that is unconstitutional if a district attorney is allowed to obviate or to preclude the preliminary examination merely by filing a charge because a court reasons....I think that's right that it's not right to have the person who thinks you're guilty of something decide whether there's probable grounds for holding you, namely, the district attorney. So the Fifth Circuit has said, "No more, Florida, you can't do that." It's a right to a preliminary examination is a paramount right and you may not obviate it or do away with it and negate it by the D.A. simply billing you. Now, Mr. Burson, an eminently right in this amendment because it says, "unless you have been indicted by a grand jury in all felony cases, you will be entitled to a preliminary examination no matter what the district attorney does."

Mr. Henry Mr. Roy, the gentlemen has decided not to withdraw the amendment if you'll.... O. O. K.... He's decided not to withdraw them so you all are on the same side.

Mr. Roy Well, I figured that, but anyway, I'm talking for the amendment now. The reason that it should be as it is in this present amendment and

contrary to what Mr. Kean thinks, is because I believe, and we have to argue rationally, that if a grand jury indicts you, then obviously there's probable cause for your being charged irrespective of it you appeared before the grand jury or not. It's that simple. I have to give a lot of weight to a grand jury indictment. So, once you've been indicted, whether you appeared or not, it should be enough grounds for holding you and for not giving you the right to the preliminary examination which is aimed only at whether, in fact, you should be held for a particular crime. I would.... I think, Mr. Kean, he may disagree with me; he may say that you know, you haven't appeared before the grand jury and that way you shouldn't be entitled.... you should still be entitled to a preliminary examination.... To be logical, to follow what I think is good law, I think the amendment is good and should not be amended as Mr. Kean would do so, although I think it makes it better for any accused because he would have two shots at it, so to speak, a grand jury would indict him and then nevertheless he could come back if he didn't appear before the grand jury and still make the district attorney go before the judge and prove probable cause for holding him and I think the grand jury....

Mr. Henry You've exceeded your time, Mr. Roy. Now Mr. Planchard has withdrawn his motion to withdraw the amendments. So, we are still on the discussion, then, of the amendments.

Further Discussion

Mr. Burson Mr. Chairman, ladies and gentlemen of the convention, although we have been typecast by the roles we have played in this convention, I want to make it plain that in speaking of this amendment, I am not in any way speaking for the District Attorneys' Association, and in fact, I have at this moment personal knowledge that there are district attorneys in the state who are opposed to this amendment. But I join with Mr. Anzalone in here because I understand the purpose of his amendment to be this limited purpose. Under the present Code of Criminal Procedure before the finding of an indictment or the filing of a Bill of Information, you have an absolute right to request a preliminary examination to see if there is probable cause for holding you on a criminal charge. After the finding of an indictment or the filing of an information, Article 292 of the Louisiana Code of Criminal Procedure says that, "An order for a preliminary examination in felony cases may be granted by the court at any time either on its own motion or on request of the state or of the defendant." The intent of this amendment is not designed, and I want to make the record clear on that point, to add to or subtract from the right to a preliminary examination in any case but one, and that would be the case where the district attorney has elected to go by route of filing a Bill of Information. Under the present law the granting or denial of a preliminary examination would in that limited instance, be determined by the judge at his own discretion. This amendment, the purpose that Mr. Anzalone told me he had by putting it in was that if a defendant requested the preliminary examination in this narrow instance where he'd been charged by a Bill of Information, that he would have the right to have that preliminary examination. To get away from the argument here that only the district attorney has reviewed the evidence, and no third party such as a grand jury has reviewed it, you would have in this case to present sufficient evidence to satisfy the judge that you had a basis for holding the case over, and this is the limited basis that I understood Mr. Anzalone had in mind when he put this amendment in. I could not in any manner be for expanding it any further. On the other hand, in the case that Mr. Gravel pointed out where you have a capital crime involved, you would have the right that he referred to under the present law, and I'm not... it is certainly not the intent of the framer of this amendment to restrict

any rights that you have under the present law. It is only to expand the right of the defendant in the limited instance where he is charged by means of a Bill of Information. I'll answer any questions.

Questions

Mr. Lanier Mr. Burson, I believe you cited the provision about preliminary examination in the Code of Criminal Procedure?

Mr. Burson Yes, sir.

Mr. Lanier Isn't that a statute?

Mr. Burson Yes, sir.

Mr. Lanier Isn't this provided for by statute under our present law?

Mr. Burson Yes, sir.

Mr. Lanier Do you know of the constitution of any state that has a provision like this in it?

Mr. Burson No, I haven't researched the point, Mr. Lanier.

Mr. Lanier Now, let me ask you this: if the judge rules in a preliminary examination that there is no probable cause, that doesn't terminate the prosecution, does it?

Mr. Burson I don't think that's the effect under the present law.

Mr. Lanier As a matter of fact the D.A. could still proceed with the case even though the judge ruled that there was not probable cause, isn't that true?

Mr. Burson You don't have a final determination in the preliminary examination in the sense of a jury final determination of the charge, but I think certainly he could hold that the state has not presented enough evidence to hold the defendant over.

Mr. Lanier Well, let me ask you this: the way this thing is written you would have the preliminary examination whether he's in confinement or not though; he could be walking the street, couldn't you?

Mr. Burson That is correct.

Mr. Lanier ...And have a preliminary examination?

Mr. Burson That's correct.

Mr. Lanier Wouldn't it be true in that circumstance that all the judge could do would be to release him from bail?

Mr. Burson Frankly, I can't at the moment think of any other reason for requesting the preliminary examination in that instance.

Mr. Lanier Well, let me suggest one other reason, Mr. Burson. Couldn't a defendant then subpoena all of the state's witnesses and put them on the witness stand and get all of their evidence from them?

Mr. Burson Well, of course, that's presuming he knew who the state's witnesses were beforehand.

Mr. Burns Mr. Burson, there seems to be some uncertainty between lawyers here in discussion of this. In other words, a person or a defendant under this amendment wouldn't have the right to an investigation by the grand jury, and then if he were indicted, come back and have the further right of a preliminary examination?

Mr. Burson No, sir. That was not the intent that Mr. Anzalone had. This was limited to the instances

47th Days Proceedings—September 14, 1973

where you file the charge by a Bill of Information. It does not in any manner involve grand jury indictment.

Mr. Duval Mr. Burson, Mr. Lanier asked you about any other state constitutions. Did you know that the constitution of Illinois, one of the more enlightened and progressive constitutions of the United States, provides that no person shall be held to answer for a crime punishable by death or imprisonment in the penitentiary unless either the initial charges have been brought by indictment of a grand jury or the person has been given a prompt, preliminary hearing to establish probable cause? Did you know that's in the Illinois constitution?

Mr. Burson I didn't know that, but I'm glad you brought it to my attention.

Further Discussion

Mr. Newton Mr. Chairman, fellow delegates, I rise in support of the amendment. I really got kind of stirred up a minute ago when the amendment was sought to be withdrawn to make some changes in it because I felt there was maybe some confusion as to what the purpose of the preliminary hearing was for. As I appreciate it, the purpose of the preliminary hearing where there has not been an indictment is to provide for a judicial review of the finding of the district attorney. In other words, where there's been a grand jury indictment, the facts have been reviewed by twelve men of the grand jury, and so there should be more of a presumption of guilt there, and I don't really want to say that "presumption of guilt" but it's to be given greater weight. Where the district attorney files a Bill of Information, he does this on his own, of course, with whatever evidence he has, and the only reason for having this preliminary hearing is to have somebody else pass on the facts as found by the district attorney as opposed to the facts as found by the grand jury. I think that it's wise to have two bites at the apple so to speak. The district attorney of course first decides to take his case to the grand jury, and they pass on the facts or else he decides to bill himself, and then the judge can pass on the facts, and I urge you to accept this amendment.

Question

Mr. Kean Mr. Newton, as I appreciate this amendment, all that the district attorney would have to do to avoid a preliminary examination would be to take the matter to the grand jury and get an indictment, wouldn't it?

Mr. Newton That's absolutely right. Of course, under the present law, all he's got to do is file a Bill of Information. I think this does make a little difference.

Further Discussion

Mr. Gravel Mr. Chairman, ladies and gentlemen of the Convention, I join with the authors of this amendment in support of it, and primarily because I think as many of us agreed that this does help to close some of the gap between the prosecution and the person who is charged with an offense. What this amendment will do, would be to say in effect that the district attorneys who filed Bills of Information without, as Mr. Kean suggested, taking the cases before the grand jury where a hearing is conducted, that in cases where the Bill of Information is employed or in cases where an affidavit has been filed and a person has been arrested simply on the basis of that affidavit, that that person has the right to go into court and to have the judge determine whether or not probable cause exists for the holding of that person on the crime charged. Now, it's very important in view of what we have already done here to have this particular provision because we have given the authority to the district attorneys to file Bills of

Information in every single case except capital cases. Now this provision is a restraint and a modification on those district attorneys who abuse the privilege that is accorded to them in the handling of the affairs of their office, and I submit to you that this is the only kind of an approach that we can now adopt to accord to a person charged with an offense some level of fairness. If you don't give this right, the right to a preliminary examination, then there is nothing standing between a district attorney disposed to do so from filing charges without any basis therefore against his political enemies or against people that he doesn't like, or in emotional cases in situations where he doesn't have any evidence to justify the charge. All that this amendment does, and keep in mind that it is authored by, authored by Mr. Burson, and I don't know whether Mr. Planchard is an assistant district attorney or not, but it is supported I think in the main by people who are on both sides of the fence in the prosecution and defense of criminal cases. It's a fair proposal; it's one that this convention should adopt, and it does restore, I think, some balance to some of the provisions that have been heretofore adopted by the delegates to this convention, and I urge the adoption of the amendment.

[18 cowriters added to the amendment. Previous question ordered. Amendments adopted: 96-18. Motion to reconsider tabled. Previous question asked in the 200th session. Session passed: 100-11. Motion to reconsider tabled.]

Amendments

Mr. Poynter Delegates Pugh and Gravel send up amendments as follows:

Amendment No. 1, on page 7, line 16, add the following: (It reads "Section 26;" you'll have to make it "28.")

"Section 28. Trial by Jury in Civil Cases
Section 28. The trial by jury shall not be abridged in civil cases; however, except in those instances where the right to trial by jury is guaranteed by this constitution, the legislature may provide for exceptions to this right of trial by jury."

Amendment No. 2, on page 7, at the end of line 16, add the following: (Personally, Mr. Pugh, I'd rather see that read, "On page 7, at the end of the language added by Amendment No. 1, add the following: 'Determination of the facts by an administrative body shall be subject to review as provided by law.'")

Point of Order

Mr. Pugh Mr. Chairman, fellow delegates, I would propose that these two are severable. May I have a ruling from the Chairman whether or not they are severable.

Ruling of the Chair

Mr. Henry Yes, they are, Mr. Pugh.

Explanation

Mr. Pugh Thank you, gentlemen and ladies. I noted as Mr. Goldman submitted his amendment which you will recall I was opposed to for the reasons then indicated, that is one, that that would have allowed civil juries in every case and also the two-thirds requirement. At that time, I was alarmed to find out however that there was nothing anywhere in the constitution as we have it today on jury trials. In that connection, this is nothing that's been presented to you before; it doesn't call for appellate review of facts; it's not rehearsing. Section 8, all it is in the first amendment is exactly what the law is today, no more, no less. I think it is appropriate that we have some provision in the constitution relative to civil juries. I

47th Days Proceedings—September 14, 1973

Mr. Henry Mr. Jack, our rules provide that the Chairman may call for a sense of the convention. Now I'm not going to stand up here personally and rule an amendment out of order unless I'm absolutely certain, as I was on the amendment that we had here a while ago, that we had considered one of the identical wording of that on yesterday, don't you see? I'm not going to say that this amendment has or has not been considered because I don't know, in my own mind that it has or that it has not. We'll let the delegates determine, and that's a fair ruling under the rules.

Mr. Jack Well, let me ask you this. I'm looking at all of them, and I don't see "felonies" but in this one. Can I be heard and read it?

Mr. Henry He's already read the amendment and we'll read it again, sir.

Mr. Jack Well, alright, the others don't have "felonies" in it. Can he read them so they can understand? I don't want this group voting on something they don't understand.

Motion

Mr. Velazquez Mr. Chairman, in the...in trying to save some time and to try to get this issue really before the people, I've had a talk with Representative Alphonse Jackson, the Chairman of the Committee on the Bill of Rights, and he has told....given me his solemn word that he will introduce legislation to this effect in the next session of the Louisiana Legislature and bring this thing before all the people and before all the elected representatives of the people. And in light of that commitment from Representative Jackson, I request permission to withdrawn my amendment.

[Amendment withdrawn.]

Mr. Poynter Mr. Chairman, the next set of amendments would affect an amendment to Section 12 which has heretofore, of course, been adopted. A motion to reconsider has been tabled. Therefore, its consideration would have to be preceded by another motion.

Motion

Mr. Kilbourne Mr. Chairman, I move to suspend the rules for the purpose of removing Section 12 from the table and to reconsider Section 12, specifically for the purpose of removing the first sentence as set forth in the amendment.

Mr. Henry The gentlemen now move for suspension of the rules for the purpose of reconsidering the vote or calling from the table the motion to reconsider on Section 12. The motion is not debatable.

Mr. Casey

Point of Information

Mr. Casey Could the Clerk read the sentence that the suspension of the rules is directed at so we'll know what we're removing?

Mr. Henry I think your point is well taken.

Amendment

Mr. Poynter Mr. Casey, the amendment that would be proposed at this time, of course it would be open to any amendments, but Mr. Kilbourne presently does have an amendment, the effect of which would be to delete the previously adopted Derbes' amendment which was adopted on September 12. That amendment by Delegate Derbes took out of the committee proposal the first sentence of Section 12 as you have it before you.

On page 4, lines 12 through 14, the sentence at that time in the proposal read, "When a person has a right to be detained, he shall immediately be advised of his legal rights and the reasons for

it. Defendant's.

The Derbes' amendment adopted on September 2 deleted that sentence and inserted the following: "When any person has been arrested or detained in connection with the investigation or commission of any offense, he shall be advised fully of the reason for his arrest or detention, his right to remain silent, his right against self-incrimination, his right to the assistance of counsel, and to court-appointed counsel if indigent."

Point of Information

Mr. Rayburn Mr. Chairman, I merely wanted to know why Mr. Kilbourne wanted to suspend the rules to reconsider this particular provision.

Mr. Henry The Clerk was just reading....there is some language that was deleted. I think that he wants....

Mr. Rayburn He read the Derbes' language, but I wonder why....Mr. Kilbourne....what language he has? I would like to know that, Mr. Chairman.

Mr. Henry All right. Read it again, Mr. Clerk.

Mr. Poynter Mr. Rayburn, the effect of that amendment would be to wipe out the Derbes' amendment, as I appreciate it, and to restore the Section 12 as it was originally drafted before you, sir.

Isn't that correct, Mr. Kilbourne?

Or just to delete it, period, and leave the first sentence out altogether.

That's what you want to do? All right.

He wants to wipe out the Derbes' amendment and leave as deleted, the first sentence.

Point of Order

Mr. Avant Point of order.

As I understand the rules, if we suspend the rules with respect to this particular amendment, then the door is open for any and all other amendments to that particular section that anyone may choose to offer.

[Convention refused to suspend the rules to reconsider amendment 12: 44-44.]

[Previous Question: 12-12.]

Closing

Mr. A. Jackson To be very brief, I simply want to express the appreciation of the Committee on Bill of Rights and Elections for all of the work done by the members of this convention in making the Declaration of Rights Article a good article that I believe will redound to the benefit of all Louisianians. I know that it's been tough and hard. We expected this because we were dealing with some of the real gut issues affecting the rights of individuals. For the last half day, you have been considering amendments that were not authored by this committee. But, we thought that in the interest of everyone receiving full attention to their concerns, that we would not raise objections. We simply wanted to say to you that we appreciate the hard work done by members of this convention in making the Declaration of Rights Article an article that we think will extend freedom and will provide a glowing edge of dignity and freedom for all Louisianians. I urge the adoption of this Rights Article for the people of this state.

[Proposal passed: 88-28.]

Personal Privilege

Mr. Rayburn Mr. Chairman and fellow delegates, I would like to suggest that we ask someone in authority to try to schedule some time for committee meetings. Revenue, Finance and Taxation has met consistently for the past several months. To *

39. Section passed: /4-36. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter "Section 12. Limitations of Local Governmental Subdivisions
Section 12. Local governmental subdivisions shall not

1. Incur debt payable from ad valorem tax receipts maturing more than 40 years from the time that it is incurred.
2. To fine and provide for the punishment of a felony or.
3. Enact private or civil ordinances governing civil relationships."

Explanation

Mr. Lanier Mr. Chairman, fellow delegates, we discussed some of these matters in the discussion of Sections 7, 8 and 9, which have just been adopted. These general limitations to be placed on local governmental subdivisions. The first one with the prohibition against the incurring debt payable from ad valorem tax receipts maturing more than 40 years is the present constitution. The prohibition against the defining and providing for the punishment of a felony is standard in this type of an approach, and the prohibition against the enactment of private or civil ordinances governing civil relationships is intended to preempt from local government the power to pass on such things as might be contained in the civil code, the workman's compensation law, the trust code, the corporation law and things of this type. I think this is a standard type of provision where you have a residual grant of authority and if there are any questions, I'll be happy to try and answer them.

Amendments

Mr. Poynter Amendment No. 1, by Mr. O'Neill, on page 6, at the end of line 31 change the period to a semicolon and add the following: "or, 4. Set prices of private goods or services other than those of public utilities or common carriers subject to their regulations."

Amendment No. 2, on page 6, at the end of line 31 change the period to a semicolon and add the following: "or, 5. Engage in wholesale or retail trade or manufacturing enterprises."

Explanation

Mr. O'Neill Ladies and gentlemen of the convention, I have not spoken on any section of this Local Government Article. I have asked several questions of different speakers, nor have I offered any amendments. I think the amendments I have will be most effective. Up until now, and please listen to me, we have provided that local government shall have all power not prohibited to them in the constitution or by the legislature which means that local governments can now do anything not prohibited to them. Now, look at Section 12 closely and read with me if you will, Section 12. "Local governmental subdivisions shall not"...and there is a listing. The Local Government Committee has provided three shall nots. I intend to offer to you Section 5 and Section 6. Two new prohibitions of things that local governmental subdivisions cannot do. The first of these is set prices of private goods or services other than those of public utilities or common carriers subject to their regulations. Now, let me explain to you exactly what this does. Right now we have a milk commission. This is a creature of the legislature. The milk prices are set statewide...uniformly statewide. At present, the local governmental subdivisions would be empowered to enact their own milk price fixing laws, and I don't single out milk for any particular reason. It's just one that comes to mind. If we do not prohibit this, local governments will be able to set and regulate

prices of private goods and private services on an arbitrary basis and these prices and regulations will not be uniform. They will vary from place to place. I can foresee simply because it's government's prerogative to get into the economics area that local governmental subdivisions will be into all sorts of pricing laws. You'll go from Baton Rouge where you'll pay 59 cents for a half-gallon of milk to New Orleans where you'll pay 90 cents a half-gallon, and it'll all be regulated by local governments. I am attempting to prohibit this. Now, in my first amendment, Number 4, it says "set prices of private goods or services other than those of public utilities or common carriers subject to their regulation." Now, this would allow local governments who do own their own utilities systems to regulate the prices that these utility systems charge for their services, and I come from a community up in Baker which does own their own public system, and the city sets the rate. I'm not against this. I think if they own the system, they should be able to regulate what is charged by the system. The other exception is common carriers. This would be transit companies, bus systems and the problems that Mr. Chatelain had in previous sections. These are two just and proper exceptions. Now, you question well if local governments can't set prices, who will? I submit to you that the legislature will. They will set uniform price-fixing laws, and you won't have a hodgepodge of regulation from one local governmental subdivision to another. I am moving to the second amendment and make sure that you have the proper copy. It's "engage in wholesale or retail trade or manufacturing enterprises." Read it in conjunction with Section 12. "Local governmental subdivisions shall not engage in wholesale or retail trade or manufacturing enterprises." The amendment was first drawn it included construction. We ran into the problem where police juries do indeed build their own roads and do have some construction at different times. Therefore, we took construction out of here. The only limitation on local government here is that they shall not engage in wholesale or retail trade or manufacturing enterprises. Now, I don't think this is the proper sphere for local government to be in...operating private businesses against other people in the field, and I think that you would probably have to do with that if you believe in the free enterprise system. My amendments, as a whole, will allow the legislature to take care of price-fixing if they so choose to do it. I've spoken to the various interests, agricultural interests, and they have not made any objections known to me. I think they feel that the legislature is the proper area to set these prices if they are going to be set, and not from local governmental subdivision to another. Now, hear me out very carefully. We have provided, and don't let anyone tell you any differently, that local governmental subdivisions shall have the power not prohibited to them in this constitution or by general law. Remember that. I am making a prohibition in this constitution saying that local governmental subdivisions can not do these two things. I think the amendments are very simple. I think they are proper exceptions to put in this Number 12.

Questions

Mr. De Blieux Mr. O'Neill, I'm concerned quite a bit about your second amendment, the first one I see no objection to, but...do you know that at the present time we have a provision in the law that local political subdivisions can vote bonds to establish manufacturing plants which they in turn rent to private industry, which a...rental on revenues pay off the bonds as well as providing employment. Now, the question is "Do you think that possibly that particular provision might prohibit some local political subdivision from having such industrial plants and sites, which they rent?"

Mr. O'Neill I would say not, Senator De Blieux, because private enterprise would indeed be running these enterprises, and I, also, submit to you that this is a creature of the legislature, if I interpret

54th Days Proceedings—September 26, 1973

your question correctly, and would be proper under this section.

Mr. De Blieux Whether they only give their local government the right to...to organize those industrial plants, sites and a...through bond issues, that's a...I'm just wondering in view of that if they...it could be considered that the local governing body is engaged in manufacturing enterprises.

Mr. O'Neill No, Senator De Blieux I don't think so...and that's not what it's intended to do.

Mr. Denberry Delegate O'Neill, I'm referring now to your second amendment. Is it not correct that there are in Louisiana a number of private organizations...private corporations engaged in water supply business?

Mr. O'Neill I'm not familiar with them, Mr. Denberry.

Mr. Denberry Is it not a fact that there are a number of private corporations in Louisiana engaged in the disposal and sale of products from garbage?

Mr. O'Neill I'm not familiar with those either, Mr. Denberry.

Mr. Denberry Is it not a fact that there are a number of private corporations in Louisiana engaged in the sale of electrical power?

Mr. O'Neill Mr. Denberry I think all of these that you refer to are public utilities, to be perfectly honest with you.

Mr. Denberry As I understand it however, sir, on your second amendment you do not refer to "public utilities". You merely prohibit a "municipality or parish from engaging in wholesale or retail trade on manufacturing enterprises". Is that not correct, sir?

Mr. O'Neill Yes, sir and I purposely excluded "public utilities", which I...

Mr. Denberry But you did not exclude "public utilities" Mr. O'Neill, that's the question I asked you. It does not exclude them, does it?

Mr. O'Neill Where does it include them?

Mr. Denberry It prohibits a "municipality or parish" as I understand your amendment, "from engaging in wholesale or retail trade or manufacturing enterprises". It says absolutely nothing about "public utilities" and it seems to me you are thereby prohibiting...the operation of a water system by a municipality or parish; the operation of a garbage system and the resale of any...any resources recovered from that garbage by a municipality or a parish, the purchase and resale of electricity, or even the manufacturing of electricity by a municipality or a parish. Now I don't know that you intended to do that, but do you not agree that your amendment would prohibit this?

Mr. O'Neill Mr. Denberry, it's not intended too, and I don't honestly think that it does.

Mr. Casey Mr. O'Neill, don't you think that we would be taking an awfully serious chance, and risk by including something like this in the constitution, that rightfully belongs and should be contained in statutes, because we don't know what the full affect of amendments of this type are going to be?

Mr. O'Neill Well, Mr. Casey we don't know what the full affect of the entire Local Government article will be, and so I don't think that it matters that we're going to put absolute prohibitions against them like these. And, it's my intention to put an absolute prohibition and to allow no flexibility in

these areas.

Mr. Casey But, do you not agree that Mr. Denberry makes some very valid points, and that these particularly paragraph...paragraph 5 could be affecting "public utilities" because "public utilities" are not specifically excluded from paragraph 5?

Mr. O'Neill Would it satisfy you to exclude "public utilities"?

Mr. Casey I would be against the amendment under any circumstances, Mr. O'Neill. It would be better than it is now, if you excluded "public utilities", however.

Mr. Duval Mr. O'Neill, would this prevent a municipality like the city of Houma from selling gas?

Mr. O'Neill Is that a public utility, Mr. Duval?

Mr. Duval Is what a public utility, "the city of Houma"?

Mr. O'Neill Gas.

Mr. Duval Gas, is not a "public utility". No.

Mr. O'Neill Is that a product...

Mr. Duval It is a substance composed of...

Mr. O'Neill ..."public utility"

Mr. Duval No, sir. It's something that comes from a oil company, drilling under the ground. And they sell it. To private individuals. Now would this prevent this...

Further Discussion

Mr. Stovall Mr. Chairman, members of the delegation, it seems to me that in the Bill or Right Article we had provision there dealing with Freedom of Commerce, that section was eliminated, and it seems to me this is an effort to bring back this issue before us, we have already dealt with it and, therefore, I move the previous question.

[Motion for Previous Question rejected; 35-67.]

Further Discussion

Mr. Casey Mr. Chairman, and delegates I'll be very, very brief. This doesn't belong in the constitution. It's as simple as that. Why tie our hands in the constitution when we don't have to, when the legislature by general law, at a later date can come back and say the very same thing, and possible do it in a very eloquent manner, whereby proper study may have been given to the subject matter, and whereby we do not know at this time if we adopt it what we're really locking into the constitution? We have to stay flexible. We have to give proper study to something like this and if the legislature wishes to take two years in deliberating on matters of this type, and then do it in a...in a...in a manner whereby we have given very much thought to it, and research, and then adopt something of this type, fine. But the legislature can do it, we don't have to do it in the constitution. I strenuously urge you to reject both amendments, or even the first amendment if that's the only one that we vote on. I might point out, also, under the second amendment that the City of New Orleans, for instance does its own street repaving on many occasions that I understand had its plant...for blacktopping and asphalt, and that would be prohibited under this constitutional amendment. Just reject both of them. This doesn't belong here.

Further Discussion

Mr. Cannon Again I rise in opposition because I've been on a committee studying ports, special districts

on transportation, what have you. This would prohibit the City of New Orleans from fixing landing fees at Moisant Airport, a major source of revenue for the airport, and likewise wharfage fees for the docks, etc. I would vigorously oppose it.

[Record vote ordered. Amendment No. 1 reconsidered. Amendment No. 2 withdrawn. Amendment No. 1 retabled.]

Closing

Mr. O'Neill I think the objections that have been raised are rather superficial. Reverend Stovall referred back to the "Right to Commerce Article" in the Bill of Rights. This has nothing to do at all with that. This simply prohibits local governmental subdivisions from fixing prices of private goods and services--private goods and services. It excepts public utilities and common carriers. They would have you believe we don't need any prohibitions against local government. I'm surprised we have the three that we have in here now. I suggest that we do have to begin limiting the power which we have given local governments. I also suggest to you the people who oppose this amendment favor price-fixing on the local level for private goods and services. We're in a battle right now where the city of Baton Rouge is trying to regulate the issuance of liquor permits. These are the types of things that I think the city should not be involved in. If prices are going to be set, the legislature should do it, and I think that's the proper place of being. Don't confuse public utilities with private enterprises.

[Record vote ordered. Amendment rejected: 29-79. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1...

Now, this is the Casey Amendments. The instructions have been changed so as to affect the placing of the language in a somewhat different spot. It should read "On page 6, line 30, immediately after the number and punctuation (3), or the paragraph designated as (3), referring to the enactment of private and civil ordinances governing civil relationships, except as may be provided by law."

Again that clause is to be added in front of itemized clause No. 3, instead of after it as the amendment was originally drawn.

Explanation

Mr. Casey Mr. Chairman and delegates, upon speaking with some of the members of the Local and Parochial Committee, my concern was aroused upon a careful reading of paragraph (3), or the paragraph designated as (3), referring to the enactment of private and civil ordinances governing civil relationships. After discussing this with the committee I'm really not convinced with a true definition of "civil relationship" might be, and how encompassing these words affect many things that might be handled down to local government. For instance I know many of the attorneys here might be familiar with the provision in the Civil Code which...by which the Civil Code gives to local governing authority the apparent responsibility and right to pass local ordinances affecting the construction of boundary fences, existing between property owners. I know in the city of New Orleans we have an ordinance whereby if a property owner wishes to construct a boundary fence, it is detailed in fine detail as to the type of fence that must...might be constructed, and as to the method whereby a property owner who wishes to construct the fence might obtain one-half of the cost of construction of that fence. So an immediate example is party fences or boundary fences. Is that a civil relationship? I think under a broad definition that is a civil relationship, as to the method of recovery of one-half the cost of a party fence. I submit to you that this should not be locked in the constitution. We have given much leeway to the legislature in dealing with local government and home

rule charters whereby the legislature can deny certain rights and privileges to local government. But I would suggest that we add this wording "as provided by law". The legislature may make certain exceptions to Subparagraph (3), so that as in the case of party fences, procedures may be set up locally by local ordinance for the recovery of half the cost of a party fence.

I yield to any questions.

Questions

Mr. Dennis Mr. Casey, aren't you also though opening the door for the adoption of local divorce and domestic relation laws, things of this nature which I'm sure all of us agree should be consistent throughout the state?

Mr. Casey Judge Dennis, I'm glad you bring up that point. In the legislative branch of government dealing with that particular branch, you may recall that we deleted Section 12 on "Local and Special Laws." That section, I think as it probably will come out of the committee, will prohibit any type of local or special laws affecting marriages, or divorce, etc. I grant that it's unfortunate we had to send that back to committee, but we were really not well prepared on that particular phase. The committee's still working on it. I would think the third is the very type of thing that would be specifically prohibited under Section 12 of the Legislative Proposal.

Mr. Dennis Well, that as I understand what you're saying, if we adopt that in the Legislative Article, that would mean that the legislature could not enact local and special divorce and domestic relation law. But could this, if your amendment here is adopted, be read as an exception to that rule, so that home rule charter, local government subdivision, if authorized by the legislature, could enact legislation of this type?

Mr. Casey Judge Dennis, I'm not sure that it could. I would hope when this would be read in conjunction with Section 12 of the Legislative Article, it would hope that that would be prohibited. I think you understand what I am trying to provide for here; that it would be difficult to tie our hands completely in the area of local government to deal with some of the problems that are now permissible under law, such as the boundary fence laws. That's not the only one. I am sure there are other instances or circumstances whereby local government can legislate in some areas that do specifically affect civil relationships. What I said initially, I'm not sure that the true, thorough, and real civil relationship might be. That's really what worries me.

Further Discussion

Mr. Lanier Mr. Chairman and fellow delegates, I think Representative Casey has brought up a very good point here, and this is one that the convention should express an opinion on. This approach that Representative Casey is suggesting is contained in the model state constitution, in the local government language. In the model state constitution it says "this grant of home rule powers shall not include the power to enact private or civil law governing civil relationships, except as incident to an exercise of an independent county or civil power." Then it goes on to say that "nor shall it include polity to find and provide for the punishment of a felony." Now, the issue here is, as pointed out by Representative Casey, is that if you preclude local government from acting in the area of civil relationships, then if something comes up that would require a modification of a civil relationship, in conjunction with the exercise of an independent power or function, then the local unit would be unable to do it. This would infuse a certain amount of rigidity into the system. The language provided for by Representative Casey would give more flexibility to the system. There has been

some commentaries on this point but very little litigation. I asked the staff to search this and found very few references on this particular point. We did find one Law Review article. For the sake of the record it is 48, Minnesota Law Review, Page 643. It deals in part with this particular problem of which way you should go on this point. Should you leave it rigid or should you make it flexible? Of course the problem inherent in taking the flexibility approach is that at what point in time does an exercise of a power or function become necessary in order to affect a civil relationship, or must you affect that civil relationship in order to have an orderly exercise of your power and function. The primary concern in the field here is that if you do allow this flexibility, that it be done so in a very definite fashion so that there is not ambiguity in the exercise. So that everybody knows specifically the limits within which the local unit of government can act. Specifically I'd like to quote from this Law Review article that I gave you. It says this: "However, even if the private law enacted by the municipality does not appear to have a seriously disruptive effect on legal relationships created by general law, it should not be given effect unless it is demonstrably of some importance to the implementation of a municipal policy or program. The prevailing assumption has been that home rule powers do not extend to the enactment of private law." Deviations from that understanding should be permitted only in the event of clear necessity." Now, I would suggest that if you would review Representative Casey's proposal, it would provide that the legislature could make that determination, and give specific authority to provide for the activity of a local unit of government in a specified area. Another problem...I don't know if Representative Casey went into it in any detail...but apparently this prohibition may well affect some existing ordinances in the city of New Orleans. Therefore, if I may mention that, this is a worthwhile provision because it plans for the future. Of course my statement is made with this understanding. The issue of whether or not the exercise of the activity, the regulation of the private relationship, is incidental to the power and function, we believe that will ultimately have to be resolved by the courts. There's just no way around that problem that I can see, although the legislature can alleviate a lot of that problem by the manner in which they frame the laws to allow the exception. In other words what this thing does is sort of a Dillon's Rule under a prohibition that we have put against local governments. In other words as an exception to this prohibition in specific cases as authorized by the legislature, the local units of government can act in this area. I think that this would give more flexibility to the system. I think it would be worthwhile to consider by you, and I would ask its favorable passage.

Thank you, Mr. Chairman. I'll be glad to yield to any questions.

[Amendment removed. Previous question ordered. Record to be ordered. Amendment adopted: 44-0. Motion to reconsider refused.]

Amendments

Mr. Poynter These amendments are sent up by Delegates Avant, Newton, Jack, Goldman and many other coauthors.

Amendment No. 1, on page 6, line 27, immediately after the numeral and punctuation "12," insert the letter "(A)".

Amendment No. 2, on page 6, between lines 31 and 32, insert the following:

"(B) Notwithstanding any provision of any plan of local government, or any home rule charter, or other provision of this article, the legislature may by general law applicable throughout the state or based upon any reasonable classification exercise the police power of the state in the parishes, municipalities, and other local governmental subdivisions of the state."

Mr. Avant Mr. Chairman and fellow delegates, I respectfully submit to you that this is an essential amendment. Now, there has been a provision corresponding to this in the Constitution of 1898, 1913, and 1921. There is a corresponding provision in the charter of the city of New Orleans in its present home rule charter. Now, first I think I should make an explanation which would be obvious to most of you, I'm sure. But the police power...what is the police power? What are we talking about? The police power is that power of government which gives government the right by law to regulate the conduct of individuals in order to promote and ensure the health, safety, welfare and morals of the general public. Now that is what the police power is. Examples of the police power immediately pop into your mind, but every building code is an exercise of the police power. A law which would outlaw pornographic materials, or houses of prostitution is an exercise of the police power. A speed limit is an exercise of the police power. Heretofore, as I've said there has been a provision in all of our preceding constitutions which specifically recognized the fact that we are a state; that we are not a league of independent city-states. That the police power of the state, that is the power to legislate so as to ensure the protection of the health, and safety, and welfare of all of the people of the state as the citizens of the state, is vested in the legislature of the state through the representatives of the people in that legislature. Now, I tell you that I am sorely afraid that under the sections that we have adopted so far in this...the sections that we have adopted so far in this article that the police power of the state has been abridged. It has been abdicated, I am afraid, to a large extent to local government. I am afraid that the legislature of this state if a municipal corporation had exercised the police power in a certain way could not come along and through the legislature exercise the police power in an inconsistent manner. I say that this is essential to make it clear, to make it abundantly clear that we are still a state, and that the representatives of the people through the legislature can exercise the police power of the state for the good of all of the citizens of the state irrespective of where they may live. This is nothing novel. It's nothing unique; it's nothing unusual. It's in the present constitution; it's been in all of our prior constitutions, at least back to 1898. It is presently in the charter of the city of New Orleans, and I can see no valid objections on the part of anyone to the adoption of this amendment.

Questions

Mr. Lanier Mr. Avant, is it your opinion that under the police power and that the legislature could provide for the minimum wages in retirement benefits of public employees, notwithstanding the provisions of Section 8 as we have adopted?

Mr. Avant Certain public employees if it was necessary in order to promote the safety and health of the people of the state as a whole.

Mr. Lanier Well, would it be your intention by this law to abrogate the provisions of protecting organization and structure of home rule units as it might affect firemen and policemen specifically?

Mr. Avant Mr. Lanier, I never subscribed to the theory and the judicial interpretation of that which said that the pay of firemen and the working conditions of firemen and policemen is a matter of structure and organization. I think that is an exercise of the police power, because I believe that I, as a citizen of the State of Louisiana no matter where I may travel in this state...if I stay in a hotel or a motel, or I drive my automobiles in a particular city...I think that I am as a citizen entitled to the same minimum standards of health and police protection, and that if local government

does not provide it for me that when I have a right to go to the legislature and to have them provide it for me. Because I am a citizen of this state and wherever I may go in this state, I think I have a right to be secure in my person and my property, and when I go to sleep at night to know that I'm not sleeping in a firetrap, or that if it catches on fire that there is an adequate, competent, trained crew of firemen who can come and rescue me. I think I'm entitled to that.

Mr. Lanier: Mr. Avant, in your zeal to accomplish that which you have just stated by putting in the language "notwithstanding any provision of any plan of local government or any home rule charter or any other provision of this article," since Sections 7, 8, and 9 have "subject to and not inconsistent with any provision of this constitution"...would this amendment in effect opt out from under the residual grant of authority the right of the local units of government to exercise the police power concurrently with the state?

Mr. Avant: Would it opt it out? I don't understand your question.

I'll answer it this way. I say that the legislature under my amendment will have the right, whether or not they choose to exercise it is another thing, but they will have a right to exercise the police power of this state, not just in the areas that you refer to, but in any area. I am afraid without my amendment the legislature could not pass a statewide statute controlling the construction of high-rise buildings. If a municipal corporation had enacted an ordinance in another fashion with less standards, I don't think the legislature could say "Oh, you've got to do this in a building that's over so many stories in order to promote the safety of the people of the state." I think that if I go to a city in this state and go into a multi-story building, that as a citizen of this state I've got a right for it to be a safe building. If local government doesn't ensure that I have that right, then I'm going to go and urge the legislature to see that I've got that right.

Questions

Mr. Staggs: Mr. Avant, by your amendment when you're saying that should this amendment be adopted that the state legislature could pass a bill raising policemen's salaries to a thousand dollars a month, and that the cities would have to come up with the money out of their pocket to pay it. Is that the effect of your amendment in that particular instance?

Mr. Avant: If the legislature was unwise enough to do that, perhaps they could, but it has to be a reasonable exercise of the police power, Mr. Staggs, as you well know.

Mr. Staggs: Are you familiar with the content of the Denney amendment on this same subject?

Mr. Avant: I am generally familiar with the language in Mr. Denney's amendment, and I don't think, Mr. Staggs, since we have turned the world upside down, so to speak, insofar as local government is concerned. The language that Mr. Denney has is keyed to the 1921 Constitution and the theory that was put into that constitution. I think that the language has to be modified somewhat so as to make it clear in view of the radical change that we have made in the entire theory of local government.

Mr. Staggs: One more question, Mr. Avant, is this a precursor to that exception in Section 16 on firemen and policemen's salaries?

Further Discussion

Mr. Burson: Mr. Chairman, ladies and gentlemen of this convention, it is quite clear that the purpose of this amendment, as was brought out by the question asked by Mr. Lanier, is purely and simply to anticipate the vote on Section 16 regarding the pay of firemen and policemen. I exhort you, let's fight

the battle of Section 16 when we get there. Let's not attempt to preclude that decision at this moment by adopting this amendment, because this amendment goes much, much further than the pay of firemen and policemen. Now, if you have done so at any time since this Constitutional Convention began, I ask you, read the amendment where it says that "based upon any reasonable classification the state may exercise the police power of the state in the parishes, municipalities and other local governmental subdivisions of the state." "Exercise" means to use in the parishes and in the municipalities of this state the police power. Now what does police power include? Certainly it includes the health, safety and welfare, but it also includes what the word says on its face, "police," the law enforcement arm of the state. I submit to you that traditionally law enforcement has been primarily a matter of local concern. It is first of all a responsibility of the municipality within the municipality. It is the responsibility of the parish within the parish, and only then does it become the state responsibility. Now, if you want, if you sheriffs who are here, want to take the chance of having the state police come in and take over your parish, well go ahead and vote for this amendment, because you want to help the firemen and the policemen. If you want to help the firemen and the policemen, cast your vote on Section 16. I don't know how many of you have a memory that goes that far back, but I can remember when, in a not too distant time in the past, we had a governor who decided that the police power of this state required that the state police go out on posses, breaking into private business establishments throughout Southwest Louisiana, knocking down doors, putting teenagers in jail where the Mama and Daddy had to come down and get them out, flying the face of the social customs of an entire area, sent the state police in to break up a backroom bourne game. Now if you want to sanction that in your constitution, well go ahead and vote for this amendment. But make no mistake about it. When you say that you can exercise the police power of the state in the parishes, municipalities, and other local governmental subdivisions, that is exactly what you are countenancing. There are other speakers who can get up here and exhort until they are blue in the face, but you cannot get around that language. Now, Mr. Avant said we have something in the present constitution --that's right. What we have in the present constitution is in the present constitution, Section 18 of Article XIX of the general provisions, and it says...as a floor amendment that I have passed out says... "that the exercise of the police power of the state shall never be abridged." That is quite a different thing from saying that the state can exercise the police power in the parishes, municipalities, etc. The state police power has a proper scope of exercise which is not a general statewide concern, but how can you just go on setting upon a reasonable classification? You're setting the stage for the kind of thing that has happened in our recent history where the state legislature can say in any city of five hundred thousand or below that and so shut out the state police. Not only New Orleans is affected. I submit to you that for whatever reason it would be a grievous error to adopt this amendment. For those...

Further Discussion

Mr. Gravel: Mr. Chairman, ladies and gentlemen of the convention, I think there's an effort here that's being made to try to obscure the real and general purpose of this amendment. I think it can be reasonably stated that the purpose of this amendment is to make sure that the sovereign power of the State of Louisiana to govern with respect to the morals and welfare of its people shall not be subordinated to the specific limited activities of any local governmental subdivision. That's precisely what this amendment is going to do. I would like to ask any questions, Mr. Arnette, so you and Mr. Lanier can sit down for just a few minutes. The Supreme Court of Louisiana has defined police power as being

"a power inherent in every sovereignty to regulate men and things and therefore the legislature may within constitutional limits prescribe regulations for promotion of public health, safety, morals and general welfare." That is the power that you would be according to the state by the adoption of this amendment, and you would make it clear that, insofar as the general welfare is concerned, no limited, special provision can be enacted by way of ordinance or provision in the charter or plan of government that would be inimical to the welfare of the people of the state as a whole. Don't be misled by some of the diversionary approaches by those who would oppose this concept. If we do not, if we do not provide in the constitution as set forth in this amendment, then the entire power of state government will be subordinated to the proliferating activities of the municipal and local governments throughout the state. That I know, no delegate to this convention really wants.

I urge you to adopt this amendment.

Questions

Mr. Jenkins Mr. Gravel, Mr. Burson said that his amendment that he's going to come with later is the same as in the present constitution. Now, that's true, but in the present constitution isn't it also true that we did not grant all of the tremendous authority to local governments that we're granting in this one? If we're going to grant the authority here, don't we need to further protect the police power of the state?

Mr. Gravel Absolutely. That's precisely why this amendment is in this particular article and refers to the other provisions of this article. That's precisely why the amendment is here placed.

Mr. Duval Camille, do you agree with Mr. Avant's interpretation of the language here that it allows the state to legislate as to firemen and policemen under this language? Do you agree with Mr. Avant's interpretation?

Mr. Gravel I wasn't listening particularly to the interpretation that he placed on it. I heard the question, but I didn't remember exactly what he said.

Mr. Duval Well, I think he said, in fact I'm sure he said, that "this language would basically allow the state under the exercise of the police power to legislate as to the wages of firemen and policemen working for a parochial unit. Do you agree with that interpretation?"

Mr. Gravel No necessarily, I think I agree with that provision... was permitted I think in a case, the Baton Rouge La Fleur case, based upon the provisions that were in the East Baton Rouge Parish charter. Let me make sure there's no misunderstanding about this. I think that this provision could apply if the legislature wanted to pass a law applicable to all policemen and firemen throughout the entire state. I think that this provision could apply if the legislature did feel that it was necessary under the police power to legislate.

Mr. Duval So it's actually not diversionary to say that one of the issues raised in this amendment is certainly the issue presented in a portion of Section 16 of the proposal. Isn't that true, sir?

Mr. Gravel It might be, yes.

Mr. Lanier Mr. Gravel, in the Judiciary Article I believe we said that the sheriff was the chief law enforcement officer in the parish. This provision provides "notwithstanding any provision of any plan of government or any home rule charter," et cetera...

Mr. Gravel Wait, read the et cetera and I think you'll answer your own question.

Mr. Lanier "Or any other provision of this ar-

to be." What effect would that have on the sheriff's office?

Mr. Gravel It wouldn't have any reference to the judiciary provisions of the constitution, because we've said "or any other provision of this article."

Further Discussion

Mr. Arnette After having heard the definition of "police power" as given by Webster's Dictionary, or wherever the definition was gotten, I really don't know but I'd say it's a pretty accurate definition, but a little more accurate definition is "that the state may do anything they want to unless it is prohibited." Anything? Because you can always class something under health, education, welfare, morals, safety. You can say anything is under one of these classifications. So unless you prevent the state from doing something, they've got the power to do it under the police power. Now what this amendment means is that they can do anything they want to in your local home rule area and class it under one of these things under a classification of say "Well, we'll just have this law apply to cities over four hundred thousand people, or over a quarter of a million." This is a reasonable classification if they want to apply under them, or they could have it apply to cities of less than ten thousand, or less than twenty thousand, or parishes of less than fifty thousand. It would be very simple to have these classifications. They could completely destroy anything they wanted to in the way of home rule. The people of this convention I think fought long and hard for home rule. They want home rule. We adopted seven, eight and nine of this article dealing with home rule. Good strong home rule provisions, and this one amendment to a section coming now could completely destroy all of those sections. This is the thing that really worries me. When you say "no home rule charter notwithstanding, or plan of government notwithstanding," this could completely destroy the theory of home rule as we have adopted it in Sections 7, 8, and 9. If you want the legislature to have the power to do just about anything they want to in your local municipality or your local parish, go ahead and pass this amendment. Mr. Denney's got an amendment coming up later on that is precisely the same thing as the old constitution, as I understand it, which doesn't make this exception, or saying that "home rule charters notwithstanding" or "plans of government notwithstanding." I think it's a much better provision. I think we ought to defeat this amendment and possibly go with Mr. Denney's.

Thank you very much.

Further Discussion

Mr. Stagg Mr. Chairman and fellow delegates, when I got up here Friday, we explained that cities and municipalities could have maximum home rule, or they could have the minimum. I don't know what the money says. By a narrow vote you gave the cities and municipalities in the home rule unit maximum authority over their own business.

On Tuesday afternoon, we came back and we fought over the same exercise, almost on the same questions, and by a narrow vote you voted again to give cities and home rule units maximum ability to operate their own business. Now, Mr. Avant, here at the microphone earlier, in, I think, a rare burst of candor, answered the question asked him by Mr. Lanier about the effect of his amendment on the pay scales of firemen and policemen, and Mr. Avant very honestly answered that the effect of his amendment would permit the legislature to set the wages and working conditions of firemen and policemen and the municipalities would have to come up with the money to pay for it. I don't believe this speaker very loudly of home rule. In my municipality, the city fathers and the citizens pay their policemen very well, and their firemen, and their working conditions are excellent. But every now and then, the legislature passes an act and says "All right, Shreveport, no matter what your budget says, come up with the

money and pay your policemen and firemen what we say you have to pay them." Is that home rule?

If the State Police came into your parish and raided the bingo games, under the police power in the Avant amendment, I ask you one question: Is that home rule? I think you ought to very carefully weigh the merits, or lack thereof, of the Avant amendment and consider it and weigh it in your mind before you punch the button one way or the other. The Avant amendment is the opposite of the kind of home rule that this convention has afforded our parishes and municipalities in the first four days of the general debate on these subject matters.

I urge you to vote "no" on the Avant amendment. While I am up, so I don't have to get back up, I urge you to vote "yes" on the Denery amendment.

Questions

Mr. Rayburn Mr. Stagg, I'm only seeking information. I have seen several occasions in this state where, in a little small village, they had what is commonly known over in my section as a "speed trap." Everybody come through, they shook them down. If they didn't have the thirty-seven fine, they'd take twenty-seven. We had to in the legislature, break up a few of those things. I wonder if we would get caught in those predicaments again? Of course, I hope we never do under these good government days we all enjoy now. Would we have any remedy to prevent something like that from happening in this state, because I know, and I think you know, it has happened.

Mr. Stagg Senator Rayburn, the remedy does not lie in the Avant amendment; I promise you that.

Mr. Roy Mr. Stagg, I'm a little confused about your allusion to plying bingo at charity. Suppose a particular area was allowing real bad crimes to take place and was not prosecuting, not doing anything about it. Is it your argument to this convention that violation of law, breaking of laws, is something that we should never address ourselves to?

Mr. Stagg Mr. Roy, you and I fought this exact same question out when the debate occurred in the Executive Article on the powers of the attorney general and the powers of the district attorney when we were debating the Judiciary Article. You and I have not agreed on this since we got in this room. There is nothing you are going to say that's going to make me agree with you now.

Mr. Roy I just asked you: do you advocate the breaking of laws?

Mr. Stagg No, I don't.

Further Discussion

Mr. Riecke Mr. Chairman, ladies and gentlemen, it's been a long time since I've been up here, but I rise to oppose this Avant amendment. I'd like to remind the delegates here today of some of the crisis when the governor ordered us to close the public schools of New Orleans, and the school board of New Orleans refused to do it. The governor, at the time, sent his police down to New Orleans and seized the books of the school board; they seized them... they put out the superintendent of schools, and they seized the seal of the Orleans Parish School Board. I want to tell you that if that can happen to a school board anywhere in the state. As a matter of fact, I think it could happen again to any branch of any government in the state. I vigorously oppose this amendment. I hope that you will vote it down. Thank you.

Questions

Mr. Burson Mr. Riecke, did you know that in the same area that you are talking about, the state

authorities tried to purge the voting rolls in St. Landry Parish, and the local district attorney had to go into federal court to stop them from doing it?

Mr. Riecke No, I didn't know that, but it can happen again.

Mr. Chatelain Delegate Riecke, you are not quite as old as I am, but I'm sure you remember the infamous period of time in Louisiana history when we were stopped by this famous Grevenberg, Superintendent of Police. Do you remember that period in Louisiana's history when you were afraid to get out of your home; afraid to get on the highways? Do we want some more of this?

Mr. Riecke Mr. Chatelain, answering your question, I am older than you, if you'll look at the record. I'm the third oldest man in this whole delegation. You're much younger than...you're just a kid.

Further Discussion

Mr. Jack Mr. Chairman and fellow delegates, I rise in support of this amendment. I'm a co-author. Now I want to first let you know that a police officer and a fireman is more than a city employee. We're not dealing with regular home rule with this amendment. I'm a great advocate of home rule. But I'm not an advocate of home ruin, which you can do by throttling the police and the firemen. It was all well for somebody a minute ago to joke about Mr. Grevenberg. I have no quarrel with that, but let me tell you, when you need help, if your house is on fire, you call the fire department; if there is somebody to harm you, you call the police. Now under the police power where health, welfare and safety is involved, the state has a right to step in, and should have that right.

Now let me tell you this. I have had a brother saved by the quick action of the police. In 1929, I'm going to tell that story, and I'm in a hurry to show you that if it wasn't for good firemen, I wouldn't be here. If it wasn't for good policemen, my younger brother would have been killed in '29, working in a filling station when it was held up. The bandits shot one customer and killed him and shot at my brother just as Detective L.V. Smith of the Shreveport Police Department shot him through the back, right through the heart, and he fell in that station dead, and as the bandit fell, he shot at my brother, and the bullet hit between my younger brother and the helper at the filling station.

Now, I don't want to leave the police power of having policemen and regulating entirely up to local authorities. If they don't do the job right, get good police, pay them properly, good firemen, pay them properly, good working conditions, I want the law where the legislature can step in. We had a fire right here in the White House Inn since July 5, in the afternoon. My wife and I were in the dining room. A bunch of fire trucks out here, the fire was up in a flue. If you didn't have a good fire department, good paid men, and good men that know their jobs, those lurking, or whatever there are up in the flue, could have stayed there...three o'clock in the morning you could have had a fire and burned up. Let me tell you, I want good fire departments. I'm from Shreveport. I'm entitled to good fire departments wherever I go. I pay my taxes. I'm entitled to good police departments. Don't tell me that's home rule, that each city can choose to have a rotten or a good fire department, or a rotten or good police department, or pay them starvation wages and lose things.

Let me tell you from a personal standpoint, the fire department, it turned out, I was most interested in my life was in Los Angeles, California, in 1930. I'd gone out there to law school on a bus. I was dead tired riding day and night, and I was on the fifteenth floor of this eighteen floor hotel asleep. When I came down the next morning, I found the lobby burned up. I was mad because they hadn't woke me up. I asked the man. He said, "Mr., look over there and you'll see we couldn't wake you..."

[*Laurel suspending immediate action and discussion*
times.]

Further Discussion

Mr. Jack Let me tell you this. When you walk down the street, it is not the elevator and you come out into that lobby and saw it all burned up, and you asked the clerk why you weren't notified, and he pointed to where the fire started over there at the telephone switchboard and the registration desk burned up. He said, "What you ought to do, Mister, instead of griping, you ought to be thanking the Lord they've got a good fire department out here that put it out."

Now, I don't want to trade good police and firemen. I say, and repeat, that this is not a question of home rule. It could make very little difference to me what and who the employees were in Baton Rouge have to do with collecting this or collecting that, and those local matters. But it makes a difference who the police are. We have police protection right here at this convention. I guess they still search people that come in. I'm glad they did. I know at the beginning they searched the wives. I'm glad they did. I want to live, and the way to live is with good firemen and police. Firemen saved my house in the depression when I couldn't have any insurance on it. Now I sit in closing, that this has nothing to do with violating home rule. I voted for all of those home rule provisions. I say to go along with this amendment, to go with Section 16.

Further Discussion

Mr. Juneau Mr. Chairman and fellow delegates, you know, as I recollect, it wasn't but four days ago we voted on the section and the vote was relatively close for firemen. It would have been not we wanted to make...or have home rule in this state. As I recall the vote, it was the will of this convention that we would have home rule in this state.

The next thing that I remember, in the newspapers and on the radio and on the television, that we're bogging down, we can't finish and nobody understands why. Well, what I am telling you is, is what this amendment is going to do is, in essence, abolish what we did a mere four days ago. This is simply nothing but a frame around the same picture that we had four days ago. I don't think that anybody in this convention was fooled by the fact that we didn't know this was coming. It was just a question of what place it was going to be inserted.

I submit to you that the issue that's concerned with a lot of people is in Section 16, and I'm willing to face that issue when we get to it. But what they've created here is a monster which goes far and beyond what is contemplated in the issue of a fireman and policeman. I also submit to you that we've got to get this convention rolling. I submit to you that I had to vote on the course of this convention, abided by the decisions on final passage when it was adverse to what I had voted earlier on amendment. I submit to you that that's the same issue we face here. If you want to stand by the will of this convention and get this convention moving, and if you wish to finish by January, let's defeat this kind of amendment and any other kind of amendment which will, in essence, defeat what we did a simple four days ago.

Thank you very much.

Further Discussion

Mr. Denberry Mr. Chairman, delegates to the convention, Mr. Avant's amendment, which he has explained to you, contains a total of fifty-six words. The amendment which I have introduced, and will shortly be before you, contains basically the same thing in a total of twelve words. But in addition to that, I would point out to you that the language in the Avant amendment goes far beyond the language in the present constitution. I don't think anyone who is interested in home rule, and certainly I do not, believe that the exercise of the police power

of the state should ever be surrendered. In a matter of fact, at the time that the constitution of the City of New Orleans was adopted, it was adopted under an amendment to the '21 Constitution which says that "nothing in the amendment shall be construed as restricting the police power of the state." Now it seems to me that's all the language we really need in here. The language that Mr. Avant has put in his amendment goes far beyond, in my opinion, what is necessary in order to protect what all of the previous speakers have talked about.

In Section 6, which we adopted in this article a few days ago, the legislature is given the authority to classify municipalities of parishes on a reasonable basis. So that portion of this is unnecessary. It's certainly unnecessary to say any more than "nothing in this article shall be...shall restrict" instead of saying "notwithstanding any provision, etc.," as is set forth in the Avant amendment. It seems to me that there's been enough concern expressed by those who are...who voted for the home rule provisions in Sections 7, 8 and 9 to warrant careful consideration of not adopting the Avant amendment, but of adopting a short phrase which says that "the police power of the state is paramount." I believe everyone will agree that it should be paramount. But certainly, if the state does not exercise its police power and it can only exercise it through statute, if it does not exercise the police power, then the local, the parishes and the municipalities should certainly have the right to exercise those police powers.

If the legislature does not adopt a statute concerning the construction of high rise buildings, as suggested by Mr. Avant, is there any reason why the city of New Orleans should not adopt an ordinance to this effect—or the city of Baton Rouge, or the City of Alexandria, or any of the other municipalities, or any of the parishes for that matter. If there is any question, and there is question as expressed by some of the previous speakers, that the language in the Avant amendment might restrict the power of local government to exercise those police powers which by virtue of this constitution have been delegated to them, but can always be taken away by a general statute, then I should think you should vote against the Avant amendment, and I strongly recommend it.

I will be pleased to answer any questions.

Questions

Mr. Deshotels Delegate Moise, in all candor...

Mr. Denberry Moise?

Mr. Deshotels We...we address people by their first name where I come from.

Mr. Denberry Oui...

Mr. Deshotels In all candor, we've been told this would destroy the provisions that we have for local government and home rule that we adopted earlier. Now, you talk in general, broad terms and you say that this is duplicitous, that we already have this...What...there has been some indication of this in the past and a back door approach. What does it do that you are afraid of?

Mr. Denberry Mr. Deshotels, I don't know. I said "if there is any doubt in your mind about it, then you should vote against it." But it doesn't, it certainly...it certainly is no more comprehensive than stating, "nothing in this article shall restrict the police power of this state," which is the suggestion that I have made in my proposal.

Mr. Deshotels Well, then you are saying that you don't know whether there really is any difference from yours and this one, other than that it's got a lot of verbiage.

Mr. Denberry That's right. It's got forty-four words more. I think it is too prolix to get into the constitution.

54th Days Proceedings—September 26, 1973

Mr. Tapper. Moise, on the... I have two questions. Number one, you admit that both of these amendments are very similar, yours and the one that's on the floor. Is that about right, except for additional words?

Mr. Dennery. I'm inclined to think that the purpose of Mr. Avant's amendment is very similar to the purpose of mine. We had discussed this several days ago together.

Mr. Tapper. Yes, sir. Now, the meaning of my question is this. Assuming that the local governing bodies decide to exercise the police power... the state police power would they not then say that the state has no further power because the constitution has given us the right to exercise it? We are exercising it; therefore, the state legislature does not have the right to exercise any more.

Mr. Dennery. Not so long, Mr. Tapper, as you have language such as I have suggested, which says "nothing in this article shall restrict the police power of the state."

Further Discussion

Mr. Casey. The Chairman said I am only entitled to brief remarks, so I'll say very briefly that I strongly urge that you vote against this amendment. Mr. Juneau eloquently indicated that what we have given to home-rule three or four days ago, we are now taking a great amount of that home rule away.

I must refer you, however, to the first couple of lines of this particular... in Amendment No. 2, the first couple of lines of Paragraph (B). Notwithstanding and any home rule charter. I think that amendment goes much farther than Mr. Dennery's amendment or than Mr. Burson's amendment. I think there is much merit for the state retaining its police powers. However, we don't know what the overall effect of this particular amendment is on existing home rule charters. We know very well that many home rule charters at this time do now exist. We have previously recognized those home rule charters in preceding sections.

We have talked very much about police power, which is a rather difficult term to define, to say the least. But under the police power authorities, under Mr. Avant's interpretation, as I understood it, we are already arguing the merits or demerits of Section 16 and I think those arguments should be put off until we arrive at Section 16, so that they can be argued in the light of that particular section as drafted.

If we would carry Mr. Avant's explanation, as I understood it, to its fullest extent, we would do what the legislature has done on many other occasions: for instance, in passing police and fire legislation affecting the city of New Orleans. That legislation has been so detrimental that at this time it is my... on the information which I have, the city of New Orleans must appropriate as much as three million, four hundred thousand dollars in order to merely pay present retirement benefits for fire and police. Those type of restrictions or responsibilities, financial responsibilities, have been placed upon the people of the city of New Orleans. If we had to make those retirement funds actuarially sound at this time, it is my understanding that the people of the city of New Orleans owe as much as one hundred million dollars to make those retirement funds actuarially sound. I think we should be awfully cautious and awfully careful about what we are doing here. I do not know the full extent of Paragraph (B) in Amendment No. 2. I must confess I don't fully understand the implications of it. I would suggest that any arguments be forestalled until we arrive at Section 16.

I don't think there are many delegates here that in any way would want to impede the rightful benefits that police and fire are entitled to. From my experience in the legislature, the legislature is very anxious to grant those benefits to police and fire because of the hazardous type of occupation

that they must participate in.

But let's leave that to the legislature in the future to take care of those problems. I think that responsible local government and home rule charters will properly provide for those spheres of activity. I urge you, very strongly, to defeat this amendment.

Questions

Mr. Lennox. Mr. Casey, would you favor all of us with a complete legal definition of the term, "police power of the state"?

Mr. Casey. Mr. Lennox, I wish I could give you a complete definition of "police power of the state," but it is my understanding, as an attorney and as a legislator and as a delegate to this convention, that it is a pretty much of a coverall phrase... because police powers affects everything that you could possibly think... almost everything that you could possibly think of in regulating the activity of our citizens, whether it be the health, welfare, morals... that's textbook law. What we have found in the... in jurisprudence, it's pretty broad and affects everything.

Further Discussion

Mr. Anzalone. Mr. Chairman and ladies and gentlemen of the Convention, how many times have we heard that we are here to write a clear, concise, well-defined constitution that is going to be readily understandable by the electorate to whom we are going to present it? I want to give you a little perspective that I had in March of 1974. I walked up to several of my constituents and I said, "I am here to sell you the new constitution."

They said, "Well, Joe, what's in there about home rule?"

I said, "Well," I said, "I gave it to them in seven and eight and nine, but we might have taken it away from them in eleven or possibly twelve. I just be damned if I know what we did."

So then he walks along and he says, "Well, Joe," he says, "what did you all do about the salaries of the firemen and the policemen?"

"Well," I said, "you know that came up in Section 16. But I believe that there was something in Section 11, or Section 3, or might have been seven, that possibly gives the legislature the authority to do what it is that we don't want them to do... or some of us didn't want them to do." So I look at him and I say, "You know, I just be damned if I know what we did." So then I look at him and I say, "Now, I've really explained this constitution to you. Boy, I've told you exactly what it is. I said just exactly what I told you. I was going to do November, was a year ago: 'I'm going to write you a clear, concise, readily understandable constitution.' Now that I've explained it to you, won't you please vote for it?"

You know what he's going to tell me? "I'll be damned if I will."

If we are going to talk about firemen and policemen, let's talk about firemen and policemen in Section 16. Don't try to hide it in Section 4, 2, 9, or someplace else. That's the damn trouble that's wrong with the United States Constitution now. Everybody talks about how short it is and how great it is, but you get hung up every time you talk about it because you don't know what really provides for what. Now that one's been in existence for almost two hundred years. We're going to try to sell this one next year. Now you all try to go out and sell it when somebody asks you, "What does this mean?"

"Well, I don't rightly know."

"Well, what does that mean?"

"Well, I don't rightly know that, either."

"Well, how about delegating other provision?"

"Well, I don't rightly know."

"Well, you just don't know too damn much about nothing, do you? How much did you make last year?"

"Oh, I made about six thousand dollars at the convention."

"Boy, you sure earned your money."

Ladies and gentlemen, please understand. This is not legislation. We're not trying here to play tricks on one another to see where we can hide it and where we can put it, and then later on we can find another little loophole to work out of. You've got to go back to the people with this thing. If they don't understand it, they're not going to vote for it. We don't understand it. Now in the world we are going to tell them what it is? You've got to reject amendments like this, not necessarily for the content, but because it is an attempt not only to put something in here that maybe you don't want, but it's a deliberate attempt to hide something. We're not here to hide. That's why we didn't put a curtain on the machine in the first place.

Further Discussion

Mr. Willis Mr. Chairman, fellow delegates, I know the deep pleasure of serving and of hearing and seeing with eyes and ears connected to the mind, and being disconnected from the heart in the search of the truth. I know the pain of enduring untruths. Lots of harsh words ring loud in my ears, trouble my mind and burden my heart when they are interwoven with untruths or half-truths. These, however, do not deter my endeavor to untie stubborn knots and untangle every scheme. I do not cut the knots, all snarled up with either wounded pride or bold prejudice. In testimony whereof, I pray you bear with me while I unravel the untruth and lay bare and reveal the truth, the whole truth, and nothing but the truth by exposing and exploding this amendment; then carefully work at it with your heart.

This amendment contains one sentence. It is overloaded and it tumbles with its own weight. Here is that sentence stripped of its ruffles and flourishes: The legislature may throughout the state exercise the police power. The legislature does not exercise. It makes laws. Those laws are executed by the executives; locally, by sheriffs or chiefs of police, and statewide, by the state police. Authority is the oldest means of persuasion known to man. When it is used wrongfully, it overcomes, but does not convince, and it overcomes only temporarily, which means uselessly. All it does is cause unrest and injustice. This amendment supplants the sheriffs, the chiefs of police, by the state police if the legislature does exercise. Maybe under this amendment the legislature could exercise the police power through its own members. Do you think...did you think of that? That's what the amendment allows. It does so in plain English. Would you have it...would we have the Republic guaranteed to us by the United States Constitution in that case?

Mr. Denny's amendment takes care of what troubles this section. There is no trick to good faith. This amendment obliterates what we have done thus far and prompts what we are later to consider. I make bold to say it confuses to convince, it diffuses to divide, it suffices for suicide. Give it the resounding repudiation, rejection, refusal, and resentment it so richly deserves.

Thank you, Mr. Chairman.

Further Discussion

Mr. E.J. Landry Mr. Chairman, ladies and gentlemen of this convention. Everybody is singing, so I'm going to sing. "I got a robe, you got a robe, all God's children got a robe. When they get to Heaven gonna put on the robe, gonna walk all over God's Heaven...Heaven...Heaven...everybody talk about Heaven, ain't going there...Heaven... Now, this idea...the idea...let's get your attention. Thank you and you should give it to me because anytime anybody will really sing for this convention, you should listen. Ladies and gentlemen, this convention, regardless of what you say in your pessimism, is a lovely and great experience. I tell you I enjoy so much hearing my good friend, Delegate Willis. If anyone ever had the command of the English language and the legal language and the beautiful language, he has, but I'm here at this moment to speak to you about a concept of government. Now,

you have got to deal on with me that this amendment really and truly is necessary. If you think local government against itself. That's exactly what it does. We need a broad concept of government. Most of you have been in management, in personnel, and you know as well as I do, ---and I have been in that area, that responsibility---state cannot delegate responsibility. It must never relinquish responsibility. It can delegate authority, but it cannot and must not delegate responsibility. Now, think well about this thing. You have had all kinds of side issues develop, bringing in things that are not even present. The title of this section is "Limitation of Local Government." Now, reread it. It's limitation and members of this convention, you want to limit local government. Like it or not---make no special provisions for any special part of this state. Vote independently, regardless of what has happened in the past. You are trying to write a simple paragraph that will do just what I've talked to you about. I'm not a lawyer; I can only give you an expression of opinion. I will not in...try in any manner, shape or form to answer any legal questions coming from the lawyers because I have listened too long to the words used by lawyers in this convention to try and cope with any of their language.

[Previous Question ordered. Quorum Call: 106 delegates present and a quorum.]

Closing

Mr. Avant Mr. Chairman and fellow delegates, this is a moment of decision, a moment such as we haven't reached before. The issue is simple: Do you want to continue to live in a sovereign state, ---one of fifty in this Union---or do you want to live and your grandchildren and children to live under a loose confederation and alliance of independent, autonomous local governmental units? That's the question. Mr. Chairman, I ask for a record vote on this amendment.

[Record vote ordered. Amendments adopted: 61-48. Motion to reconsider tabled. Motion to take up other orders adopted without objection.]

Announcements
[J Journal 532-533]

[Adjournment to 1:00 o'clock p.m., Thursday, September 27, 1973.]

* * *
need more money, or we're just going to fail and we're going to lie up there. So, Mr. Chairman, what I ask for is what the status of that resolution now, and if possible, that that resolution can be called from the calendar by this convention and considered at this time?

Mr. Henry Reverend Alexander, we'll find out what the posture of that is. I don't know, but we'll find out and I'll report back to you.

Mr. Alexander Tomorrow we'll...

Mr. Henry We can let you know by tomorrow. Certainly, we need to move as rapidly as we can, and I think any rules we want to adopt, find, well, and good, but I think if we just use some individual restraint on ourselves so that when it's not necessary, and sort of discourage those who do like to talk so much, I think we'll speed up the progress of our work.

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Poynter Committee Proposals No. 17, introduced by Delegate Perez, Chairman on behalf of the Committee on Local and Parochial Government, and other delegates, members of that committee.

A proposal making for general provisions for local and parochial government, levee districts, and ports, the financing thereof, and necessary provisions with respect thereto.

The status of the proposal, at this juncture, is that the convention has adopted, as amended. Sections 1 through 11 of the proposal, with the exceptions of the following sections which have been deleted, those being Sections 2, 4, and 10 respectively; presently has under consideration Section 12 of the proposal, which at this time has had two amendments adopted to it.

Reading of the Section as amended

Mr. Poynter "Section 12. Limitations of Local Governmental Subdivisions

Section 12. (A) Local governmental subdivisions shall not: (1) incur debt payable from ad valorem tax receipts maturing more than forty years from the time it is incurred; (2) define and provide for the punishment of a felony; or (3) "...insert the language "except as may be provided by law enact private or civil ordinances governing civil relationships." Also added is a paragraph:

(B) Notwithstanding any provision of any plan of local government or any home rule charter, or any other provision of this article, the legislature may by general law, applicable throughout the state or based upon any reasonable classification, exercise the police power of the state in the parishes, municipalities, and under local governmental subdivisions of the state."

Amendments

Mr. Poynter Amendments sent up by Delegates Lowe, Roemer, and Mire.

Amendment No. 1, on page 6, line 27, immediately after the word and punctuation "not:" delete the remainder of the line and delete line 28 in its entirety and delete line 29 in its entirety and insert in lieu thereof the following: "(1) the de-". It would reinsert as a (1) the de-so that it would pick up on line 30, "define and provide."

Amendment No. 2, on page 6, line 30, immediately after the word "or" and before the word "enact" change the number "(3)" to the number "(2)".

Explanation

Mr. Lowe Mr. Chairman and fellow delegates, the amendment was handed out yesterday. I believe if you look on page 6 of CP No. 17, you can understand the amendment without too much trouble. Under Section 12, there are three prohibitions and what this amendment does is merely to delete prohibition num-

ber one. Prohibition number one says that a subdivision shall not incur debt payable from ad valorem tax receipts maturing more than forty years from the time it is incurred. Now, according to the explanation that was given to us by Mr. Perez in this digest, there's no such provision in the 1921 Constitution. We talked about this some under revenue, finance, and taxation. Section 40 (A) of this same proposal places a limitation on bonded debt of ten percent of the total value of all property within such subdivision valued for assessment purposes, and this ten percent limitation seems adequate to control the debt of municipalities and local subdivisions. Often local government finds it necessary to refund bonds. You may have a bond running for thirty years and for some reason or another the call features in the bond may make it have less cost, interest-wise, to refund those bonds and include it with another issue to run thirty years. I would doubt that that could be done under a proposal where there was a limit of an original debt of forty years. As you know, it's bad to put numbers in the constitution. When we were returning from the wars in 1946, it was not uncommon for a home... a residence to be purchased and paid off over a twenty year period, and that was the limit at which you would pay off a home in those days. Today it's not uncommon for young people to go out and buy a home that's payable over thirty and thirty-five years, so what we'll have fifty years from now, I don't know. But, the point is that this limitation, I don't think is required. The ten percent limitation in Section 40 (A) is adequate to control and place limits on local government.

Question

Mr. Roemer Mr. Lowe, isn't really all you're trying to do is just eliminate some unneeded language in this constitution, since we have the ten percent limitation that's the real protection, not the length of the bond?

Mr. Lowe That's exactly it, Mr. Roemer, and this amendment does nothing more, and as we huddled up here, I understood from Mr. Perez that he didn't have any serious objections, or maybe has no objections. I ask that you adopt the amendment.

Further Discussion

Mr. Perez Mr. Chairman and delegates, the reason this provision was put in the Local Government Article is because of the fact that many times in Article XIV, Section 14, when dealing with the specifics of the issuance of bonds, there was a limitation of forty years. The committee has no strong feeling with respect to it. We recognize that the State Bond Commission has to approve the issuance of bonds, and we have no strong objection to the deletion of it if that's the pleasure of the convention.

[Amendments adopted without objection.]

Amendments

Mr. Poynter Amendments sent up by Delegate Casey as follows:

Amendment No. 1. Delete in their entirety Amendment No. 1 and Amendment No. 2 proposed by Mr. Avant, et al., and adopted by this convention on September 26, 1973.

Amendment No. 2. On page 6, line 27, immediately after the numeral and punctuation "12," insert the letter "(A)"

Amendment No. 3. On page 6, between lines 31 and 32, insert the following: "(B) Notwithstanding any provision of this Constitution, the police power of the state shall never be abridged."

Explanation

Mr. Casey Mr. Chairman, and delegates, as you know we yesterday adopted the Avant amendment which struck very seriously at the heart, the soul, and the guts of our argument on home rule, the very

thing we have been arguing about and moving back and forth now for a whole week. I don't pretend to say that this amendment is the complete solution to the argument, but for right now, I think it will be a happy solution or a possible compromise until we can further resolve some of our differences. Chairman, I will yield to questions, but I would like to finish my remarks first.

I'd like to just relate or tell a humorous story about something that occurred [occurred] when I first got into the legislature, and I'd like to first say to Mr. Avant, "Please don't take this personally," and I relate it in jest; but when I first got into the legislature, somebody said, "Be careful because sometimes you can lose your socks without having your shoes taken off."

Ladies and gentlemen, that's exactly what happened yesterday with the Avant amendment. Those who may have favored home rule, home rule charters, strong home rule, lost their socks and they didn't even have their shoes taken off in the process, because you didn't realize what was happening. I think Mr. Wilkins probably made the most appropriate remark to the effect, that you have to be careful of the language in here when you're talking about "the legislature may by general law applicable throughout the state exercise the police power." If you really take a close look at that amendment which says "notwithstanding any provision of any plan of local government or any home rule charter or any other provision of this article, the legislature may by general law exercise the police power of the state," that amendment really worried me after it was adopted yesterday. So, last night I went to the L.S.U. Law Library and read Corpus Juris Secundum for three hours on nothing but the police powers of the state, and I found that it was most informative, very educational, and I wish I could have the time to relate to you completely what I learned last night. But this is a very, very serious matter. In the area of laws we have, I think, three areas of law that affect people, citizens in our state: the taxing power of the state or municipal government; the civil relationships that exist between our citizens, such as laws on liability, divorce, marriage, estate and the police power of the state. Delegates, the police power of the state is practically everything, and there are statements in Corpus Juris Secundum that indicate that the powers of municipal government entail nothing but police powers. So what we are doing, those areas that have charters now, those areas that operate under home rule charters now, that have and exercise certain police powers of the state, those powers being delegated to them by our constitution, have now lost a certain amount of their autonomy because now under the Avant amendment, those powers can be taken away from local government where they were irrevocably given, and that certainly—and I think Mr. Avant might admit--was the whole purpose of the Avant amendment. Police powers are so broad it is something that is inherent in the state. Laws do not give the state police powers. Those powers exist for the state to regulate the morals, health, and welfare of the citizens of our state. The only clause that I know of that we have in our constitution is something to the effect, which I am attempting to amend in Amendment No. 3, that the police powers of the state shall never be abridged. But, if I could just have your attention for just a couple more minutes, I want to explain to you something very interesting that Corpus Juris Secundum explained to me, that the police powers of the state certainly cannot be abridged, but those police powers can be delegated to local, municipal government. They can be delegated revocably--that is, the state can take it back, or it can be delegated irrevocably. Those with home rule charters existing now or that may exist in the future, no matter what your situation may be, no matter what type of police powers you have, those powers can be taken away by the exercise of the prerogative of the legislature, so that in the city of New Orleans, for instance--and I hate to use the city of New Orleans in examples, but that's the one I'm most familiar with--the city of New Orleans which has zoning laws, those laws can be diminished, amended, modified, revoked, rescinded

by the exercise of the police powers of the legislature. In effect, the state laws would preempt our local ordinances establishing our zoning laws. Delegates, I don't believe that's the intention. I hope that's not the intention of this Constitutional Convention. Further, in Corpus Juris Secundum, I found that maybe, just maybe, the prerogative of the Committee on Local and Parochial Government may have gone too far, but just perhaps, maybe the Avant amendment is on the other extreme. There are certain powers that rightfully should be retained by the state. Mr. Roy, there's no question about it, absolutely. There are also certain powers that rightfully and truly belong to municipal government and can be much more efficiently enacted and operated and carried out by municipal government. We don't have that solution at this time, and I would propose that the members of the Committee on Local and Parochial Government and the others who are interested in weak home rule would make a joint effort to arrive at some compromise to delineate as far as possible now far the state should retain police powers, and how far we can go in delegation of police powers to local government; but that has not been accomplished and the Avant amendment is not the solution to the problem. I would suggest to you that at a later time, on a later date, after intelligent, prudent determination and deliberation would be made on this issue, that we can arrive at some special separate section whereby we can compromise the real guts of the issue, the true conflict between the home rulers and those who wish to retain all police power in the state. I'll yield to any question.

Questions

Mr. Newton Mr. Casey, I know what you're trying to do, but I think your language goes even further than you want it to. It says "notwithstanding any provision of this constitution." Now, the Bill of Rights is part of the constitution, and there are certain protections against arbitrary abuses or uses of the police power which are contained therein. I think your amendment would abrogate the Bill of Rights, such as, the right to the writ of habeas corpus, freedom from search and seizure, and things like that.

Mr. Casey Mr. Newton, is your suggestion that we delete "notwithstanding any provision of this constitution"? Would you vote for it then if we deleted that?

Mr. Newton I think you need to narrow it down if you want to accomplish your purpose. I think you've gone further than you meant to go.

Mr. Roy Tom, I just wanted to point out that what Mr. Newton says is true, and if you look at the Avant amendment, it says "any other provision of this article" which deals with the home rule charters and not with the Bill of Rights, because you agreed in the Bill of Rights would never be suspended, as well as quartering of people in a person's house. Under the police power of the state, they could come in and quarter people in your house without your permission, and I don't think you meant to do that.

Mr. Casey I'd like to request the permission of the Chair to withdraw the amendment, delete the word "constitution", insert "article", and resubmit it.

[Amendment withdrawn and resubmitted with correction.]

Question

Mr. Jenkins Mr. Casey, I certainly agree that the police power of the state can be delegated, but is there a delegation of power when we have said simply that home rule charter parishes have all powers not denied them? That's not really a specific delega-

tion of the police power, is it--rather an abrogation of sovereignty, isn't it?

Mr. Casey Woody, I think that's a matter of interpretation. I think personally, I think the state was still well protected under, I think, Section 8, Paragraph E, where it indicated that the legislature could deny really any of the police powers to local government that it wanted to. I find no problem at all.

Further Discussion

Mr. Duval Mr. Chairman, fellow delegates, I think we ought to put the issue as clear as possible, and I think Mr. Casey has done an admirable, and excellent, and lucid job. The Avant amendment destroys what we did in Sections 7, 8, and 9. Some of the people who voted for the Avant amendment got caught up in the firemen and policemen problem. Some of the people who have been voting consistently for strong and viable home rule got caught up in that problem because it was intertwined and intermingled into the very ambiguous broad and dangerous language of the Avant amendment, and so they voted for it. That issue should be discussed when we get to Section 16. That issue should be isolated and separated from the broad issue of home rule. It should not be meddled up in this bad amendment that we've adopted, and that's why I'm suggesting we should adopt the Casey amendment. If what everybody is interested in is really the preservation of the police power, that's precisely what the Casey amendment says. It's very similar to the language in the '21 Constitution, and I think it's quite clear that everybody here dagdum well knows the legislature can deny local government just about anything if it has a specific law denying it. But 7, 8, and 9 vests local government with certain powers, some of which would be police powers. Now we have given, and now we have taken away. It is totally ludicrous, and totally evasive, and devious to do what we have done: to on the one hand give, and by a very good vote, give the home rule vests with certain powers and then to say they really don't have anything now. They really don't have anything--and that's what it says if it's carefully read. It's not the fireman and policeman issue. It is a total emasculating of what we've done, what we spent a week doing, and that's what it is. I think if everybody is going to be candid about it, they can say that what it really does is to take it away--what we've given. It's a back door approach; it's not really what we're doing. Yes sir, that's what it is, because it takes away what we previously enacted, and I'll tell you this: who do we represent, or whom do we represent? I guarantee you this is an office of public trust. We're writing organic law. We're writing organic law for the people of Louisiana. We've all used the euphemism, "I'm wondering what the people are. The people of this state want home rule. The vested interests do not want home rule, and we're supposed to represent the people of this state, and what this amendment is, is to placate vested interests. The Avant amendment places it in the hands of the man on the street who elects you, who elects the governor. That's the man who elects you. I think everybody ought to start thinking about that, and who elected you to come up here. Those people want home rule, and it's been taken away by this amendment. The Casey amendment preserves the police power and does not destroy what we have done. I suggest to you that this convention looks pretty ludicrous when it argues for a week and establishes a sound principle and then by vague, ambiguous, devious, evasive, and obfusatory language takes away what we have already done. I ask you to adopt the Casey amendment--to not yield except to your own conscience. That's what I ask you to do.

Further Discussion

Mr. Burson Mr. Chairman, fellow delegates to the convention, I know that very often in my manner of speaking to you, I have been in every sense of the

word, an advocate of one polar position of political philosophy in this convention, and that is the philosophy that believes first and foremost that government closest to the people is the best, and that the best way to protect liberty is to decentralize government power. That philosophy is not as concerned with the designation of rights in the Bill of Rights as it is with the dispersal of government power. That philosophy sees the concentration of government power as the greatest danger to liberty.

Now I recognize that certainly there is another philosophical position which looks upon the central government as the guardian, not only of the basic constitutional rights of the people, but of the social and economic rights of the people. I do not say that this is an invalid position at all times and all places, although in this convention, I have spoken always on the other side. But I'm asking you for a moment to divorce your thoughts, if you will, from whatever of these two political philosophies, or any philosophy in between, you might espouse. Look, if you will, to the practical effect of the amendment that we adopted yesterday in the language that we used. That language says that the legislature may by general law, applicable throughout the state, or based upon any reasonable classification, exercise the police power of the state in the parishes, municipalities, and other local governmental subdivisions in the parishes, and in the municipalities, and it may exercise it. I submit to you that that language is so broad sweeping, and so unlimited, that it clearly presents not only the possibilities raised by Mr. Casey, but the possibility that the state would not only set firemen's and policemen's salaries, but the salaries of the garbage man and the janitor who cleans up in this city hall, and carried to its ultimate extreme, would permit the state legislature as I see it, if they so desired, to virtually take over local self-government.

Now you say the state legislature won't do that right now and the governor we have right now wouldn't do that. I would agree with you. But language that establishes power is a neutral thing and the power, once established, is there for all time to come and it is not there just for the present governor, it is not there just for the present legislature, but for whoever will come in the future. If we look to the political history of our state, we would be naive, indeed, to deny the fact that there have been incumbents of the governor's office, and there have been some people in the state legislature in times past, who would have used this power in exactly the way that we fear it could be used. I submit to you that that is too dangerous a possibility to leave in this constitution.

Mr. Casey's language is virtually the same language that was contained in my amendment which was taken verbatim from the present constitution. It has a well defined historical meaning. We know in the past in our political history which of the police powers have been delegated to the municipalities and to the parishes, and which have been reserved by the states. It seems to me that we ought to be very careful, indeed, before we adopt new language, undefined, that is so broad sweeping that it would easily be open to the interpretation of an all encompassing central power.

Further Discussion

Mr. Avant Mr. Chairman, fellow delegates, particularly Mr. Casey. Mr. Casey, I don't take things personally and I know you well enough to know that you don't engage in personal debate. We're here to discuss principles, principles, not fear. I don't think that the day will ever come when I will have to be afraid of you on that point.

I do want to say this. I think Mr. Casey made my point very eloquently. Mr. Casey concedes that he thinks the committee, maybe, went a little bit too far. Well, I'm going to put the interpretation on what the committee has done that I put on it yesterday. The committee has turned the world upside down insofar as this area is concerned. Now

let me tell you, let's just get right down to it... right down to the basic issue which is before us and that we have been debating.

This provision is written by the committee and as far as adopted by this convention, this article, literally does turn the world upside down in this area. Every municipal corporation in this state, under this proposal, in the absence of this amendment, has unlimited power. Now I'll tell you why, because I am sitting here reading from the plan of government of the parish of East Baton Rouge, which is the most liberal home rule charter that I ever saw or heard of anywhere. Yet we have some limitations. I'm not going to read this whole provision, but it says that the city of Baton Rouge can do anything in the world they want to, subject only to the limitation that the provisions of said ordinances shall not directly conflict with the provisions of any state law. You don't even have that limitation in this article, and I'll tell you why. Because this says that they can do anything not expressly denied by general state law. It means that they can pass laws that are directly in conflict with general state law unless the legislature affirmatively comes back and says, "We are preempting this field and you can't legislate in this field." So, it is much broader and goes further than anything ever conceived by the mind of man up to this date.

Now I told you yesterday, and the issue is still here and it's still simple. Mr. Duval asked, says we'll talk about in the Preamble, "We, the people." Who are we talking about? We are talking about the people of the State of Louisiana. It's my understanding that's why we're here to write a constitution for the people of the State of Louisiana. That means the people in Terrebonne Parish, the people in Grant Parish, the people everywhere living together within this state as the citizens of a state...not some sort of a confederation...not some League of Nations, or whatever you might want to call it, but of a republic with one political entity, one of fifty states in these United States. That's what we came here to do. Unless we stick with what we've done yesterday, we are not going to do it.

I just say one thing in closing. I'm a citizen of the State of Louisiana and when I cross a river, I don't want to be a stranger in my own land.

Further Discussion

Mr. Smith Mr. Chairman, fellow delegates, I am very much in favor of this amendment. As I said in the beginning, I'm an independent. I didn't run on anybody's ticket down here, and I'm not running on anybody's now. I'm down here to try to write a good constitution. I guess this may be the end of my political career, but this what we had yesterday certainly is not home rule. As I told you yesterday, I have been in local government for forty years in a small community; we have police powers to carry on our work. This will...amendment we passed yesterday will take away all local police powers, take away home rule, we can't even raise our taxes, raise our firemen or policemen, as you know, I mean when they're going to come down here and get their raise and we have nothing to say about it. We can't raise our own people. This is just the starting point, and they come down and want to raise other employees. So if you want home rule, vote for this amendment.

Another thing, as I say, my interest is to pass a good constitution. I have no...I'm not with any coalition of anyone. But if we are going to pass this kind of stuff that we passed yesterday, the constitution cannot be adopted. I want to go around the state and do all I can to sell the constitution. But if we are going to do away with home rule, this is going to be one of the worst things we could do in trying to sell it.

So I ask you to let me vote this amendment and go ahead with the rest of the...I think, so far, we've got a pretty good constitution. But gentlemen, if we keep in now what we have, it's going to be an awful bad thing, and I just hope that you'll vote

for this amendment. I say this...I have a good feeling on it, and I want to see us write a good constitution and I feel like if we do away with this amendment that we passed yesterday and adopt this one, it'll go a long ways towards passing this constitution. I thank you.

Further Discussion

Mr. Abraham Mr. Chairman, fellow delegates, we are still trying to decide at what level do we draw the line on home rule. Now what does home rule mean? Does it mean home rule in the city? Does it mean in the parish? Does it mean in the state? Or does it mean in the country? I just don't understand how we can pass Section 7, Section 8, which reaffirms or affirms our position that we want home rule down to the lowest level for the people. In Section 9, we provided that we would have the home rule, provided the people themselves and other municipalities which had not had a home rule charter, voted on it and accepted it, and we've talked all along in this constitution about giving the people the right to decide what they want to do. We talked about it in the Bill of Rights, we talked about it in the Legislative Article and everywhere. Here, again, we are still talking about the same thing. Where do we draw this line? We adopted the Avant amendment which completely undid everything we had done previously. To me, the argument is not sound in saying that I want to know that when I go from one parish to another, that I'm going to be operating under the same laws or the same system.

If we draw the line, why draw the line at parishes? What do we do when we go out of the state? Do we object to having a different law in a different state? If we follow the line of reasoning that we...all these parishes had to be consistent, why not go a step further and say that all states had to be consistent and that I want to give the power to the Federal Congress to make all states operate exactly in the same manner and in the same consistency?

All these things are relative. But here again I repeat, that we are much better off if we give our people the right to decide this thing...these things for themselves. This, to me, is real home rule. This, to me, is allowing the people to really exercise of their rights. I don't deny that the state has certain powers that it should not relinquish. But the state is going to retain its powers because if any parish, or any local governmental subdivision steps out of line, the parish then...or rather the state then will be able to pass a general law which will say, "No, this is out of line. No one can do this." I think this is a much better means of handling it than by just throwing everything out the window. As somebody has said before, we throw the baby out with the bath water. So I urge you to consider what we did yesterday...to reconsider what we did yesterday. I think that the Casey amendment will bring us back on to the right track. I think we should maintain the concept that we have already adopted in Sections 7, 8, and 9. I urge the adoption of the Casey amendment.

Further Discussion

Mr. Stagg Mr. Chairman, I'll make my remarks very brief by asking the delegates a series of six questions.

Do you remember the debate of last week on structure and organization provisions of some home rule charters?

Do you remember the debate of last week on LaFleur versus Baton Rouge, and a Jefferson Parish case where the courts upheld the provisions of those city charters with respect to the payment of firemen and policemen as ordered by the state legislature?

Do you remember the debate of last week where Dillon's Rule and Fordham's Plan were contrasted?

Do you remember the debate of last week in a series of votes that this convention voted in favor of the Fordham System of home rule?

Do you remember the debate of last week where the differences were explained, where Dillon's Rule

and the little one, features of the legislature, and the Hornum rule was that the people of the cities are the master of their own fate?

Do you remember the debate and the vote on the Avant amendment yesterday, where by a vote of sixty-one to forty-eight, you voted to reverse all of the votes you cast on this subject last week? Today, by a change of seven votes, you can replace what we did last week. For that reason, I urge these delegates who voted all last week on the Fordham type of city government, will now vote for the Casey amendment.

Further Discussion

Mr. Kilbourne Mr. Chairman, fellow delegates, I hesitate to come up here on this debate because I really don't feel that I know what I'm talking about. But after I've listened to everybody else talk, and I feel maybe they know any more than I do, so I have a little more confidence.

I feel a little bit like I did several years ago right in my own woods, near my own home, but it was on a cloudy, overcast day, I couldn't see the sun, and I got lost. I wandered and I wandered. Every time I'd think I was getting out, I'd find I'd go right back where I'd started. I was going in a circle. That's an easy thing to do. I feel like maybe that's what we are doing now. But I told Mr. Avant yesterday that I couldn't vote for his amendment because I thought it was too broad.

Now I don't know what they talk about when they talk about police power. When they say, "reasonable, any reasonable classification, the exercise of police power in the state, in the parish, in the municipality is based on any reasonable classification." What's a reasonable classification? Well, I guess it's just what the people who happen to be holding the reins of power at a particular time think is reasonable. Or the judges who happen to be judges at a particular time rule is reasonable. That's the only thing I can think of. What is police power? I don't know what police power really means, and it's so broad...so, I just...I wish Will Rogers was here sometime, because he was a man that could take the complicated things and put them in simple language that I could understand.

What I think police power is, just to me, is real simplistic, is what the government, or the people who hold the reins of government at a particular time do to you, or for you, for your own good, whether you like it or not. I think this, that what we adopted yesterday, I still think it went too far. I think it's far too broad. It's too vague, and nobody, I'd say nobody here can foresee what the outcome, or how that kind of language could be interpreted in the future. For that reason, well, I don't know what the answer is, and I don't say Mr. Casey's amendment is the answer, but I believe there's got to be a better answer than what we did yesterday. So, I hope for the time being, that we can vote for Mr. Casey's amendment and maybe, maybe, we can come up with something still better than that. But I really believe that Mr. Avant's amendment goes too far.

Anybody can ask me questions, but I've already told you I didn't know anything about what we are talking about, and I don't think I can answer them, but I'll try.

Question

Mr. Derbes Mr. Kilbourne, I agree with what you say, and I'd just like to ask you this question. Isn't it true that any legislative act, any act of the state legislature pursuant to the Avant amendment, under the established rule of law, would be presumed constitutional, and it would be up to anyone challenging that law to establish its lack of constitutionality? If that were not established by proper evidence, the presumption of constitutionality would carry.

Mr. Kilbourne Well, Mr. Derbes, that's a very simple rule, a Horn Book law, of which even I know. Every legislative act is presumed to be constitu-

tional. You are absolutely correct.

Further Discussion

Mr. Kean Mr. Chairman, fellow delegates, I rise in support of the Casey amendment, and I'd like to take a few minutes to tell you why. I know what the Avant amendment does to East Baton Rouge, I know what it does to Jefferson, I know what it does to Orleans and the other home rule charters that exist in this state.

In the case of East Baton Rouge following the enactment of Section 11, it completes the emasculation of the charter of East Baton Rouge Parish. What I don't know is how far-reaching this particular section would be, if enacted with Mr. Avant's amendment in it, so far as other governmental offices and units are concerned. For example, and I think this is a matter which ought to be of some importance, for example, to you elected assessors, you other elected local public officials who are sitting in this convention. The Local Government Committee put in Section 13 a provision which, in my opinion, is inherent, is necessary, if local government is to have any viability in this state, and that is the electors of each governmental subdivision shall have the exclusive right to elect the members of their governing authority, and to further provide that such officials shall not be subject to removal by the legislature.

Now as I appreciate Mr. Avant's amendment, which says "anything in this constitution notwithstanding,"...anything in this constitution notwithstanding that the legislature could decide whatever is necessary in the exercise of the police power to classify all municipalities over two hundred and fifty thousand, and to take the position that the elected public officials of that particular...those particular municipalities shall be terminated. Is that what you want? Is that what this section means? Read Mr. Avant's amendment and then read Section 13 and decide for yourself. This particular provision by Mr. Avant wouldn't provide the means by which we could strike down, destroy, do away with local government in this state so that simple device of violating the election of local officers who have been elected by the people for whom they serve.

I can't believe that the delegates of this convention want that to be the law of this state. I know the people of this state don't want it to be the law of this state. This provision in Section 13 has been in the constitution for many years, put there for very principal purpose, for a very precise purpose, to keep the legislature from doing what was done back in the early forties, and that is to take away from local government its own elected local officials. I say to you, by all means take a look at the broad expanse of Mr. Avant's amendment. Give consideration to what it does striking across all of the provisions of this article to such an extent that nothing is left. As I said in the beginning, I know what it does to Baton Rouge. It emasculates the Baton Rouge plan of government. It does it more effectively than Section 11 ever could have hoped to have done. I am prepared to fight that battle as it comes.

But I urge on you delegates who now, for the first time, have to decide what this amendment by Mr. Avant does to the rest of the state and the rest of the local government. You'd better take a good, close look at it and vote in favor of Mr. Casey's amendment, which is a sensible and reasonable approach to this problem.

Further Discussion

Mr. Gravel Mr. Chairman and ladies and gentlemen of the convention, I'm utterly amazed that my good friend, Tom Casey, could suggest to you delegates who sat here yesterday and heard many hours of debate, who were polioed on the floor of this convention, hear him say that nobody knew what was happening. I think that just as clearly as it could possibly be put, that there was presented to this convention on yesterday, there is being represented

to this convention today, the proposition of whether or not you are going to have the ruling power over the people reposed within the mayors and police juries of this state, or whether you are going to repose that power... I will not yield... in the legislature, the elected representatives of the people, the elected representatives of those to whom they are accountable. That's precisely the issue. I wonder if you will recall that when the Casey amendment came to you, he spoke grandiosely about the concept of delegated powers, delegated powers. There's nothing in this proposal up to date unless we maintain the Avant amendment which was adopted yesterday, that in any way assures that there will be the concept of delegation of powers by the legislature to local governing authorities. On the contrary, if you adopt the proposal suggested today and go along, in effect, with the committee, which is what you would be doing, you would be limiting the police power of the entire State of Louisiana. You would be limiting the right of the people of this state, through their elected representatives, to provide for the general welfare, morals and betterment of all of the people in this state. All that the Avant amendment did yesterday, and it's strange to me that there can be so much opposition to it, is to provide that no part of a home rule charter, no provision in a plan of government, can adversely affect all of the people in the state and that the legislature may pass laws irrespective of anything that may have been slipped into some local plan of government or some local charter, which will insure that the full rights of all of the people throughout the state are protected.

If you don't maintain the position that you securely adopted yesterday by a resounding vote, then you are going to permit literally hundreds of small governmental operations to coexist without any uniformity throughout the length and breadth of Louisiana. Ladies and gentlemen of this convention, that's the issue. How, in Heaven's name, can New Orleans or any other area, be concerned and worried about the police power of the state, exercised as authorized by this amendment, if the provisions of their charter or the provisions of their plan of government, are only for local and special purposes? The Avant amendment would not do that. That is, that only permits the exercise of legislative authority by the legislature, by your Representatives, and by your Senators, when the police power of the entire state is being invoked, and then only for the public good.

I think everybody understands the issue. Sixty-one to forty-eight you voted yesterday, and when you got through voting, the same power lay descended upon us as has descended upon us on previous occasions.

[Quorum call: 104 delegates present and a quorum.]

Further Discussion

Miss Perkins Ladies and gentlemen, those of you that were in New Orleans some time ago when the convention first convened and we had a conference with some of the... the Chief Justice of the Louisiana Supreme Court, some of you probably heard me ask the question and tell the how is a bikini like a barbed wire fence? It protects the property without obstructing the view. Now exactly how does this apply to home rule?

Well, what the Avant amendment does, is it takes away the property that is home rule and the rights thereunder, but it obstructs the view. That is, it makes the people think that they still have the home rule rights that we granted to them last week. It is most amusing and amazing that we have broadened the powers of the governor, and we have broadened the powers of the legislature, but yet we are unwilling to broaden home rule power, that is, the power of the people themselves. We have asked the people of the State of Louisiana to trust us and all other public officials. Yet, we are apparently unwilling to trust them with handling their own af-

fairs. This is a government for the people, but what about by the people? Do we trust them to handle their own affairs? Legislatures do handle the state affairs and we have protected the state police power. But yet, we seem to refuse to let people handle their own local affairs.

The people of your respective districts chose you to represent them. When they elected you, they let you know that they trust you, but yet now we are turning around and telling the people of our districts, "Look, we don't trust you to handle your own affairs." Ladies and gentlemen, you either give to the people the trust and the authority that they deserve on the local level, or you're not for home rule. I strongly urge the support of the Casey amendment. As stated earlier by previous speakers, the Avant amendment destroys the work that has been done these last weeks here at the convention. I ask you, and urge you, to give the people the power they deserve and the trust that they have given you.

Thank you.

Further Discussion

Mr. Roy Mr. Chairman, ladies and gentlemen of the convention, I rise in opposition to the amendment. I want to just say a couple of things about what I think we've done in the last week or ten days, contrary to what some of my distinguished friends think.

I think for the first time in the history of this state, we provided a vehicle, a constitutional vehicle whereby police juries, local municipalities and any other governmental subdivision may facilitate the adoption of a home rule charter. We constitutionalize those that are in existence, and seven, and we provided in Section 8 that in the future you may have others. I never believed, though, that we were in any way attempting to abrogate, modify or amend the police power of the state in any circumstance, and never will believe that. I ask one thing, was my friend who said that I'm talking truly when I gave these powers to the local governments, and to the people, which they should have to create home rule charters in the constitution, and when it said, contrary to everything in the past that we are going to give you every power that is not expressly denied to you in the future, that was a change that everybody has agreed, from a hundred and fifty years of government in the past? Why, then, why not the same little one line sentence that existed in the 1921 Constitution that said, "the police power of the state shall not be abridged"? You understand, they were giving absolute, autocratic power to local citizens to form a home rule charter subdivision, and yet they didn't bother to say anything about the police power of the state. Now, I'm not trying to say there was anything sinister. That's not my point. My point, as a legal matter, though, is that since they have so broadly said that every home rule charter subdivision will have whatever power is not expressly denied. Since there are so many charters that have powers that we don't know about, my point is that I think the Casey amendment is, the belated Casey amendment, is much too weak, that there can be an argument made, and surely it will be made by these autocratic people of home rule charter subdivisions, and it's not the people. It's the people in power who are trying to push through the thing. You don't see any little people out trying to say what...

Further Discussion

Mr. Wall Mr. Chairman, fellow delegates, we have to be able, we have to have in this state a standard, a standard to protect all the people of this state. Now you can't protect... if the state can't have minimum fire regulations for the safety of the people of this state, then we can't have the safety that we need. Now if we don't meet that, New Orleans can't have stiffer fire regulations than they have up in West Monroe, because their... their hazards are different in New Orleans than they are in West Monroe, but there has to be a minimum for all of them. You have to retain, you have

to retain the right for these general laws, and for the general protection of people of this state.

Another thing, you talk about the health conditions of this state. You can't permit, you can't permit a police jury, or even in the same parish, next to a city, or even in another parish, create a subdivision and let them have the standards of an oxidation pond that's not functioning properly.... that's not functioning properly, and they would create a health hazard to the people of this local government. There has to be an overriding, and retained by the state, the right to protect the health of the people of this state. That's all this is. Now the thing is, we have a good amendment that was adopted yesterday, and I think we should retain it as it is. It states the police power in a positive manner. To properly protect the people of this state, it needs to be stated in a positive manner.

So, I'm going to ask you to reject Mr. Casey's amendment.

Thank you.

Further Discussion

Mr. Nunez Mr. Chairman and fellow delegates, it's very difficult to say what has been said because I think it's all been said. It hasn't all been said today. It's been said for the last two weeks, and if we don't adopt the Casey amendment, what's been said for the last two weeks, and what's been adopted for the last two weeks will go for practically nil.

You know, there's been a lot of talk about slowing down the convention, and why the convention is slowed down. Well, certainly, when you keep coming back after you have adopted Section 7 which ratified existing charters, Section 8 which gave the constitutional vehicles to local governing authorities to adopt the home rule charter, and Section 9 which... which, by the way was, I thought, a real compromise, and I came here yesterday morning as optimistic as I've been since we started this convention, that we have been doing very well eventually the ultimate product of this convention was going to be a good product and the people of the state can vote for it.

But after we adopted and made the compromise, and put the referendum to the people—that was the big cry from a lot of people, you know, they wanted the people to vote for it—they came back in Section 12, which was "limitations of powers," and in "limitations of powers" what they did is almost undo anything you had done for a week and a half. Let me say to the firemen and policemen who are here, I don't think you've had a better friend in the past ten years I've been in the legislature. I haven't missed a vote for you. I don't think this is a vote for you, by the way. I think it's a vote to torpedo what we've done over the past two years, or past two weeks.

Section 16 covers the firemen and policemen adequately. If you want to vote to protect the firemen and policemen of this state, which I will do, vote for Section 16... vote for Section 16. But don't be fooled by... it's in Section 12... a lot of people, I believe, still believe that they are voting for firemen and policemen. It's completely untrue. You are not voting to protect firemen and policemen. Section 16 will do that. I say up here publicly, maybe it's a bad vote, but I'll vote for Section 16. I believe that we have in this Casey amendment, what people have gotten up here and told you they wanted... not to abridge the police powers of the state. That's exactly what it does, very simply. It prohibits the abridgement of the police powers of the state by anybody. Now haven't you heard that a hundred times up here... that they do not want to give the local governing authorities the police powers that are delegated to the state? Well, this does it. This does it. What does the Avant amendment do? Not to be repetitious, but I think I just puts the present home rule charter in. It puts the present Provision 9, and I think it goes a lot further than that. It goes into any constitutional provision such as your ports and your levee dis-

tricts and your other constitutional provisions as long as it's reasonable... as long as it's reasonable. What is that? That's one sentence in there I just can't seem to grasp... reasonable... is that all parishes east of the Mississippi River, is that reasonable? All parishes above five hundred thousand; all parishes on the coast of Louisiana; all parishes that have fifty percent pine trees; is that reasonable legislation? Certainly it's reasonable. I think Mr. Casey has come up with an excellent amendment. I think his arguments for it are certainly prudent. His research last night, I think, is outstanding and far outdoes anything anybody has done so far. I think this is another compromise. I believe that if we adopt this amendment, we are on our way back to having a sane... sane and sensible, and something that we can sell to the public of this state, and to the local governing authorities of the state.

So, I would ask you to adopt the Casey amendment. I would ask you to adopt it in the sense that it doesn't do violence to local government, and certainly it keeps the police powers to the state. It spells it out very simply. So, let's adopt the Casey amendment and move on with the convention because, I would say, at this point, we have slowed down to snail's pace and I would say at this point that if we don't pick it up, we might get into some serious trouble.

Thank you.

[Previous Junction ordered.]

Closing

Mr. Casey Mr. Chairman and delegates, I don't pretend to hope to sway anybody at this late moment. I merely wish to furnish some additional information.

In reading the law books last night, I think it might be interesting to forward to you, some of the material which I read last night just by repeating this information. The Constitution of the state, Corpus Juris Secundum says that "it extends to all matters which concern the regulation and control of the internal affairs of the state", and listen to this part, "and almost the whole of the great body of municipal law... the whole of the great body of municipal law which establishes and enforces the duties of citizens to each other is embraced within the police power." Police power affects everything. I have a list of about two hundred things, animals, slaughtering animals, breach of the peace, building and zoning laws, service stations, bookmaking, brickyards, butchers, carpet cleaning, curfew, dairies, dancing, fences, fire regulations, lewdness, laundries, lifeguards, you name it, and that's the police power of the state.

Gentlemen and ladies, I think you should consider seriously what the Avant amendment has done to the future of home rule government. Now I told "Sixty" Rayburn this morning, I don't know if "Sixty" is around, he knows that the city of New Orleans is always thinking about one of the days of the week when they could have some of that clean, good, cool St. Tammany and Washington Parish water. Now, if this, if the Avant amendment stays in effect, that would, in effect, permit the state legislature, by general law, to pass some type of law whereby the city of New Orleans might, by general law, perhaps, one day, would be able to take water from St. Tammany or Washington Parish and use it to the benefit of the city of New Orleans unless the right were given to the parishes of Washington and St. Tammany, by local ordinance, to prohibit the removal of water from their parishes.

Also, the legislature, as you know, is becoming more urban-oriented. It's certainly possible, that through a large representation from urban representatives, that possibly legislation could be passed which might be detrimental to the rural areas of the state of Louisiana whereby, however, through police juries' ordinances, the local interest, agricultural interest, might be better protected through local ordinances. I would like to point out very

strongly that because of the Avant amendment, we have gone farther, much farther, in diminishing home rule than did the 1921 Constitution. We are worse off with that thought; to say that local governmental subdivisions shall not levy any tax beyond the limits of this constitution or may not levy or increase any other tax which is not authorized by this constitution unless the legislature approves the imposition of that tax and unites the voters of the area go to the polls and vote for it. Taxation has become a real problem in this country and I think the people are not going to stand by for increased taxes unless they are given the opportunity to vote on those taxes. So this gives them that right. It makes sure that the legislature can't pass a law imposing a tax on a locality without the approval of the people in that locality, not does it allow the legislature to come along and authorize a local governing body to impose a tax on a locality without the approval of the people in that locality. So, I urge the adoption of this amendment.

So we have three choices when you get down to it. This is what we really ought to seriously consider are these three choices. Do we want the committee proposal which is one extreme; do we want the Avant amendment which is the other extreme; or is it possible, perhaps, maybe, that during the debate in the consideration of this article we might give to the state those things that are due rightfully for regulation by the state and give to municipalities those police powers which it rightfully should enjoy to conduct its own business? That's the whole issue. You can't do that with the existence of the Avant amendment.

[*Mr. Jenkins: "I'd like to see the committee proposal and a quorum. Record vote ordered. Amendments adopted: 6-55. Motion to reconsider failed."*]

Amendment

Mr. Poynter Amendment No. 1 [*By Mr. Jenkins*]. On page 6, line 31, at the end of the line change the period "." to a semicolon"; and insert the following: "or (3) levy any tax beyond the limits imposed by this constitution; or (4) levy any tax not specifically authorized by this constitution unless authorized by the legislature and by a majority of the electors voting thereon in the political subdivision affected."

All right now, Mr. Jenkins has a further change. With respect in the amendment to item No. 4, the amendment as he wishes it introduced would read: or "(4) levy or increase any tax"; insert the words "or increase." So, it would read "or (4) levy or increase any tax not specifically authorized by this constitution unless authorized by the legislature and by a majority of the electors voting thereon in the political subdivision affected."

Explanation

Mr. Jenkins Mr. Chairman, delegates, the proposal of the Local Government Committee very carefully limited the taxing authority of local governmental units, and you will see in the later provisions on finance, in this section, they specifically put limitations on property taxes, special district assessments, sales taxes etc. However, there is a loophole left in the whole taxation scheme, and that is the possibility that other taxes not specifically mentioned in this article could be imposed by virtue of the fact that local governing authorities have the power not denied to them by general law. Examples of this would be things like a value-added tax; there is no provision in this article or elsewhere that would prohibit a local governmental subdivision from imposing a value-added tax of, say, one percent all along the way on the sale and resale of various goods. There's no prohibition, for example, against the imposition of an employment tax; it might happen in New Orleans where there would be a head tax on people employed in the city, which would have to be paid by people in Jefferson or elsewhere. So, in the committee proposal there was the listing of certain things that local governments could do. If you will look on page 5 in Section 9, you will see that one of the things that local government could have done was the No. 1 there, "to tax under the limitations provided in this constitution or by general law." However, we deleted that with an amendment that the...local...the government...Local Government Committee went along with—you remember deleting that entire listing. So, it's now somewhat up in the air whether or not local governing authorities can increase taxes beyond the limits set in this constitution or could impose new taxes not authorized by this constitution. Now, in the local governmental section here, the committee provided

that a vote of the people must be taken in order to increase taxes authorized in this constitution. So, the purpose of this amendment is to stay in line with that thought; to say that local governmental subdivisions shall not levy any tax beyond the limits of this constitution or may not levy or increase any other tax which is not authorized by this constitution unless the legislature approves the imposition of that tax and unites the voters of the area go to the polls and vote for it. Taxation has become a real problem in this country and I think the people are not going to stand by for increased taxes unless they are given the opportunity to vote on those taxes. So this gives them that right. It makes sure that the legislature can't pass a law imposing a tax on a locality without the approval of the people in that locality, not does it allow the legislature to come along and authorize a local governing body to impose a tax on a locality without the approval of the people in that locality. So, I urge the adoption of this amendment.

Further Discussion

Mr. Perez Mr. Chairman and ladies and gentlemen of this convention, I would have hoped that Mr. Jenkins would have read Section 35 of our Local Government provision which goes into the authority for the taxing power. I suggest to you that this is not the time to consider the question of the limitations upon local government to tax. If there are any amendments which should be offered, they should be offered to Section 35. Section 35 specifically provides, "a political subdivision may exercise the power of taxation subject to such limitations as may be elsewhere provided in the constitution, under authority granted to them by the legislature for parish, municipal and local purposes, strictly public in their nature. Provisions of this section shall not apply to, nor affect, similar grants to such political subdivisions under other sections of this constitution which are self-operative." I would hope that Mr. Jenkins would be agreeable to withdraw his amendment at this time, so that we may take up the question of taxation in an orderly fashion.

Question

Mr. Jenkins Mr. Perez, in Section 35, would you agree to go along with the idea of providing that...there must be a vote of the people before a tax could be imposed or increased on the local government level?

Mr. Perez Mr. Jenkins, every provision in the constitution with regard to the right to tax by local government has a specific provision requiring a vote of the people. I cannot say to you at this time that the legislature in some years hence might want, under certain conditions, to give the authority to levy a tax without the vote of the people, but again, I'm not going to answer your question directly because I believe that will be self-evident to whom we go to Section 35. I believe we would move a lot more...lot quicker if the...you would have read the particular provision and we could have considered it at that time. I urge you to defeat the amendment and then we will consider whatever further limitations on taxation that the body would like to do at the time we consider Section 35.

Further Discussion

Mr. Roemer Mr. Chairman and fellow delegates, it seems to me that if you read Section 35, it clearly says on line 22 and 23 "subject to such limitations as may be elsewhere provided in the constitution." Well, of course, this is the constitution and the section that we're talking about now deals with limitations on local political subdivisions. So I think that the Jenkins amendments are not only in order, I think they're appropos to the subject of limitations on local political subdivisions. Now, what more important limitation might there be than the requirement of a vote by the people before a

new tax can be imposed, and I think that's all Mr. Jenkins is trying to do. He does not tie the hands of the local political subdivisions in any way; he just says that if it's a new form of taxation, that they must have a vote of the people before they can be imposed. Now, it has been said to me that there are some home rule charters that allow for taxation without the vote of the people. That may or may not be the case. If there... if that's the case, it's--the idea is abhorrent to me. It seems to me in a nation that's being taxed to death, the least we can expect is for our constitution to require a vote of the people, and that's all Mr. Jenkins is trying to do. I think the amendment is quite good, and I think it's certainly in order and apropos to the general concept of this constitution: that is, government for all, but with reasonable limitations.

Questions

Mr. Perez Mr. Jenkins [Mr. Roemer], did you say, but...don't you agree that if that is the pleasure of the convention, we can take care of that when we get to Section 35, instead of taking it up out of order now?

Mr. Roemer Well, perhaps we can, Mr. Perez, but I would submit to you that if you listened to my opening remarks, you seem to have given a nod in Section 35 to the need to be aware of other provisions in this constitution. You say just that it seems, in addition, to me, to be relevant in limitations on local political subdivisions to put this most basic limitation on those local political subdivisions.

Mr. Lanier Mr. Roemer, aren't there certain types of taxes like special assessments, etc., that are imposed not with a vote of the people?

Mr. Roemer Is that a question or a statement?

Mr. Lanier I'm...did you know?

Mr. Roemer No.

Further Discussion

Mr. Conroy On previous occasions when matters relating to finance and taxation have come before this convention, I have urged the convention not to act upon them at that time, but to postpone them until such time as they can be considered in proper context. This, again, is one of those occasions I urge you to defeat the Jenkins amendment at this time so that the whole problem can be placed in proper context and studied in Section 35 with regard to taxation by local governmental units. It may well be that there are certain kinds of taxes that a local governmental subdivision should be able to increase or to levy without a vote of the people. I'm not sure what is meant here by taxes, whether it includes a special assessment or not. This point was brought out by Mr. Lanier's question. I think we again get into the question of home rule. We don't have a limitation of this kind on the legislature of the state; we don't require the state to submit all taxes to a vote of the people through out the state; and where you have a home rule charter in which the people of a governmental subdivision have decided that they want their governmental unit to be able to exercise certain powers of taxation, I don't see any reason for this constitution to limit the possibility of such authority being exercised by the local governing unit. I yield to my questions.

Questions

Mr. Willis Mr. Conroy, I commend you for what you said and in the interest of time the most invaluable--the most valuable element we are about...isn't this the best way to drag anchor, is by proposing amendments to a section under the guise of amending it and then scratching away at a section beforehand and then something that refers to taxation?

Mr. Conroy Yes, in addition to dragging anchor, it also confuses the issues and I think...makes them very difficult for the delegates here to comprehend, the significance of what's going on.

Mr. Willis Very good.

Mr. Arnette I was going to speak, Mr. Conroy, but I think I can ask you a question that might clear up my problem. Section 4 of Mr. Jenkins' amendment says that you need a vote of the legislature and a majority of electors.

Mr. Conroy That's correct.

Mr. Arnette Now, even if the people of a locality want the tax, they vote it themselves, you still have to go to the legislature under this provision. Do you think that's a good idea?

Mr. Conroy I certainly do not, Mr. Arnette, but as I said before, I hated to get into a discussion of too much of the merits here because I think it's subject to too many comments and criticisms and minor changes. I think if this passed, we would find a whole bunch of additional amendments then being promoted on the floor to properly define and place this in proper perspective.

I urge you to reject this amendment and I move the previous question.

[Previous Question ordered. Record vote ordered. Amendment rejected: 34-79. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Dennis]. On page 6, between lines 31 and 32, delete Floor Amendment No. 2 proposed by Delegate Avant, et al. and adopted by the convention on September 26th and insert in lieu thereof the following: "(B) This article shall not limit the power of the legislature to enact laws of statewide concern."

Now, Mr. Dennis, we've already got that amendment deleted. So, all we need to do is add a new paragraph and we need to call it "(C)" now. We've got a Paragraph (B) already.

The intent of the amendment--I'm going to have to change the instructions--is to leave the Casey amendment and add this language as a Paragraph (C). The instructions will read and I'll correct the instructions on the desk: On page 6, between lines 31 and 32, and following the language added by the Casey amendment, insert the following...So, this would be added as a third paragraph, Paragraph (C).

[Quorum Call: 93 delegates present and a quorum.]

Explanation

Mr. Dennis Mr. Chairman and fellow delegates, I'm offering this amendment as a separate section--separate paragraph to this section. The amendment simply says that "this article shall not limit the power of the legislature to enact laws of statewide concern." The reason I'm offering this amendment is, ladies and gentlemen, we have not resolved the issue we've been grappling with. In Sections 8 and 9, which we have previously adopted, we have granted certain powers to local governments and Mr. Casey's amendment, which was just adopted, simply says that "the police power of the state shall not be abridged." Now, Mr. Casey's amendment either is meaningless, or it does away with the powers we granted under Sections 8 and 9. If you read it literally that "the police power shall not be abridged," then 8 and 9 would be in conflict with this, because they do abridge the police power of the state. However, if you read it to override 8 and 9...if you don't read it to override 8 and 9, then it's meaningless; it doesn't limit the power of local government one whit. Now, I submit to you that there are some areas in our law which can, although they may affect local government powers, can

come to be of statewide concern. I suggest to you that in the coming years the area of ecology will be one of these areas. We may be forced to enact statewide laws to deal with problems that prevent us from having a healthy environment, and we may find ourselves thwarted in that regard by a local government charter which has usurped the power of the state in carrying out this function. Now, like Mr. Casey, I spent some time in the library this morning on this problem. I was looking for some way of compromising this issue, and--I could find but one const...state constitution in this country, and I admit I didn't look at all of them, but I looked at a great number--which has as powerful a local government section as we have just adopted in Sections 8 and 9. That was in the Hawaiian Constitution which says that "charter provisions with respect to a political subdivision's executive, legislative and administrative structure and organization shall be superior to statutory provisions." However, in that constitution they went on to recognize exactly what I'm trying to tell you right now--that there are some problems of statewide concern with regard to which we cannot tie the state legislature's hands. This, I think, is the amendment that is proposing is taken verbatim from the section of the Hawaiian Constitution and says "this article shall not limit the power of the legislature to enact laws of statewide concern." Now, ladies and gentlemen, I submit to you that we...we haven't clearly dealt with this issue. I agree wholeheartedly with what Mr. Anzalone said yesterday--we don't know what the damn thing means. Now, we all keep saying that we want local home rule to take care of local problems, but we all recognize--even Mr. Casey said this--that there are some statewide problems that need to be dealt with by the state legislature, and that is all this amendment does. This amendment leaves purely local problems up to local government, but it says that, nevertheless, the state legislature will still have the power to enact laws of statewide concern. Now, I think it is what a large number of us want to do. We want strong home rule, but yet we want that home rule to be tempered in the case there is a problem of overriding state interest to the point that the legislature can enact a law to protect a statewide concern or a statewide interest. So I ask you to please think about this amendment and support this amendment, because I believe that this comes closest to doing what I think that the fair-minded delegates want to do, which is to give as much local home rule as possible, but yet preserve to the state its interest to deal with statewide concern.

Questions

Mr. Conroy Judge Dennis, I sympathize with the problem which you mentioned about the confusion that might exist, but I'm not sure that we don't have more confusion here. This is under the section entitled "Limitations of Local Governmental Subdivisions" and your suggested language is that "this article shall not limit the power of the legislature to enact laws of state wide concern." Do you feel that there is something that has been done in this article up to this point which would limit the power of the legislature to enact such laws?

Mr. Dennis Yes, sir.

Mr. Conroy But...

Mr. Dennis All that is offered; in other words, I believe Sections 8 and 9 that we have adopted do limit almost totally the power of state...of the state legislature to enact laws in certain areas. I don't believe Mr. Casey's amendment breathes that power back into the legislature, and that's why I'm offering this amendment, but remember that this amendment only empowers the legislature to enact laws deal...of a statewide nature dealing with a statewide problem.

Mr. Conroy But...I don't quite follow how you find that limitation, for example, in 9, which said that

"the local governmental subdivisions may exercise any power and perform any function necessary or proper for the management of the affairs of the local governmental subdivision not denied by general law," which seems to me to recognize already the power of the legislature to enact such general laws and, in turn, to limit the local governmental unit to matters which pertain to local governmental matters.

Mr. Dennis Mr. Conroy, I...I know you well enough to know that you know this area better than that and that you know that we have preserved the organization and structure--these matters--exclusively to local government under home rule charters, and you also know that there have been court decisions which say that some things are structurally and organizational which you might not have thought before those cases were decided. The thing that...if that interferes with the legislature dealing with a statewide problem in the future and what we can see right on the horizon is dealing with ecology problems--I don't think we ought to thwart the legislature in that regard because what we are going to end up doing is coming back and amending this constitution, to say that the legislature can deal with ecology problems--problems of a healthy climate. There may be even problems of justice in this state, those that need to be treated in order to get at a statewide concern.

Mr. Conroy This, then, is similar to the amendment which you had...is similar in purpose to the amendment which you had proposed that we dealt with on Section 8, then, when we dealt with that aspect of local government--The structure and organization sentence. Is that right?

Mr. Dennis No...as I said earlier, this is different wording. It is taken from the Hawaiian Constitution which has a similar strong home rule charter provision in it. They thought it necessary to qualify that in the area of statewide concern. I see that necessity. I see the wisdom of that, and I hope that the convention will see that; otherwise, I think we are going to be coming back and amending this constitution continuously in the future.

Mr. Toomy Judge Dennis, by your amendment, do you imply in any way that the other articles to this constitution might limit the legislature from enacting laws of statewide concern? You just mentioned this article shall not. Do you imply that the other articles might limit the legislature in this area, such as the Bill of Rights, or the Judiciary or whatever? To enact laws of statewide concern?

Mr. Dennis Yes. It...you could have a statewide concern. For example, you could enact a law that would abridge constitutional rights against self-incrimination if you were concerned about crime on a statewide basis, but in the Bill of Rights we have said that that individual right is so important that the state, meaning the legislature, or anybody else acting for the state, cannot take it away from you.

Mr. Toomy If you notice, the Local Government Committee has a definition of "general law" as meaning "a law of statewide concern enacted by the legislature which is uniformly applicable to all persons, to all political subdivisions in the entire state." Do you mean in 5 of your amendment that these laws of statewide concern would not be uniformly applicable throughout the state...that it may not be statewide enacted, but only statewide concerned?

Mr. Dennis No. I don't...I'm not sure I follow you, but I don't...

Mr. Toomy You don't...necessarily say in your amendment that these laws of statewide concern would be applicable to the entire state.

Mr. Dennis All I'm saying, Mr. Toomy, is in Sections 8 and 9 we have reserved a little area of

power solely to local governments, to take advantage of it. In saying that's fine and good, but if that gets in the way of the legislature dealing with a statewide concern, I think the overriding state interest must be paramount and the legislature must be given the right to enact a law. If we don't, I'll guarantee you we'll be amending this constitution to take care of such a problem.

Mr. Toomy But you don't say in your amendment that these laws will be unified...applicable throughout the state.

Further Discussion

Mr. Pugh Mr. Chairman, fellow delegates, I share Judge Dennis' concern about this problem. I, however, wish to approach it a little different. As I appreciate it, he would propose, as an amendment to a section relating to the limitation insofar as local governments are concerned, a prohibitory type language insofar as those matters of statewide concern might address themselves. I look upon this as more an entire section as distinguished from an amendment to this section. I do believe as he does, that when we get through, if we ever do, with the article on Local Government, that something comparable to this will be necessary. I do believe in this section of the article it's inapplicable and premature. I would join Judge Dennis in the preparation of a similar type amendment to provide for a section in a more applicable place, perhaps the end, to contain language somewhat similar to this. I do not oppose the concept; I oppose its location and the manner in which it's currently being presented, and I would suggest, therefore, that we vote against this amendment in its present posture.

Vice Chairman Casey in the Chair

Questions

Mr. Lanier Mr. Pugh, would you agree with me that if we put this language in this particular section, that it could be construed to mean that the legislature could by general law impair the organization and structure of home rule units?

Mr. Pugh I think it's a possible construction. The use of the word "article" here concerns me greatly. If he wanted to say "this section," then perhaps it might deal strictly with this, but I worry about a phrase referring to an article that's contained within a subsection of a specific section.

Mr. Dennis Mr. Pugh, do you realize that Mr. Casey's amendment refers to the article also?

Mr. Pugh Yes, sir, and I voted against Mr. Casey's amendment.

Mr. Dennis Well, Mr. Pugh, don't you agree that if we adopt this amendment here or anywhere else, it's going to mean the same thing and if you disagree with the placement, that might be a matter that could be considered by Style and Drafting.

Mr. Pugh I don't disagree with the concept at all, Judge Dennis; I'm with you one hundred percent. I am concerned about whether or not it would properly flow in this particular place in the constitution. I am not in disagreement with the concept. I think it's one absolutely needed.

Mr. Willis Mr. Pugh, don't you think that the very first independent clause of the Legislative Article supplants, replaces and indeed takes into consideration everything Judge Dennis wants to do and that there's no need for further words when it says "the legislative power of the state is vested in the legislature"?

Mr. Pugh Well, I don't think that resolves the issue that Judge Dennis has raised; however, unfortunately, I was not here at the time the Legislative

Article was passed.

Mr. Willis Well, the legislative power is the power to legislate for statewide concern, isn't it?

Mr. Pugh Yes, it is, but we run into the problem of whether or not, in reference to these home rule charters, if it's pre...if it's preempted the entire field relative to these matters. I think Judge Dennis has got an excellent point. I just am concerned about sticking it right here. I think it's too important to be a subsection.

Mr. Willis Well...doesn't this first independent clause of the Legislative Article completely subordinate the entire Local Government Article for the reason that the local government can only operate within its own sphere, a meager poor privilege it has indeed, for the people which are concerned in that sphere.

Mr. Pugh No, sir. I think that matters relating to statewide concern necessarily would be within the ambit of a local subdivision.

Further Discussion

Ms. Zervigon Mr. Vice-Chairman and delegates, I rise in opposition to the amendment, not because I oppose the legislature passing general laws, but because I find the wording very fuzzy. In the research that we did in the preparation of our article, one of the local government sections that we read was the one that was passed in Colorado? The Colorado Constitution uses the words "statewide concern". The legislature may deal with those things of statewide concern. Local government may deal with those things of local concern. That constitution stayed in the courts for thirty-five years trying to decide...define and redefine what was of statewide concern as opposed to what was of local concern. I believe that the way we have it worded now is clear. The words "police power" in the Casey amendment are defined in the statutes and have been litigated over time. The words "not denied them," referring to the powers of local government, are as clear as they can be. The words "statewide concern" are unclear. If the state feels concerned about one particular local government problem, may they act upon it or not; is that of local concern as opposed to statewide concern? Let's leave the legislature the power to act, but let's put it in words that are clear and that we know what they mean.

Questions

Mr. Tobias Ms. Zervigon, do you think that women are more qualified to vote on this amendment because they know more about home rule?

Ms. Zervigon Mr. Tobias, I appreciate your warning me about that question five days ago, and that's why I haven't taken the mike much on this article.

Mr. Casey Ms. Zervigon, did you answer the question, though?

Ms. Zervigon Some women do and some women don't, but in Mr. Tobias' home, he's the king.

Further Discussion

Mr. Burson Mr. Chairman, fellow delegates, in the vein that Mrs. Zervigon spoke on, we did a lot of research into this question of what is and what is not a general law in preparing this Local Government Article. Now, I will readily concede that by far the most legitimate argument that has been raised in debate here by the opponents of the strong home rule provisions that we have proposed and which have thus far been successful is the argument about the effect on legitimate general statewide laws. But, I oppose this amendment for a very particular reason. I would ask you, please, if you would, to look

on page 26 of the committee proposal at the definition there of general law. I was the one who wrote that up to submit to the committee and, of course, it was changed somewhat thereafter. It says, "General law means a law of statewide concern enacted by the legislature which is uniformly applicable to all persons or to all political subdivisions in the entire state, or which is uniformly applicable to all persons or to all political subdivisions within the same class." Now, if you will look at the Model State Constitution and the Illinois Constitution, you will see that this definition combines the two definitions, in greater part, that they use. This is a very nebulous concept, but if you just say a law of statewide concern, you run into this problem. Let's put it in the context of Louisiana history. New Orleans, being one of the largest ports in the world and certainly in the United States, is certainly of statewide concern. It is entirely arguable that a law which would affect only New Orleans would be of statewide concern but they would be applied discriminatorily to the city of New Orleans and not to the entire state, or not even to all political subdivisions within a class defined. If you will look at Section 6 of the Classification Article that we have adopted, we say there that the classes have to be related to the purpose of the classification. The example that is used would be in the context of Louisiana that it would be reasonable to classify all coastal parishes, let's say, in a matter of ecology such as what Judge Dennis was talking about. But, if you just say a law of statewide concern, I fear that you have not nearly defined your terms as thoroughly as you need to define them. Believe me, if I have been sincere about any argument that I have made, I share the concern of the people who are concerned about the general applicability of law, statewide. I submit to you that this language does not do the job and I agree with Mr. Pugh, although he and I have disagreed on many things, that this would be appropriate work for a separate section of this article or somewhere else in the constitution. Mrs. Zervoun is absolutely correct in pointing out that Colorado has litigated or thirty-five years in the courts over what was statewide concern and what was local concern. Other states have had the same experience by trying to use a similar definition. You simply have got to get into the question more explicitly than that. I would also point out that you here encounter the whole problem of the fact that you need special laws or local laws. We would all recognize the fact that the legislature has to be able to pass certain special or local laws to affect just one municipality, or just one parish. But these are local or special laws. By request, and these involve a reasonable classification. These involve personal rights such as the right to sue that we have argued about in the sovereign immunity question.

[Quorum Call: 95 delegates present and a quorum.]

Further Discussion

Mr. Conroy I think all of us share some concern about the meaning of what we've done so far, and the relative positions of state government and local government. I am concerned as some others are about the position of this in this article, and I have some specific reasons why I am concerned about its positioning because I don't understand the interrelation of this particular provision and Section 30. Section 30 of this proposal, if adopted, says, "The provisions of this constitution shall be paramount and neither the legislature nor any political subdivision shall enact any laws or ordinances in conflict therewith." This proposed amendment being fixed where it is under "Section 12 on Limitations of Local Governmental Subdivisions," says, "This article shall not limit the power of the legislature to enact laws of statewide concern." Now, what bothers me is whether this means being placed where it is, that a local governmental subdivision could not pass an ordinance on a matter which might, also,

be of statewide concern. If that is a reflection on the local governmental subdivision, that's the only significance I can really attribute to this language here, is to pull away from a local governmental subdivision the power to enact ordinances which might deal with matters of statewide concern even though they may also be of local concern. So, as others have suggested, I would urge the author of this amendment to consider withdrawing it, and to place it in better language and better context to achieve his objective, and urge that the convention recognize that in its present posture as another attempt to bring before the convention issues which the convention has defeated previously. I urge the defeat of the amendment.

Further Discussion

Mr. Arnette I just have one very quick point to make, and that is that possibly the last part of this particular provision might be all right, allowing the legislature to make laws of statewide concern. But, when you add the first part, it says "This article shall not limit that power," you have just said that the legislature may enact any law, any law of statewide concern against any home rule charter, against any local government. That's what it does, ladies and gentlemen. It totally destroys any home rule charter if the legislature so chooses. All they merely need to say is, "is of statewide concern, is of statewide concern for us to have uniform local laws." All they have to do is pass a law saying that, and that would destroy all home rule charters, all local governments, and they would just enact all your local laws for you. I'd just like to point this out before we vote on this particular amendment. Thank you.

[Previous Question ordered. Quorum Call: 109 delegates present and a quorum.]

Closing

Mr. Dennis Mr. Chairman, fellow delegates, we've been vacillating to some extent because I think we're groping for a fair solution. Now, Mr. Casey admitted earlier that perhaps the committee proposal was too strong in granting powers to local government. I think that was the reason yesterday we adopted Mr. Avant's amendment but then we got worried about that because we thought that that had taken the police power away from the local governments. But, I submit to you Mr. Casey's amendment didn't solve the problem of a fair balance of power between local governments and the state legislature because all his amendment said was, "There shall be no abridgment of the police power." Now, that can't mean but one thing—no abridgment beyond what you've already abridged it in Sections 8 and 9. What you've done in Sections 8 and 9 is carve out an exclusive area of power to local governments. Now, there's only one way I can say fairly and clearly that if a statewide concern arises and necessitates the legislature acting in that area, that it can do so, and that is to say exactly what this amendment says. "This article shall not limit the power of the legislature to enact laws of statewide concern." Someone complained that that's fuzzy. Well, I submit to you it's not nearly as fuzzy as police power. Mr. Casey said he spent three hours last night in corpus juris secundum trying to find out what "police power" meant, and he wasn't able to tell you what it meant in the time he was up here. I think what we really want is for the legislature to enact upon statewide problems and the local governments to govern local problems. That's what this amendment does, it fairly and clearly define the area of power of local government and statewide concerns of the legislature. So, I think that you adopt this amendment. I believe it is as close as we can come to drawing the line fairly in this very difficult area.

Questions

Mr. Duval Judge, would you say that zoning was a

matter of statewide concern?

Mr. Dennis I would say that zoning is not a matter of statewide concern unless it interfered with an overriding statewide interest such as preserving a wholesome ecology.

Mr. Duval So you think...

Mr. Dennis I think that we could come to a time in this state in which ecological problems could become so severe that it would require the state legislature to pass laws to protect the ecology, and I believe if that situation should arise, if it should become a matter of great statewide concern, that the legislature should not be thwarted in its ability to act in this area.

Mr. Duval Sir, do you think the legislature... in answer to my question, zoning, then can be a matter of state concern. Is that right? In answer to...

Mr. Dennis No, not zoning itself would not be. The protection of the ecology would be a situation I could see that would arise in which the legislature would need to act in an area that you may have carved off and preserved exclusively to a local government if you don't have this amendment.

Mr. Duval Under this section as written, couldn't the legislature, by general law, prohibit or deny any type of that...any type of activity like that?

[Record vote ordered. Amendment rejected: 4-13. Motion to reconsider tabled. Previous question ordered on the Section. Quorum call: 111 delegates present and a quorum. Section passed: 114-7. Motion to reconsider tabled.]

Amendment

Mr. Poynter The amendment is being passed out at this time.

Amendment No. 1 [by Mr. Singletary]. On page 6, between lines 31 and 32, add the following section: "Section 12.1. Codification of Ordinances

Section 12.1. The governing authority of each political subdivision shall within two years of the effective date of the adoption of this constitution, cause a code to be prepared containing all of the ordinances of the political subdivision of general application which are appropriate for continuation as law. When the code shall have been prepared the governing authority of the political subdivision shall cause copies of the same to be prepared and made available for public distribution. All proposed ordinances of general application adopted after the approval of the code shall be adopted as amendments or additions to the code."

Explanation

Mr. Singletary Mr. Chairman, ladies and gentlemen, this section would require local government to put their ordinances into a code which would be readily available to the public. It is essentially saying that the people have a right to know. This section is intended to ease a gigantic problem--the problem of knowing what the local law is. It would require political subdivisions to put their ordinances of general application into a code. Let me illustrate. In my area, I must make a sixty mile round trip to the courthouse and look in the minute entries of the meetings of the police jury to find a police jury ordinance. If we are going to give local government more lawmaking power, then local government should, also, have the additional obligation to put that law into a form that people can get their hands on and read so that they will know what law they are subject to. This section would not impose an unreasonable financial obligation. A fee could be charged to any individual who wanted a copy of this code. Also, if this code were merely xeroxed, pages of the ordinances held together by a staple, I believe this would be in compliance with the section.

This would be inexpensive, but still accomplish the purpose of making the law available to the public. I believe this matter is so basic and so important that because...and because we are giving such important new lawmaking authority to local government, that this section should be put in the new constitution. Shreveport, Baton Rouge and New Orleans have already put their ordinances into a code, and so have many other bodies, so this wouldn't affect them. We have put many safeguards and restraints in the constitution in the Legislative Article in order to insure that the people will be informed about what the...about the law that the legislature makes. We have not done this in the constitution with regard to local government. So, I think it is reasonable to put a provision in this constitution to provide that the people know what the law is. I urge the adoption of this section, and I request a record vote. I'll yield to any questions.

Questions

Mr. De Blieux Mr. Singletary, do you know anything in this constitution that we have approved so far that's coming up that would prevent local subdivisions from doing that without this section?

Mr. Singletary No, sir, but I think we need to impose the obligation to do it.

Mr. De Blieux Do you know anything that would prohibit the legislature from requiring them to do that?

Mr. Singletary No, sir, I don't. But, I want to make sure that we do it.

Mr. De Blieux Well, don't you think that would be something that we ought to leave out of this constitution and let the legislature take care of?

Mr. Singletary No, sir, I don't. In the Legislative Article we provide that local laws had to be advertised, we provided for style of law, passage of law, signing of laws, effective date of laws, general public hearings. We provided none of those with regard to local government, and I think that this is a basic safeguard that we have to provide. I think it's extremely important that we do this.

Mrs. Warren Mr. Singletary, did you know that I think that's the nicest thing that has happened in this convention and I would love to be a coauthor, if you don't get but two votes, mine and yours?

Mr. Singletary Thank you, Mrs. Warren.

Mr. Roy Mr. Singletary, do you know that I'm from a small town and that they don't do these things. I think this is great.

Mr. Singletary Thank you, Chris. It's a real problem to find the local law and this would make...

Mr. Henry Well, that's just real wonderful.

Mr. Jenkins Mr. Singletary, of course, the legislature must meet certain requirements when it enacts statutes. They have to be published so that the people can know about them. In this constitution, we are giving local governing authorities a great additional power. Unless they also publish and make known these ordinances and resolutions that they pass, isn't it true that the people would really have no means to know what had been passed?

Mr. Singletary Absolutely. I think you are right.

Mr. Alexander Mr. Singletary, throughout this convention we've been, possibly, most likely, I've been opposing anyway, any move on the part of the legislature to impose anything on a local governing agency that would cost money. Now, we are saying

55th Days Proceedings—September 27, 1973

that the local governing unit must do this within two years. Won't this be rather expensive...

Mr. Singletary No, sir, I don't think it will. Reverend, because, as I said, I think if they just merely put their ordinances into some type of form and xerox page the things and put a staple up in the corner and make these things available for purchase, I think if someone wanted a copy they could be charged a reasonable fee for it. Xerox copies with a staple in the corner, I don't think, would be any problem. I wouldn't want to impose any unfair financial burden on local government. I don't intend that; I don't think it would happen.

Mr. Fontenot Mr. Singletary, I, also, am in support of your amendment. At the present time in Ville Platte we are doing the exact thing, proposing a code and it's not costing that much. Do you know...is it your interpretation that whenever they do adopt such an ordinance with a code that it will be published as in the adoption of regular ordinances? It will be published in the newspapers as required by law?

Mr. Singletary I left that up to local government. They can provide for those type of things. I just merely want them to put this thing into a form that's available that the people can get their hands on.

Further Discussion

Mr. J. Jackson Mr. Chairman, ladies and gentlemen of the convention, I am in support of Mr. Singletary's amendment. I think that particularly as we have provided and it has been stated about the extensive powers that we have given the local government, that it's no more than right that the citizens of the affected areas have in at least one location or at least in one volume, those ordinances that are going to pass. I would hope that you would support it. I can't very well see an argument against imposing financial burdens. I think cause you may have an ordinance supposing the financial burden on a particular taxpayer, then that taxpayer ought to have the right and the city ought to have the responsibility of letting him know what the law is without him having to be a research assistant to go through all kinds of volumes of newspapers and various other sorts of methods of informing the public where he can, and the way we do it in the city of New Orleans is that there is a volume that is in the public library at City Hall. If you wanted one for your personal copy, you can purchase one from the city itself. So, I rise in support and ask that you favorably adopt Mr. Singletary's amendment.

Further Discussion

Mr. De Blieux Mr. Chairman, ladies and gentlemen, this is a good concept but it shouldn't be in the constitution. This is legislation; this is not a constitutional provision. I think it ought to be that ought to be the law, but let the legislature require that of your local subdivisions or local bodies. It's not proper to put the type of provision in the constitution. If anything that I've heard requested from the people of the State of Louisiana, those I've talked to, they say, "Make it short, make it short." It seems if they're not near as interested in what we put in it as if we put it in language which they can understand and not put a lot of legislation in the constitution. That's what's wrong with our constitution right now. It's crammed full of stuff that the legislature should take care of. Now, I'm going to ask you in all good graces, let's don't put this in the constitution. Let's let the legislature provide for that. I tell you if I'm a member of the legislature when this matter comes up before us, I'll certainly vote for that, but I certainly don't think that we ought to put this kind of information in the constitution because this is the saying now it shall be done and ten or fifteen years from now maybe it should be done a little bit differently. Now, let's leave this to the legislature and don't stick

all of this kind of material into the constitution. I ask you to use your good judgment now, and vote against this amendment.

Questions

Mr. Avant Senator De Blieux, don't you realize what we've been talking about here for two days, that under the article as written, the legislature can't pass such a statute?

Mr. De Blieux Well, I'm just...I think we're just ruining it now by putting this kind of stuff in it because after while, the legislature won't be able to do anything.

Mr. Avant Would you believe that there's very little they can do now, and that this is one thing they can't do?

Mr. Fontenot Do you realize that I disagree with Mr. Avant very much? Do you, also, Mr. De Blieux, let me ask you a question. Have you ever sponsored legislation to this effect, or has anybody in the legislature in the past few years sponsored such legislation? If you say the legislature is going to take care of it, why haven't they in the past?

Mr. De Blieux Mr. Fontenot, there's a lot of ideas that come up every once in a while that I didn't think of that I don't...that I haven't previously thought of to put into an act...as an act of the legislature. This is a new one, and I think it's a good one. I think it's one the legislature should take care of. But, let's...I don't think it has its place in the constitution. We've got the situation now on this local government to where you won't need the legislature if we do all the things like this--we won't need them at all.

Mr. Fontenot Right. That's exactly the point. Now, if we don't need the legislature like Mr. Avant thinks you don't need them anymore, don't you think maybe the people ought to be informed of what ordinances do affect them?

Mr. De Blieux Certainly, and the legislature can take care of that; it ought to.

Mr. Fontenot Well, don't you think the local governments could take care of that business by this amendment?

Mr. De Blieux Are you interested in abolishing the legislature? It seems to me, with ideas like this in the constitution...

Further Discussion

Mr. Kilbourne Mr. Chairman, ladies and gentlemen, I just have a few words here. This is one thing I have had some little experience with. East Feliciana Parish is one of the poorer parishes of the state and, yet, several years ago they put in...they codified their ordinances, and I think this is a very important...it has worked very well, and it works very well indeed. It's not really all that expensive. If East Feliciana Parish can do it, I think any parish can do it. I think every parish ought to do it. I support the section.

[Previous Question ordered. Revised vote ordered. Amendment adopted: 108-8. Motion to reconsider tabled. Previous Question ordered on the Question. Question passed: 108-5. Motion to reconsider tabled.]

* * *

* * *
Mr. Foynter. One more, Mr. Chairman. Also, from the committee, Delegate Proposal No. 43, introduced by Delegates Johnny Jackson, Gauthier, et al.

A proposal for providing for juvenile courts having exclusive original jurisdiction with the exception for offenses of murder, aggravated kidnapping, armed robbery, or aggravated rape.

Comes from the Committee on the Judiciary. Reported without action.

[*Motion to withdraw Delegate Proposal No. 43 from the files of the convention. Substitute Motion to engross and pass to its third reading.*]

Explanation

Mr. J. Jackson. Mr. Chairman, ladies and gentlemen of the convention, as you recall, approximately a little over a month ago we discussed the...in the Judiciary Article constitutionality of juvenile courts. As a result of the close vote on this convention by four votes--four or five votes--an amendment failed that would have given constitutional sanction to the juvenile courts as we have given it to the district courts, courts of appeal, and the Supreme Court, and to some degree, to mayor's courts and justice of the peace courts. So, as a result of that, a delegate proposal which was just the same amendment--and we're right at the deadline--was introduced as a delegate proposal and sent to the Committee on the Judiciary. Because of the problems that the committee had had--particularly on the final hearing of the delegate proposal--because of the problems that they had, and they couldn't get a quorum. On Wednesday they accommodated me by saying, "We'll let your proposal out without recommendation." The feeling was that the committee would possibly never get a quorum and ultimately, a sort of fair hearing to attempt to address themselves to the reservations by the delegates of this convention and some delegates on that Judiciary Committee would not materialize. So, therefore the committee, in order to accommodate, asked that it come out, to the floor. So, as a result, I would like to suggest to you that I did pass out before you a letter from the judges of the Orleans Parish Juvenile Court which states very clearly their reservations concerning our present provisions as they deal with juvenile court. Now, I'm not asking you here this morning to argue the merits or demerits of Delegate Proposal No. 43. But, I do feel that so crucial an issue which is going to affect a large segment of our population--and particularly the future generations of this state--ought to have at least as much debate, criticism, and concern as we have given every article and delegate proposal. So, I'm not asking you, here, by your vote now, to say that you are for retention or you are against it. I'm saying that allow us to pass this on to the third reading, to allow us not to have this proposal to be withdrawn from the files of the House. I do not understand, and I cannot envision any proposal--whether I like it or don't like it--failing to get as much consideration as possible because we cannot maintain various quorums. I think this is a very crucial, [sic] and you know that I have, for the longest, attempt to relate to you my concerns--not about maintaining juvenile offenders who commit heinous crimes, but I want you, on this vote, to think about those youngsters which is in...which are in the majority who do not commit heinous crimes like murder, aggravated rape, or robberies; but those who may get in a fight and decide...and will be...and as a result would be subject to criminal courts and all the kinds of ramifications therefor. So, I ask that you allow this delegate proposal to be passed on to its third reading, at which time when it comes up for debate--and I think it will come up at a time where we can best attempt to address ourselves to this problem--then you can vote your conscience, one way or another, whether you're for the retention or

you're against the retention. I ask your favorable adoption.

Further Discussion

Mr. Dennis. Mr. Chairman and fellow delegates, I rise in opposition to the substitute motion to pass this to third reading. I urge you to vote against that motion, and to let this proposal be withdrawn from the files of the House. You will recall that the Judiciary Committee, in its committee proposal, recommended to you a very simple proposition with regard to juvenile courts. We recommended that you adopt a section which simply said that "The juvenile and family court shall have such jurisdiction as the legislature shall provide by law." You adopted that simple statement. The reasons we recommended that simple statement to you--as I told you when we were presenting the Judiciary Article--is that there are many differences of opinion as to how old a person ought to be when he is treated as a juvenile. We are in a period of great social change in our society. Some people think that incorrigible juveniles ought to be referred to the adult courts; others think that they should not be. There are all kinds of differences of opinion, and things are changing from day to day. So, we felt it best to leave this type of decision in the hands of the legislature so that they could study it, treat it in a detailed and thorough fashion, and be able to change it and not have it frozen in the constitution. You will also recall that Delegate Johnny Jackson attempted to amend this on not one, but several occasions. One of the amendments he attempted to get you to pass was the same thing as this delegate proposal. He had other amendments which were, I believe, even more damaging to the Judiciary Article in that they interfered with what we had done in enabling the legislature to work toward a uniform and consistent court system. He has just said to you on this microphone that if you pass this to the third reading, he's going to seek to amend this delegate proposal in the same fashion that he sought to do on the floor, which I would be even more opposed to because it will interfere with the big thing we have done in this Judiciary Article: to give the legislature the power to work toward a more comprehensive, consistent court system, and perhaps do away with the crazy quilt work of local courts that we have in this state, at some time in the future. The convention...the Judiciary Committee has considered this on not one, but three occasions. We recommended a simple statement to you. It was debated fairly and fully and for a long period of time on the floor, and you saw fit to sustain the committee and to adopt this statement leaving the juvenile jurisdiction to the legislature. If you do this again this morning, and let's go on with our business. Vote against passing this delegate proposal on to third reading because you will only reopen the matter that we have already debated, considered and decided.

Questions

Mr. Lanier. Judge Dennis, did I understand Delegate Jackson correctly when he said that this is the identical amendment that we previously voted on?

Mr. Dennis. I didn't hear everything he said because someone was talking to me, but it is, I believe, identical to one of the amendments he offered. He offered more than one while we were debating this on the floor. One of them did just this. Another one did this plus, in my estimation, interfered with the scheme that we had come up with for court structure. So, I'm opposed to both of them, and the latter even more than the first one.

Mr. Lanier. But, what I'm getting at is...

Mr. Dennis. Yes, sir, I believe you are right. Yes, sir.

Mr. Lanier. Would it be correct to say that we have voted on this thing already, and it's been

decided?

Mr. Dennis Yes, sir; that's my point.

Mr. Jenkins Judge Dennis, in other words, you want us to go ahead and kill this particular proposal because it's been dealt with, as I understand it? Is that correct?

Mr. Dennis That's right, sir.

Mr. Jenkins Now, let me ask you one other question, too. In the legislature this last session, the legislature tried to deal with the juvenile problem, but because of the stringent constitutional provisions with regard to jurisdiction, we were unable to. The governor vetoed our bill on constitutional grounds. Would it be the committee proposal, as it stands, allow the legislature to deal with the juvenile problem, sufficiently, without all these burdensome provisions in the constitution?

Mr. Dennis That is our intention. I am not familiar enough with the legislation you passed to know whether this actually removes the particular constitutional objection that he used for the basis of his veto. But, the general idea here is to leave this problem to the legislature because the committee felt that it was extremely complicated in an area of great social change, and that we were not competent enough to freeze something in the constitution detailing the juvenile jurisdiction of the court, and that we ought to leave this to the legislature.

Further Discussion

Mr. Pugh Mr. Chairman, fellow delegates, I abide by your wishes to expedite the matters of this convention. I shall speak briefly and to the point. Judge Dennis sits on the district court, and the district court's jurisdiction is spelled out in the constitution. Justice Tate sits on the Supreme Court; his jurisdiction is spelled out in the constitution. Mrs. Miller sits on the court of appeal, and his jurisdiction is spelled out in the constitution. There's no justification for not spelling out the jurisdiction of the juvenile courts. It's not going to hurt the district courts because under the constitution, they sit as a juvenile court. They're going to have to do that work anyway, but the protection that we will afford by a specific constitutional amendment or a provision is to allow the Orleans Juvenile Court and the Caddo Juvenile Court to continue. It's not going to affect the other district courts because they've got to handle the problem regardless of their age, one way or the other. They sit either as a juvenile court or as a district court. I ask your favorable consideration to Delegate Jackson's proposal, to allow it to remain open for your further consideration. I appreciate the time and the indulgence you've given me to make these remarks.

Questions

Mr. Dennis Bob, I know you didn't intend to mislead anyone, and I'd just like to ask a question in clarification. You are aware, aren't you, that in Section 15 of the Judiciary Article—which is a different section than we are dealing with here—we said that "the district, parish, magistrate, city, family, and juvenile courts existing at the time of the adoption of this constitution are retained"? You are aware that that does take care of the juvenile courts and retains them as they are now?

Mr. Pugh It gives them absolutely no jurisdiction, and you know it, and I know it. All it allows them to do is the same judges will continue to sit. Insofar as the juvenile courts are concerned, if the legislature shall decide we won't have them, then you won't have the judge to go with it because he won't have an office to run to. Nothing in...

Mr. Dennis Then I'd like to ask you this, Bob:

...you aware that the legislature... by this and is of the opinion that this retains everyone of these courts intact with its present jurisdiction and powers? That is the reason we put this in here. If it doesn't do that, then all of these other courts have not been retained.

Mr. Pugh Are you trying to tell me, Judge Dennis, that you didn't spell out the jurisdiction for the district courts? Are you trying to tell me you didn't spell out the jurisdiction for the courts of appeal and for the Supreme Court?

Mr. Dennis We didn't spell out the jurisdiction of the parish, magistrate, city, family and juvenile courts because we did not intend them to be constitutional courts. We intended the district, court of appeal and Supreme Courts to be the only constitutional courts in the constitution. The rest of it we intend for the legislature to be able to merge into the three level court system, if it wants to in the future. This is the point I've been trying to make, over and over and over. This is the one thing we have done in this Judiciary Article, and if you come back and undo it, you're undoing the only real reform step we have made. Do you understand what I'm saying now?

Mr. Pugh I understand that you're saying that you want to put it in the posture where the legislature can abolish the juvenile courts—I got that message.

Mr. Dennis Do you understand I'm not saying that we will abolish the juvenile court function, just like I, now, sit as a juvenile judge? By the way, I want you to be aware that I do juvenile work, I sit as a juvenile judge. I'm not...

Mr. Pugh Judge Dennis, I've written two books on this subject. I know...

Mr. Dennis I just want to ask this question: do you realize, Bob, that we are not leaving it open for the legislature to do away with juvenile court functions? These can be performed by district courts, just as I, as a district judge, perform juvenile court functions. We are simply saying that if the legislature wants to, in the future, it can establish a consistent three level court system and have divisions of the district court which do juvenile work, family work, criminal work, civil work, and all kinds of work. Do you understand that, sir?

Mr. Pugh Yes, Judge Dennis, I drew the acts by which you sit as a juvenile court.

Mr. Jenkins Isn't it true, Mr. Pugh, that under Delegate Jackson's proposal that if a person one day under the age of seventeen committed the crime of attempted murder, that the worst that could happen to him under this provision is that he'd be sent to L.T.I. or some similar provision until about his eighteenth birthday and then would be released?

Mr. Pugh There is that possibility.

Mr. Jenkins Isn't that a certainty, not a possibility?

Further Discussion

Mr. Jack Mr. Chairman and members, we debated this issue thoroughly already. The reason we didn't spell out the jurisdiction in the proposal for juvenile courts was with this day and time, it may be we would want to lower the age limit below seventeen. There's so much crime in this country today that's committed by people under seventeen, so many robberies where people are not killed in them, but are ruined for life. There's been connections by juveniles in mass killings that a murder charge would not stand up, but they played a big part in the robberies and the other connected things that wouldn't make them a principal and guilty of murder that we thought it best to make this flexible and leave it up to the legislature to set the juris-

tion. It's not lowering the importance of the juvenile court at all. Now, the material that was laid on my desks about juvenile judges--telling about the clause in the proposal that was adopted that they could be abolished--I agree with them. In Mr. Lawrence's proposal cut down to where they couldn't be abolished by the legislature, I'd support that. But, I cannot support his proposal as is to set in the constitution, for this words. "Ink it in here, close the door", for it's not a question of a courtesy to be extended to allow these bills in. Now, if it's something that is a delegate proposal that hadn't been here before, that's a different matter. But, this took up a lot of our time. I remember, definitely, numerous people talking on it, so, I'm going to vote against this.

[Continued, discussion continued.]

Closing

Mr. J. Jackson. Mr. Chairman, ladies and gentlemen of the Convention, I am deeply regretful of the fact that we are attempting to discuss the merits and demerits of Delegate Proposal No. 43. I said very clearly when I got up here on the platform: I'm saying whether you're against it or for it--I'm not asking you to vote your convictions here today--I'm asking you to allow us to pass it on to the third reading. If there was a quorum in the Judiciary Committee on Wednesday, we could have settled it there. There were ten members, but they did not...they could not stay to hear the whole proposal, even the members that we had planned to introduce to reserve whatever objections that people had. I'm not asking you to stay here and say you're for juveniles who commit armed robberies, but I do want to say this in response to those kinds of arguments that have attempted to cloud the issue: what about that ninety percent of youngsters that don't commit those crimes? Even in the delegate proposal, if you're concerned about armed robberies, I'll put it in there, and it was not in the prior constitutional provision; it was a statutory law. I'm saying to you that the juvenile court system--and I just found that out recently--is America's only contribution to the judicial system of the world--America's only contribution--and here we are not willing to allow us to debate it. I'm saying to you very clearly, I wouldn't even come back to you with this issue if the convention wasn't so closely divided. If the committee would have finalized this hearing on it, I wouldn't 'cause they could have voted it out unfavorably, or they could have tabled it in the committee so you wouldn't have to do it. If they would have met, you probably wouldn't discuss...be discussing this. As Mr. Pugh said, I passed to you a letter from my judges. My judges have said very emphatically their position on legislative action. But, see, that comes down the road when we discuss the merits of the delegate proposal as proposed to be amended. But, I also want to say, you know, when I'm talking about this is that on Wednesday I met with representatives--black youngsters and white youngsters--from the Baton Rouge area--from Valley Forge High, Catholic High, Istrouma, etc. Mr. Lowe gave me, this morning, a class project which includes numerous letters expressing concern. The letters don't say, "Mr. Lowe, I want you to vote for Delegate Proposal No. 43." It says very clearly, "Mr. Lowe, would you vote to pass it on to its third reading?" Mr. Lowe...well, in talking to the youngsters, themselves, they are concerned because they recognize that they may be subjected whether they get in a fight at school, they may be subjected to going before district court, having a record, and being charged with aggravated battery because they were fighting at school. In closing, I say to you very clearly, I'm not asking you here to vote your convictions on the juvenile court. I'm just merely asking you to give fair consideration of it. I suggest to you that there are too many people--not only bad, but good--can be affected if this proposal--this last

opportunity--is withdrawn from the files of the house. For those who are interested in what the legislature did last year, I've got all the acts here. I would like to point out to you that Act 36 that did not pass... said that all juvenile records will be open to the public, not for court purposes, not for D.A. purposes, but just to let somebody come in there and criticize or castrate [sic] youngsters, no matter what...

[Record vote ordered. Substitute Motion adopted: 57-49. Motion to reconsider tabled.]

* * * *

Amendment

Mr. Poynter Amendment sent up by Delegate Kilbourne as follows:

Amendment No. 1. On page 1, line 18, insert the following:

"Section 1. (A) State Penal Institutions; Reimbursement of Parish Expense. In parishes in which are located penal institutions of the State of Louisiana, the expenses incurred by the parish arising from crimes committed in such institutions or by the inmates thereof shall be reimbursed by the state."

Explanation

Mr. Kilbourne Mr. Chairman, fellow delegates, this is almost the same as the amendment, the proposal we've already voted on, except I have left out employees. I can only reiterate what I told you already. I think this is very necessary, and it's been pointed out to me that...under present Article IV of Section 12, without this being in the constitution, these expenses could not be reimbursed by the legislature. So, I think it...and I think that's why it was in there. It's very urgent that we put that in there because these people that commit these crimes, and believe me, it's a real serious situation in Angola. There's nowhere else you can try them except in the parish of West Feliciana, unless there's a change of venue. It's a terrific expense, and it will simply mean that the parish just simply could not carry the burden. These people could not be tried. For the protection of the inmates, themselves, it is certainly necessary that we have them tried for the crimes that they commit against one another at Angola. I certainly hope that you will see fit to pass this amendment. I believe some of the delegates may have become confused on the other matter when the other vote was taken--I hope so, and the manner in which it was voted on. I'll answer any questions that I can.

Questions

Mr. Kean Mr. Kilbourne, as I understand your explanation, the present constitution, Article IV, Section 12, prohibits the granting of public funds by the state to any person or corporation--public or private. If this provision is carried over in the new constitution and we don't have the provision that you are here presenting for reimbursement of the parish, under those circumstances, the legislature couldn't act to make reimbursement, could it?

Mr. Kilbourne That's my understanding, Mr. Kean, and I appreciate your pointing it out to me. Let me say this: West Feliciana is...I think that the population--excluding the population, the inmate population of Angola--is about between twelve and fourteen thousand people. Angola, you know, occupies about twenty to twenty-three and twenty-five thousand acres of land which isn't on the tax roll. It...it just isn't any way that these matters...that these crimes could be handled in the courts in West Feliciana without this amendment.

Mr. Nunez Mr. Kilbourne, do you have any idea what we are talking about in actual dollars and cents or cost to the Judiciary Department in that parish?

Mr. Kilbourne Well, Mr. Nunez, one trial--if it goes all the way to the Supreme Court, and most of them do now--can cost anywhere from two thousand to three thousand dollars--one trial.

Mr. Nunez I realize that, Mr. Kilbourne, but I thought you might have had some idea that in 1971 and '72 it cost the state a hundred thousand dollars to do this service for that parish because of that institution, 'cause it's presently covered. I don't recall of ever...voting for an appropriation of that sort. That's why I'm...I'm trying...and if it is justified, I'd be glad to vote for it.

Mr. Kilbourne I don't know how, Mr. Nunez...I

don't have the figures here because I didn't know this was coming up today. I could have easily gotten them. But, we have had trouble in the last...with the change of administration of the new attorney general that we had an argument about the repayment of these expenses because they didn't know any authority for it. I had to go dig up this constitutional provision because I don't know just how it's taken care of, whether it was a general fund or some of it's paid for by Angola. Incidentally, Mr. Nunez, we got a bill in 1956 in the legislature to reimburse attorneys who represent these inmates, which is also a very, I think, a very progressive thing. It worked out...it worked very well indeed which, of course, had nothing to do with this particular phase of it, but I recall, one time, spending about two weeks, myself, defending inmates at Angola and didn't get a penny for it--not even in expenses.

Mr. J. Jackson Mr. Kilbourne, I'm trying to...I understand you do have a problem as it relates to judicial expense. Let's say if an inmate from a parish prison escaped from West Feliciana and commits a crime in East Baton Rouge Parish. Are those same kind of reciprocal agreements made from parish to parish, that maybe the parish of East Baton Rouge would then be subject to--I mean the parish of West Feliciana--would be subject to bear the court costs of that inmate?

Mr. Kilbourne You are asking whether...if an inmate in the parish jail in West Feliciana escapes and goes to Baton Rouge and commits a crime, well, that wouldn't...this wouldn't have anything to do with this. This only covers the state institution.

Mr. J. Jackson But, I'm trying to find out in terms of some rationale, do we have that kind of agreement or that kind of understanding on parish levels?

Mr. Kilbourne I'm not aware of that, Mr. Jackson.

Mr. Ours Mr. Kilbourne, you have the state institution for the prisoners in your parish; I have the state institution for the prisoners in my parish for women--you have it for the men. This is a friendly question. It's a question with a statement. Do you know that we had a disturbance over in St. Gabriel at the women's prison farm, and at that time, we didn't have a public defender. Three attorneys were appointed to represent these inmates, and they sent a bill to the police jury of about eighty-five hundred dollars? Out of the fund for the parish, they are still paying off that bill. That's just one disturbance that they had over there. Now, through the public defender's system, thank goodness, that they don't have that anymore. But, they are still paying a bill for what they had before. I think that that happened in a state institution that the state should pay for that.

Mr. Kilbourne I wasn't aware of it, Sheriff, but it certainly is becoming more of a problem all the time, and I believe we'd be taking a step backward if we didn't have this in the constitution.

Mr. Chatelain Mr. Kilbourne, I'm certainly sympathetic with your problem, but could not the legislature provide for this also?

Mr. Kilbourne Well...I think I pointed out, Mr. Chatelain, it's my understanding under the present constitution, Article IV, Section 12, which...will like to be carried over into what we're working on now, they could not without this provision; and I think that's the reason it's in there.

Mr. Velazquez Delegate Kilbourne, since the people at Angola come from all over Louisiana, and since when they cause a problem at Angola the East Feliciana Parish has to bear the burden of the expense, shouldn't the entire state be willing to reimburse East Feliciana Parish for disturbances caused by citizens from all over Louisiana?

Mr. Kilbourne I would certainly hope so, Mr. Giarusso.

Mr. Giarusso Mr. Kilbourne, don't you think this is discriminatory in that the parish of Orleans--where the parish prison population is about a thousand--when crimes are committed within the confines of the parish prison, and these prisoners are brought to trial wherein they are state prisoners, is that Orleans Parish is not reimbursed for the trial expense whereas, your parish is?

Mr. Kilbourne I'm sorry, sir, I didn't...I couldn't hear all of your question, and I can't answer it. If you'd repeat it, I'd try to answer it.

Mr. Giarusso Okay, I said, don't you think that your proposal is discriminatory in that East and West Feliciana...

Mr. Kilbourne This is West Feliciana...

Mr. Giarusso ...All right. West Feliciana is reimbursed for the expenses, whereas in Orleans Parish, in parish prison where the population is about a thousand, crimes are committed there just as in Angola, they go to trial, but Orleans Parish is not reimbursed...

Mr. Kilbourne You mean...prisoners from Angola commit crimes in the prison in New Orleans, and the parish is not reimbursed.

Mr. Giarusso No. I said state prisoners...or commit crimes.

Mr. Kilbourne Well, that's parish prison. No, sir, I don't think any parish prison...no provision...that's not a real problem. It may be in New Orleans. Let me say this: in my experience the worst prisoners they have at Angola came from New Orleans.

Mr. Giarusso No question about that.

Mr. Singletary Mr. Kilbourne, doesn't this amendment refer to state institutions?

Mr. Kilbourne Yes, sir. That's the intent of it, and I believe it's specifically...and it's just exactly what is in the present constitution with the omission of one word. It hasn't caused any problem in all these years; it worked very well indeed, and I certainly hope you will vote favorably on it.

Mr. Singletary Well, it's not referring to parish prisons?

Mr. Kilbourne No, sir.

Mr. Singletary All right. Well, it seems to me that it is implying that the parish has to pay other expenses of state institutions except the ones caused by crimes committed in such institutions.

Mr. Kilbourne Well...I don't quite understand that, but what you are exactly...getting at...

Further Discussion

Mr. Jenkins Mr. Chairman, I rise in support of Mr. Kilbourne's amendment, and I think there are a number of facts that haven't been brought out that the convention ought to be aware of. The main effect of this amendment does deal with West Feliciana Parish because the state prison is located there. It also, though, would deal with other state...penal institutions such as the various locations of Louisiana Training Institute, and the Woman's Prison in St. Gabriel. Now, I want you to take the Parish of West Feliciana Parish, as an example, to see the injustice that might occur if we don't adopt this provision. West Feliciana has a population of probably about twelve thousand people. There are, in turn, about four thousand inmates up in the upper northwest corner of the parish, very isolated from the rest of the parish. Of the people who work at

the prison, the employees, most of them either live in West Feliciana Parish, in Avoyelles Parish, or on the prison grounds itself. In which case, they contribute nothing in the way of taxes--property taxes--to the parish of West Feliciana, nothing in the way of sales taxes to that parish. Only a handful of the employees live in West Feliciana Parish itself. The prison itself contributes nothing in the way of finances to West Feliciana Parish. Yet, the children of the employees who do live on the prison grounds, and those few who do live off the prison grounds, go to school in West Feliciana Parish and use the services of that parish. Now, every crime that is committed in the prison itself has to be tried in the Twentieth Judicial Court which sits for these purposes at St. Francisville. There's no rationale or justification for forcing the people of West Feliciana Parish who benefit not at all from the existence of this institution, and who are not a particularly a rich parish at all, to have to bear this expense. Now, the problem that arises if we don't have this in here, is the fact that in years past before this provision was in the constitution, occasions arose when the legislature refused to pay these expenses; and it's just and right that the legislature would. Now, Chief Giarusso raised the question of parish jails and the fact that there is no reimbursement for those. That's not a legitimate argument, I don't think. The people in the parish jail, even though they're sent up for state offenses, are there because they committed an offense in Orleans Parish, if they're in the Orleans jail. So, it's just that Orleans Parish would pay the expenses of trial of those prisoners, just as the people who are in the West Feliciana Jail in St. Francisville, their expenses are paid...their trials and so forth--if they committed crimes from West Feliciana Parish--are paid for by West Feliciana Parish. But, there's no justification for forcing the people of West Feliciana Parish to pay for crimes, the trials of crimes--which are committed on the grounds of a state institution by people who were sent there without their consent and without the consent of the people of West Feliciana Parish. Now, the question was raised of the fact that there were twenty capital offenses which had to be...which are now pending in West Feliciana Parish that occurred in the last six months at Angola. This represents a tremendous expense for a small parish, and it's just not right to put that expense on the people of that parish. So, I urge you to do a just...do justice here and adopt this amendment.

Questions

Mrs. Warren Mr. Chairman, somebody else might want to know what I want to know, but I was trying to save time; but I will ask him. He mentioned the fact that we had people from Mississippi that was working at the prison, and that they were not contributing anything, but their children were going to school here. Now, I would like to know...how many people are employed here in our institution from Mississippi or any other state.

Mr. Jenkins No, that isn't what I said, Mrs. Warren. I said that there is a large majority of the people who work at the prison either live on the grounds in Mississippi or in Avoyelles Parish. I think there is a distinct minority that live in the parish itself. But, as I said, the children of the employees who live on the grounds and outside the grounds, but in West Feliciana Parish, do go to the West Feliciana Parish schools.

Mrs. Warren Well, what is the rationale for hiring people out of Mississippi in Louisiana; you can't find nobody here?

Mr. Jenkins Well, Mrs. Warren, I think that's another question entirely, I have no reason for it one way or the other; I'm just telling you the facts and the fact that...

Mrs. Warren That's the reason I didn't want to come here, but I wanted to ask you the question; and I didn't want anybody to think I had a secret.

90th Days Proceedings—November 19, 1973

[Previous motion adopted without dissent. Motion for
recess. Amendment rejected: 65-28.
Motion for table rejected: 18-71.]

Point of Information

Mr. Kean A question for the Chair, Mr. Chairman.
I know you have ruled it twice now, but we are now
offering amendments to this proposal. The amendment
has to have sixty-seven votes in order to pass?

Mr. Henry Well, it says...the rules provide that
to add a new section, you have to have sixty-seven
votes, and to adopt a section you have to have six-
ty-seven votes; so that's the problem.

[Motion to reconsider rejected: 4-18.
Previous motion adopted without dissent.
Motion for recess and adjourn.
Amendment adopted: 79-12.]

*

*

*

- MR. HENRY (cont'd)
Without objection, so ordered.
- MR. POYNTER
Delegate Proposal No. 72 by Delegate Abraham.
- MR. HENRY
Returned to the calendar subject to call.
Without objection, so ordered.
- MR. POYNTER
Delegate Proposal No. 43 by Mr. Johnny Jackson.
- MR. HENRY
Read it, Mr. Clerk.
All right. Let's go through them all and see where we are.
Returned to the calendar, subject to call.
Without objection, so ordered.
- MR. POYNTER
Delegate Proposal No. 22 by Delegate Conroy,
To provide for the prohibition of certain enumerated local
and special laws.
- MR. HENRY
Return to the calendar, Mr. Conroy?
- MR. CONROY
I'll be happy to take that up any time we're ready to take...
- MR. HENRY
Returned to the calendar, subject to call.
Without objection, so ordered.
- MR. POYNTER
Delegate Proposal No. 42 by Delegate Denmyer.
A proposal providing for the lieutenant governor as ombudsman
- MR. HENRY
Returned to the calendar, subject to call.
Without objection, so ordered.
- MR. POYNTER
Delegate Proposal No. 49 by Mrs. Brien,
Relative to consumer education.
Return to the calendar, Mrs. Brien?
- MR. HENRY
Returned to the calendar, subject to call.
Without objection, so ordered.
- MR. POYNTER
Delegate Proposal No. 16 by Mr. Alario.
Making provisions for homestead exemptions.
- MR. HENRY
Returned to the calendar, subject to call.
Without objection, so ordered.
- MR. POYNTER
Delegate Proposal No. 17 by Delegate Planchard.
Relative to prohibiting lotteries.
- MR. HENRY
Returned to the calendar, subject to call.
Without objection, so ordered.
- MR. POYNTER
Delegate Proposal No. 20 by Delegate Jack.
A proposal to limit the number of proposed constitutional
amendments that may be submitted to the voters.
- MR. HENRY
Mr. Fulco moves that it be withdrawn from the files of the
convention.
Without objection, so ordered.
- MR. POYNTER
Delegate Proposal No. 21 by Mr. Jack.
A proposal making provisions for a deduction in state income
taxes from federal income tax payments made during the same period.
- MR. HENRY
The gentleman moves that it be withdrawn from the files of
the convention.
Is there objection?
Without objection, so ordered.
Is there anybody that would particularly like to go with
their delegate proposal first?
Mr. Conroy, do you want to go with yours? That is 22.
Mr. Conroy now moves to call from the calendar Delegate
Proposal No. 22.
Is there objection?
Without objection, so ordered.
- MR. POYNTER
Delegate Proposal No. 22 introduced by Delegate Conroy and
Delegate Newton.
A proposal to provide for the prohibition of certain
enumerated local and special laws. Then, provides with respect
to proposed Section 12 of Article III in a single section.
The machine is not working but I'll try to use the board to
indicate the proposal number that we have up.
- MR. HENRY
Proceed, Mr. Clerk.
- MR. POYNTER
Section 12. Local and Special Laws; Prohibition Against
Enactment
Section 12. Except as otherwise provided in this constitution
the legislature shall not pass any local or special law:
(1) For the holding and conducting of elections, or fixing
or changing the place of voting;
(2) Changing the names of persons; authorizing the adoption
or legitimization of children or the emancipation of minors; affecting
the estates of minors or persons under disabilities; granting divorces;..."
- MR. HENRY
Mrs. Brien now moves to dispense with the reading of the section.
Is there objection?
Without objection, so ordered.
- MR. POYNTER
It was reported favorably. So, as introduced, it's exactly as
the proposal is right now. It was not reprinted.
- MR. HENRY
We'll stand at ease just a few minutes here.

RECESS

MR. HENRY

The Convention will come to order.

Mr. Conroy, if you will, explain the proposal--the first section of it.

MR. CONROY

You may recall that way back when the convention first started in July, we had before us the article on the legislative powers. We arrived at Section 12 of that proposal which dealt with the way in which we would handle the prohibitions against local or special laws. It was a subject of rather lengthy debate in the convention at that time and essentially, the proposal as it's before you now, was adopted at one point as an amendment to the committee proposal and was adopted by the convention. Later, at the suggestion of the committee, the section was deleted and referred back to the committee for further consideration of the problem. The delegate proposal, which is before you, is a vehicle that was used to get the matter back before the committee for its consideration. The Legislative Powers Committee eventually approved this delegate proposal, in effect, making it the Section 12 of the legislative powers original proposal. So, while this is a delegate proposal, I think in some fashion it is also a committee proposal or the present thinking of the committee as the best way in which to handle this difficult problem. I think at the time that we first considered it, the major objection to this approach was the long listing of prohibitions that it involved and the desire, at that time, to keep a very brief constitution. I think we've seen in the past few months that that has been impossible in a number of areas; I think it's equally impossible here to make it any shorter. In order to understand the provisions which we have here, I think you have to go back and look at your copy of the 1921 Constitution, Article IV, Section 4. You will see there a long list of prohibitions of what... the types of local and special laws cannot be passed by the legislature. There are only a few differences between the Article IV, Section 4 as in the present constitution and Delegate Proposal No. 22 as before you; I'll point those out briefly. If you have in front of you page 36 of your compilation of the present constitution, at the bottom you will see a prohibition against creating corporations or amending, renewing, extending, or explaining the charters thereof provided that this shall not apply to municipal corporations having a population of not less than twenty-five hundred inhabitants. That was changed simply to prohibit the creation of private corporations so that it would not interfere with the local government problems. On page 37 in the second paragraph there is a prohibition against extending the time for the assessment or collection of taxes which further prohibited any ordinance to be passed by any local, political corporation of the state. Since this was not in local government, it was thought inappropriate to include it here in the Legislative Powers Article. Also--and I think that this is a point that Mr. Drew may particularly wish to address himself to--when the matter was before the convention the prior time, the contents of Section 5 of Article IV were made the subject of a floor amendment. The contents of Section 5 of Article IV are not included in this delegate proposal. It may be that Mr. Drew would again wish to make that the subject of a floor amendment. That Section 5 says that "the legislature cannot indirectly enact a special law by the partial repeal of a general law." I wasn't entirely sure that that was necessary, but I would certainly have no objection if Mr. Drew still feels that that is necessary. I gather from his nodding that he does feel it's necessary and will probably propose a floor amendment to that effect, to which I would have no objection. I think that...as I said before, the desire of everybody was to try to make this a briefer constitution. But, I don't think anybody was able to come up with language that would accomplish what we wanted to do and at the same time carry forward the types of prohibitions that the state has had and which I think have operated successfully in the state. I'll yield to any question.

MR. HENRY

You have a question, Mr. Duval?

You're next, Mr. Arnette; then you, Mr. Willis.

MR. DUVAL

David, I certainly think your proposal is needed. I wanted to ask you one question. The '21 Constitution doesn't have "except as otherwise provided in this constitution," and you have it in your proposal. I was just wondering, was there any specific reason for doing this or did you do it merely as a catch-all?

MR. CONROY

Well, I'm embarrassed to say, Mr. Duval, that I wasn't even aware that that was in there. I had asked the staff to prepare this and they probably had something specific in mind and I'll try to find out the answer to your question, but I really don't know.

MR. DUVAL

All right.

MR. HENRY

You have a question, Mr. Arnette?

MR. ARNETTE

Mr. Conroy, I definitely think these prohibitions are needed, also. The only question that I have regards Paragraph 8 when you say "the building or repairing of schoolhouses and the raising of money for such purposes." Under my understanding, all the colleges and universities around the state are funded by special appropriation, by special laws, may I like for building a law school at Southern or something like this. It seems like this particular provision would prevent that and the building of any other...anything on a university campus by special law.

MR. CONROY

Mr. Arnette, the only answer I can give you is that if we picked up the language from the '21 Constitution, if it hasn't given them any problem so far, I don't see how it could create any problem in the future. But, again, I think that each one of these things can be considered and if there are any specific objections, consider them. But, I...that's in the present constitution.

MR. ARNETTE

Perhaps we better clarify that and maybe put "except on education" or something to this effect.

MR. CONROY

I might add, and Mr. Duval asked the question along the....

Mr. Arnette, Mr. Duval, follow this carefully because I think it's important. Mr. Duval had asked about there wasn't any provision in the '21 Constitution about "except as otherwise provided in this constitution." I do notice that the particular paragraph in the '21 Constitution on the public schools situation does specifically have the exception that Mr. Duval referred to. So, I assume that the staff decided that that was a better order to take that exception out of that one particular clause and put it up at the front rather than just leave it to one particular clause. But, that one does have a specific exception which I assume indicates that under the Education Article that there may be some exceptions to the education....

MR. ARNETTE

Well, I think under the '21 Constitution they did have such a provision about the special appropriations for colleges and universities, but we do not have one; it's my understanding. So, maybe we need to put "this only applies to primary and secondary schools" or something of this nature.

MR. CONROY

Mr. Arnette, that may well be because this proposal was drafted, as I mentioned, back in July, long before we knew what we would be running into as we went along.

MR. HENRY

Would you yield to a question from Mr. Willis?

MR. WILLIS

Mr. Conroy, my question is now just about moot because you've exhausted yourself on the explanation of an exception clause; that's what worried me and I'm not going to quibble and question you about it any further. But, let me have your assurance—and this is for the record—that you contain in your proposal everything that is in the counterpart to our Section 12 of the Legislative Article except the two items which you mentioned?

MR. CONROY

Yes.

MR. HENRY

Would you yield to a question from Mr. Lanier?

MR. LANIER

Mr. Conroy, this exception clause that you have at the beginning would put this provision in line with the provision of the Local Government Article that authorizes the legislature to classify legislation along the lines of population or any other reasonable classification, wouldn't it?

MR. CONROY

Yes.

MR. LANIER

...in other such type exceptions that may be found throughout the document that we have prepared.

MR. CONROY

Yes. Mr. Lanier, as I indicated, this was drafted a long time ago. I'm sure the staff, I think quite properly, realized that other areas that we might specifically deal with might create exceptions to this.

MR. HENRY

Are those all the questions?

Mr. Clerk, do you have amendments?

MR. POYNTER

I haven't had distribution copies of this....I had this prepared in Mr. Conroy's name...it's just a technical amendment to make the lines 8 and 9 conform to the appropriate way that we've been trying to make these articles consist of and it would strike out lines 8 and 9 and insert in lieu thereof:

"ARTICLE III. LEGISLATIVE BRANCH

Section 12. Prohibited Local and Special Laws"

It's a technical amendment to try to keep the proposals in a uniform style.

MR. HENRY

The gentleman offers up a technical amendment and moves the adoption of the same.

Is there any objection?

Then, without objection, so ordered.

Are there further amendments, Mr. Clerk?

MR. POYNTER

Yes, we have one further amendment.

MR. HENRY

Do you have distribution copies?

While we are waiting, I'll read—I believe it's a telegram we got from the Texas Constitutional Convention that says:

"Dear Chairman Henry,

On January 19 your constitutional convention canoe will have run the rapids of rhetoric for the last time. The eyes of Louisiana are upon you. Where do you intend to work next year?"

You don't have the distribution copies, Mr. Clerk?

MR. POYNTER

We don't have the distribution copies.

Mr. Drew has sent up an amendment. We don't have the distribution copies as yet.

MR. HENRY

All right, Mr. Clerk, if it's not lengthy or complicated, in the interest of time, go ahead and read it and let's see if we can talk about it.

MR. POYNTER

He has two amendments; the first one is technical.

On page 1, line 10, after "Section 12" and before the word "Except" insert "(A)"

Amendment No. 2. On page 2, between lines 19 and 20, add the following:

"(B) The legislature shall not indirectly enact special or local laws by the partial repeal or suspension of a general law."

MR. HENRY

Explain it.

MR. DREW

Mr. Chairman, ladies and gentlemen, when this section was previously considered by this convention, this amendment was adopted at that time. However, as Mr. Conroy has pointed out, it is not included in this delegate proposal. What this does is close the back door on the legislature where they cannot do by a repeal or suspension what they cannot do directly. It has been adopted by the constitution. I think it's necessary that it be contained; it's in the present constitution. I move for the adoption of the amendment.

MR. HENRY

Does that complete your explanation, sir?

Are there any questions?

Is there any objection to the adoption of the amendment?

Then, without objection, the amendment stands adopted.

Are there any further amendments, Mr. Clerk?

There are no further amendments.

Is there any further discussion?

Mr. O'Neill.

MR. O'NEILL

Ladies and gentlemen of the convention, I just want to make sure that you all understand that this is something that we've gone over before and that this is a very necessary thing to have and that we're going to need the required sixty-seven votes to pass this thing. The Committee on Legislative Powers and Functions wrestled with this problem and we never found an adequate solution. But, I think this is the solution to simply put back in almost verbatim what was in the old constitution because we know how it's been interpreted. So, I would like to ask that you please help give the required sixty-seven votes.

MR. HENRY

All right. Mr. Arnette, did you have a.....

MR. ARNETTE

Mr. Chairman, I request about a ten minute recess to find out if we do need an amendment to paragraph 8 of this.

MR. HENRY

Now about three minutes?

MR. ARNETTE

Well, I'll try to find it in three minutes.

MR. HENRY

We will stand at ease for about three minutes.

RECESS

MR. HENRY

The Convention will come to order.

I'll ask that the Clerk read the Arnette amendment. The distribution copies will be here in just a few minutes but this is a very short amendment. I'll ask that you give the Clerk your attention so you can follow along with him in reading the amendment so we can go ahead and dispose of it.

Proceed, Mr. Clerk.

MR. POINTNER

The amendment fits on page 2 and relates to Subparagraph or Item, if you will, No. 8.

Item No. 8, on page 2, on line 14, immediately after the word "of" and before the word "public" insert the words "parish or city".

The same amendment on line 15, after the word "of" and before the word "schoolhouses" insert "parish or city".

So, it would read: "Regulating the management of parish or city public schools, the building or repair of parish or city schoolhouses and the raising of money for such purposes."

MR. HENRY

Mr. Arnette, explain it, please.

MR. ARNETTE

Well, I'm sorry for taking so long but I thought the amendment was necessary, primarily because if this proposal were allowed to stand the way it is right now it would prevent any special appropriation for building, say, a school for the deaf, or addition to any university, or anything like this. I think we want to allow the legislature to have special appropriations for, say, putting a law school at Southern, or adding buildings to any universities, or vocational-technical school, or something like this. I don't think there is any problem; it's in the nature of a technical amendment. I've talked to Mr. Conroy about it and he agrees that it should be put in. Are there any questions?

MR. HENRY

Do you have any questions?

Is there any further discussion?

Is there any objection to the adoption of the amendment?

Then, without objection, the amendment stands adopted.

Mr. Clerk, you have further amendments?

MR. POINTNER

Yes. I do have one further amendment.

MR. HENRY

We don't have the distribution copies on this one either but it's a very short amendment and in the interest of time, if you will, Mr. Clerk, go ahead and read the amendment.

MR. POINTNER

All right. This would have the effect of adding a new item. I'm going to have to change the instructions, there, Mr. Avant, a little bit; it says on line 20 and we've already gotten something between 19 and 20. So, we're going to have to say:

On page 2, between lines 19 and 20 and before Amendment No. 7 proposed by Mr. Drew and just adopted, add the following paragraph: It would insert a new ten—" (10) Defining any crime."

MR. AVANT

All right, Mr. Avant, if you will, please.

MR. AVANT

Mr. Chairman and fellow delegates, I'm going to be very brief. If you will recall when this matter came up before, this amendment was added. Now, the reason for that--the legislature had seen fit to pass laws defining the crime of criminal trespass in various ways in various parishes. So that if you go from parish to parish you don't know what the state law is in that particular parish because it's not uniform all over the state. What say constitute the crime of criminal trespass in Union Parish is different from what it is in Concordia Parish and different from what it is in East Baton Rouge Parish and so forth. Now, I have no objection to the law of what constitutes criminal trespass being different in all sixty-four parishes. Don't get me wrong. I just say that if it is a matter which is going to be a state crime and a crime under the criminal code of this state, that then it ought to be uniform throughout the state. If they can't make it uniform throughout the state, then the legislature should not attempt to legislate in that particular area but do a very simple thing, which they have the power to do, so that local governing authorities have the right to define a particular crime and provide a penalty therefore, and that the penalty shall not exceed so much. I wouldn't have any objection to that, but the point is this--that the Supreme Court has held that the legislature does have the right to enact a general state law, supposedly, which will define a crime in different manners, depending upon where you are in the state. The thing that disturbs me about that is, if they can define the crime of criminal trespass in different ways in different parishes, then they can define any other crime in different ways and in different parishes. They could say that the crime of burglary in the parish of East Baton Rouge will consist of certain things, but in the parish of Orleans it will consist of something else, and in Shreveport it'll be something else. Now, you say, "Well, they haven't done that." Well, twenty years ago they hadn't defined the crime of criminal trespass in different fashions throughout the State of Louisiana. Now, there is one other question that I know is going to be asked, and I'm going to answer it because I was asked before. They say, "Oh, that's going to invalidate all the game laws in the state because you can kill a doe here in certain parishes in certain times of the year and you can't kill one in another parish, etc. etc." That is simply not correct because the crime is not the killing of the female deer, per se, the crime is taking game in violation of the rules and regulations that have been promulgated by the Louisiana Department of Wildlife and Fisheries. You have many, many administrative regulations of various regulatory agencies which after they are adopted and promulgated, then, if you violate those regulations you have committed the crime, a misdemeanor in practically all cases--I don't know of any felonies that you can commit in that fashion. But, the crime is not....the crime is violating the rules and regulations which do not necessarily in these administrative areas have to be the same throughout the state, just like the speed limit

MR. AVANT (cont'd)
on a certain type of road would not necessarily be the same throughout the state. But, what I'm talking about is more serious crimes which should have a statewide, uniform application. If there is any good and sufficient reason as to why that particular crime cannot be defined uniformly throughout the state, then the legislature should not attempt to regulate that particular conduct but should get out of the area and leave it up to local government, which they have a perfect right to do under this constitution. So, that's all I have to say on it. I know you're tired. I know we've got a lot of work to do. This amendment was adopted earlier and then it was sent back to the committee. The committee has seen fit to take that amendment off, and I simply ask you to put it back on.

MR. HENRY
Would you yield to a question from Mr. Lanier?
The gentleman yields.

MR. LANIER
Mr. Avant, do I understand your amendment correct that it's adding a Section (10) that says "defining a crime"?

MR. AVANT
That's right. If you go back to the beginning, "Except as otherwise provided in this constitution, the legislature shall not pass any local or special law, (1), (2), (3), (4), (5), right on down to (10)—defining any crime."

MR. LANIER
Any crime?

MR. AVANT
Any crime.

MR. LANIER
Right. Now, wouldn't this invalidate the gill net law that we have enforced in the Tenth Ward of Lafourche Parish?

MR. AVANT
No, sir, it would not, Mr. Lanier. I just got through answering that, telling you that that is a matter which relates to the taking of wild game and which can be done by the rules and regulations of the Wildlife and Fisheries Commission. If they feel that in that particular area it is good sound conservation practice to outlaw taking game in that particular fashion, then they can do it.

MR. LANIER
Well, Mr. Avant, please explain to me how that law would not be either a local or a special law in the contemplation of this proposal.

MR. AVANT
I'm just saying that you can do it in another fashion, Mr. Lanier. You can accomplish the same and identical thing without leaving the constitution wide open for the legislature to pass any kind of criminal statute they want and make it on a local or special basis.

MR. LANIER
Now, Mr. Avant, would this proposal of yours invalidate the slaptrap law in Assumption Parish?

MR. AVANT
The same thing, Mr. Lanier; I mean, you're accumulating your questions. You did this before and we went through this little deal before and it will not; it will simply have to be done by reason of administrative regulation under the Department of Wildlife and Fisheries which don't have to be uniform all over the state.

MR. HENRY
Would you yield to a question from Senator Brown?
The gentleman yields.

MR. BROWN
Mr. Avant, following up Mr. Lanier's question, I had a bunch of game fishermen come to me and I read a statute—if I had a couple of minutes I'd get it and show it to you—that says you can only catch a fish a certain length up in, say, the parish of Concordia, whereas down in Plaquemines the length is longer because of the content of the water, and the amount of water available; it's a very complicated biological determination. By statute, those amounts are set; I've read the statutes.

MR. AVANT
But, they can be set by rule of the Department of Wildlife and Fisheries, and I think you know that, Senator Brown.

MR. BROWN
Well, they could be if you wanted to give the Wildlife and Fisheries Commission a power to....in other words, I can see some instances where that would be a pretty wide rule-making power just to say they can pretty much set everything we do, you know. It might be a question as to whether we want to give the Wildlife and Fisheries Commission that kind of authority and power.

MR. AVANT
Well, you're getting into another subject, but I'll answer you this way. I happen to feel that the Department of Wildlife and Fisheries with trained biologists and people who are trained in that particular area should be the persons who provide the rules and regulations for the taking of game and it should not necessarily be a political football kicked around in the legislature.

MR. HENRY
Would you yield to a question from Mrs. Zervigon?
The gentleman yields.

MRS. ZERVIGON
Mr. Avant, I think you've got a good idea. I believe I voted with you before, but I wanted to ask you this one question. We have elsewhere in this new constitution a section that says, "The legislature may classify cities and parishes on the basis of population or on any other reasonable basis related to the purposes of the act." Now exactly does this fit with that?

MR. AVANT
I don't think that has anything to do with this question, Mrs. Zervigon. That relates to legislation which affects the powers and duties and responsibilities and so forth of local governmental units.

MRS. ZERVIGON
No, sir, I don't believe it does; it's a separate section; it just says that "the legislature may."

MR. AVANT
May classify and may legislate?

MRS. ZERVIGON
Well, could the legislature classify under these game laws in such a way that it was reasonably related to the purposes of the act and either obviate some of what you are trying to do or get around some of the objections that Senator Brown and Mr. Lanier have?

MR. AVANT

I don't follow you. My amendment is limited strictly to the definition of what is a crime under the criminal code of the state and for which you can be fined and sent to jail. I say that if the legislature is going to say that certain conduct is criminal, then it should be uniformly applicable all over the state. If for some reason they can't make it uniformly applicable all over the state, then there would be no uniform state law, then it's obviously a matter which should be left up to local government.

MR. HENRY

You've exceeded your time, sir.
Mr. Vick moves to allow the gentleman five additional minutes to answer questions.
Is there objection?
Without objection, so ordered.
Go ahead, Mrs. Zervigon; you're next, Mr. Willis.

MRS. ZERVIGON

Then, what you're saying is that these two sections have no relation to one another?

MR. AVANT

I don't feel that they do, Mrs. Zervigon.

MR. HENRY

Would you yield to a question from Mr. Willis?
You're next, Mr. Stinson.

MR. WILLIS

Mr. Avant, to please those people who have hilly country in North Louisiana and marshlands in South Louisiana and all kinds of other lands or topography with respect to trespassing, isn't it simply for the legislature to define what is marshlands; what is swamp land; what is highland; what is rock land? Then, after they have made that delineation by definition they can say what is a crime in those areas and still achieve, but it would still be uniform all over Louisiana. In other words, what you are trying to do is to have special laws for one parish where when you cross the boundary and you don't know where it is, you don't know whether you are committing a crime or not.

MR. AVANT

That's right. The approach that you've taken is another solution to the problem that was raised by Mr. Lanier.

MR. WILLIS

And, it would be a conviction of our legislature of inability to define topography and the compaction level and fertility in terms of soil and so forth, and if they can't do that, they can't define a crime; isn't that right?

MR. AVANT

That's correct.

MR. CASEY (IN THE CHAIR)

Would you yield to a question from Mr. Stinson?

MR. STINSON

Jack, don't you know for years in the legislature we couldn't come up with a uniform one? Firstly, in the way, I believe it was Jefferson Davis Parish, and then I had one from Bossier and other parishes. Because of the different problems in different parts of the state, every time we tried to have—don't you know—every time we tried to have a uniform South Louisiana one because of the marshlands and all, well they would vote down anything we wanted. So, then, about ten different parishes, at least, passed their own and provided

MR. STINSON (cont'd)

that the police juries could choose it, at their option. Don't you think that's a form of home rule? So around now, in Baton Rouge we concerned about what we have in Baton Rouge unless you're going to go up there and try to criminally trespass on our lands?

MR. AVANT

Mr. Stinson, I don't think you were listening. I said that I didn't care. If the legislature wants to pass an act saying that all local governing authorities in this state are given the authority to define the crime of criminal trespass within their respective jurisdictions and to provide penalties therefor—up to which would be misdemeanor, I wouldn't kick about that at all. What I'm saying is that I don't want the legislature saying that the crime for criminal trespass shall constitute this in one parish and that in something else because of this reason—that I'm so upset about trespass. If they can define—over—by a local and special law, then they can define any crime by a local and special law. They can say that the crime of armed robbery will consist of this and such in the parish of Caddo and thus and such in the parish of East Baton Rouge, and that is what I'm trying to head off.

MR. STINSON

Don't you know that argument wouldn't hold water at all, Jack; they couldn't do it on something like that?

MR. AVANT

Well, they most certainly can because they have defined a crime and made it a state crime, a violation of the State Criminal Code to wit: the crime of criminal trespass, and it is not the same crime in all of the parishes of the state; it varies from place to place as you travel around the state.

MR. STINSON

Well, don't you think a solution would be that they can for criminal trespass, but no other crime then?

MR. AVANT

Well, if you want to add that amendment after my amendment is put on, I wouldn't holler about that, if you want to limit it that way. I think it would be kind of foolish because I think the thing to do, if the legislature can't decide what criminal trespass ought to constitute throughout the State of Louisiana, they ought to quit fooling with it and let local government decide.

MR. CASEY

Senator Brown.

MR. BROWN

Mr. Avant, one more question. You said you don't want the legislature determining that, in other words, only so long a fish should be caught in one area; that all that should be administrative rules. Aren't, in effect, what you are doing is allowing the commissioner to, in effect, write criminal laws saying that, "Look, if you are involved in hunting or fishing with this type of game, you're in violation of our rules"? Aren't you, in effect, writing criminal law and charging that man through an administrative procedure which is—in effect, we are kind of doing that right now, now that you mentioned it, and I think the whole concept is unconstitutional; wouldn't you agree?

MR. AVANT

Well, I don't think it's unconstitutional at all. I think you do it in many, many areas; the civil service can adopt rules which have the effect of law. Now, I don't know any of them that have criminal penalties...

112th Days Proceedings—January 8, 1974

MR. BROWN

That's civil, that's not criminal though. You are talking about criminal areas....

MR. AVANT

There are other areas.

MR. BROWN

Aren't you talking about criminal penalties when you....

MR. AVANT

The Department of Public Safety and various and sundry other departments of the state after a hearing and notice and all that, can adopt rules and violation of those rules, once they are adopted in accordance with due process of law, can be a misdemeanor.

MR. BROWN

In accordance with due process of law, but what you're....

MR. AVANT

Which involves notice, and hearing, and giving people an opportunity to be heard and express their views.

MR. CASEY

Mr. Arnette.

MR. ANNETTE

Mr. Avant, you mentioned the Department of Public Safety; don't they set the speed limits on highways around the state?

MR. AVANT

Yes, they do.

MR. ARNETTE

And, a violation of that regulation as set by them is a crime?

MR. AVANT

In certain instances they may, yes.

MR. CASEY

Mr. Hernandez. This is the last question, gentlemen. You've really exceeded your time, Mr. Avant.

MR. HERNANDEZ

Mr. Avant, let me admit to start off with, I didn't get interested in your amendment, it got here too late; I'm asking for information now; I'm not needing. Is it true that you are attempting to give the legislature the power to let the local government determine certain local issues, for instance, trespassing?

MR. AVANT

They already have that power. They can....if you'll go back over the Local Government Article and the Legislative Article you will conclude that the legislature can give to local government certain authority. They can give them the right to pass ordinances, the violation of which would constitute a misdemeanor. Defining crime, they have that authority now....

MR. HERNANDEZ

You do not propose to take any of that away from the local government?

MR. AVANT

No, I'm not trying to take that away from local government. The only thing I'm trying to do is to say that if the state legislature

MR. AVANT (cont'd)

over here in the State Capitol passes a state law defining a crime which will be in the Criminal Code of this state, then that, that law has got to be of uniform application all over the state. The crime will not consist of one thing in one parish and something else in another parish. The reason that I want to do that is not because I'm concerned necessarily about them passing laws regulating the taking of game or them passing laws on criminal trespass, but if they can define one crime throughout the state in different manners, then they can define any crime. There is nothing in this constitution that says you can define these crimes in different fashions throughout the state but no others.

MR. CASEY

You've exceeded your time, Mr. Avant. I'm sorry, gentlemen.

Mr. Conroy is now recognized for the floor; then, Mr. Vick is on the list also.

Why do you rise, Mr. Abraham?

MR. ABRAHAM

How many speakers on the list, Mr. Chairman?

MR. CASEY

Two speakers on the list--Mr. Conroy and Mr. Vick.

MR. ABRAHAM

If I'm in order, I would like to move that we limit debate to ten minutes.

MR. CASEY

You're in order. Mr. Abraham now moves to limit debate to ten minutes.

Is there objection?

Without objection, so ordered.

MR. CONROY

I oppose Mr. Avant's amendment because it really subverts the intent of the proposal as is before you. The intention of the proposal was to carry forward the restraints that had existed in the past, ones that had been tried, tested, we knew what they meant. We felt these were appropriate restraints to continue. However, Mr. Avant's proposal gets us into an entirely new area that we don't really know the effect of Mr. Avant's amendment. I don't think any of us in this room fully could tell you exactly what crimes that the legislature has to date defined might be made unconstitutional by virtue of Mr. Avant's amendment. If any of us could, I would be happy to hear it. But, I don't think we know what laws Mr. Avant's amendment might render unconstitutional that are presently on the books. I think that in our Bill of Rights section we have given ample protection to the individual who is charged with a crime under the equal protection clause and other provisions in there as far as the individual criminal defendant is concerned. I do not think it appropriate to get into an area where we don't know exactly what we are doing and erase possibly a lot of legislation presently on the books that may be fully justified and desirable. Therefore, I urge you to defeat this amendment.

MR. CASEY

Mr. Vick is now recognized for the floor. Mr. Vick waives.

Is there any further discussion?

Are you ready for the question?

Without objection, the previous question is ordered.

Mr. Avant, has a right to close.

MR. AVANT

I just want to clear up what I may have said that may have confused some people; I didn't intend to say or imply that any administrative agency could adopt a rule or regulation and say that if you violate this rule or regulation that there will be a criminal penalty and that they would be in a position to enforce the criminal penalty. Let's go back and . . . the legislature may give to an administrative agency the right to make rules and regulations. Then after those regulations have been promulgated in accordance with the procedures established by the legislature and which must meet the constitutional requirements of due process, the legislature could say all right, if you violate these rules and regulations which we have authorized this administrative agency to make that you will be guilty of a crime and provide a penalty for that. After which, if you are charged with violation of that statute of the legislature, you would have to be tried and convicted in a court of law. No administrative agency could put you in jail, you would be entitled to all of the protection of the criminal laws in that event. As I said before, the important thing is this, that if the legislature is not prohibited from enacting local and special laws defining crimes—which they are not prohibited from doing up to this point because the amendment that I had offered before was taken off—then there is nothing that will prevent the legislature from passing laws, as they have in the case of criminal trespass, and saying that the illegal use of marijuana shall consist of this and such in the Parish of Orleans, but in the Parish of East Baton Rouge you can have more marijuana than you can in New Orleans; or saying that houses of prostitution will be illegal in the Parish of Caddo, but they will not be illegal in the Parish of St. Landry, etc., etc. Or if you really want to go further, they could define any crime—I don't care what it is—in different manners throughout the state. That's bad, and that is what we need to prohibit.

MR. CASEY

Do you yield to questions, Mr. Avant?
Mr. Vick has a question, then, Mr. Willis.

MR. VICK

Jack, I want to take you over this for the last time so the record will reflect your intention without any qualification or equivocation. Under the administrative procedure act the legislature can empower an administrative agency to find various acts in violation of the regulations they promulgate, that's number 1.

MR. AVANT

That's correct.

MR. VICK

Number 2, they can attach a criminal liability to those acts, but . . .

MR. AVANT

The legislature can attach criminal liability, not the administrative agency.

MR. VICK

The legislature, right, that's number 2. Number 3, in order to find a citizen guilty of a criminal act the attorney for the agency has to go . . . or an agent empowered to make an arrest, for example, has to go to the district attorney in the parish involved and file charges and go through the regular criminal routine as set forth in the Code of Criminal Procedure, etc.

MR. AVANT

That's right. Mr. Vick, the classic example of that, or a classic example is the law that we've had on the books for years relating to the pollution of streams that it is administered by the Stream Control Commission; they make certain rules and regulations

MR. AVANT (cont'd)

as to what you can dump into a stream. Now, if you violate those rules and regulations they can—now, they can sue for an injunction, or they can file a criminal charge against you, but they are the ones who have been empowered by the legislature to make a determination as to what constitutes pollution and what you can do and what you can't do. But, they don't have the right to put you in jail. The legislature simply has said, if you violate the rules and regulations that they promulgate then we say that you should be subject to a criminal penalty. But, still you have your day in court, you have the benefit of all of the criminal laws and if you say, "I'm not guilty," they have to prove you guilty beyond a reasonable doubt in accordance with all of the procedures that protect the rights of the person accused of crime.

MR. CASEY

Mr. Willis has a question. You've just about exceeded your time, Mr. Avant.

MR. WILLIS

Mr. Avant, you have preempted my question when your words say, "defining any crime," you were restricting it in your opening argument to your . . . and focusing upon trespass, but you developed that it applies to all crimes. Isn't it a fact, that if we allow your amendment not to pass, that you could define that in the city of New Orleans, you cannot disturb the peace unless you have a loaded gun in your pocket, all other—you can use loud and abusive language, etc. Isn't that correct?

MR. AVANT

That is exactly correct.

MR. WILLIS

You could single out --and you brought this up, but I bring it again for emphasis-- that you could have houses inhabited by women of the oldest profession in only one parish in the State of Louisiana, and could not my parish.

MR. AVANT

That is exactly correct. As you know the law which defines the crime of burglary says that if you break into an automobile or you break into a water-craft, it constitutes a burglary. Well, the legislature could pass a law saying that in the coastal parishes if you break into somebody's boat, it constitutes burglary, but if you happen to have a boat on Toledo Bend and somebody breaks into it, it don't constitute burglary. That's the whole objection in why we need this prohibition.

MR. CASEY

Mr. Avant has exceeded his time, gentlemen.
Mr. Avant has sent up amendments.
Is there any objection to the adoption of the Avant amendment?

To which objection is urged.

Mr. Avant has requested a record vote.

Will twenty-six members join?

A record vote is not evident.

Will twenty-six members join?

Okay. A record vote is ordered.

Therefore, when the roll is called, those in favor of the adoption of the amendment will vote yes. Those opposed will vote no, and the Clerk will call the roll.

MR. FORTNER

Abraham	No	Asseff	No
Ackerly	Yes	Avant	Yes
Alario	N.V.	Badeaux	No
Alexander	Yes	Bel	Yes
Anzalone	N.V.	Bergeron	Yes
Annette	Yes	Blair	N.V.

MR. FORTNER (cont'd)

Bollinger	No	Maubert	Yes
Brien	No	Maybucc	Yes
Brown	No	Miller	No
Burns	Yes	Mits	No
Burson	Yes	Morris	Yes
Cannon	Yes	Munson	Yes
Carmouche	No	Newton	N.V.
Casey	Yes	Humes	Yes
Champagne	No	O'Neill	Yes
Chatelain	No	Ours	N.V.
Chehardy	Yes	Perez	N.V.
Comar	Yes	Pedkins	N.V.
Condo	Yes	Planchard	No
Conroy	No	Pugh	Yes
Corne	No	Rachal	No
Coven	No	Rayburn	N.V.
D'Agostino	Yes	Reeves	N.V.
De Blieux	Yes	Riecke	Yes
Deinery	Yes	Rosner	No
Dennis	Yes	Roy	N.V.
Derbes	Yes	Sandoz	N.V.
Deshotels	N.V.	Scheiff	Yes
Drew	N.V.	Segura	N.V.
Dunlap	N.V.	Shannon	Yes
Duval	No	Singletary	N.V.
Edwards	N.V.	Slay	N.V.
Elkins	Yes	Smith	Yes
Fayard	N.V.	Soniatt	Yes
Flory	Yes	Stagg	Yes
Fontenot	N.V.	Stephenson	No
Fowler	N.V.	Strinson	No
Fulco	N.V.	Stovall	Yes
Gauthier	Yes	Sutherland	Yes
Giarrusso	N.V.	Tapper	Yes
Ginn	N.V.	Tate	Yes
Goldman	Yes	Thistlethwaite	N.V.
Graham	Yes	Thompson	N.V.
Cravel	Yes	Tobias	Yes
Crier	No	Toca	Yes
Guarisco	No	Toomy	No
Hardee	No	Ulio	N.V.
Hayes	Yes	Velazquez	Yes
Haynes	N.V.	Vesich	N.V.
Heine	No	Vick	Yes
Hernandez	Yes	Wall	N.V.
Jack	N.V.	Warren	Yes
Jackson, A.	Yes	Wattigny	Yes
Jackson, J.	Yes	Velis	N.V.
Jenkins	Yes	Willis	Yes
Jones	Yes	Winchester	N.V.
Jeanue	No	Wisham	Yes
Kean	N.V.	Womack	N.V.
Kelly	N.V.	Zervigon	Yes
Kilbourne	Yes		
Kilpatrick	Yes		
Lambert	N.V.		
Landrum	Yes		
Landry, A.	No		
Landry, E.J.	Yes		
Lanier	No		
Leblou	No		
Leigh	N.V.		
Leithman	Yes		
Love	Yes		
McDaniel	No		
Martin	No		

MR. CASEY

65 years and 30 days and the amendment has been adopted.
Mr. Avant moves to reconsider the vote by which that amendment was adopted and lay that motion on the table.
Without objection, so ordered.
Any further amendments, Mr. Clerk?

MR. FORTNER

Mr. Pugh is preparing an amendment back there at this time, sir.
Did you want a personal privilege at this time, Mr. Pugh, while you're waiting on that amendment?

MR. CASEY

Mr. Pugh is recognized on a personal privilege.

MR. PUGH

Mr. Chairman, fellow delegates, . . .

MR. CASEY

Just a minute, Mr. Pugh. Delegates, please give Mr. Pugh your attention, you might be interested in what Mr. Pugh has to say.

MR. PUGH

Last Saturday, I suggested to you the feasibility and the advisability of our having struck a coin commemorative of the creation of this constitution by this delegative body. I ask that you give it consideration and let me know what your thoughts are. I tell you that those who have discussed it with me are all in favor of such a plan. In that connection, I make these observations and suggestions for your consideration, that there be such a medal struck, that the medal be restricted in its distribution in the following manner: that one--and one only-- may be acquired at their sole cost and expense by a delegate to the convention; that in addition to that number, that there be one presented on behalf of the convention to Mrs. Duncan and to David; that there also be one presented to the governor of this state; and with your permission in 1975 when the Republic of France honors the Louisiana Bar Association on the hundred and fiftieth anniversary of the Civil Code of 1825, I would like to present one to the President of France. Now, the last one, I suggest to you should be placed within and on a plaque to be put in the lobby of the Capitol that we provide for such a plaque in the Transitional Measures so that it will have constitutional endowment, and that the names of all of the delegates to this convention be inscribed upon that plaque. My first, and last, and final thought in this connection is to ask the governor if he will issue a proclamation that this medal may be worn by the recipients thereof at any state occasion, whether the thing be the inauguration of a future governor, the installation of a Justice to the Supreme Court, or the initial session of the legislature, or at the official bicentennial functions in the State of Louisiana. I shall ask you now by a show of hands those of you who are interested in the medal in the fashion in which I have outlined, are you in favor of such a proposition; if you are, raise your right hand. Thank you.

MR. CASEY

Do you yield to a question? I think Mr. Avant had a question. You waive? Okay.

MR. CASEY

Next amendment . . .

Thank you, Mr. Pugh.

Mr. Shannon, then Reverend Landrum.

Mr. Shannon.

Anyone else wish to be recorded that has not been or otherwise affect their vote?

MR. SHANNON

Bob, what is the approximate cost of this?

MR. PUGH

I was trying to determine by hand number how many were interested in it and I'll go call Franklin Mint at my own expense and make that determination. I would assume that in silver it would be in the neighborhood of \$25.00--outside figure-- that at sterling silver. If, however, you want it in gold or you want any of the presentation pieces in gold, I'll try to arrange for an act of congress, and they'll probably run in the neighborhood of \$250.00 to \$300.00.

MR. CASEY

Reverend Landrum.

MR. LANDRUM

Mr. Pugh.....

MR. PUGH

Yes.

MR. LANDRUM

I was wondering would you consider including the coordinators, and also members of the press who have been here every day we've been here?

MR. PUGH

Of course, whatever the constitutional convention wants to do would be my pleasure. I am not trying to get anybody to do anything; these are merely thoughts. Incidentally, what I had in mind is something similar to this. If you'll take a look at this this is the type of medal that I had in mind that on one side might have a reference to this constitutional convention and the outside days on which it sat and on the reverse side would be the seal of the great State of Louisiana.

MR. CASEY

Mr. Burns.

MR. BURNS

Mr. Pugh, I assume that all of this would only go into effect in the event the constitution was approved by the people, right?

MR. PUGH

That is correct.

MR. BURNS

I can imagine how embarrassing it would be if we go through all of this and then the constitution was defeated.

MR. PUGH

Well, the only thing I could say is insofar as the plaque is concerned, I have no objections to going ahead and arranging for the medal at this nominal cost regardless, but that's your pleasure.

MR. CASEY

Mr. Goldman.

MR. GOLDMAN

Delegate Pugh, in the several complementary medals in your suggestion with which I am in complete favor, when you find the cost, could you get the cost so that the cost to each of us who buy our medal will be incorporated, that portion of the cost of those

MR. GOLDMAN (cont'd)

complementary medals that you're going to give.

MR. PUGH

It has been my thought that we would bear the cost of those three or four complementary medals.

MR. GOLDMAN

Within our individual cost, so that we won't have to go around and make a collection for those or something.

MR. PUGH

That is correct.

MR. CASEY

Mr. Chatelain has a question.

Gentlemen, this is the last question. You've just about exceeded your time, Mr. Pugh.

MR. CHATELAIN

Mr. Pugh, I think you have an excellent idea, sir, and I certainly voted for it, but I would ask you to please, please, limit the numbers that would be made to the numbers you mentioned; let's not spread it out any further. I think you would lose the effectiveness of it if you went beyond the number that you mentioned and I think that you ought to stand fast on that, sir.

MR. PUGH

All right.

MR. CASEY

Gentlemen, we're waiting for an amendment to come that's being submitted by Mr. Pugh.

Do you have a question, Mr. Brown?

MR. BROWN

Mr. Pugh, is the medal going to be made fairly soon?

MR. PUGH

Well, that is in connection with this question over here. If it falls through are we going to do it? I think we ought to go and do it regardless and then, of course, . . . the constitution is going to pass-- I mean there's no problem about that. I'm satisfied it's going to pass and well then, we'll use the medals.

MR. BROWN

Well, in case it falls, you might want to consider maybe making it in the shape of a purple heart or something like that.

MR. PUGH

I'll ask my wife to bury me with mine.

MR. CASEY

Thank you, Mr. Pugh.

MR. PUGH

I move the adoption of this plan as outlined today.

MR. CASEY

Mr. Pugh, I think it . . . I'm not sure if it's appropriate right now that the convention adopt it. We're on another proposal and I think it may be well if necessary, to find out how many people are interested and also, it may be a subject matter that the Executive Committee ought to take up also.

MR. PUGH

All right. Whoever asked me to move. I'm sorry. Thank you.

MR. CASEY

We'll stand at ease until the Pugh amendment is . . .

MR. FOYNTER

Mr. Vice-Chairman, I have the desk copies of Mr. Pugh's and Mr. Vick's amendment. I don't have the distribution yet, if you want me to read it and let the gentleman be explaining it.

MR. CASEY

Okay. Clerk will read the Pugh amendment. Please give the Clerk your attention, please.

MR. FOYNTER

The amendment would read as follows: It's sent up by Delegates Pugh and Vick.

Amendment No. 1. On page 2, between lines 19 and 20, in the amendment proposed by Delegate Avant, just adopted, at the end of the text of the amendment, after the word and period "crime," add the following:

"Nothing herein, however, shall be construed as authorizing the delegation by the legislature to any board, commission, department, or agency the power to define a crime."

MR. CASEY

Mr. Pugh will explain his amendment.

Now, delegates, please take your seats; give Mr. Pugh your attention. The distribution copies will be here in a moment. We will not vote until they've been distributed, but please give Mr. Pugh your attention, so we can move this along.

MR. PUGH

Mr. Chairman and fellow delegates, they can look at this as somewhat of a caveat. The only concern that I had expressed walking around the floor about the last amendment related to the possibility of some construction relating to why these administrative boards or bodies defining a crime. I believe this amendment would take care of that problem, and for that reason, Mr. Vick and I ask your favorable consideration. Thank you.

MR. CASEY

Do you have any questions of Mr. Pugh?

Do you yield to questions, Mr. Pugh?

Is there any further discussion on the Pugh amendment?

Is there any objection to voting on the amendment before the distribution copies are distributed?

Is there objection?

There is objection.

We'll have to stand at ease until the distribution copies are ready.

RECESS

MR. CASEY

...For the question.
Senator De Blieux.

MR. DE BLIEUX

Mr. Chairman, in the second line of their proposed amendment shouldn't the word "legislation" be "legislature," rather than "legislation"?

MR. CASEY

I believe it should be, Senator De Blieux.
Is that right, Mr. Clerk?

MR. FOYNTER

It appears that way to me. Don't you think so, Mr. Pugh?

MR. CASEY

Then, Mr. Pugh withdraws his amendment for corrections, and resubmits same after changing the word "legislation" to "legislature."

Is there any further discussion on the Pugh amendment?

Do you yield to some questions, now, Mr. Pugh?

Mr. Duval, did you have a question, too?

MR. LANIER

Mr. Pugh, does this mean that the legislature cannot delegate to a board, commission, department, or agency the power to define a crime?

MR. PUGH

That's its intention, yes. I don't think constitutionally they can anyway, but go ahead.

MR. LANIER

Well, let me ask you this: if the legislature passes a law saying that the violation of a wildlife and fisheries regulation is a crime, and then leaves it up to the wildlife and fisheries to prescribe the regulations, would that not be the wildlife and fisheries defining what the crime is?

MR. PUGH

Not in my opinion. That's why I'm saying that the wildlife and fisheries determines when the hunting season is. The legislature

MR. PUGH (cont'd)

can define a crime for killing wildlife outside of a hunting season. But, the hunting season itself is defined, you know, the limits of it, are set forth by the wildlife and fisheries. That has nothing to do with the definition of crime.

MR. LANIER

But, in effect, wouldn't the wildlife and fisheries be prescribing the circumstances under which the crime would be committed? Is that not correct, Mr. Pugh?

MR. PUGH

By rules and regulations, if the legislature said that they may define under rules and regulations what a crime is, then I agree with you; or if the legislation says that any violation of any of the rules and regulations of one of these departmental commissions is a crime, then I don't believe such legislation would be constitutional, and it particularly wouldn't be in the light of this.

MR. LANIER

Well, let me ask you this, Mr. Pugh: Would you not agree with me that under the present laws dealing with the wildlife and fisheries, that certain sections have particular penal provisions attached to the sections, but that there is a general penal clause pertaining to any violation of any wildlife and fisheries regulation?

MR. PUGH

Yes, I'm familiar with that. I know it doesn't satisfy this constitution, but I'm familiar with it.

MR. LANIER

Well, has it ever been declared unconstitutional?

MR. PUGH

No, not to my knowledge.

MR. LANIER

If this is correct, if this is the way our present wildlife and fisheries law is written, would your amendment invalidate the general penal provision of our present wildlife and fisheries law?

MR. PUGH

Well, I think there's no question but the legislature among its other functions is going to have to straighten out any legislation, including that to comply with this constitution.

MR. CASEY

Mr. Duval.

MR. DUVAL

Mr. Pugh, in your opinion, under the Avant amendment and if your amendment is passed, will it require entire rewriting of all the wildlife laws of Louisiana? Would the Transitional Committee have to do that?

MR. PUGH

All the wildlife laws? No. We're talking about the regulations that they may have. If there's a wildlife law, then it's been passed by the legislature and you don't have to worry about it.

MR. DUVAL

Well, you don't think it'll be in conflict with this constitution?

MR. PUGH

No.

MR. DUVAL

Why not?

MR. PUGH

Not unless that law confers upon this administrative body the right to define a crime.

MR. DUVAL

You do agree, though, that part of the laws would have to be rewritten under this provision?

MR. PUGH

Well, ...

MR. DUVAL

What about the part of the wildlife law which says that the violation of a regulation is a crime. That would have to be rewritten, wouldn't it?

MR. PUGH

Yes, it sure would, and I think it should be.

MR. DUVAL

Now, what about the wildlife laws that only apply to a specific local area? Will those have to be rewritten?

MR. PUGH

That's Mr. Avant's amendment.

MR. DUVAL

Yes. Will those have to be rewritten?

MR. PUGH

Yes.

MR. DUVAL

They would have to be rewritten, won't they?

MR. PUGH

Yes, if you're going to try to say that if you violate the rules and regulations in this little book published by an administrative body, you have committed a crime, then, yes; they'd have to be rewritten.

MR. DUVAL

Do you think we've studied this sufficiently to know what effect it's going to have on the various revised statutes affecting the wildlife, for an example?

MR. PUGH

Well, if you are asking me that in the last twenty minutes have I read all these wildlife laws, I haven't.

MR. CASEY

Mr. Burns has a question.

MR. BURNS

Mr. Pugh, this worries me. I mean, I don't quite understand it. Say, the legislature passes a law, it's a present law, defining the killing of a doe as a crime.

MR. PUGH

Killing of what?

MR. BURNS

A doe, deer...female deer.

MR. PUGH

Oh, I thought you said a toad.

MR. BURNS

But, under our present law, as I understand it, the Wildlife and Fisheries Commission or Department in certain areas where they have an overproduction of doe, female deer, they can declare an open season on it although there's a state law declaring that the killing of a doe deer is a crime.

MR. PUGH

If you're asking me whether an administrative body ought to be able, by its rules and regulations, to change the laws of the State of Louisiana, as enunciated by the legislature, then I'll tell you that they ought not to be able to.

MR. BURNS

The only reason I cited that because that's the situation now.

MR. PUGH

Well, see, going back to my earlier illustration, there's one thing to say that the killing of a deer out of season is a crime. There's another thing to say that the administrative body can determine the limits of the season. Those are two entirely different things.

MR. CASEY

Mrs. Zervigon has a question.

MRS. ZERVIGON

Mr. Pugh, the way your amendment is phrased, it says, "nothing herein shall be construed as authorizing." As I read this delegate proposal, it's a limitation, not an authorization of anything.

MR. PUGH

That's correct.

MRS. ZERVIGON

So, how could anything be construed as authorizing? How could anything in Delegate Conroy's proposal be construed as an authorization when all the language of it is cast as a limitation?

MR. PUGH

I asked Mr. Vick the same question. He said we'll let Style and Drafting take care of that.

MRS. ZERVIGON

Isn't it also correct that the legislature may do anything not denied it, and that this is cast in...the delegate proposal is cast in the language of a long denial of things to the legislature?

MR. PUGH

Yes. It can do anything it's not denied. However, I think it ought to be denied the right to delegate the power to define crimes. There isn't any question about that. I think you ought to be able to look to the statutes of Louisiana to tell what a crime is.

MRS. ZERVIGON

One more question: Wouldn't that be unconstitutional delegation of authority in any case?

MR. PUGH

...Well, I think it is, frankly. That was my answer over here. I think it's always been unconstitutional when they did it.

MR. CASEY

That's all the questions, Mr. Pugh.

MR. CASEY (cont'd)

Is there any further discussion on the Pugh amendment? To which objection is urged.

Are you ready for the question?

Without objection, the previous question is ordered.

Mr. Pugh, you have a right to close.

Mr. Pugh waives.

Therefore...take your seats, delegates...let's take a standing...

Mr. Lanier now requests a record vote.

Will twenty-six members join?

A record vote is not evident.

Therefore, those in favor of the Pugh amendment...we'll have a standing vote...those in favor of the Pugh amendment will vote yes by standing. Those in favor please stand. Please stay by your seats; don't walk around and don't move around. All those who are not delegates, please move out of the way.

Please be seated.

Those who are opposed to the Pugh amendment, please stand.

The Clerk has indicated that it's impossible to determine by a standing vote.

The Clerk will have to call the roll.

Those in favor of adopting the Pugh amendment will answer yes when the roll is called. Those opposed will answer no.

The Clerk will call the roll.

MR. POYNTER

On the Pugh-Vick amendment.

Mr. Abraham	Yes	Fayard	No
Aertker	Yes	Flory	Yes
Alario	No	Fontenot	No
Alexander	Yes	Fowler	N.V.
Anzalone	N.V.	Fulco	Yes
Arnette	No	Gauthier	No
Asseff	No	Giarrusso	N.V.
Avant	Yes	Ginn	N.V.
Badeaux	No	Goldman	Yes
Bel	Yes	Graham	No
Bergeron	No	Gravel	Yes
Blair	N.V.	Grier	No
Bollinger	No	Guarisco	Yes
Brien	Yes	Hardce	No
Brown	Yes	Hayes	Yes
Burns	No	Haynes	N.V.
Burson	No	Heine	Yes
Cannon	Yes	Hernandez	Yes
Carmouche	No	Jack	N.V.
Casey	No	Jackson, A.	Yes
Champagne	No	Jackson, J.	Yes
Chatelain	No	Jenkins	Yes
Chehardy	Yes	Jones	Yes
Comar	Yes	Janeau	No
Conino	Yes	Kean	N.V.
Conroy	No	Kelly	N.V.
Corne	No	Kilbourne	No
Coven	Yes	Kilpatrick	No
D'Gerolamo	Yes	Lambert	No
De Blieux	Yes	Landrum	Yes
Denberry	No	Landry, A.	No
Dennis	Yes	Landry, E.J.	Yes
Derbes	No	Lanier	No
Deshotels	N.V.	Leblieu	No
Drew	No	Leigh	N.V.
Dunlap	N.V.	Leithman	No
Duval	No	Lowe	Yes
Edwards	N.V.	McDaniel	N.V.
Elkins	No	Martin	No

MR. POYNTER (cont'd)

Mauberrert	Yes	Sondat	Yes
Maybuce	Yes	Stagg	Yes
Miller	Yes	Stephenson	No
Mire	No	Stinson	Yes
Morris	N.V.	Stovall	N.V.
Munson	Yes	Sutherland	No
Newton	N.V.	Tapper	No
Nunez	No	Tate	No
O'Neill	Yes	Thistlethwaite	N.V.
Ours	N.V.	Thompson	N.V.
Perez	N.V.	Tobias	N.V.
Perkins	N.V.	Tora	N.V.
Planchard	No	Tommy	No
Pugh	Yes	Ulio	N.V.
Rachal	N.V.	Velazquez	Yes
Rayburn	N.V.	Vesich	N.V.
Reeves	N.V.	Vick	Yes
Riecke	Yes	Hall	N.V.
Roemer	No	Warren	Yes
Roy	N.V.	Wattigny	Yes
Sandoz	N.V.	Weiss	N.V.
Schmitt	Yes	Willis	Yes
Segura	N.V.	Winchester	N.V.
Shannon	No	Wisham	Yes
Singletary	No	Womack	N.V.
Slay	N.V.	Servigon	No
Smith	No		

MR. CASEY

47 years and 48 days, and the amendment has been rejected. Mr. Conroy now moves to reconsider the vote by which that amendment was rejected, and lay that motion on the table. Without objection, so ordered. Why do you rise, Mr. Bergeron?

MR. BERGERON

Mr. Chairman, are there any more amendments to...?

MR. CASEY

No more amendments. Are there any other amendments, Mr. Clerk?

MR. POYNTER

No. I have no pending amendments at the desk.

MR. CASEY

Mr. Bergeron now moves the previous question. Is there any objection on the entire subject matter of Delegate Proposal No. 227? Is there any objection? Without objection, so ordered. Why do you rise, Mr. Tobias?

MR. TOBIAS

Mr. Chairman, did that motion include the voting since there is...this would require a record vote, passage of the section and proposal. In other words, would a motion be in order at this time to move for a suspension of the rules so that we can act upon Section 1 and the proposal simultaneously?

MR. CASEY

I see. Mr. Tobias, I made an error. I should have just indicated your intention was to call the question on Section 12, but you're talking about something completely different, right? When we vote, we're going to vote on Section 12 and the entire delegate proposal, and that is your motion?

MR. TOBIAS

That would be my motion.

MR. CASEY

Right.

Mr. Tobias now moves for a suspension of the rules in order to vote on Section 12 and Delegate Proposal No. 22 at one and the same time.

Is there any objection?

Without objection, so ordered.

Mr. Conroy, you have a right to close.

Mr. Conroy waives.

Therefore, when the Clerk calls the roll, those in favor of the adoption of Section 12 and Delegate Proposal No. 22 will answer yes. Those opposed will answer no, and the Clerk will call the roll.

MR. POYNTER

The proposal read as...this is on the section and the proposal simultaneously.

Mr. Abraham	Yes	Graham	No
Aertker	Yes	Grawel	Yes
Alario	Yes	Grier	Yes
Alexander	Yes	Guarisco	No
Anzalone	N.V.	Hardee	Yes
Arnotte	Yes	Hayes	Yes
Asselt	Yes	Haynes	N.V.
Avant	Yes	Heine	Yes
Badeaux	No	Hernandez	Yes
Bel	Yes	Jack	N.V.
Bergeron	Yes	Jackson, A.	Yes
Blair	N.V.	Jackson, J.	Yes
Bollinger	No	Jenkins	Yes
Brien	Yes	Jones	Yes
Brown	No	Juneau	Yes
Burns	Yes	Kean	N.V.
Burson	No	Kelly	N.V.
Cannon	Yes	Kilbourne	Yes
Carmouche	No	Kilpatrick	Yes
Casey	Yes	Lambert	N.V.
Champagne	Yes	Landrum	Yes
Charclain	No	Landry, A.	Yes
Chehardy	Yes	Landry, E. J.	Yes
Comar	Yes	Lanier	No
Conino	Yes	Lebleu	No
Conroy	Yes	Leigh	N.V.
Corse	Yes	Leithman	Yes
Coven	Yes	Low	Yes
D'Gerolamo	Yes	McDaniel	N.V.
De Bileux	Yes	Martin	No
Denney	Yes	Mauberrert	Yes
Dennis	Yes	Maybuce	Yes
Derbes	Yes	Miller	Yes
Desbostels	N.V.	Mire	Yes
Drew	Yes	Morris	N.V.
Dunlap	N.V.	Munson	Yes
Duval	No	Newton	N.V.
Edwards	N.V.	Nunez	Yes
Elkins	Yes	O'Neill	Yes
Fayard	No	Ours	N.V.
Flory	Yes	Perez	N.V.
Fontenot	Yes	Perkins	N.V.
Forler	N.V.	Planchard	Yes
Fulco	Yes	Pugh	Yes
Gauthier	Yes	Rachal	N.V.
Giarrusso	N.V.	Rayburn	N.V.
Glen	N.V.	Reeves	N.V.
Goldman	Yes	Riecke	Yes

MR. POYNTER (cont'd)

Keeser	No	Thompson	N.V.
Roy	N.V.	Tubbs	Yes
Sullivan	N.V.	Town	N.V.
Schmitt	No	Tugsey	No
Segura	N.V.	Uille	N.V.
Shannon	Yes	Velazquez	Yes
Singletary	Yes	Vesich	N.V.
Slay	N.V.	Vick	Yes
Smith	Yes	Wall	N.V.
Soniak	No	Warren	Yes
Stagg	Yes	Wattigny	Yes
Stephenson	No	Weiss	N.V.
Stinson	No	Willis	Yes
Stovall	N.V.	Winchester	N.V.
Sutherland	Yes	Wisham	Yes
Tapper	Yes	Womack	N.V.
Tate	Yes	Zervigon	Yes
Thistlethwaite	N.V.		

MR. CASEY

74 years and 20 days, and Section 12 and Delegate Proposal No. 22 have been adopted.

Mr. Conroy now moves to reconsider the vote by which Section 12 was adopted and lay that motion on the table.
Without objection, so ordered.
The same gentleman now moves to reconsider the vote...

MR. LEBLEU

I object to laying it on the table, and move to reconsider the vote.

MR. CASEY

Well, we were just laying on the table Section 12, Mr. LeBlou. Then, Mr. Conroy made a separate motion—I know you heard that—where he moves to reconsider the vote by which Delegate Proposal No. 22 was adopted, and without objection, so ordered.

We agreed we would not lay it on the table.

Judge Tate, do you have an announcement before we break for lunch?

MR. TATE

This is to remind Style and Drafting to gather up here for a short twenty to thirty minute meeting to agree on certain reports of substantive committees, or disagree.

MR. CASEY

Style and Drafting meets immediately after we break.
Mr. LeBlou.

MR. LEBLEU

Mr. Chairman, I just wonder if there's any possibility of having Delegate Proposal No. 22 assembled with the amendments, and have some copies made and placed on our desks, please.

MR. POYNTER

That will be done within the day, anyway, Mr. LeBlou, from the Enrolling Room.

MR. CASEY

We'll stand at east until 1:45—quarter to two.
Without objection, so ordered.

RECESS

* * *

MR. HENRY

When the machine is opened, as many of you as are in favor of the adoption of Section 1 of this proposal will vote yes. Those who are opposed will vote no, and the Clerk will open the machine.
Vote your machines, ladies and gentlemen.
It takes 67 votes.

Are you through voting?

The Clerk will close the machine.

48 years and 45 days, and the section fails to be adopted.

Mr. Fontenot moves to reconsider the vote by which it failed to be adopted and lay the motion on the table.

Is there objection?

Mrs. Brien objects to tabling the motion to reconsider.

Therefore, when the machine is opened, as many of you as are in favor of tabling the motion to reconsider will vote yes. Those who are opposed will vote no, and the Clerk will open the machine.
Please vote your machines, ladies and gentlemen.

Are you through voting?

The Clerk will close the machine.

55 years and 35 days, and the motion to reconsider is tabled.

Mrs. Brien, do you want to withdraw this now?

Mrs. Brien now moves to withdraw Delegate Proposal No. 49 from the files of the convention.
Without objection, so ordered.

Mr. Johnny Jackson now moves to call from the calendar Delegate Proposal No. 43.

Without objection, so ordered.

Read it, Mr. Clerk.

MR. POYNTER

Delegate Proposal No. 43 introduced by Delegates Johnny Jackson, Gauthier, Gravel, Alphonse Jackson, et al.

A proposal providing for juvenile courts having exclusive original jurisdiction with the exception for offenses of murder, aggravated kidnapping, armed robbery, or aggravated rape.

The section reads as follows:

"Section. Juvenile courts including district courts and parish and city courts when sitting as ex officio juvenile courts, shall have exclusive original jurisdiction of all offenses committed by persons under the age of seventeen, except that the criminal district courts in the parish of Orleans and the several district courts in the other parishes of the state shall have exclusive original jurisdiction of persons who at the time of the commission of the offense are over the age of fifteen years and who have been indicted by a grand jury for the offenses of murder, aggravated kidnapping, armed robbery, or aggravated rape committed within their respective jurisdictions."

MR. HENRY

Explain the proposal, please.

MR. POYNTER

Mr. Jackson, before...It's the beige copy. The beige copy is the correct copy in this case; it's not a gold copy.

MR. J. JACKSON

Mr. Chairman, ladies and gentlemen of the convention, in order to conserve some time of this convention—and particularly in order to allow adequate discussion, debate, and hopefully a well thought out decision on the part of this convention—I want to suggest to you that the committee proposal that is before you is the proposal that went before the committee and did not have the opportunity to be amended. So, I would ask that you disregard the committee proposal as it appears in your book because the substance of the proposal is an amendment that I have sent up. If you recall on yesterday, I did announce that we would be debating and discussing that amendment because in effect that was my Delegate Proposal No. 43. So, Mr. Chairman, I would ask that you allow the amendment

MR. J. JACKSON (cont'd)
This proposal to be introduced so we can discuss fully what I consider the most crucial issue—one of the most crucial issues in this convention.

MR. HENRY
You have an amendment, you say?
Read the amendment, Mr. Clerk.

MR. J. JACKSON
Could we maybe take just a minute to allow the amendment to be passed out to the delegates?

MR. HENRY
I think they're passing them out right now, sir.
Mr. Clerk, read the amendment.

MR. POYNTER
Amendment No. 1. On page 1, delete lines 12 through 23, both inclusive, in their entirety and insert in lieu thereof the following:
"Section ____ There shall be a juvenile court for each parish. It shall have jurisdiction of cases of the State of Louisiana in the interest of children under seventeen years of age who are brought before it as delinquent or neglected children, as may be defined by law, except for capital crimes or crimes defining attempted rape, which are committed by children fifteen years of age or older. It also shall have jurisdiction over cases involving persons charged with the violation of any law for the protection of the physical, moral, or mental well-being of children under seventeen years of age not punishable by death or hard labor. It also shall have jurisdiction of cases of desertion or non-support of children by either parent, or non-support of a wife by her husband and also of the adoption of children under seventeen years of age. Courts serving as ex officio juvenile courts on the effective date of this constitution shall continue to serve in that capacity until such time as their jurisdiction is changed as provided herein. Notwithstanding the provisions of Section 15 of Article V of this constitution to the contrary, the legislature may provide by law upon a favorable vote of at least two-thirds of the members elected to each house: (1) for the merger of juvenile courts with other courts; (2) for the abolition of juvenile courts; (3) for additional jurisdiction of juvenile courts; and (4) that a juvenile court may waive its jurisdiction over children fifteen years of age or older at the time of the commission of any offense, who may then be tried as adults."

MR. HENRY
Why do you rise, Mr. Bergeron?

MR. BERGERON
Mr. Chairman, I'd like to ask the Clerk: On line 7 of the amendment, my amendment reads "attempted aggravated rape", and Mr. Clerk read "attempted rape". I'm just wondering if I have the wrong amendment, or if there's two amendments sent up?

MR. HENRY
Run the question by him again.

MR. BERGERON
On line 7, David, is it "attempted aggravated rape" or "attempted rape"? You read it "attempted rape"?

MR. POYNTER
It's "attempted aggravated rape". If I read it incorrectly, I'm sorry.

MR. HENRY
All right, Mr. Jackson, explain the amendment.

MR. J. JACKSON

Mr. Chairman, ladies and gentlemen of the convention, as most of you know that I have personally, along with Mr. Pugh and other delegates here, have been concerned about the present provision as it exists in the Judiciary Article. I've heard constantly over the last three months, particularly, about some concerns that individual delegates here had about the original proposal. The only thing that I ask you in listening to this amendment is to recognize (1) if I have made the necessary compromises, (2) if the amendment as I present to you indeed is worth every positive and affirmative vote on your part. In explaining the amendment let me say that (1) if you look at the first paragraph, it says, "there shall be a juvenile court for each parish," rather than "in each parish." This was done to allow parishes that may now or in the future cannot financially afford or geographically maintain a separate juvenile court to join with other parishes in the support of such a juvenile court. In addition, what that does is to allow that those parishes that presently have district courts serving as ex officio courts to be retained. That is significant because one of the arguments was that you're mandating that each parish have a juvenile court, and I'm suggesting there's a difference between the language, "there shall be a juvenile court in each parish" and "a juvenile court for each parish." So, it allows flexibility on the part of the governing authority of the parishes. (2) The first paragraph maintains the present provisions regarding juveniles or youngsters fifteen years of older who commit vicious or heinous crimes and allow that these persons be tried in the district court as the present 1971 Constitution provides for and which has not—and I repeat—it has not been changed. Now, this was done—and I attempted to address my concern to those delegates who cried very loudly and who I disagreed with to some extent about those youngsters who commit vicious crimes. I am saying that if they're fifteen years or older and they commit a vicious crime, that my provision provides, as in the 1971 Constitution, provides that they can be tried as an adult so that we ought not be smoke screen about... around that issue of whether vicious... youngsters who commit vicious crimes can be allowed to escape trial by jury or trial by the courts. Thirdly, what I have done, I have retained the provision—in the first paragraph now—particularly as it relates to the Orleans courts having jurisdiction over desertion and non-support and adoption. Delegate Vesich, in my discussion with him, was concerned that my original amendment did not provide for the adoptions and desertion; so I provided that to address myself to that problem.

If we look at Paragraph 2—and particularly I want those parishes that have district courts serving as ex officio juvenile courts to understand what the second paragraph does. The second paragraph provides that courts that are functioning ex officio juvenile courts shall be continued as provided in Paragraph 3, which requires a two-thirds vote of the legislature to change. So, that means that if you presently now have a district court—and in Paragraph 1 I have not mandated each parish—but if you presently have a district court serving as ex officio juvenile court, then you are allowed to maintain that without being required to go to a separate specific court within your particular parish.

Paragraph 3 is, in my estimation, full of compromises because (1) we give the legislature the flexibility to merge it, to abolish it, or to grant additional authority by two-thirds vote. Now, this was done because there are three factions in this convention here that have some strong feelings about merging. One faction wants to merge it; one faction says we ought to abolish them. The other faction says—and like we particularly in the city of New Orleans—we want to move from a juvenile court to a family court, so we have allowed a mechanism by two-thirds vote to allow that no one faction in my opinion would have to just get a majority vote to sway whatever direction that they want to go.

MR. J. JACKSON (cont'd)

Secondly, in Paragraph 1--and I will answer questions--second in Paragraph 3 we provide that the juvenile court judge may waive...the juvenile court may waive its jurisdiction over those youngsters fifteen years or older for any offense. Now, this was done because a lot of the delegates say, "Well, look, Johnny, we've got some juveniles that don't commit major offenses, but they're constant repeaters. As long as you do not allow some flexibility where these constant repeaters can be tried in a court because they are incorrigible, then I'm afraid I can't go with your amendment." So, what this specifically addresses itself to is to allow repeaters, particularly on the determination of the judge of the juvenile court, to allow this youngster to be transferred. Now, basically those are the significant changes that I've made. Again, I repeat, if for somehow you believe that these are compromises and these are points of merit, then I ask your favorable vote.

I'd like to point out--Mr. Chairman, if I have time--I'd like to stress certain points to you. One point is that I want to point this out: Under the judiciary--under the provisions of the Judiciary Article....

Mr. Chairman, could I get a little attention, please?

MR. HENRY

Gentlemen, please take your seats and give Mr. Jackson your attention, please.
Proceed, Johnny.

MR. J. JACKSON

I'd like to point out that under Judiciary Articles, district courts have exclusive jurisdiction over all felonies, and I question seriously if this could be interpreted if a youngster and his bike could be charged with assault and battery; that 2, that a youngster could be tried on a state charge for maybe stealing hubcaps, or 3, that youngsters now can be exposed to the full effect of the law. Now, I'm not talking about those youngsters that commit vicious crimes because they can go to the district court. But, I'm just talking about those youngsters who may go to a party after a prom, get some alcohol in them, take somebody's hubcaps, and they could very well be charged with a state charge, and if you know--he doesn't have to be convicted--but, if you know what that means in terms of an arrest record following him through the rest of his life, no matter what kind of influence he was under, then I suggest to you that that is very dangerous. Second point of stress--and I hope you're making notations of it--that the only...you hear the argument about the three tiered court, and I've talked to some people about that. The only justification for a three tiered court that I've heard is that they want to cut down on the amount of clerks, the amounts of sheriffs and the amount of people issuing subpoenas. My only suggestion to the gentlemen is that you can do that administratively and you can do that cooperatively, but do not, in my estimation, do not jeopardize the future of young people in this state just because somebody's concerned about a duplication of the serving of writs. I think that can be done by the judicial administration and cooperation between the various courts. Thirdly, while talk about this whole three tier level court, you're going to get some amendments up here about reducing the terms of the judge. I want to say very emphatically, please, gentlemen, do not put the future of juveniles in jeopardy because there's some problem between certain judges in this state. If you've got a problem, you work your problem out within your judicial administration or within courts. But, it seems to me very clearly that that ought not be the issue. The future and the treatment of juveniles who are not vicious, not the one who commit heinous crimes, ought to be the prime consideration. Thirdly, I'd like to point out that in recent reports--and I have them here if you want to read them--by PAR to a recent special legislative committee chaired by Kenny Leithman, it was pointed out that there are fifty-three thousand, four hundred and thirty-eight children in need of special services in this state and that twenty-seven thousand of them have been evaluated, but, do you know what? The state does not have the resources or the facilities to serve those youngsters. Now, it seems to me that we're running a very dangerous risk exposing those twenty-seven thousand when we don't even have service for to the full effect and force of the law. Another report by the American Businessmen Research Foundation points out--and I had that here--points out that the newest problem drinker causing concern among the nation's directors and mental health workers is not a pressured executive; it's not a bored housewife; it's not a skidrow bum, but really children. They're saying, in effect, now, that we've got the problem of alcoholism among youngsters. Now, you take that in relationship to the problems that we're having with juveniles across the state. A third report by the State Department of Education.

MR. HENRY

Mr. Jackson, you've exceeded your time, sir.

MR. J. JACKSON

Mr. Chairman, I ask for an additional three minutes to finish...

MR. HENRY

The gentleman requests an additional three minutes.

MR. HENRY (cont'd)

Without objection, so ordered.
 Proceed.

MR. J. JACKSON

In a report by the State Department of Education on suspensions that was done by, in particular, Rep. Alphonse Jackson and the committee and by Dean Stone, that in this state—and Alphonse, you correct me if I'm wrong—that just on suspension alone, that in the year 1972 that there were around thirty-three thousand, if I'm correct, youngsters who were suspended out of school. Now, how many of those youngsters are going to be exposed to the full effect of the law because now they can't get in school; they have been suspended. You take that in relationship to the juvenile problem. The fourth one, I'd like to point out that on the Subcommittee on Drug Abuse, which I had said before we got into standing committees, it was pointed out by the state commander of the Narcotics Union that if you go...you can go to every parish within this state. If they've just got a gas station and a grocery store in it, that you'll find the presence of marijuana and some other soft drugs. Now, what relationship does the drug problem have to the increase in juvenile crime problem and how we treat juveniles? Are we prepared to say that if somebody gives our youngsters—just on one occasion, maybe at a party—give him a stick of marijuana and he smokes it, and he goes out...and something to do with that, he ought to be exposed to the full effect and force of the law? I've talked to one delegate this morning from a rural parish, and I suggested to him, I seriously think that once the drug problem be crystallized and some people stop hiding it in these rural parishes, you're going to really find out to the extent that youngsters nowadays are involved in a drug culture. In the New Orleans area where the clamor has originated, I would like to quote a portion of a report of the New Orleans Chamber of Commerce in their report on runaway crime. It says, in effect, that they are glad that we are now in the legislature is now beginning to do something about the crime problem. But, it cautions the legislature and persons who are concerned that we ought to not act in haste and we ought to not act in a fit of emotionality and particularly in a fit of political expediency. I'd like to say that I've read this book here by the National Commission on Juvenile Delinquency, and that nowhere in this report does it say that we ought to abolish specialized courts. Finally, gentlemen, just let me say in closing my presentation that those who sincerely want to address themselves about the rising juvenile problem, I suggest as one delegate that we ought to be not confusing juvenile court with: 1, coordination of police department, our schools, our mental health centers, our parents, our corrections, and our hospitals; and that we ought to be about the business of establishing shelter houses, centers, family counseling centers. We are aiming at so-called criminally inclined youngsters, or the bad guys. All I have to say, gentlemen, at this point is what about the thousands of youngsters that are going to be exposed to what I consider a very political and emotional body; but those who come up with the argument about leave it to the legislature, if this matter had not been in legislature then I would be all wet in saying to you that I did not trust the legislature. I do trust it, but I'm saying that we've got a track record, and if that track record is going to be indicative of the kind of future legislation that youngsters are going to be exposed to, then I'm saying it is not worth it. It is not worth it. I, in my amendment, allows some flexibility to the legislature, but I'm suggesting to you that we ought not, as I've stated, we ought not use a shotgun approach because while we're aiming at the youngster who threw the brick with a shotgun, we can sure shoot down a whole lot of youngsters who just happen to be in the crowd.

MR. HENRY

You've exceeded your time, Mr. Jackson.

MR. HENRY (cont'd)

Do you yield to same questions?
 Mr. Hayes, for a question.

MR. HAYES

Mr. Jackson, I don't know. You probably answered this question, but I want to get clear on it. "There shall be a juvenile court for each parish" does not mean one in each parish. Is that correct?

MR. J. JACKSON

That's right.

MR. HAYES

But, it would be mandatory that they would have access to one. It would take, say, East and West Feliciana, maybe, and St. Helena would probably have to get together and come up with a juvenile court.

MR. J. JACKSON

Mr. Hayes, presently under the present constitution, it says that there shall be a juvenile court in each parish. To me that was more restrictive and that it did bind some parishes, possibly having this one specific court. What this allows really is more flexibility because it allows like the parish of West Feliciana and maybe East Feliciana, if they don't want to use the district court as an ex officio, and I think that's what they're doing now, that they could combine whatever resources they could necessarily...

MR. HAYES

Would this in any way affect the family court system in this parish?

MR. J. JACKSON

No, it does not.

MR. HENRY

Will you yield to a question to Rev. Alexander?
 The gentleman yields.

MR. ALEXANDER

Rep. Jackson, on line 6, I think you, do you not want to correct that? You mean "except for capital crime or crimes defined as attempted aggravated rape." Isn't that what you mean to write there? That's on line 6.

MR. J. JACKSON

I'm sorry, Reverend, "except for crime..."

MR. ALEXANDER

"Except for crime or crimes defined," rather than "defining as attempted rape," you mean "defined."

MR. J. JACKSON

If you considered that a technical amendment, I'd checked with the staff on it and...

MR. ALEXANDER

O.K.

MR. J. JACKSON

...and they told me that in their opinion that what it meant to say that, you know, the crime was to be defined by the legislature, by law.

MR. ALEXANDER

All right. Now, this is the other question: there are some thirty or forty district courts in Louisiana which means that you just could be creating an additional thirty or forty juvenile

MR. ALEXANDER (cont'd)

courts. Now, most district courts, that is...it may be a court in a small parish and there may be two or three parishes that make up that district. Now, the judges, the number of judges in that district, of course, depend on the case load. Now, here you would separate all the juvenile cases, take all the juvenile cases away from that district court.

MR. J. JACKSON

No, Rev. Alexander. If you would look at the second paragraph, it states very clearly for those parishes that have district courts...

MR. ALEXANDER

No, that isn't what I'm saying. The only thing I'm saying is that you would not remove the district court, but you would take all the juvenile cases away from the district court.

MR. J. JACKSON

No, not district courts that presently serve as ex officio. If a district court is serving as ex officio juvenile court, then it's still retained. I'm not taking anything away from them.

MR. ALEXANDER

Well, in almost all the parishes, of course, where they have no family court or juvenile court...

MR. J. JACKSON

They have district courts.

MR. ALEXANDER

That's right, and they're serving as everything, aren't they?

MR. J. JACKSON

Yes, but they...right, and I'm not taking nothing away from them.

MR. ALEXANDER

Well, then, where will your jurisdiction come from?

MR. J. JACKSON

Rev., if you understand the process, there are district courts that sit ex officio and juvenile court and then they operate under the jurisdiction as provided in the constitution. All I'm saying is that I maintain the present provision as it relates to this. So, I don't affect them one way or another.

MR. ALEXANDER

But, they would not sit as juvenile courts any longer; is that right?

MR. J. JACKSON

Yes, they would, Rev.

MR. HENRY

Would you yield to a question to Mr. Fontenot?

You're next, Ms. Maybuc; then you, Mr. Tobias, Mr. Giarrusso, Mr. Arnette, Burns, De Bileux, and Nunes.

MR. FONTENOT

Mr. Jackson, at the present time, a case where, say, a husband without any children is not supporting his wife. What court has that jurisdiction? Where she files charges for nonsupport? Does the juvenile court have jurisdiction over that, or does the district court have jurisdiction?

MR. J. JACKSON

It presently, if the husband is not supporting his wife, the juvenile court, does.

MR. FONTENOT

At the present time?

MR. J. JACKSON

Yes.

MR. FONTENOT

There's no kids involved at all, the juvenile court still has jurisdiction? I mean doesn't that depend on what parish it's in, or something like that?

MR. J. JACKSON

Well, in the parish of Orleans it is that way.

MR. FONTENOT

So, under this amendment, say, in Evangeline Parish, where, possibly the city court has jurisdiction over juvenile matters, at the present time and district court has jurisdiction over nonsupport of a wife, then you're changing that law in the sense that you're going to make that husband and wife go to city court, you're changing the jurisdiction of some of these courts, aren't you?

MR. J. JACKSON

Not really, Mr. Fontenot. Now, if you consider that a major problem, I would...I've talked with Mr. Pugh, and it's not our impression that it does. In addition, in the fact that we have basically followed the present provisions of the constitution, that what this does, this does not, in effect, does what you say.

MR. FONTENOT

Well, I may agree that maybe a husband who doesn't support his wife is acting juvenile, but I don't think it ought to be in juvenile court.

MR. HENRY

Will you yield to a question to Ms. Maybuc? The gentleman yields.

MS. MAYBUCE

Johnny, I can certainly agree with you that we need to do something about our juveniles and how they're treated in the court. We certainly need to get rid of the concentration camp up on Scenic Highway. I agree with you, and this will help do this. Yet, on the other hand, I think Mr. Hayes and Mr. Fontenot had touched on what I'm going to ask you. We here in East Baton Rouge Parish have a well-oiled, I believe, family court. When Dewey asked you the question, how would it affect our family court, you said it would not. But, I feel that the cases of nonsupport which go through our family courts, those of adoption, those of taking care of our mentally ill children, we want them left in our family court. But, you didn't answer him that way. Would that...would you take that out and say "except East Baton Rouge Parish"?

MR. J. JACKSON

I wouldn't mind doing that, but let me suggest to you, Mrs. Maybuc, that does not do that to East Baton Rouge Parish. Secondly, if you look under the Judiciary Article right now, all it says is that the Family Court of East Baton Rouge Parish could be as determined by the legislature, the jurisdiction, which means that by a simple majority everything that you have now could be wiped out. So, I'm just saying to you that in my discussion in putting together this amendment, it does not affect the Family Court of Baton Rouge.

MS. MAYBUCE

O.K. because we don't want it tampered with.

MR. J. JACKSON

I'll say that for the record.

MR. HENRY

Would you yield to a question to Mr. Tobias?

You've exceeded your time. Do you want an additional...

The gentleman requests an additional five minutes to answer questions.

Is there objection?

Without objection, so ordered.

Mr. Tobias.

MR. TOBIAS

Mr. Jackson, what is the present term of a juvenile court judge?

MR. J. JACKSON

Mr. Tobias, I think it's eight years. I'm not really...

MR. TOBIAS

It is in Orleans Parish. In the rest of the state it's six years. My next question is this: When you state in your amendment that the jurisdiction of the juvenile court is such and such--in other words, you spell it out--I would like to know how that protects the juvenile. All that does is state that the court has jurisdiction of it. It does not say that it protects the juvenile. In other words, you do not agree that the legislature could still, in spite of your amendment, allow juveniles to be sent to the penitentiary?

MR. J. JACKSON

Mr. Tobias, my amendment provides that if they commit vicious crimes that they can be tried in the district courts. Now, I told you earlier, I'm going to make it very plain, I do not want to--and I'll say it very seriously--the issues of the judges' salaries is a different thing. We're talking about the merits of constitutional jurisdiction for a juvenile court. I suggest to you very seriously, do not confuse the issue. I'm not going to get into that fight between the judges. I'm not going to allow juveniles because it seems to me that when we first introduced this amendment, we're talking about juvenile court jurisdiction. Now, we're talking about another problem that's come up about the judges' term. Now, if you want to deal with that in appropriate, let's reopen the Judiciary Article where it ought to be, and I will support you. But, don't try to do it on this amendment.

MR. HENRY

Will you yield to a question of Mr. Ciarrusso?

The gentleman yields.

MR. CIARRUSSO

Delegate Jackson, where it says, "there shall be a juvenile court for each parish," do you think that this is imposing an added expense and burden on each parish where a juvenile court is not necessary, where the juvenile problem is not really predominant that would require a full-time judge?

MR. J. JACKSON

Well, Chief, no, not really because if you look at the present constitution, each parish is... it's stated very clearly that there shall be a juvenile court in each parish, and that did not mandate them. What this does is the opposite of what you say. It allows for a flexibility. It allows if they want to use the district court which most of them presently have now, serving in ex officio, that they could still retain that. But, this does not in any way mandate them that they have to... each individual parish has to mandate, have a specialized, separate, distinct, juvenile court.

MR. CIARRUSSO

O.K., John, let me ask you about number four where it says that...

MR. J. JACKSON

I just want to know if that point is... if I answered that clearly for you.

MR. CIARRUSSO

You know, it says, "shall be" and of course, it's my appreciation if it says that there shall be...

MR. J. JACKSON

The '21 Constitution says "there shall be a juvenile court in each parish." I say "for each parish" to allow the kinds of flexibility. Now, I'm just saying to you, Chief, that the questions that are raised concerning mandating added costs not really in my estimation in talking to experts and even people who are concerned, does not violate what parishes already have. If a parish has a district court saying that they're going to sit ex officio and they've been doing it for the years, then that's the juvenile court for that parish.

MR. CIARRUSSO

Well, I just simply thought that there could be better qualifying language rather than "shall be" but so be it. Let me just ask you another question, John, please. It says that a juvenile court may waive its jurisdiction over children fifteen years of age; does this mean that it may not waive its jurisdiction over juveniles, say, for example, if a capital crime is committed, and that the court decides, one, that they will hear the case, and if they do hear the case, is that he's then sentenced to the juvenile court? It doesn't come under the criminal statutes of the state and that he will be out when he's twenty-one years of age rather than to be tried as a criminal?

MR. J. JACKSON

Chief, if you--and I'm being very honest--I say it very clearly and the amendment says very clearly that if any youngsters commit a capital crime, whether it goes to the district court, he goes to the full effect of the law; if convicted, he can be sent to the state penitentiary or some other intermediate facility because the amendment says very clearly, "a capital crime." I'm saying that, and this was to address itself to the concerns of some delegates who said, well, we've got some kids who don't commit capital crimes, but they are incorrigible, and I don't have the resources in the juvenile court to deal with, and I think that they ought to be the district court. Then, I'll leave that determination up to the juvenile judge; and I say not only for capital crimes; I say it for any offense. So, it doesn't have to be a capital crime.

MR. CIARRUSSO

Under the present law, aren't all other crimes, other than capital crimes, assigned to the juvenile court, then tried in juvenile court?

MR. J. JACKSON

Right.

MR. CIARRUSSO

They're not tried for a crime, but they're tried as a delinquent. But, here you give the option to the judges that in the event that they choose it's a discretionary thing with them that in the event that they want to send the case to the criminal district court, that they can?

MR. J. JACKSON

Yes, Chief, you're right. You're exactly right, and you're

MR. J. JACKSON (cont'd)
right because it has been spoken by a large segment of these delegates that if we're going to talk about some flexibility that you're going to put it in the constitution, then there ought to be some flexibility. I'm just saying that if it's in the opinion of the juvenile judge that a youngster has committed twenty crimes within his discretion and I think that juvenile court judges and resources supportive of their court can make that determination and they feel that the youngster is incorrigible and ought not really be treated as a juvenile, then I'm allowing the mechanism for that judge to transfer it. I think that was done to address itself to those delegates who are really concerned about repeaters, who did not commit necessarily, capital crimes.

MR. GUARUSSO
John, the only thing I say is that "jurisdiction" should be defined and should not be discretionary.

MR. J. JACKSON
Well, Chief, the only problem that we have in doing that is that if it's defined, it may leave out that provision, and I think I've defined it in giving the flexibility. Now, if a judge feels as though they ought not be, I would think that he would. But, under the 1921 Constitution, as I recall debating the practice that I was one of the critics, too, that the 1921 Constitution didn't allow for any mechanism for these youngsters to be transferred to district court if they were constant repeaters.

MR. HENRY
Will you yield to a question to Mr. Arnette?
The gentleman yields.

MR. ARNETTE
Johnny, my questions are more of a technical nature. I was just wondering, when you said "capital crimes," how do you define a capital crime?

MR. J. JACKSON
They are crimes presently provided by statute which are capital crimes.

MR. ARNETTE
Which involve a death penalty; is that the crimes you're talking about?

MR. J. JACKSON
...or about six months of hard labor.

MR. ARNETTE
Now, wait. What's your answer?

MR. J. JACKSON
Capital crimes, in talking with particularly, well, I'd say Mr. Gauthier now, but I did talk with him and I talked with Mr. Pugh. Capital crimes are those crimes, those felonies, those felonies that were punishable by a certain sentence, by hard labor six months or more.

MR. ARNETTE
I think the usual meaning is "punishable by death." I'd like to get this very, very clear. Do you intend to include life in prison, or perhaps a crime that involves ninety-nine years at hard labor, or something like this?

MR. J. JACKSON
Well, my intentions were--and I apologize to the group because I'm kind of weary up here, arguing this thing again, but I apologize to the group, and I don't want my ignorance to spout that large.

MR. J. JACKSON
I do recognize that capital crimes are punishable by death. But, I do have the intention that this could apply to crimes punishable by death, or crimes that would have a determining amount of sentence, too.

MR. ARNETTE
Well, perhaps, if that was your intent, we ought to put it in here, that it was punishable by a certain amount or something else because I was greatly concerned when I read that you have attempted aggravated rape but not second degree murder which is an intentional crime, that you intend to actually murder somebody. You plan it ahead of time, and that was not included, and also the crime of armed robbery which involves a ninety-nine year sentence. That also concerns me.

MR. J. JACKSON
Mr. Arnette, what I will do is withdraw the amendment temporarily to add that technical amendment because that was my intention.

MR. ARNETTE
Well, I think we ought to make it clear because, you know, somebody's life may depend on it.

MR. J. JACKSON
Yes, I agree.

MR. CASEY (In the Chair)
Will you yield to a question to Judge Dennis?
Judge Dennis, did you have a question? Oh, you wanted to speak.
The gentleman has exceeded his time on questions right now.
Mr. Jackson, you wish to withdraw your amendment at this time?

MR. J. JACKSON
...and temporarily, make that technical change as advised by Mr. Arnette.

MR. CASEY
Mr. Jackson moves to withdraw his amendment.
Without objection, so ordered.
We'll stand at ease for about five minutes, please.

RECESS

MR. CASEY
Please take your seats, delegates.
Mr. Jackson now suggests the absence of a quorum.
The Clerk will open the machine for roll call.
Are you through voting?
The Clerk will close the machine.
29 delegates present and a quorum.
Please proceed, Mr. Jackson.

MR. J. JACKSON
Mr. Chairman, delegates to the convention, in talking with the coauthors of this amendment, we are come to a consensus that once you start enumerating one crime, you've got to enumerate all of them. That is, in effect, statutory material. We believe very strongly that we do provide the mechanism, Mr. Arnette, within this amendment as to allow for youngsters who commit second degree murder, armed robbery as such, particularly if you look at paragraph 3 with the waive of the jurisdiction for him to be tried in district court. In one final comment, let me just say that I personally believe living with this amendment

MR. J. JACKSON (cont'd)

and living with this proposal, not only on paper, but just in terms of actual life, that we ought to think very seriously the merits of leaving in it, "providing constitutional jurisdiction for the court" as opposed to leaving it entirely in the hands of the legislature. I suggest to you very seriously that I don't want to leave a cat out on the fence because just as I mentioned before when our state takes some strong positions on drug laws that we are now, because it's coming close to home, have reviewed our penalties as it relates to marijuana. I suggest to you gentlemen that there are too many things out in this world that can subject a youngster on a one time sensation whereby if he falls into a trap of being influenced, that he could very well under—and I'm not talking about something that I think the legislature will do, something that I know and participated in as to what they have done that would drastically have an effect on them that will carry with them the rest of their life. If folks are contented enough to allow that to happen, then I suggest to you, so be it. But, I caution you very seriously that be not deceived by the smoke screens. If you believe this amendment has the kinds of flexibility, if you believe that this amendment compromises significantly my views and the opponents' views as it relates to the protection of juvenile courts... I mean constitutional protection for the jurisdiction of juvenile courts, then I suggest that you ought to favorably vote for it, and I'll abide by the will of this convention.

MR. CASEY

Mr. Jackson, you had really exceeded your time before, and we granted you this additional time just to make your remarks as to why you didn't amend it.

I now recognize Judge Dennis for the floor.

MR. CASEY

Why do you rise, Mr. Shannon?

SHANNON

Mr. Acting Chairman, how many speakers does the list?

MR. CASEY

Mr. Shannon, we have five speakers on the list. Judge Dennis, Mr. Jenkins, Mr. Fogh, Alphonse Jackson and Roseford Landrum.

MR. SHANNON

I move that we limit debate on this to thirty minutes.

MR. CASEY

Okay.

Mr. Jenkins had requested the floor also.

Mr. Shannon now moves that debate be limited to thirty minutes.

Is there objection?

Mr. Jackson, you object.

Therefore, when the machine is opened, those in favor of limiting debate to thirty minutes will vote yes. Those opposed will vote no; the Clerk will open the machine.

Are you through voting?

Are you now through voting?

Clerk will close the machine.

33 yeas and 42 nays and the motion has been defeated, and there's no limit on debate.

MR. CASEY

Judge Dennis is recognized.

MR. DENNIS

Mr. Chairman and fellow delegates, on behalf of a substantial majority of the Judiciary Committee, I rise in opposition to this amendment and this delegate proposal for the reason that, everything that Mr. Jackson wants to do can now be done under the Judiciary Article as it presently stands, and for the additional reason, that you have already considered twice before today his arguments that we should spell out all of this in the constitution and you have decisively rejected it both times. Today is the third time that it is being considered. The first time was when the Judiciary Article came before you, he and others made several attempts to place into that article amendments just like this, or almost like this. Again, when he asked that this delegate proposal be passed to its third reading, we debated it then. We are now going to debate it for several hours today and even if he prevails, it will not end the debate on this issue because then there will be a conflict between the delegate proposal and the Judiciary Article and we will have to come back and probably take another day to resolve that conflict. Now, I think that you have already acted wisely in adopting what we have in the Judiciary Article and rejecting this detailed spelling-out of juvenile court provisions. The Judiciary Article now provides that the juvenile and family courts shall have such jurisdiction as the legislature shall provide by law. The reason you adopted that, I think, is that you recognized that this is an area of the law in which we must have some flexibility. As you already heard today, there are several different viewpoints about how... what we should do to handle our juvenile crime problem. Some people think that everyone under eighteen ought to be treated as a juvenile, other people think that juveniles as young as sixteen years old should be transferred to adult courts, if they commit certain types of crime. This is an area in our society which is changing rapidly. We must not freeze in the law because we need to have the flexibility to deal with today's problems, and remember we're writing a constitution. We

MR. DENNIS (cont'd)

may have an entirely different set of problems with our juveniles five or ten years from now. In addition to that, I think that the way Mr. Jackson has drafted his amendment raises even more problems; even if you buy his concept of spelling all of this out, I ask you to look carefully at this amendment because in all due respect to him I strongly disagree. I do not think it is clear that he is doing what he says he is doing. He starts off by saying that "there shall be a juvenile court for each parish." Now, to me, that means that there shall be a separate juvenile court for each parish; that means that we are creating sixty-four separate juvenile courts. Now, he says that the other language in here qualifies that, but I don't think it's clear and I don't many of you think it's clear. Also, I'm afraid when he says, "there shall be a juvenile court in each parish," that might mean that there's only going to be one juvenile court in each parish. That would be devastating because in parishes like mine where we have a district court sitting ex officio as a juvenile court and two city courts sitting ex officio as juvenile courts, we have in effect, three juvenile courts. Now, if this is going to say that there can only be one juvenile court in each parish this is going to make a drastic change in the way we handle juvenile cases in my parish as in many of your parishes. Also, I think that it is clear that he is giving jurisdiction to juvenile courts which are city courts in a lot of your parishes to handle adoption cases and criminal nonsupport cases. Now, heretofore, we have always considered these cases to be so serious that they should be handled by district courts. Now, in New Orleans they don't do that; they handle them in the juvenile court, I understand, but in other parishes we have felt that city courts ought not be handling these kind of cases. Thirdly, you will notice in the last paragraph, he has made it much more difficult for the legislature to ever make any changes in the juvenile courts; he has required two-thirds vote. You will recall in the Judiciary Article we did not establish any courts as constitutional courts below the district court level. The whole theory, the whole theme of the Judiciary Article is flexibility in the legislature below the district court level because times change and courts need to change with them. If you adopt this, this will cut across and remove the effect of what, I think, is the basic reform we have made in the Judiciary Article which is, to establish in the constitution only the top three courts and the rest of it can be changed and modernized by the legislature.

MR. CASEY

Do you yield to questions, Judge Dennis?

MR. DENNIS

Just a minute, when I finish.

MR. CASEY

Well, Judge, you've exceeded your time already.

MR. DENNIS

Could I ask for two minutes more?

MR. CASEY

Okay. Mr. Bel now moves for a suspension of the rules to give Judge Dennis an additional two minutes.

Is there objection?

Without objection, so ordered.

MR. DENNIS

Again, I say that everything. . . all of the problems that you have brought out, the questions, the things that have been said that need to be done with regard to juveniles can be done under the Judiciary Article, and what's more important, it can be changed in the future if there needs to be a change. I think this is an area in which we have got to trust the legislature to do what is right. We've got to trust the legislature to be able to deal with the problems as they change. So, I ask you to please,

MR. DENNIS (cont'd)

vote down this amendment and also the delegate proposal because it is a basic departure from what you have already decided on two other occasions.

MR. CASEY

Will you yield to questions?

MR. DENNIS

I yield to questions.

MR. CASEY

Mr. Johnny Jackson has a question, and then, Mrs. Warren was on the list.

MR. JACKSON, J.

Judge Dennis, is it, in fact, true, that this convention decisively by a super majority or a significant percentage on the first time defeated this amendment? Do you know what the vote was? It was by six votes; you call that decisive?

MR. DENNIS

I think it was decisive because this concept that you're trying to get across was tried not only once or twice by you, but by several other people, I believe, Mr. Gravel. . . would you let me answer the question, please. Several times it was tried and on each occasion it was defeated. I think that is a decisive decision.

MR. JACKSON, J.

Do you call from three to six votes decisive? Your answer is yes. Secondly, did you hear it in your committee. . . did your committee hear it?

MR. DENNIS

Yes, sir, we considered this problem for several days.

MR. JACKSON, J.

No. Did you hear my delegate proposal in your committee?

MR. DENNIS

Your delegate proposal? No. At your request, Mr. Jackson, because we had trouble. . .

MR. JACKSON, J.

Didn't have time, right.

MR. DENNIS

. . . because we had trouble getting a quorum, I asked the committee to report it without action to give you a chance to run with it, and we did not consider it, and in my opinion if we had considered it, we would have reported it unfavorably. But, at the courtesy of the committee, we reported it out without action.

MR. CASEY

Just a minute, Judge Dennis.

Judge Dennis has exceeded his time.

Mr. Johnny Jackson now moves for a suspension of the rules to grant Judge Dennis an additional two minutes for the purpose of answering questions.

Is there objection?

Without objection, so ordered.

MR. JACKSON, J.

Judge, the point I'm really trying to make and I can understand your position, but the point I'm really trying to make that it is not entirely true when we say that this convention has de-

MR. JACKSON, J. (cont'd)
 ctively voted when one, the first vote was about from three to six votes. Second, is that the committee reported it without action. Thirdly, when we're talking about moving it on to the final passage, I was not the one debating the merits for it, it was the opposition; all I asked was that it be moved down. Is that not true?

MR. DENNIS
 What's your question? Mr. Jackson, . . .

MR. JACKSON, J.
 . . . case. . .

MR. DENNIS
 . . . you're making an argument, but let me just repeat what I said earlier. I think when you defeat four or five amendments all along the same line attempting to change a committee proposal, that it has been decided decisively that the committee proposal is what the convention wants.

MR. CASEY
 Mrs. Warren.

MRS. WARREN
 Judge Dennis, I noticed or I believe you said, that you had three courts in your city. . . juvenile courts that handle juvenile cases?

MR. DENNIS
 Well, in my parish.

MRS. WARREN
 In your parish.

MR. DENNIS
 In one of my parishes, I have three juvenile courts and in the other parish in my judicial district we have two. We have one city court, and a district court in one parish and another parish we have two city courts and one district court.

MRS. WARREN
 But, in each . . . each parish then has a juvenile or family court?

MR. DENNIS
 Each parish has more than one court. . .

MRS. WARREN
 See, you're covering more than one parish, and I wasn't really thinking on that then, I was thinking about one particular city or municipality having three separate courts for juveniles.

MR. DENNIS
 Well, in Monroe, we have one city court. In West Monroe we have a city court and we have a district court that covers that parish, so we have three courts acting as juvenile courts in Ouachita parish.

MRS. WARREN
 So, each one. . . In Monroe they go to the Monroe courts.

MR. DENNIS
 We all. . . of course, the city courts don't have jurisdiction outside of the city. The district court has jurisdiction over the whole parish. But, by agreement we allow the city court judges to handle juveniles who live within the city. We could reach out and take jurisdiction of all of them, but we . . . they help us—

MR. DENNIS (cont'd)
 I mean the case load for example, would not come to be handling the juveniles outside the city.

MR. CASEY
 You've exceeded your time, Judge Dennis.

MR. DENNIS
 Mr. Chairman, could I ask for thirty seconds just . . .

MR. CASEY
 Well, go ahead and complete your answer.

MR. DENNIS
 All right, I just wanted to point out that Mr. Warren had just handed me the Journal and if I'm reading it correctly, here, Mr. Jackson's amendment was designated as a vote of 21 to 16, so I think that I've decided . . . well, one of the amendments dealing with the juvenile courts.

MR. CASEY
 Mr. Denbes is now recognized for the floor.

MR. DENNES
 Ladies and gentlemen, I'd like to take this opportunity to support the Jackson amendment and explain to you my reasons for doing so. It is true that we have considered this matter on several previous occasions. On every previous occasion, I have been opposed to amendments and to provisions which would constitutionalize the jurisdiction of juvenile court. On this particular occasion I find that this amendment provides sufficient flexibility and sufficient recognition of a basic principle that I can indeed support it. That principle is essentially that the jurisdiction of juvenile court should be set forth in this Louisiana Constitution and if it were not set forth in this constitution, the legislature may on impulse change that jurisdiction by a majority vote. What enables me to support the Jackson amendment is the waiver provision. That is something which would be new to our law, but which has been tried successfully in many other jurisdictions throughout this United States. In this particular instance, the exact jurisdiction currently maintaining in the state would continue; that is, everyone under the age of seventeen would be tried in juvenile court except those people charged with capital crimes or crimes defining attempt aggravated rape. If they are over fifteen, they would be tried in a district court. Furthermore, the amendment as it is presently cast, would permit in instances where a child is fifteen years of age or older, the legislature may provide a waiver system whereby the juvenile court would decide whether or not it would try the child and if it decided in the negative, the appropriate district court would try the child in accordance with presently established or legislatively established adult procedures. I'd like to answer some of the charges advanced against this amendment. First, that it would create a conflict which would have to be resolved in Style and Drafting. I think that is indeed a weak argument to advance against something which is so important. I suggest to you that we have decided and provided elsewhere in other provisions of this document that notwithstanding certain things we have done in other sections, particular principles should apply. That is all that we have done here. I do not see a serious conflict, a conflict which would require a great deal of time to resolve. Secondly, I take issue with the opponents of the amendment who suggest to you that it would disrupt ordinary and existing juvenile court activity in respective parishes. It would seem to me that the second paragraph of this amendment very clearly provides that those juvenile courts in existence at the time of this constitution will continue. I do have some minor criticisms of the amendment, but I have prepared an amendment which is not before you to cure what I regard as two minor defects. I will submit that amendment and have it distributed

MR. DERBES (cont'd)
in the event that this amendment passes. I have also prepared an amendment which will accomplish essentially the same purpose in different language in the event that this amendment passes: that amendment has been distributed to you. I do not imply by the distribution of that amendment that I oppose the one that is currently before you; in fact, I support it. The problem of dealing with children who are accused of crimes in this state is a very serious one. It deserves great consideration and, in my opinion, it deserves the constitutionalization of juvenile court jurisdiction provided that there is built in sufficient flexibility that the legislature can handle the problem by a change in procedures. But, I do think that it is absolutely necessary for us to set forth basic age limitations in the constitution and this amendment does so. I urge its adoption.

MR. CASEY
Mr. Willis is now recognized for the floor.
You don't want the floor, Mr. Willis?

MR. WILLIS
I realize what prompted you to offer me the floor,
Mr. Chairman. I merely was assuming my pensive stance.

MR. CASEY
You waive; is that right?

MR. WILLIS
I hadn't requested, but I thank you for the offer.

MR. CASEY
Why do you rise, Mr. Burns?
Mr. Derbes has exceeded his time.
Okay. Mr. Burns moves for a suspension of the rules
for an additional two minutes for the purpose of answering
questions?
Is there objection? Without objection, so ordered.

MR. BURNS
Mr. Derbes, down there in the last sentence under Number
4, where it would waive jurisdiction of children fifteen years
of age or older at the time the commission of the offense who may
then be tried as adults. Unless the law has changed, they used
to try juveniles in juvenile court on the basis of affidavits
only, right?

MR. DERBES
That's correct.

MR. BURNS
Well, what would you do if you transferred that juvenile
over into the district court as an . . . and try him as an
adult, you couldn't try him in district court except under an
indictment of bill of information?

MR. DERBES
Well, the jurisdiction would be waived. In other words,
the legislature would put together a package, Mr. Burns, a
package of legislation which would be passed by a super majority
of the legislature and that package would say, first, that based
on certain criteria, on recidivism, on seriousness of the crime,
on the circumstances of the crime, that the juvenile court's
jurisdiction could then be waived—you want to listen, Mr. Burns—
if you want the answer, I'll be glad to give it to you.

MR. BURNS
I believe, so far, your answer doesn't answer the question
I had.

MR. DERBES
Well, maybe I'm on the road to it, Mr. Burns, if you'd
just wait one second. Then the legislature could also provide
that once the jurisdiction of the juvenile court is waived by
the juvenile judge based on certain criteria, that then the
district attorney could indict the person by virtue of a bill
of information or a grand jury indictment. It seems to me to
be a procedure that is eminently feasible.

MR. CASEY
Mr. Duval.

MR. DUVAL
His, for the record I just want to get something clear.
Now, the way this reads, is it possible that it would call for the
creation of a different juvenile court in each parish. . . a
separate and distinct juvenile court in each parish?

MR. DERBES
I think not, Mr. Duval, and I . . . I don't believe
that's Mr. Jackson's intention. I'd like to point out to you
that all the language in the first paragraph, as sloppy as it may
be, is the language of the existing constitution. That's why Mr.
Jackson chose it and it's the language under which we've been
operating for some time now.

MR. DUVAL
But, whatever happens it's your impression that it's
certainly not the intent . . . to create a separate and
distinct juvenile court.

MR. DERBES
As a supporter of the amendment and as an attorney, I
believe that under the language of the amendment taken as a
whole it would not require the creation of a separate juvenile
court in each parish. It would preserve the existing separate
juvenile courts and would permit existing other courts who operate
ex officio juvenile to continue to do so.

MR. CASEY
You've exceeded your time, Mr. Derbes.
Mr. Fugh is now recognized for the floor.

MR. FUGH
Mr. Chairman, fellow delegates, I rise in favor of this
amendment, both as a cosponsor thereof and with what I believe to
be some knowledge about the field and the subject to which this
amendment has been addressed. First off, for the purpose of setting
at rest any misunderstanding that may have been created as a result
of the suggestion from this podium that the use of the language
'there shall be a juvenile court for each parish,' necessarily means
that there is being created by this amendment a brand new set of
courts throughout the State of Louisiana, that language is, and
has been, in our constitution since 1936, without question, without
qualification, word for word has been there since 1936. This
state has had the pleasure of having juvenile courts since 1906.
The first one of which was created for the benefit of Orleans
Parish. There are three specialized juvenile courts in the State of
Louisiana today. Except for those district judges sit ex officio
as juvenile judges. The present constitution does state that those
judges who shall sit ex officio as juvenile judges. The failure
to recite that language here has no bearing on whether or not new
courts are being created. In a nutshell, the proposition before
you is one shall we continue in existence with constitutional,
jurisdictional status, the juvenile courts as we know them today?
Tell me what thing has occurred since this convention was called
to suggest that a system known to this law since 1906 no longer
has any usefulness in our system. Now, as I told you once before,

MR. FUGH (cont'd)

for some strange reason, we left the district courts in the constitution. We left their jurisdictional status in the constitution and spelled it out ad infinitum. We did the same thing for the courts of appeal. We did the same thing for the supreme court. So, what we're doing here, let's not kid ourselves, you throw this to the legislature and it's all over with by a majority vote. It was attempted in the last session of the legislature and the only reason they weren't successful is because the governor had the foresight to realize that there was a constitutional, jurisdictional requirement and that that jurisdiction could not be shifted or handled over by the legislature. It's cut and dried, that's it. We either want juvenile courts or we don't want juvenile courts and we'll probably make a decision within the next half an hour of whether or not we want juvenile courts. I say there's a place and there's a need for them. But, in all of our wisdom, if we make a mistake—look what Johnny Jackson has provided— if it's so bad, he says, "Okay, let the legislature by a two-thirds vote take them away." Let this onus be on the legislature. Let this cup pass to another. We came here at a time that our constitution spelled out jurisdictional status for the courts and there's absolutely no reason why the constitution shouldn't have it. You take away jurisdiction from a court, you take away its blood. That's like a haberdasher selling a hat and keeping the hat and giving you the band; they've got nothing— they've got nothing under the Judicial Article as it stands today.

MR. CASEY

You've exceeded your time, Mr. Fugh.
Mr. Alphonse Jackson is now recognized for the floor.

MR. JACKSON, A.

Mr. Vice-Chairman, this is such a serious problem affecting the lives of children generations yet unborn, I would suggest that we have an absence of a quorum.

MR. CASEY

Mr. Alphonse Jackson now suggests the absence of a quorum. The Clerk will open the machine for roll call.

Please vote your machines, delegates.

Vote your machines.

Take your seats, delegates; break up the little groups up in the audience there.

Are you through voting?

Clerk will close the machine.

81 present and a quorum.

Please proceed, Mr. Jackson.

MR. JACKSON, A.

Mr. Vice-Chairman, ladies and gentlemen, this is a serious problem that we consider this day, and I would ask for about five minutes of your attention because I believe that what we do in the next few minutes will seriously affect the lives of young people in the State of Louisiana. Now, I know that you have heard arguments here about why we ought not to constitutionalize the jurisdiction of the juvenile court. But, I tell you that I serve in the distinguished House of Representatives of this state and I'm honored to be there, but I tell you that that is a political body as it should be and it makes political decisions. If you do not constitutionalize authority for juvenile courts, you're going to have the legislature of this state reacting and over-reacting to emotional situations and making laws that all of us will live to regret. Now, let me point out to you that the original package of legislation that was introduced in the last session. . . last regular session of the state legislature. As the bills were originally introduced would have placed a youngster for stealing a watermelon out of a country patch in Angola. I dare say that many of you would have found yourself there had not we had some authority for juvenile courts. I point this out because I do not fault the legislature

MR. JACKSON, A. (cont'd)

for making a political decision because we had had an emotional situation in New Orleans, but I tell you that government actions were taken because the authority was constitutionalized. Now, the distinguished delegates might say that we ought not to do this because we would have conflict with a past article already passed. And we to the point in this country that we disregard the whole future of youngsters? Are we going to spend youngsters in long resorts and have it follow them the rest of their lives simply because we don't want to take time to give full consideration to an important matter? Now, we have problems emanating from youthful offenders that we have never had before, and so it makes no sense at all for us to say that we do not have to have a specialized court to deal with them. Mr. Jackson pointed out to you the increased numbers of youngsters that are now suspended and expelled from school. His information was not as current as the facts are. In 1972, we suspended over a hundred thousand youngsters from the schools of this state. On the figures. . . preliminary figures for 1973 would suggest that that figure is going to be higher. I would suggest to you that that in itself would suggest to us that we have rather serious problems that ought to suggest to us that we must be creative in terms of dealing with this situation. Now, I'm a politician, and I'm not about to stand here and tell you that we don't have a problem, but we do have a problem, but we've all got to solve the problem by dating the method that we deal with youthful offenders in this state by a hundred years. This is what you are about to do when you destroy specialized courts and specialized consideration for youthful offenders: you're about to date this thing about a hundred years and I speak to you as an individual who for twenty years studied the problems of youthful offenders. I would suggest to you that this proposal allows for flexibility. It allows for us to be creative. It allows for us to deal with the growing problems that we have in the area of youthful offenders. I would suggest to you that I don't believe any of you want your son or your daughter or the son or daughter of one of your friends, assigned to a life that would suggest that he was a habitual criminal or that he was engaged in crime simply because he went astray on one occasion. I don't believe any of us would, by way of our action in this convention suggest that we don't want to find a way to rehabilitate youngsters, and we don't want to find a way to be understanding. We don't find a way to say to youngsters that we care. When we destroy the specialized courts in this country and in this state we turn our back on a serious problem that cannot be solved by way of the existing district and criminal courts that we have in this state. So, I would ask that you would vote for this amendment.

MR. CASEY

Reverend Landrum:
Why do you raise, Mr. Dennis?
Judge DUBOIS:
He understood his time, Judge DUBOIS.
Reverend Landrum is recognized.

MR. LANDRUM

Mr. Chairman and fellow delegates, I was somewhat reluctant to come up here because I think we have heard some very fine reasons why we should support this amendment. I was just thinking a few years back when my little boy was about five years of age and my daughter was about nine. A man that owns a tobacco factory was running behind an eleven year old boy that stole a twenty dollar radio out of his car, grabbed my son and daughter and some other little kids in front of the church with a pistol in his hand. Now, when he caught the boy, some blocks away, he walked back with the boy to his place of business and called for the police. Now, my children was all upset—the children at my church. When I went around there, there's a guy walking around, he has done something real proud, big. I asked the officer in charge. . . I wanted the man to know—now, maybe Chief Garrison might remember this, because they had to call his office on it—I wanted that man to know if someone would steal his store, never to point a pistol in my child's face. Not only my child, but nobody's child. The policeman was very, very angry about it—very angry about it. He brought. . . he put the man in jail too. But, I am the one that went to the judge and asked the judge—when I went to court that morning, that man and his wife sat in the court afraid, just as a child would be afraid, because he didn't know what was going to happen to him—but I asked the judge not to put the man in jail. All I wanted him to let him know he had no right to do this sort of thing. I had attorneys trying to get me to sue the man. I got a great case. But, I wasn't interested in suing the man, either. Somewhere in life we have to show some mercy towards one another. If we cannot do it for young people, then America is already lost. I don't believe that we just want to put young people in a position, a crime is committed at an early age in life, no matter in life can that child be forgiven for the crime. I think we need to go to our juvenile courts. We really need to do. . . to go to juvenile courts. I'm so sorry that this convention did not visit Pineville and Angola and all the other institutions. Then, we could have come here and tried to do some things that are right for people, whether we be elected again to office or not. But, I keep telling you, please God first of all—please God.

I think the Jackson amendment and those who are coauthors with him is a very good amendment. I think it's watered down too much, but I'm going to support it as it is. Thank you.

MR. CASEY

Mr. Jenkins, you waive? Right; now, is that correct?
Senator De Blieux is recognized for the floor.

MR. DE BLIEUX

Mr. Chairman and ladies and gentlemen of the convention, I want you to very carefully consider this amendment, because I'm afraid of the effect it will have upon our courts here in East Baton Rouge Parish. We have a peculiar situation here in East Baton Rouge Parish. I think it's the only court in the state like that. But, our court is strictly a family court. It handles anything pertaining to family relations, domestic relations, which naturally includes juvenile matters. It includes divorce cases; it includes support cases; hears neglected children, the crimes of juveniles, or whatever they may be. I just have the feeling that when this particular amendment was drafted, they did not take that into consideration. I have. . . I can't help but

MR. DE BLIEUX (Cont'd)

feel like that it will have a very detrimental effect upon the already established court which has been operating since 1954.

For that particular reason, I must oppose this amendment and ask you to do likewise, because I think you don't want to upset what is already being done. I recognize they've got a problem, but certainly the amendment should have been drawn with consideration of all the courts, the way they are operated now, in mind at the time it was prepared. Until they can prepare an amendment which will not have an adverse effect upon the Family Court of East Baton Rouge Parish, I have no alternative except to oppose the amendment. I ask you to please do likewise.

MR. CASEY

Do you yield to questions, Senator De Blieux?

Mrs. Warren has a question. Then, Mr. Pugh; then. . .

MRS. WARREN

Yes, Senator De Blieux. I'm picking up bits and pieces, and I remember one of the other delegates mentioned that this is the same thing that was in the old constitution. I'm almost sure your courts in Baton Rouge were set up under this old constitution. Now, what is going to keep it from staying as it is, if this is the same thing that we've had? Just for the information, not whether you're against it or for it, but if you. . . if this is the same thing that we have had in the constitution, your courts are set up under it, so how is this going to affect it? Is it going to make them illegal, because you set them up under it?

MR. DE BLIEUX

Well, I do not think that, as I read the amendment, Mrs. Warren, it does not make enough separation between the existing courts. Now, you take in practically every court where you don't. . . every judicial district where you don't have a juvenile established court, the local district judge acts as the local juvenile judge, or the city court judge, as it may be. Now, that is not the case in East Baton Rouge Parish; I don't think it's the case in Orleans Parish because you have an established juvenile court there. It's not the situation in Caddo Parish. But, in other parishes where you don't have a regular established juvenile court, then the district judge acts as the juvenile court. Now, this particular amendment, as I see it, will say that those courts will continue acting as juvenile courts. I just think that it's going to have too great an effect upon our court in order to make it advisable that I support it. I have to oppose it for that reason.

MR. CASEY

Mr. Pugh. Mr. Pugh has a question.

MR. PUGH

Mr. De Blieux, you do recognize the fact that this amendment relates to juvenile courts, do you not?

MR. DE BLIEUX

That's right.

MR. PUGH

You do recognize that you don't have a juvenile court in East Baton Rouge Parish?

MR. DE BLIEUX

Well, we have in this respect: that it handles all juvenile matters.

MR. PUGH

It's called a family court, and it's under an entirely different section and article in both the old constitution and in the committee's treatment of the present constitution.

MR. DE BLIEUX

But, it takes the . . . the amendment makes no reference to the preservation of present juvenile courts.

MR. PUGH

But, that's not a juvenile court; just like the amendment makes no reference to the Supreme Court or to the city court, or the district court, or to the courts of appeal. The Baton Rouge court is a family court and is in an entirely different section and article in both the old constitution and their treatment under the new constitution.

MR. DE BLIEUX

I'm just afraid the way the amendment is read, here. I've spoken to other attorneys on the same matter, and they have also had that same fear.

MR. CASEY

Delegate Johnny Jackson.

MR. J. JACKSON

Senator, since we're talking an amendment--we're not calling for the sixty-seven vote, we're just talking about an amendment--couldn't it be very well that if you are that concerned that this does not include the language, that you could just offer a very simple amendment?

MR. DE BLIEUX

I'm not getting your question right. Would you state. . . restate. . .

MR. J. JACKSON

My question is that this is an amendment that we're discussing at this point--an amendment. Now, Mr. Pugh has given you his interpretation not only as a lawyer, but an authority who has wrote several books on juvenile courts and jurisprudence as such. Wouldn't it be very simple, Senator--and I would have no objections; I want to let you know I would have no objection--if you want to put a simple amendment that says that the Family Court of East Baton Rouge--if you need further clarification--that the Family Court of East Baton Rouge is hereby, as constituted, retained. That's just a very simple amendment, if you feel that you need that. I would, and I think the coauthors and the proponents of this, if you think you need that additional clarification, we'll do that. But, I don't want you to feel as though that that amendment is aimed at denying the Family Courts of Baton Rouge its protection, because under the present provisions in the Judiciary Article, a majority vote of the legislature could change that just like that; did you know?

MR. DE BLIEUX

Well, Mr. Jackson, if you would incorporate that into your amendment, then I would have no objection to it. But, until that is incorporated, actually incorporated, I really wouldn't want to take the chance.

MR. CASEY

You've exceeded your time, Senator De Blieux. Mr. Gravel was next on the list to speak. Mr. Gravel, you waive? Mr. Tobias was next on the list.

MR. TOBIAS

Mr. Chairman, fellow delegates, I hesitate to rise in opposition to this amendment. I was a member of the Committee on Judiciary of this convention, and for two solid days we debated the question of how to handle the juvenile court issue. After much debate, we finally decided that there was no satisfactory way to treat it in a constitution. This type of decision over jurisdiction has to

MR. TOBIAS (Cont'd)

be left to the legislature. It is indeed unfortunate. This provision does not protect the juvenile. It does not prohibit the legislature from all transferring that jurisdiction, for violations of crimes, can be sent to the Louisiana State Penitentiary. All this amendment does is protect the court--just the court. We are not here to protect courts, we are here to protect the people.

Read Section 15 of the Judiciary Article that we've adopted. It continues juvenile courts. Read the fourth line in the final paragraph of the Jackson amendment. Think about this: what criteria is set by this amendment with respect to waiving jurisdiction? I don't see any criteria. You're leaving it arbitrary to the judge. The flexibility must be kept in the system. I urge you, stick with what we've done. We've passed on this issue over and over again. The Judiciary Committee found no satisfactory way to handle it. I urge you to defeat this amendment.

MR. CASEY

Do you yield to questions, Mr. Tobias? Mr. Pugh has a question.

MR. PUGH

Mr. Tobias, how is it that you all found no difficulty in establishing the jurisdiction for the district court, for the court of appeal and the Supreme Court, but even guided by the present constitution that we've had almost for forty years on this subject you found so much difficulty in laying out the juvenile court jurisdiction?

MR. TOBIAS

Mr. Pugh, the problem with laying it out is the present constitution does not allow a judge of a juvenile court to waive jurisdiction over people over the age of fifteen. We didn't want to freeze into the constitution the age of fifteen. It's arbitrary. The judge of juvenile courts ought to have the right to waive it at fourteen, or thirteen, or twelve. But, we don't want to freeze it here and now. The time has . . . the flexibility has got to remain in the constitution--it's got to remain.

MR. PUGH

Don't you think that it's not frozen if under Jackson's amendment it provides that the legislature can change it by a two-thirds vote? Does that sound to you like it's frozen?

MR. TOBIAS

You're spelling out something that I think has got to be left to the legislature. The flexibility has got to remain. It doesn't protect the juvenile. All it does is protect the court. There's no . . . do you see, Mr. Pugh, anything in this proposal, in this section, that would say that juveniles can't be sent to the penitentiary? This only says the court has jurisdiction over the matter.

MR. CASEY

Mrs. Warren has a question.

MRS. WARREN

Mr. Tobias, you mentioned the fact that it wasn't any protection for those juveniles. I'm wondering if you want protection for the juveniles.

MR. TOBIAS

I. . .

MRS. WARREN

My next question is: you said it was unfortunate. Now, what is unfortunate about this situation? Unfortunate for who?

MR. TOBIAS

It's protecting the courts, and I'm not here to protect courts. I'm here to protect people.

MRS. KARRKEN

So, in order to keep a court from being protected, it should not be in the constitution? So, in other words, no courts should be in the constitution. It should all be left to the legislature.

MR. TOBIAS

If it had been left to me, I moved for that in the . . . on the committee. That was my concept.

MRS. WARRREN

But, in essence of that, since you were one, and the others thought that these should be protected, don't you think they should think under the same grounds, that this one should too?

MR. CASEY

Have you completed your remarks, Mr. Tobias?
Oh, Mr. Gauthier. Then, Johnny Jackson.

MR. GAUTHIER

Max, can the legislature abolish a district court at any time?

MR. TOBIAS

No.

MR. GAUTHIER

Under this amendment, can the legislature abolish a juvenile court?

MR. TOBIAS

Under the proposal that the committee came up with and adopted on the floor, the juvenile court, the city courts, all of the courts except district courts, courts of appeal, etc., can be abolished.

MR. GAUTHIER

No, I'm not talking about . . . I'm talking about this amendment, because you indicated, if I'm not mistaken, that we were protecting the court far beyond what we should. Yet, I see a difference in that under this proposal juvenile courts can actually be abolished, whereas there is no way to do that to a district court.

MR. TOBIAS

Let me ask you this: why do you believe, though?

MR. GAUTHIER

No, it's my turn to ask the question.

MR. CASEY

Now, just a minute, Mr. Tobias. You don't ask the questions, and besides, you've exceeded your time.

Is there any further discussion?

Are you ready for the question?

Without objection, the previous question is ordered.

Mr. Jackson, you have a right to close.

Mr. Jackson now suggests the absence of a quorum.

The Clerk will open the machine for roll call.

Are you through voting?

Let's vote your machines, delegates; come on. Please vote your machines.

Are you through voting?

The Clerk will close the machine.

81 delegates present and a quorum.

Please proceed, Mr. Jackson.

MR. J. JACKSON

Mr. Chairman, ladies and gentlemen of the convention, first of all, it's very obvious now that some of the issues have changed from some of the people. . .

MR. CASEY

Just a minute, Mr. Jackson.

You all just hold it down back there. That's unnecessary.

Please take your seats, delegates.

Please proceed, Mr. Jackson.

MR. J. JACKSON

It's very obvious and it's very apparent to me, at this point, that those who raised issues back in September and November concerning the original amendment have come up to date with some new concerns. I don't . . . I guess this can go on and on and on. I'll candidly say to you that look, the amendment does not do what people have said it would do. So, my position is very . . . and I suggest to you, you know, if you are against allowing providing for the jurisdiction of juvenile court in the constitution, just say you're against it. Don't hide it in some other sort of smoke screen. If you say . . . if you are against providing that juvenile courts—and I take strong opposition to Mr. Tobias when he say that we got the interest of the court at heart. There's nowhere in the world can we list all the procedures that the legislature can do in terms of proceedings and matters of the juvenile court. That should not be in the constitution. He alone should know that. I suggest to you gentlemen, very strongly, we have provided—and I question very seriously, if we provide for the Supreme Court, the court of appeal to the district court, and particularly since there is a rising adult problem, how in the world can we say that we can justify for district courts but we can't say it for juvenile courts? My understanding is that there are more adult criminals and there's more of a serious problem among adults than there are among juveniles.

Now, I suggest to you that most of the issues—and I respect some of the opposition because I think there was some real concern, but I want to say it very clearly: who are we writing this constitution for—who are we writing it for? Are we writing it for this present generation alone, or for future generations? Are we that so much concerned about incidents that we are ready to expose not only those juveniles that commit vicious crimes to adult records and the full effect of the law, but everybody? Do we not recognize the impact of drugs among youngsters? Do we not recognize the fact of emotionally disturbed among youngsters? Do we not recognize, very seriously, the kinds of problems that we're having now as a result of suspensions? I say this committee made it up in its mind that they wanted three courts, and that was it. No consideration whatsoever about trying to work out something within the constitution to allow for constitutional jurisdiction for juvenile courts.

Again, Judge, and folks, I will not . . . and I say that it's unfortunately . . . that the problem was created in New Orleans. But, however, the Judges from New Orleans have said, "Yes, you're right. The problem did crystallize in New Orleans." But look here, even us, we have sent you a communication saying that there ought to be constitutional jurisdiction. There have been problems in Jefferson, but even the Judge of Jefferson has written a letter saying that to maintain semblance of jurisdiction. That Judge said at the time he wrote the letter that I wouldn't yield under sixteen. But, yet and still, I have yielded since then. Now, I have tried very seriously, gentlemen, to address myself to each and every concern of each of the delegates in opposition to this amendment. I should say very seriously that there were certain delegates that wouldn't even sit across the table and talk to me about their reservations. I had to get it from notes that they had made in terms of drawing up a platform of opposition. Now,

MR. J. JACKSON (Cont'd)

I say to you, this is very dangerous--it is very dangerous. I'm confident, very confident, that those of us who have supported some constitutional status for juvenile court feel that we have fought a good fight, and we're going to continue to fight. But, I'm saying to you that it's very risky, and that for every concern--and I think the utmost concern is about juveniles not getting in the way with vicious crime--you show me in that amendment where they can go before a district court--show me where they can go. Show me where I abolish your district courts that are serving as ex officio courts. Even Mr. Tobias said in this remark: that the present constitution didn't allow for waiver of jurisdiction. I allowed for it. You read 15 (A), you go back and read 15 (A). They say very clearly that the district court shall have exclusive original jurisdiction over all felony cases. Can the Legislature pass a statute concerning juveniles? I wonder can you do it. Now, they don't want to open up the Judiciary Article, and I can understand why, 'cause they don't want somebody to touch some of the sacred things. But, I suggest that is not a reform. I suggest, as Representative Alphonse Jackson say, that is a move back into history, a move back into the past. You explain it very seriously when one of your sons or one of your kids get arrested, and somebody want to force him and force the equal application under the law to him. That's his first time, because he went to a party; somebody gave him something to drink; he did something foolish. But, yet and still, you know, the legislature provides that on certain offenses that this person must be tried. If he's not convicted--and I say it again--how many applications do you know of inquire about arrest records? How far can an arrest record, not necessarily a conviction record, how far can an arrest record go in destroying somebody's life? I suggest to you that it's going to come home to roost. I suggest to you that you not be committed just because somebody won three tiers. If three tiers is so good, now why was there never a move in the legislature to introduce a constitutional amendment to do it?

MR. HENRY

You've exceeded your time, Mr. Jackson.

MR. J. JACKSON

It's a smoke screen. I ask the favorable adoption of the amendment.

MR. HENRY

The gentleman has exceeded his time, Judge Dennis. What?

MR. DENNIS

I would like to ask for thirty seconds to ask him a question, Mr. Chairman.

MR. HENRY

The gentleman refuses to yield. All right. The gentleman will yield. You want to ask him the question, Judge?

MR. DENNIS

Johnny, a couple of speakers said that this is the same language as in the present constitution. I'm sure they do not mean that it's the same exact language. I know you're used to prevent the same meaning, but you do agree it is not the same exact language; don't you?

MR. J. JACKSON

Judge, if you'll look at the first section of the constitution except for the words "for", that is basically the same wording.

MR. DENNIS

Would you have....I'd like to read you the first two sentences of the Section 52, "There shall be a juvenile court for every parish of the state except as otherwise provided for the parishes of Orleans and Cadeau, the judges of the district courts shall be ex officio judges of the juvenile court for the parish or parishes within the district in all cases where the legislature has not established separate juvenile courts." Then, that section goes on for two more pages. I think that additional two pages plus the difference in language that I've just read to you makes much more clear what is intended than what is in your amendment. Don't you agree that this is...that you have not really given the same exact language, I know you are trying to?

MR. J. JACKSON

I disagree, Judge, on the basis that when you talk about the other court with the exception of Orleans and Jefferson, if you look at the second paragraph it says that courts who presently serve ex officio juvenile court, Judge, are hereby retained. If you look at that, Judge, that is basically the same thing you are saying.

MR. HENRY

Mr. Jackson, you've exceeded your time.
Mr. Alphonse Jackson.

MR. A. JACKSON

I want to ask for a record quorum call and a record vote on the amendment.

MR. HENRY

All right. The gentleman requests a record vote. Will twenty-six delegates join him? A record vote is ordered.

Mr. Alphonse Jackson also suggests the absence of a quorum.

The Clerk will open the machine for roll call.

Vote your machines, ladies and gentlemen.

Are you through voting?

Quorum call.

The Clerk will close the machine.

97 delegates present and a quorum.

Mr. Johnny Jackson has offered up an amendment to which objection has been urged.

Therefore, when the machine is opened, as many of you as are in favor of the adoption of the amendment will vote yes. Those opposed will vote no and the Clerk will open the machine.

Are you through voting?

The Clerk will close the machine.

28 yeas and 62 nays, and the amendment is defeated.

Mr. Tobias moves to reconsider the vote by which the amendment was defeated and lay the motion on the table.

Without objection, so ordered.

Are there further amendments, Mr. Clerk?

MR. POYNTER

Mr. Derbes sends up amendments at the present time.

MR. HENRY

Read them.

MR. POINTER

Amendment No. 1. On page 1, delete lines 12 through 23, both inclusive, in their entirety and insert in lieu thereof the following:

"Section _____. Juvenile Courts
Section _____. (A) Jurisdiction. The juvenile courts shall have jurisdiction, except for capital crimes and crimes defined by any law defining attempted aggravated rape if committed by children fifteen years of age or older, of cases of the State of Louisiana in the interests of children under seventeen years of age, brought before said courts as delinquent or neglected children. However, by law enacted by a vote of two-thirds of the elected members of each house, a procedure may be established whereby the juvenile court may waive its jurisdiction over children fifteen years of age or older at the time of the commission of any offense so that they may be tried as adults in the district court. They shall also have such other jurisdiction as is now or may hereafter be granted to them by law.

Amendment No. 2. On page 1, below the language of Floor Amendment No. 1 above, add the following:

"(B) Merger and Abolition. Notwithstanding the provisions of Section 15 of this Article, the legislature may by law merge juvenile courts into district or family courts; and may, by law enacted by vote of two-thirds of the elected members of each house, abolish juvenile courts."

MR. HENRY

Explain the amendment, sir.

MR. DERBES

Ladies and gentlemen, this is a slightly different and, I hope, acceptable approach to the problem. This says nothing about adoption; says nothing about non-support; says nothing about criminal neglected family; it leaves all of that up to the legislature. It does, however—and Mr. Landry, I would like to point out to you that it will not disturb in anyway the jurisdiction over your local city courts over adoption or any present jurisdiction that any courts have—this does, however, constitutionalize the principle that children shall be tried in the juvenile courts and it includes in addition thereto flexibility whereby the legislature may establish a system of waiver. Now, waiver is a new concept to our state and I do not intend to efface the waiver by this provision. I merely give the legislature the latitude to do so. Presently, the juvenile courts in this state cannot waive their jurisdiction in favor of any other court. Under the committee proposal as we've adopted it, the legislature may do anything that they please with juvenile court; they are not limited in any way. This would say that if a child is fifteen years of age or younger he must be tried in juvenile court regardless of the offense. If a child is over fifteen and under seventeen, he must be tried in adult court if he has committed a capital crime or attempt aggravated rape, that's the present law. Furthermore, it says that the legislature may establish a system, a procedural system, which implicitly would be based on objective criteria to be implemented by the judge whereby the jurisdiction of juvenile court in the instances of children over the age of fifteen would be waived in favor of the adult court. This would take care of, in my opinion, of recidivists of habitual offenders, of children who have committed serious crimes which are not necessarily capital in nature, but it would nevertheless give the juvenile courts those sitting ex officio and those sitting independently some basic constitutional grant of jurisdiction which would not be subject to impulsive derogation on the part of the legislature. I point out further that the second amendment that's before you now is considerably less restrictive than Mr. Jackson's amendment. My Amendment No. 2 on the page in front of you

MR. DERBES (cont'd)

says that by a majority vote the legislature may merge juvenile courts into district courts or family courts, they don't need a super majority. So, this would essentially agree with what the committee proposed and also agree with what we've done so far with the exception of the fact that juvenile courts could not be merged into city courts or other courts than district or family courts. Finally, it requires that only by a two-thirds vote of the legislature may juvenile courts be abolished. So, what would happen if both of these amendments passed? You would have a constitutionalization of the age limitation and jurisdiction with flexibility to deal with the habitual offenders and with the requirement that only by a two-thirds vote of the legislature may juvenile courts be abolished and by a majority vote of the legislature juvenile courts may be merged into family or district courts. I see no substantial objection.... I can contemplate no substantial objection to either of these amendments. I point out to you that the amendments are divisible. So, if you agree with the principle that the age limitation of juvenile court should be constitutionalized, as I do, you should vote for Amendment No. 1. If you have problems with the abolition of juvenile court and you want to make it easier for the legislature to implement a three-tier system, then you may have some objections to Amendment No. 2. But, nevertheless, Amendment No. 2 does give the legislature the opportunity to abolish by a two-thirds vote and to merge by a majority vote. I thank you for your consideration late in the day on a matter that's been before you for some time. I think it is important. I do not believe and do not anticipate that there would be serious objection to these particular amendments. I certainly urge your support of Amendment No. 1 and further of Amendment No. 2. I'll yield to any questions.

MR. HENRY

Are there any questions?

Does that complete your remarks, Mr. Derbes?

MR. DERBES

Yes. Thank you.

MR. HENRY

Mr. Pugh.

MR. PUGH

Fellow delegates, I rise in support of the amendment. I do so and take your time because I feel so strongly for the need that we specify in this constitution some jurisdiction for juvenile courts; it's an important matter; it has been with us, as I pointed out earlier, since 1906. I suggest to you that it's important enough to now give it some seventeen lines in the constitution. Think back over the last four or five months as to many, many times that got page after page after page in the constitution without any serious dispute or difficulty. Is not the matter relating to juveniles not worth at least seventeen lines? I would like to speak no longer because I would like to have the opportunity of answering any questions from anyone who may raise them. I will suggest to those of you who are from East Baton Rouge Parish—East Baton Rouge Parish has a family court, it has an entirely different and separate jurisdiction from either a district court or a juvenile court. This in no manner addresses itself to the problem or problems in the East Baton Rouge Parish courts. If those from East Baton Rouge Parish wish to give the dignity to their court that has been attempted to do here for the juvenile court, I, for one, will speak for it and will certainly vote for it. Are there any questions?

MR. HENRY

Are there any questions?

I don't believe there are any, Mr. Pugh.

Is there any further discussion on the amendment?

MR. HENRY

Are you ready for the question?
Without objection,....
You want the floor, Judge Dennis? Please.

MR. DENNIS

Mr. Chairman and fellow delegates, again on behalf of the Judiciary Committee or the majority of its members, I must rise in opposition to these amendments. These amendments are the same thing basically in substance as was presented in Johnny Jackson's amendment. Mr. Berbes has, I admit, cleared up many of the smaller problems that were contained by the drafting in Mr. Jackson's amendment but still it is a reversal, a flip-flop away from the basic decision that you made when we considered the Judiciary Article, that we debated so long and hard on. You decided that because of the need of flexibility in this area that you would not tie the hands of the legislature, that you would not restrict the legislature to deal with the area of juvenile law. I submit to you that there have been no new arguments, no new information presented to you since we made that decision which would justify such a drastic reversal. I submit to you that if one is counter to the basic theory of the Judiciary Article that we adopted. Also, I want to remind you in these closing days of the convention when our time is running short that we should strive not to create any more conflicts than necessary in what we have already done because each one of those conflicts will have to be dealt with again. If we pass this amendment or this delegate proposal, it will definitely create a conflict with the Judiciary Article that has already been adopted. We will have to come back and probably spend another day on this issue again. I don't think you need to do that because I think you considered all of these arguments, all of this information back when we adopted the Judiciary Article. I think you made a wise decision. So, I'll ask you to stick with it and vote this amendment down and also the delegate proposal.

MR. HENRY

Would you yield to a question from Mr. Pugh?
The gentleman yields.

MR. PUGH

Judge Dennis, you indicate that this amendment reflects some disgust of the legislature. Was there any reason that the district court jurisdiction was put into the constitution? Couldn't we have left it out or did we distrust.... the legislature when it related to the district court jurisdiction?

MR. DENNIS

Well, we have vested a lot of power in the legislature to affect district court jurisdiction. Our whole idea—I realize you disagree with me, you keep saying this over and over—but I'll just have to say to you that we felt that the top three courts should be established in the constitution. Personally, Mr. Pugh, I would have been willing to leave the structure of the district courts and the courts of appeal up to the legislature the way the U. S. Constitution leaves those kinds of courts up to the Congress; but, I was in the minority on that. The committee after hearing hundreds of people speak to us, from within this state and without opted for a basic constitutional court system of three courts plus other courts to be set up by legislative act or changed by legislative law in order to keep up with the times. This juvenile court is one of those courts. You might have people who think that city court jurisdiction, or family court jurisdiction, or any number of these special courts should be in the constitution but the committee and I think this convention has come to an agreement on one occasion that we should constitutionalize the top three courts and leave the others to be changed by the legislature.

MR. HENRY

Would you yield to one more question from Mr. Pugh?
The gentleman yields.

MR. PUGH

I noticed you're talking about the top three courts. Now, you're talking about the district court being a judge against what the juvenile court and then the appellate appeal and the Supreme Court. Is that what you are saying?

MR. DENNIS

Yes. These are our basic courts, the other courts are specialized courts.

MR. HENRY

Would you yield to a question from Mr. Abraham?
You're next, Mr. Jackson.

MR. ABRAHAM

Jim, one short question. You said there would be a conflict with the Judiciary Article. Could you explain to me, I can't see any room for conflict or for any violence being done to the Judiciary Article because Section 15 says that "The family and juvenile courts existing at the time of the adoption of this constitution are retained and that the legislature may abolish the trial courts by a majority vote." The only thing I see different here is that it would take two-thirds vote to abolish the juvenile courts. I'm confused on this, could you explain it to me?

MR. DENNIS

Flip over and read Section, I believe, it's 18 where it says that "The legislature shall establish the jurisdiction for family and juvenile courts." This amendment and delegate proposal takes away from the legislature the power to change juvenile court jurisdiction by the route of ordinary legislation; it puts protections on it and writes age limits in there that are not written in Section 18.

MR. HENRY

Would you yield to a question from Mr. Johnny Jackson?
The gentleman yields.

MR. J. JACKSON

Judge, trying to pursue Mr. Pugh's question, on what basis, seriously, on what basis does the district court have more import than that of the juvenile court when particularly almost half of the population of this state are juveniles. Now, other than that reason, what greater import does it have?

MR. DENNIS

It has no greater import; it is a basic part of structure. The way we have written the Judiciary Article you can take any function that is now being served by a specialized court and handle it as a division of the district court. Now, the Judiciary Article doesn't require that but modern thinking is that this gives you better service and a better form of justice. We have allowed the legislature this option to go in this direction rather than stop it.

MR. HENRY

All right. You've got time for one quick one, Mr. Jackson.

MR. J. JACKSON

Judge, if that's the case....

MR. DENNIS

But, maybe I should say this further, it's very difficult to say that handling juveniles is more or less important than trying adults for murder or handling adoptions, they are all important. That is the basic idea of having a unified court system is that all of these things are just as important as others and they ought to be handled by a judge having the same rank and dispensing the same quality of justice.

MR. J. JACKSON

So, in other words, Judge, what you are saying is that was an arbitrary decision based upon whether the committee wanted to cut it off at and that a court, which is America's only contribution to the judiciary system is not worth the constitution and jurisdiction?

MR. DENNIS

No, Mr. Jackson, we merely presented a view to this convention. Our view was that part-time judges such as some of our city judges maybe we should think about not letting them handle juvenile cases in the future because they are....

MR. HENRY

You've exceeded your time, Judge.
You want the floor, Mr. Lowe?

MR. LOWE

Just a point of information, Mr. Chairman.

MR. HENRY

State your point.

MR. LOWE

If we could ask the delegates to have their seat, we could pass out the checks which represent their underpayment for the services that they have rendered for the last fifteen days.

MR. HENRY

Is there any further discussion on the amendment?
Are you ready for the question?
Without objection, the previous question is ordered.
You have the right to close.

MR. DERRIS

Ladies and gentlemen, I respect the pride of authorship which the Committee on the Judiciary expresses here when they oppose this particular amendment. I suggest to you that the three tiers of which they speak could more appropriately be three tiers shared in the interest of juveniles of this state rather than the three-tier court system we've been hearing so much about. Now, I think that this constitution is an adequate and a good place to set forth the jurisdiction, the basic jurisdiction over the children of this state. I submit to you that this is a problem with which we should all have due concern and consideration. It is likely that the children of some of us will indeed for one reason or another have reason to go to juvenile court, whether it's for a trial on delinquency or for a minor traffic offense, it's something that we can all be concerned about and something which affects a great deal of the citizens of this state. There is nothing in this amendment to in any way confuse the issue of adoption or non-support or a criminal neglected family. There is nothing in this amendment which prevents the kind of merger that the committee on the Judiciary encouraged and supported and set forth in their committee proposal. The only basic two premises in this particular amendment are: (1) an age limitation with sufficient flexibility for waiver and (2) a provision that requires a two-thirds vote of the legislature for the abolition of the courts. It would seem to me that this is the least that this convention can do in order to clearly set forth the jurisdiction of the courts in which the children of this state should be handled, that is all that the amendment asks. Judge Dennis apparently referred to various conflicts which the amendment would create. I suggest to you that his answer to Mr. Abraham's question illustrates that the conflicts are minimal. I further suggest to you that the propositions involved in this amendment are simple and with which we can all agree. I urge your favorable consideration.

MR. HENRY

Would you yield to a question from Mr. Jackson?
The gentleman yields.

MR. JACKSON

Jim, don't you feel that it's somewhat ironic that in the city of New Orleans when a problem was crystallized and even the judges of those courts who recognized the problem as suggested jurisdiction that at present right now for these parishes who feel that my amendment drastically affected their situation that what you do right now by not adopting your amendment is to jeopardize the juvenile court situation that has particularly been indicated by some of the questions raised here in the city of New Orleans?

MR. DERRIS

Yes.

MR. HENRY

Would you yield to a question from Mr. Giarrusso?
The gentleman yields.

MR. GIARRUSSO

Jim, do you think that the present laws give the judges the necessary flexibility that they need to handle juveniles for rehabilitation, for proper sentences and everything?

MR. DERRIS

Joe, we've got to distinguish between the present laws that are on the books and the books that we are working on here. The present laws, which are on the books, in my opinion having worked in juvenile court for more than four years now do not give the judges sufficient flexibility. The committee proposal that we have passed which would leave all of the juvenile courts jurisdiction to the legislature would give the judges sufficient flexibility provided that the legislature saw fit to do so; it's a matter of trusting the legislature to provide the juvenile court with the sufficient tools and techniques. This amendment tries to do so with flexibility but with specific limitations.

MR. HENRY

You've exceeded your time.
The gentleman has offered up an amendment to which objection is urged.

Who do you rise, Mr. Tobias?

MR. TOBIAS

Division of the question.

MR. HENRY

You want to vote on them in order that they are?
The gentleman requests a division of the question.
Therefore, when the machine is opened....
The gentleman requests a record vote on both amendments.
Will twenty-six members join him? A record vote is not visible. Will twenty-six members join him? A record vote is ordered.
Therefore, when the machine is opened, as many of you as are in favor of the adoption of Amendment No. 1 will vote yes. Those opposed will vote no, and the Clerk will open the machine.
Vote your machines, ladies and gentlemen.
Are you through voting?
The Clerk will close the machine.

48 yeas and 55 nays, and the amendment is rejected.
Judge Dennis moves to reconsider the vote by which the amendment was rejected and lay the motion on the table.

Without objection, so ordered.
Now, the other one is going to be out of order inasmuch as the purpose...do you want to move for a suspension of the rules for the purpose of withdrawing it?

Without objection, so ordered.
The gentleman now moves to withdraw the amendment.
Without objection, so ordered.

MR. HENRY (cont'd)

You have further amendments, Mr. Clerk?
Read the next amendment, Mr. Clerk.

MR. POYNTER

Mrs. Warren sends up amendments at this time.

Amendment No. 1. On page 1, the clauses are not out yet. They will be distributed here in just a moment.

On page 1, delete lines 12 through 23, both inclusive, in their entirety and insert in lieu thereof the following:
"Section 38. Jurisdiction of juvenile and family courts shall be as provided in Sections 52 and 53 of Article VII of the Constitution of 1921, as existing on the effective date of this constitution."

MRS. WARREN

Mr. Chairman and delegates to this convention, in January of last year we started a long journey, and now we are coming to the closing of this journey. We have come to a dangerous intersection. I'm going to try to do something now that I have not ever tried to do before. I'm going to try to please everybody in this convention. Even though I am reminded of a story of a man and a little boy who started out on a donkey many years ago. The man started out and he put his little boy on the donkey. As they reached the first town, they ran into a group of people who began to laugh and say how stupid it was for an old man to be walking and a little boy riding. So, the old man got down off the donkey. . . the little boy got down off the donkey and the old man got on. They journeyed on. When they got to the next town, a laugh came again that an old man was riding while a little boy was walking. So, the old man decided that they both would get on the donkey. They both got on the donkey and they began to ride. When they got to the next town, the laugh came again. How sad it was for the two to be riding a poor old donkey. So, the old man said, "We'll both get down." They got a stick and they tied the legs of the donkey, and they began to carry the donkey. So, when they got to the next town, they got another laugh; how stupid it was for these two people to be carrying a donkey. So, the old man got down and he cut the strings and he let the donkey loose. He put the little boy back on top of the donkey, as he had started out in the beginning. He said to himself, "he who tries to please everybody, pleases nobody."

But, I am going to try to please all of you. I heard Senator De Bileux said that this amendment would affect the courts in Baton Rouge. I heard Judge Dennis said how it was going to affect his area. Many are wondering how this thing is going to affect them. So, I say to you, let's keep it like we've got it, and let's make everybody happy. You have what you want and I have what I want.

I'll yield to any questions.

MR. HENRY

You want a question, Mr. . . .
State your point.

MR. DUVAL

Mr. Chairman, I just want to understand the status of the convention. After a delegate proposal is defeated--and this is certainly no reflection on Mrs. Warren's amendment, but I want to understand how this whole convention is going to operate--does that mean that amendments which are not delegate proposals can be introduced ad infinitum, or what is our parliamentary status?

MR. HENRY

Well, what Mrs. Warren has done. . . the delegate proposal has never been defeated, it's never been voted on, Mr. Duval. There

MR. HENRY (cont'd)

have been two sets of amendments to amend this section of the proposal, both of which have been defeated. As I appreciate what Mrs. Warren is doing now, she's coming in with another amendment to this section.

MR. DUVAL

I see. So, we could just offer amendments to the delegate proposal. . .

MR. HENRY

Just like you all have always done during this convention, Mr. Duval.
Would you. . . you have a question, Judge Dennis?
The lady will yield.

MR. DENNIS

Mrs. Warren, you are, as I understand it, you're attempting to make sure that the juvenile and family courts somehow now are continued.

MRS. WARREN

Right. And to make you happy and all of the rest of you. You seem to be happy with what you've got. It seems to be good and working in your area. I'd like to see you keep it.

MR. DENNIS

Well, I. . . we share that concern on the Judiciary Committee. Did you know that Section 15 of the Judiciary Article that we passed says that "the district, parish, magistrate, city, family and juvenile courts existing at the time of the adoption of this constitution are retained"? Did you know that?

MRS. WARREN

I didn't keep up that much with it, Judge Dennis, but I tell you the truth, as I stand here and I heard one debate behind the other, and I decided once I wasn't going to get up because juveniles and their problems--just the very word "juvenile" says to me this: that this person is not mature. When it comes to crime or delinquency, it means that person needs some help and needs some specialized help. I didn't want any way that they would delete the juvenile courts from our constitution.

MR. HENRY

Any other questions?
Is there any further discussion?

MRS. WARREN

I ask for the favorable adoption.

MR. HENRY

Are you ready for the question?
You have a question, Mr. Shannon?

MR. SHANNON

No, a motion, Mr. Chairman.

MR. HENRY

What's your motion?

MR. SHANNON

I move the question on the entire subject matter.

MR. HENRY

We have this and one other amendment.
There are no speakers on the list.
Two other amendments? We have this one and two other amendments.
Is there objection to the previous question on. . .

MR. HENRY (Cont'd)

You want the floor, Judge?
We have one speaker on the list.
Do you insist on your motion, Mr. Shannon?
Therefore, when the machine is opened, as many of you as are
in favor of the previous question on the entire subject matter
will vote yes. Those who are opposed will vote no, and the
Clerk will open the machine.
Are you through voting?
The Clerk will close the machine.
5 years and 52 days, and the motion is defeated.
Judge Dennis, you are recognized.

MR. DENNIS

Mr. Chairman, I do hate to take the time, but I think. . . I
just want to make it clear that the Judiciary Committee feels,
and still does feel, that we have done everything Mrs. Warren
is seeking to do in Section 15 by saying that all of these courts
are retained.

MR. HENRY

Are you ready for the question?
You have a question, Mr. Jenkins?
Judge Dennis, would you yield to a question from Mr. Jenkins?
The gentleman yields.

MR. JENKINS

Judge Dennis, just for clarity purposes, thus we should not
agree to this because this is really different from what the
committee has approved inasmuch as this would continue the
jurisdiction in constitutional form, whereas the jurisdiction
is continued in statutory form under the judiciary proposal. Is
that correct?

MR. DENNIS

Yes, you are correct. I should have pointed that out, also.

MR. HENRY

Are you ready for the question? Are you ready for the question?
Is there anyone who wants to speak?
Then, without objection, the previous question is ordered.
You have the right to close, Mrs. Warren.

MRS. WARREN

Mr. Chairman and fellow delegates, Judge Dennis pointed out
exactly what I was thinking: that it wasn't in the constitution
and he didn't want it in here. Other. . . but, he wanted his
other courts in here. So, our juveniles are not important enough
to be in the constitution. So, this is why I came back with the
amendment. I wanted to convince myself and convince you that the
issue is not that we've got it, we want to keep it. I'm asking
you for a favorable vote on this amendment.

MR. HENRY

The lady has offered up amendments to which objection has
been urged.
Therefore, when the machine is opened, as many of you as are
in favor of the adoption of these amendments will vote yes. Those
who are opposed will vote no, and the Clerk will open the machine.
Are you through voting? Are you through voting?
The Clerk will close the machine.
24 years and 64 days, and the amendment is rejected.
Judge Dennis now moves to reconsider the vote by which the
amendment was rejected, and lay the motion on the table.
Without objection, so ordered.
You have further amendments, Mr. Clerk?

MR. POINTNER

Judge Dennis, you want to go with yours, or you just want to
. . .

MR. HENRY

Read them.

MR. POINTNER

We have an amendment to delete, Mr. Chairman. I don't have
the distribution copies.

MR. HENRY

Read it.

MR. POINTNER

Amendment No. 1. On page 1, delete lines 5 through 23, both
inclusive, in their entirety.

MR. HENRY

Explain it, Judge.

MR. DENNIS

Mr. Chairman and fellow delegates, I did not offer this amend-
ment to delete the delegate. . . the substance of the delegate
proposal earlier, because out of courtesy to Mr. Jackson, I wanted
him to have the opportunity to present his amendment and debate
it with it before you. But, I think if I'm right—I may be wrong—
but I think I sense that you agree with what we have in the
Judiciary Article already. So, I'd like to give you this opportunity
to terminate this debate and settle this issue so that we can move
on to something else. So, I ask you to adopt this amendment which
would delete the substance of the delegate proposal and will, in
effect, defeat it.

MR. HENRY

Mr. Johnny Jackson.

MR. J. JACKSON

Mr. Chairman and ladies and gentlemen, I rise in opposition
to the amendment to delete. Let me just say very seriously that
it's inconceivable to me, very seriously, sitting here as a
delegate, that in the expediency of time that we are willing to
risk the future of our generation. Let me also say that I
recognize the business of this convention is important. Lord
behold, let me be the one to stymie that progress. But, I
suggest that we're making a very serious mistake. I think it's
going to be very difficult—very difficult—behind some other
things that we have done to say to somebody, very serious, that
we are writing a constitution that is futuristic in nature, that's
rewriting a constitution that's supposed to provide for the
adequate judicial administration of our court. That somehow or
another, the question is posed to you, very seriously, "Well, how
can, with the increasing adult problem, you provide for constitu-
tional jurisdiction of district courts and not give some semblance
of constitutionality to juvenile courts?" You may try to technically
talk about my amendment; you may try to technically bring out
the defects in the Derbes amendment. But, see, there's one thing that
you won't be able to correct. You're not going to be able to
correct, very seriously in my estimation, the kind of long-range
adverse effect it's going to have not on the intentional offender,
but seriously, on youngsters who are victims or the prey of the
kind of society that we live in. If you say or tell me that there's
not going to be the opportunity where one youngster is going to
fall victim to what we've done in the judiciary, if you can assure
me of that, then I'll say we ought not continue to try to resolve
this problem.
I suggest to you that the amendment to delete is not an amend-

MR. J. JACKSON (Cont'd)

ment to give me full consideration on this issue. You know, that's just like me telling my neighbor, "You vote for it and I'll vote against it or I'll vote for it and you vote against it." Ladies and gentlemen, I think and I'd like to compliment all the delegates who have fearfully struggled on with this important question. I suggest to you very seriously that it's a question of the magnitude that even I don't understand the depths of. It was so important that even some of the authors of the legislation that was introduced took their name off because they began to see what were the possibilities. Just let some youngster get. . . Well, I don't want to keep giving you examples. But, I say to you that it's hard, it's very hard. I don't mind losing, but it's very hard and it's unconceivable in any stretch of the imagination when we can provide for constitutional protection for retirement systems and some of the things that we've done for special interest groups, that we can't even provide the semblance of it for half of the population that must live, in the future, under this constitution. I just can't. . . nobody can explain it to me. It's not that my mind is closed, but I just can't do it in comparison with some of the other vested interests that we've got embedded in this constitution, even to the extent that we've embedded it to allow a two-thirds vote of the legislature making it, as someone said, difficult to remove. I just can't understand it.

MR. HENRY

You've exceeded your time, sir.

MR. J. JACKSON

I ask you to reject this amendment and I'll return it to the calendar. If such time that this convention's got some laxity to talk about this issue again, I don't want to see it die of the kind of death the Judge is proposing by this amendment. I suggest that we defeat the amendment and then return it to the calendar.

MR. HENRY

You've exceeded your time, sir.

You want to. . . Do you want to yield to a question if we get one more minute?

All right. Proceed.

MR. LANDRUM

Mr. Jackson, don't you think that at this time that we should adjourn until tomorrow, and probably with better minds maybe we could work something out overnight to present to this body that would be acceptable to the delegates?

MR. J. JACKSON

Rev., I would say to all the delegates who are about that kind of business that I'll be willing to do that. But, you're going to hear the argument that that's just going to delay us, and I would hope that we could do it. I'm saying to you that I have sincerely, conscientiously, even to the point of reaching some delegates by the arm and saying, "What's the problem? Tell me." I just. . . I don't know. I think that it's so embedded at this point, that some folks have just got their mind that a reform is a reform is a reform. That what we're trying to do is not of importance to constitutionality and the constitution.

MR. HENRY

You have. . . the gentleman has exceeded his time.

Now, gentlemen. . .

The gentleman requests an additional one minute for questions. Is there objection?

MR. LANDRUM

No, Mr. Chairman.

MR. HENRY

Yes, sir.

MR. JACKSON

At this time, if I'm to make a suggestion to make that we adjourn until tomorrow morning at nine o'clock.

MR. HENRY

I recognized you for a question, Reverend Landrum. We've got too much work in this amendment to go adjourning this early in the afternoon, now.

Why do you rise, Mr. Jackson?

MR. PEAS

Move the previous question on the amendment.

MR. HENRY

The gentleman asks the previous question on the amendment.

I have no other speakers on the list.

Is there objection to the previous question?

Without objection, the previous question is ordered.

You have the right to close, Judge Dennis.

The gentleman passes.

The gentleman has offered an amendment to which objection has been urged.

Therefore, when the machine is opened, as many of you as are in favor of the adoption of the amendment will vote yes. Those who are opposed will vote no, and the Clerk. . .

Gentlemen. This is an amendment here, Mr. Jackson.

Are there any other amendments after this, Mr. Clerk?

MR. POYNTER

Well, there was one other. The gentleman doesn't want to go with it, though. There are no further amendments.

MR. HENRY

There are no further amendments.

Judge Tate, why do you rise, sir?

MR. TATE

Would someone state the amendment before us once before we vote?

MR. HENRY

Read the amendment, Mr. Clerk.

MR. POYNTER

It just. . . it deletes lines 5 through 23, Judge; deletes two.

MR. HENRY

It deletes the section, Judge Tate.

MR. TATE

So, if you are against the section you vote yes?

MR. HENRY

I never thought I'd have to explain that to a justice on the Supreme Court.

The gentleman has offered an amendment to which objection has been urged.

Therefore, when the machine is opened, as many of you as are in favor of the adoption of the amendment will vote yes. Those who are opposed will vote no, and the Clerk will open the machine.

Are you through voting? Are you through voting?

The Clerk will close the machine.

53 yeas and 39 nays, and the amendment is adopted.

MR. HENRY (Cont'd)
Mr. Dennis moves to reconsider the vote by which the amendment was adopted, and to lay the motion on the table.
Without objection, so ordered.
Do you want to withdraw it, Mr. Jackson?
The gentleman moves that the proposal be returned to the calendar subject to call.
Is there objection?
Without objection.
To which objection is urged.
Mr. Tobias, why do you rise, sir?

MR. TOBIAS
A point of order.

MR. HENRY
State your point.

MR. TOBIAS
There's nothing left of the proposal. It's deleted the enacting clause; it's deleted everything pending; there's no committee for it to go to. It has nothing.

MR. HENRY
Thank you, Mr. Tobias.
The gentleman has moved that the proposal be returned to the calendar subject to call, to which objection has been urged.
Therefore, when the machine is opened, as many of you as are in favor of returning the proposal to the calendar will vote yes. Those who are opposed will vote no, and the Clerk will open the machine.
Vote your machines, ladies and gentlemen.
Are you through voting?
The Clerk will close the machine.
46 years and 40 days, and the proposal is returned to the calendar subject to call.
Mr. Planchard now moves to call from the calendar Delegate Proposal No. 17.
Without objection, so ordered.

MR. FOYNTER
Delegate Proposal No. 17, introduced by Delegate Planchard: A proposal making provisions prohibiting lotteries.
"Section 14 of Article II. Neither the state nor any of its political subdivisions shall conduct a lottery."

MR. PLANCHARD
Mr. Chairman, if I may, I'd like to ask for a quorum vote.

MR. HENRY
The gentleman suggests the absence of a quorum.
The Clerk will open the machine for roll call.
Vote your machines, ladies and gentlemen, please.
The Clerk will close the machine.
Go ahead with the explanation of your proposal.
Gentlemen, please take your seats.

MR. PLANCHARD
Mr. Chairman, fellow delegates, I reluctantly bring up my proposal right now because it seems to be a dark Tuesday for delegate proposals. But, my proposal, if you've read it, is a very simple proposal, but one which I feel is very important to put into this constitution. It's a very few words, but this is the one area which I was approached about on many, many occasions. I must admit at the outset that where I first observed this was in the general provisions of the present constitution referring to gambling. There is a phrase in the present constitu-

* * * * *

MR. HENRY (cont'd)
Without objection, so ordered.
Why do you rise, Mr. Shannon?

MR. SHANNON
Mr. Chairman, I think we're all tired. So, I move that we return to other orders of business.

MR. HENRY
The gentleman has moved that we now revert to other orders. To which objection is urged.
Therefore, when the machine is opened, as many of you as are in favor of reverting to other orders will vote yes. Those opposed will vote no, and the Clerk will open the machine.
Vote your machines, ladies and gentlemen.
Are you through voting?
The Clerk will close the machine.
48 years and 46 days and the motion is adopted.
Morning Hour No. 11. Reports of Committees.
Morning Hour No. 7. Reports of Committees.

MR. FOYNTER
Judge Tate, on behalf of the Committee on Style and Drafting, sends up the report that:
Committee Proposal No. 21, by Delegate Dennis has been reported with amendments, and all of those amendments are set out in detail and will be printed in the Journal.
Respectfully submitted by Justice Tate, Chairman of the committee.
The above proposal containing this report lies over under the rules, under regular order...proposals on the calendar for approval of final styling.
Regular Order No. 5.
Mr. Denney sends up the following report that the following proposals have been properly enrolled, being Delegate Proposal No. 22, Delegate Proposal No. 18, Delegate Proposal No. 28, Committee Proposal No. 36.
Respectfully submitted by Moise Denney, Secretary of the Convention.
The four proposals contained in the above reports referred to the Committee on Style and Drafting under the rules of the convention.

MR. HENRY
Are there announcements?

MR. FOYNTER
Justice Tate who had to leave for the Supreme Court meeting, at any rate, had sent up notice that Style and Drafting will meet tomorrow, Jan. 9, noon recess in the Treaty Room.

MR. HENRY
The gentleman moves for a suspension of the rules for the purpose of calling that meeting tomorrow at noon.
Without objection, so ordered.

MR. FOYNTER
That's noon in the Treaty Room for Style and Drafting.

MR. HENRY
Mr. Perez, for an announcement.

MR. PEREZ
Point of information, Mr. Chairman. Do we have any better feel at this stage of the game as to when we will have the opportunity for the substantive committees to meet? We have talked about the possibility of Thursday morning.

MR. TATE (cont'd)
one because we did just pass out a hundred and thirty before, and we lost some. If there's any shortages, pages, there's a few more over behind that counter not collected.

To refresh your memory, what we are doing, something ago, I passed the floor—was the first enrollment of the Judiciary Article, a white piece of paper, which I suggest to you you need not look at unless you are going to meticulously check the lines and page because on the green collection of papers on the left hand side is the same text that passed the floor. On the right hand side is the stylized version which puts into consistent language the same language, the same concepts, that were on the left hand side. To refresh your memory as to the procedure, this passed through a staff draft of our senior staff, then through the Style and Drafting Committee, then to the substantive committee headed by Judge Dennis, and then back to reconcile any views that might have changed the sense or the substance, and then it is now to you. Now, these amendments will be called up section by section. They're on the third white sheet collection that says Amendment 1, Amendment 2. But, most of you probably will be like me who won't follow it. Someone who's got more sense than me is following this thing by line and page. Senator De Bileux will follow it, I know, and I'm glad he will. Mr. Denney will, to keep us honest, and Mr. Perez has already double-checked it. Now, the speaker will call the amendments slowly, section by section. We'll just mention briefly—you'll see on the right hand side where changes are made in the linked in numbers. You will be able to see what they are. Before I report on these amendments, I would like Judge Dennis, the Chairman of the Judiciary Committee, to ask him if he would like to say a word.

MR. DENNIS

Mr. Chairman, fellow delegates, the Judiciary Committee has reviewed all of the changes recommended by the Style and Drafting Committee and has approved of them. So, we join with the Style and Drafting Committee and ask that you adopt the changes in style and drafting recommended.

MR. HENRY

Roll them.

MR. TATE

Thank you, Judge Dennis.

On Article V, Section 1, as you see in the right hand side, there were two changes made. They changed the word "shall be" to "is", and they changed the word "constitution" to "article" because nowhere else in the constitution are courts authorized to be created except by this article.

MR. HENRY

Do you move the adoption of the amendments?

MR. TATE

Amendment No. 1, yes, sir.

MR. HENRY

Sir?

MR. TATE

Yes, sir. I move the adoption of Amendment...

MR. HENRY

The gentleman now moves the adoption of the amendments to Section 1.

Are you ready for the question?

Without objection, the previous question is ordered.

MR. HENRY (cont'd)

Therefore, when the Roll call is opened, as many of you as are in favor of the adoption of these...

There's no opposition.

Then, without objection, the amendments stand adopted.

Proceed.

MR. TATE

In Amendment 2, with regard to Section 2, you will see we added a comma to be consistent, and we added an "a" in front of court of appeal to be consistent with the styling.

MR. HENRY

Gentleman moves the adoption of the amendments to Section 2.

MR. HARDIN

It's Amendment No. 2.

MR. HENRY

Is there any objection?

Without objection, the amendments stand adopted.

MR. TATE

In Section 3, a slight error was made when the floor said it was four ten-year terms instead of fourteen years, and...no, that's a joke, and the last time I made a joke up here I learned about that.

MR. HENRY

Let's keep bringing on the bacon, Judge.

MR. TATE

That's a terrible meat, sir. You'll see we changed a phrase to make it in line with the general consistency to say that "the term of a Supreme Court judge shall be ten years," instead of the term "the judge of the Supreme Court." Saves a couple of words.

MR. HENRY

The Judge moves the adoption of the amendment.

Is there objection?

Without objection, so ordered.

Proceed.

MR. TATE

All right. In Amendment No. 4 we made just stylistic changes of sense, and in line with the consistent philosophy throughout the constitutional provisions, when we spoke about the legislature, the general intent of the membership in every instance we could determine except once or twice was they meant "by law." They may pass a law, and when we say by two-thirds of the elected members, it was by law enacted by two-thirds of the members. So, in order to carry out that consistent intent throughout the constitution, we so recommended these changes.

MR. HENRY

The gentleman moves the adoption of the amendments to Section 4.

Is there any objection?

Without objection, the amendments stand adopted.

Section 5.

MR. TATE

On Amendment 5, the changes were strictly to singularize where we used plurals, to make sentence structure without changing the sense, to do away with the possessive, and in general, all through this, unless you have any questions, they're just strictly stylistic changes in the interest of consistency.

MR. HENRY
Will you yield to a question from Mr. Jenkins?

MR. TATE
Yes, sir.

MR. HENRY
The gentleman yields.

MR. JENKINS
Sir, I have a question on lines 32 and 33. The original language said that the following cases shall be appealable: "a case in which a law or ordinance has been declared unconstitutional." Then the style and drafting changes say "a case shall be appealable to the Supreme Court if a law or ordinance has been declared unconstitutional." I'm wondering if your change, perhaps, ambiguous in that it might be argued that a case which comes about under a law which has previously been declared unconstitutional might be considered appealable under your style and drafting changes, whereas it clearly would not be under the original language?

MR. TATE
We thought, Mr. Jenkins--perhaps missed the full force of your question--we thought the appeals had to be always some cases because the appeals come from cases. We did not think it made any difference. Would you explain again, sir? I'm sorry if I...

MR. JENKINS
Well, under the original proposal, it was clear that a case is appealable if, in that case, the law or ordinance in question in the case was declared unconstitutional; whereas it appears in the style and drafting changes that the interpretation might be that a case is appealable if it involves a law which has been declared unconstitutional.

MR. TATE
No, sir. No, Mr. Jenkins, because it says "a case shall be appealable if a law or ordinance has been declared unconstitutional." I think within its context it means within that case, sir. I see what you mean, but I see no problem with this, if I may. But, I see your question, sir.

MR. HENRY
Any other questions on Section 5?
Is there any objection to the adoption of the amendments on Section 5?
Then, without objection, the amendments stand adopted.
Section 6.
Mr. Tapper.

MR. TAPPER
Point of information, Mr. Chairman. We're adopting amendments to these sections, and my question is: can we adopt these amendments to the section without a record vote and without having sixty-seven votes? I'd like to have a ruling on that because...

MR. HENRY
Under the rules, yes, sir, we can.

MR. TAPPER
But don't we readopt the section after...

* * *

Page 70

MR. HENRY
Any questions on Section 9?

MR. TATE
It's on the yellow. Later we'll get to it. It's at the end. Yes.

MR. HENRY
Questions on Section 9?
Any objection to the adoption of those amendments?
Then without objection, the amendments stand adopted.
Section 10.

MR. TATE
Section 10 again has to do with standardization of language omitting needless words, making a consistent sort of parallelism, and adding numbers for the sake of clarity.
If there are any questions, Mr. Chairman? Otherwise, I would move its adoption, sir.

MR. HENRY
Section 10. Any questions?
Any objections to the adoption of the amendment?
Then without objection, the amendment stands adopted.

MR. TATE
Section 11 again, in Amendment 11, Mr. Chairman, involves just using shorter words, and we think, little clearer language, omitting some words that seem to have no function.
If there are no questions....

MR. HENRY
Eleven.
Any objection to the adoption of the amendments on Section 11?
Without objection, the amendments stand adopted.
Section 12.

MR. TATE
Section 12 was, in effect, a simple incorporation language leaving out "there is" in line with the Style and Drafting Manual that we... usually, when you say "there is" you don't need it. You can just say whatever follows is.

MR. HENRY
Any questions on Section 12?
Any objection to the adoption of the amendments?
Without objection, the amendments stand adopted.

MR. TATE
Likewise in Section 13, we changed "has authority" to "may" in line with the general Style and Drafting Manual on that issue. Amendment 13, Mr. Chairman, if there are no objections....

MR. HENRY
Any questions on 13?
Any objection to the adoption of those amendments on 13?
Without objection, stand adopted.
Fourteen.

MR. TATE
Amendment 14.... Section 14 we simply singularized the parlance in the district judge in line with the consistent usage throughout the Style and Drafting.
If there are no questions, Mr. Chairman....

MR. HENRY
Any questions on 14?
Any objection to the adoption of the amendment on 14?
Without objection, the amendment stands adopted.
Proceed.

Page 72

MR. TATE

On Section 15, which is Amendment 15, we rearranged the courts in the proper hierarchy. We standardized the language. We rearranged the section number. Most of our other exceptions... stylistic changes, were simply to make standard language... use standard language, and to keep related words together, and substitute words for phrases. The one thing that we did do here is that Section 15.1, the Jack Avant-Blaik Daniel amendment, was added. It said, "a judge of a city court shall be elected to the same term as a district judge." Rather than having a separate Section 15.1...we just added "city judge" here when it says the term...formerly says "the term of a district or parish judge." It says, "the term of a district, parish, or city court judge shall be six years. Mr. Singletary...Mr. Chairman, are there any questions?

MR. HENRY

Mr. Singletary, you have a question?

MR. SINGLETARY

Judge Tate, what are the little brief, descriptive words following the section? Are they supposed to reflect the little title at the beginning after each number?

MR. TATE

Yes, sir....

MR. SINGLETARY

I see (D) says "number of judges," and it's not reflected up there in the descriptive....should that be up there?

MR. TATE

Oh, No, sir. I'm sorry. The....we took a judgment that the section title should not necessarily be a complete index to what everything in it....but this would be generally descriptive of what is concerned, because in some of the longer, later articles, it would have been an awfully long title. So, we thought that simply that if you generally suggested what was in the amendment....in the article, and then, I understand, the indexing will pick up the subtitles for easy reference.

MR. HENRY

Any other questions?

Any objection to the adoption of the amendments on 15?
Without objection, the amendments stand adopted.
Proceed, Judge.

MR. TATE

On Section 16 which was repeating most of the language from the prior constitution on the exclusive jurisdiction of the district courts, we tried to break down that sentence with.... let's see. We tried to break down that first sentence into two sentences. Let's see. We tried to clarify the language in lines 10 and 11 of the old section to say the same thing more clearly in 9, 10, and 11, of what the jurisdiction is. There will be a caveat on this, will there not? Later on, we will bring to your attention a slight change that we were unwilling to make ourselves, although we figured that it was your intent, which is the traditional language as used here that the district court has exclusive jurisdiction when the state, or a political corporation, or a succession as a defendant. Political corporation has been in the constitution a long time. It was defined at one time in the project, "A Prolet attempted to define it.

In the present constitution, we use "political subdivision" to refer to local entities, but that doesn't quite include these political corporations....the....perhaps it might include the domed stadium, but things like the R.F.C. and so, we will later in a....ask you to consider adding to that not only political

MR. TATE (Cont'd)

corporation, but political subdivision to carry out your full intent. But, that's a later amendment. That is, otherwise.... the changes submitted are to omit needless words, take out a useless colon, etc.

Mr. Chairman, if there any....I yield to any questions.

MR. HENRY

Are there any questions?

Any objection to the adoption of the amendments?
Without objection, the amendments stand adopted.
Proceed.

MR. TATE

Section 17....we....simply stylistic changes of changing a.... using an indefinite article in the context and omitting needless words.
I'll yield to any questions, Mr. Chairman.

MR. HENRY

Are there any questions?

Any objections to the adoption of the amendments?
Without objection, the amendments stand adopted.

MR. TATE

All right. Section 18, one of the amendments requires a little explanation, but not much, I hope. The others, except for the addition of Section 16, there are stylistic changes only about voiding a needless word, etc. We....as it passed the floor, it said, "Notwithstanding any provision of this article to the contrary." In context, this was a Tate-Tobias amendment. We went out and got the floor debate, the transcript. Senator De Blieux said, "Well, what do you mean?" The debate plainly indicates that it was in deference to Mr. Jackson's worry that the definition of the district court's jurisdiction of felonies, of conduct and duty constituting felonies, would possibly take away from the juvenile courts their jurisdiction.

In order to avoid any possibility, we added "notwithstanding any provisions of this article," meaning only Section 16. The floor debate clearly illustrates that....all that was involved....in order to clarify the intent, we recommended the stylistic change to add Section 16.

MR. HENRY

Any other....you have a question, Mr. Singletary?

MR. SINGLETARY

Judge Tate, you said that the indexing is going to be according to the titles....it's going to pick up the titles?

MR. TATE

The subtitles, yes, sir.

MR. SINGLETARY

The subtitles. Well, since this paragraph deals with both juvenile and family courts, shouldn't the description say juvenile and family courts?

MR. TATE

We....goofed, Mr. Singletary. We should have. It was a floor amendment. We didn't pass it in the title.

MR. SINGLETARY

I recommend that change.

MR. TATE

Well, the trouble....our trouble is at this point, we either can only take the Style and Drafting amendment, or take the floor amendment. So, I'm sorry. We tried to get a one hundred percent

MR. TATE (Cont'd)

perfect job, but even a fellow who likes bacon makes mistakes from time to time.

MR. HENRY

You move the adoption of the amendment?

Judge.

Mr. Jenkins.

MR. JENKINS

Why can't we just move for a suspension of the rules to allow him to make that slight change? I so move, if I may.

MR. HENRY

Well, no, now, we can either do that, but this is going to be resubmitted to Style and Drafting, I believe, Mr. Jenkins, where that could be taken care of. You can do what you want to on the thing. But, it's going back to Style and Drafting. So, it...when you suspend the rules, you know, you are going to open up that section again. So...

MR. TATE

Mr. Chairman, can I suggest this, maybe. If we will note this. It comes back to us for rearrangement. We will, at a certain point, there are maybe one or two other places, no more than I...I don't think we have any more in this section. But, last time when we opened it up, we inadvertently left out commas in that floor amendment...Mr. Chairman, I suggest, maybe, if we will note that this change will, at one time, when we get the final enrolled copy, we'll come and try to rearrange it as to permit....

MR. HENRY

You move the adoption of the amendment?

MR. TATE

Yes, sir.

MR. HENRY

Is there any question?

Any objection?

To which objection is urged.

Therefore, when the machine is opened, as many of you as are in favor of adopting the Style and Drafting Amendments to Section 18 will vote yes. Those opposed will vote no, and the Clerk will open the machine.

Vote your machines, ladies and gentlemen.

Are you through voting?

The Clerk will close the machine.

22 years, 6 days, and the amendments stand adopted.

Section 19.

MR. TATE

Section 19. The language was standardized. We standardized the language...oh! it's very good. This is the first time that it's come up in this article. It has come up in others. It says, "mayors' courts and justice of the peace courts existing at the time of the adoption of this constitution." The question then came whether they meant on the day the people voted on it, or the day it came into effect. Since in this instance it would take a constitutional amendment to, as far as the justice of the peace courts are concerned, we thought we would carry out the intent which was to continue the...those existing on the effective date of the constitution. We thought it made little difference, but it had to be clarified whether it was the day of the election, or the effective date. Generally speaking through the constitution, we have been using on the effective date, although we're trying in

MR. TATE (Cont'd)

a given instance, when it doesn't mean on the effective date, but something else, to specify that date.

MR. HENRY

Any questions?

Mr. Perez.

MR. PEREZ

May I have the floor? I'd prefer to have the floor, if possible, after the Judge is finished?

MR. HENRY

All right, Judge. Are you finished?

Mr. Perez.

MR. PEREZ

Mr. Chairman and ladies and gentlemen of the convention, I do not rise at this time in opposition to the particular proposed amendment by Style and Drafting. But, I did want to very clearly set forth before the convention that we do have a problem as far as this convention is concerned as to the proper use of the words when we come around to the effective date of certain provisions because there are....we have in a number of different places used different terminology. In one case, we may have meant upon the effective date of the constitution. In other cases, we say "as now exist." I'm satisfied that the great majority of the delegates were thinking in terms of what they know exists today, not when it may exist upon the effective date of the constitution. I only wanted to make these brief remarks at this time so that the adoption of this particular amendment would not be construed as standardization of language to be used throughout, whenever we talk about when something becomes effective.

MR. HENRY

Judge Tate.

Any other comments?

Any objection to the adoption of this amendment?

Without objection, the amendment stands adopted.

Proceed, Mr. Clerk...Mr. Judge.

MR. TATE

Section 20, Amendment 20, is....oh! In amendment 20, we.... in Section 34 as it passed the floor, it said, "No attorney general, judge, so and so...shall have a salary or retirement benefits diminished during his term of office." This Section 21 referred only to judges and said, "No term of office or compensation." Because the two sections didn't include totally similar things, we took the Judge's reference out of the former Section 34, which is on page 45, and put it here as to retirement benefits. We left the.... what was included, as with regard to the attorney general, district attorney, and so on, in former Section 34, now Section 32 on page 45.

MR. HENRY

Any other questions?

Any objection to the adoption of the amendment?

Then, without objection, the amendment stands adopted.

MR. TATE

Now, we go to Amendment 21, Section 21, which, on your green page is 27, and, I believe, 28.

The changes involved here were again strictly stylistic, using standard language, adding commas, putting phrases in a better place, using shorter words where meaning the same thing, trying to put in the same sentence the related ideas.

MR. HENRY

Any questions?
That complete your comments, Judge?

MR. TATE

Yes, sir.

MR. HENRY

Any questions?
Any objection to the adoption of the amendment?
Then, without objection, the amendments stand adopted.
Proceed.

MR. TATE

All right.
Amendment 22, which is to Section 22, which is on page 29 of your green copies, again involves using standard language and consistent form with regard to where we place exceptions, the...excuse me...omission of needless words, and doing our best to use shorter...short sentences when a long sentence could be broken into two.

MR. CASEY (in Chair)

Are there any questions of Judge Tate?
Is there any discussion?
Any objection to the adoption of the amendment?
Without objection, the amendment stands adopted.
Next section.

MR. TATE

Section 23, which is Amendment 23, that's on page 31; we later will have a caveat. I'll tell you about it at the time, which it strictly has to do with the standard time when you have the qualifications, either at election or time of qualification. As it passed the floor, it said, "Shall have practiced law in this state for at least five years prior to his election." This green...copy, we are just stylizing the language by omitting a needless word or two, and putting a separate thought in a separate sentence. But, we will come back with the second yellow amendment to use a standardized time of eligibility for office.

MR. CASEY

Any questions?
Any discussion?
Any objection to the adoption of the amendment?
Without objection, then, the amendment stands adopted.
Next section, Judge.

MR. TATE

Now, Section 24....Section 24 which is page 32 of the green copies, was a long section that was restyled. It looks longer, but it's because the margins are different, to use consistent language throughout, parallel uses, lower case titles, and enumeration in order....not to have one big long sentence about because, for instance.

MR. CASEY

Any questions of Judge Tate?
Any discussion?
Without objection, then, the amendment stands adopted.
Next section, Judge.

MR. TATE

Section 25 deals with the attorney general, and is....

MR. CASEY

Why do you rise, Mr. Stagg?

* * *

MR. CASEY (Cont'd)

Any objection to the adoption of the amendment?
Without objection, then, the amendment stands adopted.

MR. TATE

All right. Section 26 which is on page 36 of your green copies, again involves the use of standard punctuation, singularizing plurals, omitting needless words, and correcting...giving a preferred spelling of "superade."

MR. CASEY

Any questions of Judge Tate?
Mr. Denberry.

MR. DENBERRY

Just for the record, the name caveat that Mr. Stagg applied to Section 25 applies to 26?

MR. TATE

Yes. It's my clear understanding that, at this point, we are not making a final judgment where it should be placed, but simply approving the styling of the language.

MR. CASEY

Any further questions of Judge Tate?
Any discussion?
Any objection to the adoption of the amendment?
Without objection, then, the amendment stands adopted.
Next section.

MR. TATE

All right. Section 27 deals with district attorneys. You will...we will have a yellow amendment, again with regard to the time of qualification. It says "shall have resided in the district for the two years preceding election."

Don't worry about that. I'll come back with it in a minute. What we did in general, aside from standardizing the language, we took from Section 3) (b) the Perez amendment which was adopted when they were talking about grand juries, and talked about the duties of the district attorney. We took from a separate Section 29, the prohibition against district attorneys defending in criminal prosecutions and consolidated them into one....into one section. There was no change of substance.

MR. CASEY

Is there any question of Judge Tate?
Any discussion?
Any objection to the adoption of the amendment?
Without objection, then, the amendment stands adopted.
Next section.

MR. TATE

All right. Section 28, on page 41 of your green copies, Amendment 28, we simply, we standardized the little language at the bottom; we took out a comma; we clarified something; and when it said "and shall be a collector of state and such other taxes and licenses as provided by law." Technically, sheriffs, my good sheriff friends, the sheriff doesn't collect licenses. He collects license fees in order to be grammatically accurate; we said "shall collect license fees" in this case.

MR. CASEY

Any questions of Judge Tate?
Any discussion?
Any objection to the adoption of the amendment?
Mr. Deahotels, you have a question?
Without objection, then, the amendment stands adopted.
Next section.

MR. TATE

All right. Section 29, Amendment 29, which is page 42 of your green copies, again involves strictly the use of consistent punctuation and consistent language, consistent parallel use of parallelism in the grammatical form. There is no change of substance.

MR. CASEY

Any questions?
Mr. Denberry.

MR. DENBERRY

Judge, isn't this another section in which the parish of Orleans should be excepted about recorder of conveyances and mortgages?

MR. TATE

I think that you are going to find that when we get to your section, they say "notwithstanding"....

MR. DENBERRY

O.K. All right.

MR. CASEY

O.K. Any questions?
Any discussion?
Judge Tate, have you completed your comments?

MR. TATE

The caveat to make this fellow appointed---it didn't quite pass, because we were all afraid Ambrose would unappoint us.

MR. CASEY

O.K. Any further discussion?
Any objection to the adoption of the amendment?
Without objection, then, the amendment stands adopted.
Next section.

MR. TATE

All right. Section 30 dealing with coroners, on page 43, in Amendment 30, again it was using the consistent forms of grammatical tense, using shorter sentences, using the positive for statements instead of the negative, and omitting needless words, and using consistent punctuation.

MR. CASEY

Any questions of Judge Tate?
Any discussion?
Any objection to the adoption of the amendment?
Without objection, then, the amendment stands adopted.
Next section.

MR. TATE

All right. Amendment 31 which is to Section 31, on page 44. We enumerated the offices involved for readability and otherwise used consistent....followed consistent usage in omitting surplus words that don't add to the meaning, and that's it.
Any questions?

MR. CASEY

Any....you've completed your remarks, Judge Tate?

MR. TATE

Yes, sir. I'm sorry.

MR. CASEY

O.K. Any questions of Judge Tate?

MR. CASEY (Cont'd)

Is there any discussion?
Any objection to the adoption of the amendment?
Without objection, then, the amendment stands adopted.
Next section.

MR. TATE

All right. Amendment 32 to Section 32, on page 45, we stated in the positive....we rearranged....rearranged the structure to conform with Section 21 which talked about judges. We arranged the officers in the order in which the constitutional provision speaks of them, and....removed judges from this article as earlier you may have noted when we put them in 21.

MR. CASEY

Mr. Stagg, why do you rise, sir?

MR. TATE

All right. We might note....

MR. CASEY

Why don't you thank him for the record, Mr. Stagg, if you'd like to?

MR. TATE

We might note that Section 32, the fact that we refer to the attorney general in this article....

MR. STAGG

Mr. Chairman....I would like for the record to make the same reservation with respect to Section 32 as it refers to the attorney general.

MR. CASEY

Judge, have you completed your remarks?

MR. TATE

Yes, sir.

MR. CASEY

O.K. Any further questions?
Any discussion?
Any objection....Mr. Denberry.

MR. DENBERRY

Judge, this doesn't....it's not going to worry the constitution. But, aren't all the things you were just talking about in Section 20, and not in Section 21? I notice in Section 20 you say "removed from Section 34 to Section 21." But, I don't know why.

MR. TATE

You're right, when we renumbered it, we forgot....it's Section 20. It's the original 21. See, it's the original 21. That's why it says 21. But, it's a new 20. The note was originally prepared for Style and Drafting referring to the original 21.

MR. DENBERRY

O.K.

MR. CASEY

Any further questions?
Any discussion?
Any objection to the adoption of the amendment?
Without objection, then, the amendment stands adopted.
Next section.

MR. TATE

Amendment 32...33, referring to Section 33 on page 46, has to do with Orleans Parish which says "notwithstanding any other contrary provision, etc.,". It real...it continues the parochial offices of Orleans Parish which are found nowhere in our statutes except in the constitution. It is my understanding, and the Judiciary recommended, that those provisions will be carried on in the Schedule of Statutes. The changes made were simply ordinary grammatical changes, adding a comma, using a semicolon instead of a comma in a certain place to break up a series that should be broken up, and adding commas in series, etc.

MR. CASEY

Any questions of Judge Tate?

MR. CASEY (cont'd)

Any objection to the adoption of the amendment?
Without objection, then, the amendment stands adopted.
Next section.

MR. TATE

All right, Amendment 34 has to do with jurors. Very slight changes were made like omitting needless words and keeping related words together.

MR. CASEY

Any questions of Judge Tate?
Any discussion?
Any objection to the adoption of the amendment?
Without objection, then, the amendment stands adopted.

MR. TATE

Section 35 dealing with the grand jury also had the amendment that added the duties of the district attorney. As previously noted, we had moved the district attorney...the district attorney's duties from Section 37, here, to Section 27 (B) as enrolled. For purposes of more logical organization, because the district attorney's duties should not be in a section about the grand jury.

MR. CASEY

You have completed your remarks, Judge?

MR. TATE

Yes, sir.

MR. CASEY

Any questions of Judge Tate?
Mr. Burson.

MR. TATE

I still have some amendments....

MR. BURSON

Mr. Chairman, this is really a question for the chair, and for purposes of amplification. I'm sure everyone in here knows by now that I intend to try to change a portion of this section. However, as I understand it, no section, or no proposal is finalized, even though Style and Drafting has been approved, because we still have Section (I), or final enrollment to come. Not wishing to interrupt the Style and Drafting procedure which seems to be going well, I would simply like to make it clear at this time that I have not abandoned that attempt, but will simply make it at a later time.

MR. CASEY

You are reserving all rights; is that correct, Mr. Burson?

MR. BURSON

That's correct. I would assume that I am correct. That nothing is being laid on the table at this time.

MR. CASEY

That's correct. These are strictly stylistic corrections and amendments.
Any further questions of Judge Tate?
Mr. Denberry.

MR. DENBERRY

Mr. Chairman, could I have a thirty second interlude with the Judge?

MR. DE BIEUX (Cont'd)

other business. If you take up and continue all other business until you have finished that—unless by that vote of two-thirds, you decide to take it up before the end of the business that you are sitting for.

MR. CASEY

Well, that certainly was in the prerogative of the convention, Senator De Bieux.

Have you gentlemen completed your interlude?

MR. TATE

Mr. Denney is not satisfied, but he's a fine gentleman, and he says he withdraws his question.

It was on an earlier section which we passed over which says "the Supreme Court may do something, or something else." He wanted to be assured that it had to do something. I...after some discussion we thought that....

MR. CASEY

Mr. Denney seemed satisfied with that interlude, Judge Tate?

MR. TATE

I don't know. He's....a nice man.

MR. CASEY

O.K. Any further questions of Judge Tate?
Any....

MR. TATE

All right. Now, Mr. Chairman, if we could pass on to Amendment 36 which is your first yellow amendment.

MR. CASEY

Judge, is it not true that I think we have to adopt Section 35 first?

They are to thirty-five?

O.K. Is there any further discussion on Section 35?

Any objection to the adoption of the amendments on Section 35?

Then, without objection, the amendments stand adopted.

Next order of business, Judge.

MR. TATE

All right. Now, with regard to the same Committee Proposal No. 21, you have these yellow amendments. The first amendment is to Section 9 which is on page 11 of your materials. You may remember, during the floor debate, the Miller amendment was adopted providing that after January 1, 1975, no judge shall be elected at large from within the circuit.

The Drew delegate proposal went to the floor and deleted that particular provision in a rearrangement of Section 9. Mrs. Miller withdrew her objection to the language. It passed the floor here, I think, 98 to 3, and we are calling to your attention the later....language on the right hand side of the Delegate Proposal No. 32, and recommending that you adopt it in substitution for the Section 9 stylized version.
I yield to questions, Mr. Chairman.

MR. CASEY

All right. Just a minute, Judge.
Why do you rise, Mrs. Miller?

MRS. MILLER

Judge...excuse me....Judge Tate, since they seem to go back and play some tapes on these, I would like for it to be remembered that Mrs. Miller withdrew her objection on the sincere, bottom of the heart, deep-hearted promise of Representative Drew that this matter would be taken up in the Judiciary Committee of the legislature and something be done about it. I want to make sure that gets on the tape again.

MR. CASEY

Judge Tate, did you want to say something?

MR. TATE

Mr. Chairman, if I might say, we will try....use some discrimination. If it's out of context, we will report it to the convention as an alternative, as we did here. We did not think we were doing anything, because the whole direction of the debate was exactly whether this should replace the former one. As I understand it, you had no objection to it upon Representative Drew's assurance that the future legislative attention would be given to your problem. But, we will not blindly say the later one, necessarily. We are calling it to your attention. We thought our remark was not a value judgment here in view of the debate. I'm sorry if I gave the impression that we were automatically going to say that the latest was always out of context. We just feel it our duty to call it to the attention of everybody that there is an inconsistency.

MR. CASEY

O.K. Judge....

MR. TATE

Amendment...I move the adoption of Amendment 36.

MR. CASEY

O.K. Is there any further questions on the adoption of Amendment 36?

Any discussion?

Any objection to the adoption of the amendment?

Without objection, then, the amendment stands adopted.

Next amendment.

The Clerk will read the amendment, Judge.

MR. HARDIN

The instructions on the amendment as you have it are incorrectly drawn. The instructions should read,

"On page 5, line 17, in Committee Amendment No. 16 proposed by the Committee on Style and Drafting and adopted by the convention on January 9, 1974, on line 10 of the text of the amendment, after the word and punctuation "corporation," and before the word "or" insert the words "or political subdivisions,"

MR. CASEY

Judge Tate, you'll explain the amendment.

MR. HARDIN

Political subdivision....

MR. TATE

Comma.

The amendment, as I previously explained, we had said that the ancient language was that when a political corporation is a party to the defendant, the district court has exclusive jurisdiction. This is a term that's not used in the present constitution except here and one or two other places. We thought of replacing it, but it is a little broader than political subdivision. But, the clear intent is to include political subdivisions as they are defined in this constitution so that our suggestion to you was that you add "or political subdivision" to the enumeration of those cases when their party is a defendant, of which the district court has exclusive jurisdiction.

MR. CASEY

Any questions of Judge Tate?

Mr. Denney.

MR. DENNERY
Now, how come you didn't put numbers in this one?

MR. TATE
Well, the only change made in this one was...

MR. DENNERY
No, no. I mean in the....you say "in all cases"....you have to read it about three times to see....to make it make sense is what I mean, unless you put numbers in between those semicolons. I was just curious as to why the committee did not do that?

MR. TATE
All right. We played with numbers. But, here's your problem. There's not a complete parallelism. You see....you put a one in front of felony cases, and put a two in front of what? So, you'd have to put a two in front of 2 cases involving (A) title of....(B) the right to office. We played with it, but it actually didn't, because of the structure, and we played with the structure, we ended up thinking it would be better to keep the present language because, after all, it's fairly traditional in the second part of it.

MR. DENNERY
In other words, "of cases" is what's carried through here, rather than cases involving....is what is carried through. Is that correct?

MR. TATE
Right.
Yes, sir. We would have had to put "of cases....", see, you couldn't say "cases of felonies" because it might have changed the meaning a little bit, so we would have to put cases....felony cases....

MR. DENNERY
No, I was talking about after your felony.

MR. TATE
...down below that we would have had to put cases in front of every numeral to make it....in cases involving in front....it's a....we gave serious consideration, Mr. Dennery, but it was a tricky question.

MR. CASEY
Any further questions of Judge Tate?
Any discussion on the amendment?
Is there any objection to the adoption of the amendment?
Then, without objection, the amendment stands adopted.
Next amendment.

MR. TATE
Amendment 38, which is going to be to Section 23 as you adopted it, on page 31, and it's going to be....if the Clerk reads it. But it's in the....it's going to say "must have practiced law in the state for at least five years prior to his election, and for at least two years preceding his election."
Now, in the legislative article, you adopted the consistent approach of prior....you have to have the requisite qualifications prior to the time of qualification. In an effort to be consistent throughout, in some of the other articles they say preceding his qualification and preceding his election. To be consistent with that, we thought since it had passed the floor once in the legislative article about preceding, you have to have the requisite time span preceding his qualification for office, or the requisite eligibility characteristics preceding his qualification for office. In order to be consistent with that

MR. HENRY (cont'd)
Mr. Perez.

MR. PEREZ
Since it is a quarter to five, or five minutes to five, and wrestling day, I'd suggest that we possibly should adjourn. I don't want to do that unless the Chair wants to, but I don't think we're going to resolve this now.

MR. HENRY
Well, could we just vote on this motion one way or the other first, then, I think you're in order there. But, since we've got the motion up can we just dispose of it so we won't leave it hanging.
Judge Tate has moved for the suspension of the rules for the purpose of calling from the table the motion to reconsider the vote by which Section 23 was adopted for the limited purpose of considering this amendment.
To which objection has been urged.
Therefore, when the machine is opened, as many of you as are in favor of the suspension of the rules will vote yes. Those who are opposed to the suspension of the rules will vote no, and the Clerk will open the machine.
Are you through voting?
Clerk will close the machine.
53 yeas, 33 nays the delegates have refused to suspend the rules.
Judge Tate.

MR. TATE
Mr. Chairman, I then move to withdraw that amendment and there's only one more amendment on Proposal. . .

MR. HENRY
We don't have an amendment there.

MR. TATE
What? With the amendment pending. . . Oh, then I then move to withdraw the final amendment on that. . . which is. . .

MR. POINTNER
Final amendment No. 39, relative to Section 27, is that right? District Attorneys, is that the one. . .

MR. TATE
District Attorneys, is that the final amendment? I think there's one more.

MR. POINTNER
No, sir.

MR. TATE
Well, that's the final amendment. Then, Mr. Chairman, that completes our work on Style and Drafting with regard to the Judicial Branch Article.

MR. HENRY
Gentlemen moves to withdraw amendments Nos. 38 and 39. Is there objection?
Without objection, so ordered.
Now, in the morning we will begin -- we're going to have to meet in the morning, Mr. Perez-- we'll try to work out something for you late tomorrow afternoon.
Mr. Perez.

MR. PEREZ
Point of information. I had understood possibly the governor was going to address us tomorrow morning at ten o'clock.

MR. HENRY
Explain them, Judge Tate.

MR. TATE
Well, you don't need a comma when there are two objects of the same preposition; it's just a stylistic change, in line with the ordinary rules of the punctuation.

MR. HENRY
The gentleman now moves the adoption of the amendments.
Are there any questions?
Any objection to the adoption of the amendment to Section 17
Without objection, so ordered.

MR. HARDIN
Amendment No. 3 is the only amendment to Section 2.
On page 2, line 5, after the word "liberty" and before the word "or" insert a comma ",",

MR. HENRY
Judge Tate.

MR. TATE
The reason, of course, under the rule we have been following is that when there's a series you have a comma after every one, including the one before the "and" or "or," the conjunction.

MR. HENRY
The gentleman moves the adoption of the amendment.
Are there any questions on Section 2 amendment?
Without objection, the amendment stands adopted.

MR. HARDIN
Amendment No. 4. On page 2, delete lines 8 through 15, both inclusive, in their entirety and insert in lieu thereof the following:
"Section 3. No person shall be denied the equal protection of the laws. No law shall discriminate against a person because of race or religious ideas, beliefs, or affiliations. No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations. Slavery and involuntary servitude are prohibited, except in the latter case as punishment for crime."

MR. HENRY
Judge Tate.

MR. TATE
All right. We standardized the language when it says you can't discriminate in one part "on account of" and another "by reason of". To say "because of" in each instance, we omitted needless repetition like "religious ideas, religious beliefs, religious affiliations" and said "religious ideas, beliefs, or affiliations," and similarly with political ideas and political affiliation. In general, those are the stylistic sort of changes we made.

MR. HENRY
The gentleman moves the adoption of the changes.
Is there any question?
Any objection to the adoption of the amendment?
Then, without objection, the amendment stands adopted.
Proceed, Mr. Clerk.

MR. HARDIN
Amendment No. 5. On page 2, delete lines 17 through 35, both inclusive in their entirety and on page 3, delete lines 1 and 2 in their entirety and insert in lieu thereof the following:
"Section 4. Every person has the right to acquire, own,

MR. HARDIN (cont'd)
control, use, enjoy, protect, and dispose of private property. This right is subject to reasonable statutory restrictions and the reasonable exercise of the police power.

Property shall not be taken or damaged by the state or its political subdivisions except for public purposes and with just compensation paid to the owner or into court for his benefit. Property shall not be taken or damaged by any private entity authorized by law to expropriate, except for a public and necessary purpose and with just compensation paid to the owner. In such proceedings, whether the purpose is public and necessary shall be a judicial question.

MR. HENRY
You have a question, Mr. Lowe?

MR. LOWE
Mr. Chairman, I just wonder if we could suspend with the reading and have Judge Tate explain or do we have to go through with the reading of all this every time?

MR. HENRY
We did not go through with the reading; we can do it any way you want to, Mr. Lowe. Since we didn't read them yesterday, I think there were one or two people who wanted them read; it's whatever the convention wants to do.

MR. LOWE
Well, personally, I would suggest that we do away with the reading and have Judge Tate explain it, unless there is some serious objection.

MR. HENRY
The gentleman has moved to dispense with the reading of the amendments on each section.
Is there any objection?
Then, without objection, so ordered.
Proceed, Judge Tate.

MR. TATE
All right. The Amendment No. 5 which is to Section 4 which rewrites Section 4 on pages 5 and 6 of your green material--in the main paragraphs, an awful long one paragraph sentence into three paragraphs, I mean, awful long one paragraph into three paragraphs and slightly rearranges the order of the ideas in order to connect logical ideas together, omits a few needless repetitions, singularizes in accord with the conventional practice and tries to separate some of the ideas into separate... separate ideas into separate sentences.

MR. HENRY
Any questions on the amendment?
Any objection to the adoption of the amendment to Section 4?
Then, without objection, the amendment stands adopted.
Proceed, Judge.

MR. TATE
The Amendment No. 6 which is to Section 5 on page 7 of your material makes three very minor changes like when they say "any court of law"; we said "any court" and when to raise the legality... it's legality "instead of repeating of the search and seizure." We slightly changed the punctuation and added an "and" in order to clarify what the reference was to the particular description required before a warrant or affidavit.

MR. HENRY
Any questions on the amendment?
Mr. Stagg, for a question.

MR. STAGG

In the Supreme Court decision, the U. S. Supreme Court decision, handed down earlier this week on the use of illegally seized search and seizure material, Judge, you think that has any effect on this section?

MR. TATE

No, Mr. Stagg, for about five hundred years they required warrants to be described with particularity; what happened since '61 is that they said if something is illegally seized, you can't use it in evidence. But, the traditional safeguard of the home is supposed to be a private...supposed to be that no officer can break into somebody's home unless a court has told them just how and which one.

MR. HENRY

Any other questions?
Any objection to the adoption of the amendment?
Then, without objection, the amendment stands adopted.
Proceed, Judge.

MR. TATE

All right. Section 6, of course, we had no comment on or no proposed amendment. On Amendment No. 7, which is to Section 7, on page 9, if you will see what we did, we just broke it into two sentences, used standard usage about "any" and "every", and punctuated it in accordance with the consistent standards followed throughout the manual on Style and Drafting for our constitution. We put unrelated ideas in separate sentences. Mr. Chairman...

MR. HENRY

Mr. Goldman, you have a question? Proceed.

MR. GOLDMAN

Judge Tate, for the record, when you refer to "freedom of speech or of the press" do you intend that to include radio and television broadcasting?

MR. TATE

Yes, Mr. Goldman. I think the sense of the convention was that it had the traditional safeguards of the United States Constitution, which is to every form of expression, including radio and television.

MR. GOLDMAN

Thank you.

MR. HENRY

Any other questions?
Any objection to the adoption of the amendment?
Then, without objection, the amendment stands adopted.
Proceed, Judge.

MR. TATE

All right. Amendment No. 8 is to Section 11....Oh, Mr. Chairman...

MR. HENRY

Yes.

MR. TATE

Mr. Chairman, the last amendment we are going to have is going to rearrange these in a logical.....order, so I'll have to.... Amendment No. 8 which is to....is now numbered....which is to Section 11 which is on page 10 which will become 9 if you approve the reordering later on....the reordering; it's simply to clarify that "No law shall impair the right of any person to assemble". We've changed the title.

MR. HENRY

Have you completed your comment, Judge?
All right. The Judge moves the adoption of these amendments.
Is there any question?
Any objection to the adoption of the amendment?
Then, without objection, the amendment stands adopted.
Proceed, Judge.

MR. TATE

All right. Now, Amendment No. 9 which is to Section 19 in the original proposal, which is on your left hand side and will become Section 10 on your right hand side if you approve the reordering; it was....used....simply repunctuated, we used commas to set up parenthetical questions and added a verb to make sure that there's a perfect parallelism in the use of....the expression of parallel ideas. I'll yield to questions.

MR. HENRY

Any questions on the amendment?
Any objection to the adoption of the amendment?
Then, without objection, the amendment stands adopted.
Proceed.

MR. TATE

All right. Section 11....Amendment No. 10 is to the old Section 26 which is on your left hand side and it....in order to, we thought, to be clear, we omitted needless words, and said.... as it passed the floor it said "in access to public areas, accommodations, and facilities, every person shall have the right to be free from discrimination based on race, religion, or national ancestry from arbitrary, capricious, or unreasonable discrimination." Now, we added a comma "," after "facilities" and when it said "shall have the right" we said "shall be free"; we thought that meant the same thing.

MR. HENRY

Any questions on the amendment?
Any objection to the adoption of the amendment?
Then, without objection, the amendment stands adopted.
Proceed, Judge.

MR. TATE

Amendment No. 11 which is to the old Section 12 on the left hand side of page 14, generally speaking, involved minor changes of tense and singularization and in the interest of consistent grammatical usage.
I'll yield to any questions, Mr. Chairman.

MR. HENRY

Is there any question on the amendment?
Any objection to the adoption of the amendment?
Then, without objection, the amendment stands adopted.
Proceed, Judge Tate.

MR. TATE

Well, in Amendment No. 12 which is to the old Section 27, which is on page 16 on the left hand side, we rearranged a sentence, we thought, making it a little clearer.
I'll yield to any questions, Mr. Chairman.

MR. HENRY

Any questions?
Any objection to the adoption of the amendment?
Then, without objection, the amendment stands adopted.
Proceed.

MR. TATE

All right. In Amendment No. 13, which is to the old Section 13 on the left hand side of page 17, we thought what we simply did there was omit needless words, standardize the language, singularize the use of the language so we wouldn't use plurals and make consistent parallelisms.

I'll yield to any questions.

MR. HENRY

Any questions?

Any objection to the adoption of the amendment?

Without objection, the amendment stands adopted.

MR. TATE

All right. In Amendment No. 14, Mr. Chairman, which is to the old Section 15 on the right...left hand side of page 18, we again...all we did was change tenses and the moods of verbs in order to be consistent with our usage throughout the constitution and we omitted an unnecessary comma.

MR. HENRY

Any questions?

Any objection to the adoption of the amendment?

Then, without objection, the amendment stands adopted.

Proceed.

MR. TATE

All right. In Amendment No. 15, which is to the old Section 16 on the left hand side of page 19, again we simply singularized where the plural words were used, in line with our usage. We broke it into short sentences. We attempted to rearrange the placement a little bit in line with the...we attempted to change the sentence placement to be more logical in line with the sense of the meaning. We've made...we're convinced there is no substantive change.

I'll yield to questions, Mr. Chairman.

MR. HENRY

Any questions?

Any objection to the adoption of the amendment?

Then, without objection, the amendment stands adopted.

Proceed.

MR. TATE

Amendment No. 16, which is to the old Section 17 on the left hand side of page 21, again involves simply standardized singularism of use of verbs, of words, of nouns, using a word for a phrase when it would work...when it says the same thing or combining a sentence in one instance in order to clarify the intent and in our judgment, of course, amounted to simply a stylistic rewriting of the article without much change in words even.

Mr. Chairman, I'll yield to any questions.

MR. HENRY

Any questions?

Any objection to the adoption of the amendment?

Then, without objection, the amendment stands adopted.

MR. TATE

All right. Now, Amendment No. 17, which is to the old Section 18 on the left hand side of page 24, involved two minor changes to make the parallel complete; we put "to", "to", "to" in front of each of the separate ideas in order to clarify the parallel separate ideas and we singularized "punishments" in line with our context...in line with our standard procedure, I mean.

Mr. Chairman, I'll yield to any questions.

MR. HENRY

Are there any questions?

Any objection to the adoption of the amendment?

MR. HENRY (cont'd)

Then, without objection, the amendment stands adopted.

Proceed.

MR. TATE

All right. In Amendment No. 18 on page 26 to the old Section 22 we inserted a comma "...", in order to clarify the sense of the sentence and in line with our usual usage.

I'll yield to any questions, Mr. Chairman.

MR. HENRY

Any questions?

Any objection to the adoption of the amendment?

Then, without objection, the amendment stands adopted.

MR. TATE

All right. Amendment No. 19, which is to the old Section 25, with regard to Section 24 of unenumerated rights, we had said as the floor language passed "the enumeration in this constitution of certain rights shall not be construed to deny or disparage any right." It was the sense of the committee that this meant "shall not deny or disparage other right" because who determines it except through a court and if this doesn't deny it, then it can't be construed to deny it.

I'll yield to any questions, Mr. Chairman.

MR. HENRY

Are there any questions?

Any objection to the adoption of the amendment?

Then, without objection, the amendment stands adopted.

Proceed.

MR. TATE

Now, Mr. Chairman, the final amendment is in the nature of a technical amendment rearranging on your yellow sheet...on your white sheet you will see it rearranges the section numbers and the sections, in line with what both committees agreed on was a more logical organization; for instance, putting at the end of all the criminal procedure sections and trying to put the fundamental rights protected...group them in some sort of a logical basis. Reasonable minds could differ, you could leave it like it was but both committees thought that rearranging them as we are...recommend here on Amendment No. 20, which was...for instance, by which Section 9 would become Section 7, Section 10, Section 8, and so on. We thought it would be a more logical organization, both committees have...there's a little disagreement, we talked back and forth and reached what both of us thought would be a more logical organization.

MR. HENRY

Any questions?

Any objection to the adoption of the amendment?

Then, without objection, the amendment stands adopted.

Proceed.

MR. TATE

Mr. Chairman, if it's in order, I move to take Committee Proposal...that finishes Committee Proposal No. 25, Mr. Chairman, and if it's in order, I would like to call from the calendar a very short committee proposal from...on Elections, Committee Proposal No. 33.

MR. HENRY

The gentleman now moves to recall from the calendar Committee Proposal No. 33.

Is there objection?

Without objection, so ordered.

* * *

MR. HENRY (cont'd)
the convention floor.
We'll stand at ease now until two o'clock.

RECESS

MR. HENRY
The Convention will come to order.
Outsiders, outside.
Mr. Casey suggests the absence of a quorum.
The Clerk will open the machine for roll call.
Are you through voting?
The Clerk will close the machine.
100 delegates present and a quorum.
Mr. Monday Lowe recognized on a point of informing us.

MR. LOWE
Mr. Chairman, ladies and gentlemen of the convention, I have our financial report for the period ending December 31, 1973. From the start of our convention on Jan. 5 of '73 through Dec. 31 of 1973, we had budgeted \$2,725,125. That was the budgeted figures. Our actual expenditures through that same period amounted to \$1,849,702. That reflects a savings of the actual amount under the budgeted figures of \$875,500. The four categories where we effected the largest savings is in the salaries of our research staff, the per diem of our delegates, our meeting expense, and the printing of the daily journal. For the month of December, 1973, we had budgeted \$377,728. So, your actual expenditures for December of '73 were \$204,308, a savings during the month of December of \$173,000. Mr. Chairman, I move that this report be made a part of the official journal of today's proceedings.

MR. HENRY
Without objection, so ordered.

MR. LOWE
Just one other thing, Mr. Chairman, as a point of information. I had had four or five delegates talk to me about the effect of the per diem at this convention, if you were drawing social security. If you'll see me, I can give you the information on that particular thing. Thank you, Mr. Chairman.

MR. HENRY
Thank you, Mr. Lowe.
Judge Tate moves we now revert to Morning Hour No. 7. Reports of Committees.
Without objection, so order.
Proceed, Mr. Clerk.

MR. POYNTER
Mr. Tate, Chairman on behalf of the Committee on Style and Drafting, sends up the following report:
Chairman and Delegates of the convention:
I am directed by your Committee on Style and Drafting to report as follows:
Committee Proposal No. 12 is returned with an amendment.
Committee Proposal No. 14 is returned with amendment.
Committee Proposal No. 22, with amendment.
Committee Proposal No. 23, with amendment.
Committee Proposal No. 31, with amendments.
Respectfully submitted by Justice Tate, Chairman of that committee.

Mr. Chairman, we do have the copies of...which are being distributed at this time -- of these five proposals. I might say these are all short, one-section proposals that the convention

MR. HENRY (cont'd)
Without objection, so ordered.
All right. Mr. Clerk, are we ready to go? We've got those things passed out?

MR. POYNTER
That's right.

MR. HENRY
Proceed, sir.

MR. POYNTER
Do you want to go in numerical order, Judge Tate?
The first one would be Committee Proposal No. 12, dealing with human resources.
Do you want me to read the proposed amendment to the proposed section, Judge?
All right. I'll read the amendment.
The proposed change to the section included in Committee Proposal No. 12, which does deal with human resources, reads as follows, as proposed amended...to be amended by Style and Drafting:
"State Penal Institutions; Reimbursement of Parish Expenses.
Section 1. The state shall reimburse a parish in which a state penal institution is located for expenses the parish incurs arising from crime committed in the institution or by an inmate thereof."

MR. TATE
Mr. Chairman and fellow delegates, as a word of explanation, all of these one-paragraph sections...some of them duplicate one another as section numbers. Eventually, you'll see when we come back with the final rearrangement, they will probably be consolidated either in a General Provisions Article or in a Human Resources Article, and at appropriate instances are in the Transitional Article. So, don't worry at present about the section numbering or lack of them.

Section 1 of State Penal Institutions is simply what was done since the rest of it was abolished like the Section (B) and all the rest. It was the just the language was simplified with the same meaning. Are there any questions?

MR. HENRY
Are there any questions?

MR. TATE
If there are no objections to it, Mr. Chairman, I would move..

MR. HENRY
Do you object, Mr...
To which objection is urged.
Is there any discussion?
Are you ready for the question?
Without objection, the previous question is ordered.
Therefore, when the machine is opened, as many of you as are in favor of the adoption of these amendments will vote yes. Those opposed will vote no. The Clerk will open the machine.
Vote your machines, ladies and gentlemen.
Are you through voting?
The Clerk will close the machine.

MR. CASEY (in the Chair)
81 yeas and 2 nays, and the amendment's been adopted.
Mr. Pugh, why do you rise?
Oh, you wanted to vote yes. O.K.
O.K. Next proposal, Mr. Clerk.

MR. POYNTER
Next proposal is Committee Proposal No. 14, dealing with human resources, dealing with welfare, unemployment and compensation.

* * *

MR. HENRY (In the Chair)

The Convention will come to order.
Mr. Staggs suggests the absence of a quorum.
The Clerk will open the machine for roll call.
Vote your machines, delegates, please.

Are you through voting?

90 delegates present and a quorum.

We thought we had the amendments ready to go, but apparently there's some confusion. So, we'll stand at ease a few minutes more.

RECESS

MR. CASEY

Please take your seats, delegates.

Mr. Newton now suggests the absence of a quorum.

The Clerk will open the machine for roll call.

Please vote your machines, delegates.

Are you through voting?

The Clerk will close the machine.

92 delegates present and a quorum.

I understand they're trying to work out some amendments on the Alario proposal, would like to take up meantime the Style and Drafting report on the Executive Committee. In connection therewith, Mr. Alario now moves to return Delegate Proposal 16 to the calendar.

Is there objection?

Without objection, so ordered.

Reports of Committees.

MR. HARDIN

Delegate Tate, chairman on behalf of the Committee on Style and Drafting submitted the following report:

To the Chairman and delegates of the Constitutional Convention:

I am directed by your Committee on Style and Drafting to submit the following report:

Committee Proposal No. 4 reported with amendments.

MR. CASEY

Judge Tate moves for a suspension of the rules to consider the report at this time.

Without objection, so ordered.

* * *

MR. TATE

You see, this was adopted way in the very beginning, and I guess that's why the exception was in there. I just don't know why we didn't . . . it didn't occur to us.

Maybe Mr. Conroy will whisper to you, and you can ask me in a question.

MR. CASEY

Mr. Conroy, did you have a question you wanted to ask?

MR. TATE

What we do hope, Mrs. Duncan, is that. . . Mrs. Duncan will nod. . . is that on the final go around, this provision may be taken out of here, and we will have a general provision, if we're certain it's true throughout the constitution, that the compensation of each elected official shall be provided by law. But, it probably may not be true. I'm not sure about that.

MR. CASEY

Any further questions on Amendment No. 7?

Any discussion?

Any objection to the adoption of the amendment?

Without objection, then, the amendment stands adopted.

Amendment No. 8.

MR. TATE

Amendment No. 8, which is to Section 5 on the green page 9, simply broke into two sentences the long sentence found as 5 (A).

MR. CASEY

Any questions?

Any further discussion?

Any objection to the adoption of the amendment?

Without objection, then, the amendment stands adopted.

Amendment No. 9.

MR. TATE

Amendment No. 9, in the interest of. . . Amendment No. 9 slightly clarified the language by the use of additional commas ",," and omitted the unnecessary words "of each regular session of the legislature." It omitted "of the legislature," because it had to be "of each regular session." "Make reports and give information to the legislature," in other words, it. . . we slightly simplified the language. By setting off the time requirements in commas, we think we made it more readable, more understandable.

MR. CASEY

Any questions on Amendment No. 9?

Any discussion?

Any objection to the adoption of Amendment No. 9?

Without objection, then, Amendment No. 9 stands adopted.

Amendment No. 10.

MR. TATE

Amendment No. 10 is to the Section 5 (C) which is found on page 11 of the green material. We. . . the phrase was placed at the beginning of the sentence to improve the flow of its lines in lines 4 to 6. The. . . we, for instance, the others are the usual standard sort of changes that we are making, with your approval, in the interest of readability like as in saying. . . instead of saying "such," in most instances saying "the" because it means the same thing in context.

MR. CASEY

Any questions?

Any further discussion?

Any objection to the adoption of the amendment?

Without objection, then, the amendment stands adopted.

Amendment No. 11, Judge.

MR. TATE

Amendment No. 11 is to Section 5 (E), on page 12. Incidentally, on both Section 5 (D) and 5 (E) are found both in the Executive Branch and with some slight addition, in the Revenue and Finance provisions. Sometime, hopefully, before we conclude, the convention will be asked to decide whether to keep the identical provisions in both, or to have them only in one. But, that's not before us now. The only change made was to add a comma (,) to 5 (E), and in order to carry out the parallelisms of "shall submit" added "shall request implementation" in order to kind of carry out the parallel ideas in, perhaps, a more easily readable form.

MR. CASEY

Any questions?
Any further discussion?
Any objection to the adoption of the amendment?
Without objection, then, the amendment stands adopted.
Amendment No. 12.

MR. TATE

Amendment No. 12 is to Section 5 (F) about pardon, commutation, etc. The . . . you'll see . . . it said, for instance, "The governor shall have the power." Well, in the standard usage, "shall have the power" means "may." Instead of "those," we used "persons." We used commas to set off the phrase, "upon recommendation of the Board of Pardons." We . . . in line with the idea of verb in the indicative mood is better than a long . . . We change "may grant commutation of sentence" to "may commute sentences," thinking it read a little stronger, without a change of meaning. The proviso clause in line with the Style and Drafting Manual is made a separate sentence preceded by "however." Following the standard usage, we used "a" instead of "each first," and so on.

MR. CASEY

Any questions of Judge . . .
Mr. Duval is recognized for a question.

MR. DUVAL

Judge Tate, I may have . . . I notice you changed the word "automatically" in here in its position. Is the purpose of that, for the record, to make it clear that no other procedure has to be gone through, that it . . .

MR. TATE

Mr. Duval, that's one of the yellow amendments when we come back, because from the floor debate, it was apparent that they meant that automatically he was pardoned, not eligible for pardon because eligibility, in context, means you've got to apply to the governor. So, we'll come back, but we did not think it appropriate, here, to change it. But, we did have the adverb follow the verb . . . follow something, anyway.

MR. CASEY

Any further questions?
Any further discussion?
Any objection to the adoption of Amendment No. 12?
Then, without objection, Amendment No. 12 stands adopted.
Amendment No. 13.

MR. TATE

Amendment No. 13 is to 5 (G), on page 15, and the consent. . . the consensus of the . . . the consensus of the Executive Branch Committee as well as of the . . . in response to our question was that it's clarified if we say the date and hour when a bill "finally passed"—add the word "finally"—"is delivered, . . . shall be endorsed," because Passed by the legislature might mean passed by either house or something like that.

MR. CASEY

Any questions of Judge Tate?
Any further discussion?
Is there any objection to the adoption of Amendment No. 13?
Without objection . . .
Mr. Abraham, why do you rise?

MR. ABRAHAM

Judge Tate, I have a question with the language. I think the intent of the committee and of the convention was that the date that it was delivered to the governor "shall be endorsed thereon." The way I read the language as proposed, is if the date that it's delivered to the governor or the date that it's finally passed by the legislature that it's endorsed?

MR. TATE

No, the date. . . frankly, Mr. Abraham, Style and Drafting had recommended saying "the date of delivery" . . . "the date and hour delivered to the governor." The Executive Branch Committee turned down our proposal and wanted to retain the original floor language which is, in my opinion, not quite as clear as Style and Drafting had recommended. But, we really don't want to get into controversy with the substantive committees that have strong views and joint membership with ourselves with strong views. We just gave into you all.

I agree with you, but it takes a little reading. But, it does say as the real test the date and hour when a bill is passed by the governor "is delivered." You see, "is delivered" is what it means. I do agree with you. Personally, I think it would have been clearer if our amendments had been accepted. But, I'm not much on sour grapes at this point.

MR. CASEY

Any questions of Judge Tate?
Any further discussion?
Any objection to the adoption of Amendment No. 13?
Without objection, then, Amendment No. 13 stands adopted.
Amendment No. 14.

MR. TATE

Amendment 14 is to Section 5 (H). At the time . . . the first exception, "Except as otherwise provided by this constitution" was added at the suggestion of the Executive Branch, because by that time, the governor . . . the civil service amendment had been passed and the governor was no longer able, under it, to item veto an appropriation to the Civil Service Branch. . . Department under certain . . . there are limitations that make this statement inaccurate. So, that was recommended that it was added; "any item" is used instead of "the items" in line with the rule of singularization. The other amendments were to leave out what were felt to be unnecessary words, to improve the flow of the sentence and unnecessary commas.

MR. CASEY

. . . completed your remarks, Judge?

MR. TATE

Yes, sir.

MR. CASEY

Any questions of Judge Tate?
Any further discussion?
Any objection to the adoption of the amendment?
Without objection, then, the amendment stands adopted.
Amendment No. 14.

MR. TATE

Fifteen?

MR. CASEY
Amendment No. 15, Judge. I'm sorry.

MR. TATE
Amendment No. 15, on page 5 (L). . . Section 5 (L), pages 17 and 18, dealing with "Appointments." Incidentally, we have a yellow amendment coming back, Senator Brown, to . . . We'll have a yellow amendment that will raise your attention. . . that you probably meant. . . may wish to consider whether it shouldn't be "public confirmation," as it is by a later amendment, of first assistants--subordinate officials. But, you'll. . . that's a separate question. We're just looking at the styling of the language right here. The general changes had to do with singularizing language: using the standard language--like "by law" instead of "by statute"; using the indicative mood of a verb--"if the legislature is not in session" instead of "should the legislature not be in session"--and stating it positively.

MR. CASEY
Have you completed your remarks, sir?

MR. TATE
Yes, sir.

MR. CASEY
Any questions of Judge Tate?
Any discussion?
Any objection to the adoption of the amendment?
Without objection, then, the amendment stands adopted.
Amendment No. 16.

MR. TATE
Sixteen is to 5 (J) on your green page 19. We singularize. . . well, we singularize the "those" to "a person," saying "The governor may remove." We use the standard language "by law" instead of "by statute."

MR. CASEY
Any questions of Judge Tate?
Any further discussion?
Are you ready for the question?
Any objection to the adoption of the amendment?
Without objection, then, the amendment stands adopted.
Amendment No. 17.

MR. TATE
Amendment No. 17, as it passed the floor, he said, "He may call out the armed forces of the state to preserve law and order." Right up in front of it, it said, "He's the commander-in-chief of the armed forces of the state, except when they're in the service." So, we thought if you said, "He may call out these forces," it says the same thing and doesn't repeat the same long-winded phrase.

MR. CASEY
Mrs. Zervigon, you had a question?
Any further discussion?
Any objection to the adoption of the amendment?
Without objection, then, Amendment No. 17 stands adopted.
Amendment No. 18.

MR. TATE
Amendment No. 18 is to Subsection 5 (L). It. . . in general, it had to do with eliminating the word "such" as unnecessary, when it says "have other powers and other duties authorized by this constitution or provided by law" means exactly the same thing. It said. . . we said, "provided by law" instead of "provided by statute" in line with the standard language being used in the constitution today.

MR. CASEY
Any questions of Judge Tate?
Any further discussion?

MR. CASEY (Cont'd)
Any objection to the adoption of the amendment?
Without objection, then, the amendment stands adopted.
Amendment No. 19.

MR. TATE
Amendment No. 19 is to Section 6, on page 21. The. . . as you see, it breaks the long sentence into two, and it follows the. . . as we have done in the other sections, the rules of omitting "such" when unnecessary, and changing "statute" to "law."

MR. CASEY
Any questions of Judge Tate?
Any further discussion?
Any objection to the adoption of the amendment?
Without objection, then, the amendment stands adopted.
Amendment No. 20.

MR. TATE
Amendment No. 20 is to Section 7, on page 22 of your green. The. . . following the rule of capitalizing the entity the first time you refer to it and as referring to it as a particular entity, "Department of State" was capitalized. Following the parallel structures we follow in most of the succeeding sections about the other statewide offices, the next sentence was. . . we broke that first long sentence into two. In fact, we broke that long whole page sentence into at least three sentences--four sentences--without changing the language.

MR. CASEY
Any questions to Judge Tate?
Any further discussion?
Any objection to the adoption of the amendment?
Without objection, then, the amendment stands adopted.
Amendment No. 21.

MR. TATE
Amendment No. 21--and this is going to be one that later you're going to discuss in the yellow amendments--is in line with the standard organization of the following sections as well as the preceding section. We broke it into two sentences and capitalized the department as an entity the first time it was referred to.

MR. CASEY
Any questions to Judge Tate?
Any further discussion?
Any objection to the adoption of the amendment?
Without objection, then, Amendment No. 21 stands adopted.
Amendment No. 22.

MR. TATE
Section. . . Amendment No. 22 is to Section 9. The. . . aside from the changes in line with what we did in the previous sections about the organization between department and the treasurer We added a "to" to parallel it, and it was thought to be more. . . read a little better and say. . . instead of saying "in advance of the regular session," just "before each regular session." The remainders of it omitting "such" as we do very commonly when unnecessary.
Are there any questions?

MR. CASEY
Any questions of Judge Tate?
Any discussion?
Are you ready. . .
Any objection to the adoption of the amendment?
Without objection, then, the amendment stands adopted.

* *

114th Days Proceedings—January 10, 1974

MR. CASEY (Cont'd)

Then, without objection, Amendment 41 stands adopted.
Amendment No.I'm sorry. Amendment No. 41 is withdrawn.

MR. TATE

Now, No. 42 deals with that matter of the Board of Pardoners we were worried about a minute ago, which is an amendment to Committee Amendment 12, which, on your green copy is Section 5 (F), and (G), which is on page 13 on your green copy. Now, this has reference to Mr. Duval's question that the language that says "however, a first offender never previously convicted of a felony shall be eligible automatically for pardon upon completion of his sentence without recommendation of the board," did not, apparently, carry out the intent of the membership of this convention. We referred it to....the Executive Branch. They recommended either deleting the word "automatically" or else inserting instead of that, the language here on your second amendment....

MR. CASEY

Yes, sir.
Mr. Avant, why do you rise?

MR. AVANT

Mr. Chairman, I don't mean to hurt anybody's feelings, but this particular thing that we are going into right now, and I don't care how it's resolved. But it is a matter of considerable consequence, and for that reason, I would like to ask for a quorum call. I would like to request the delegates to really pay attention because I think this is a matter of considerable importance, and I'm not all hung up about how it's resolved, but I do....would like to see it resolved by an intelligent vote.

MR. CASEY

Mr. Avant, your motion is certainly in order.
But, why do you rise, Mr. Conroy?

MR. CONROY

Carrying forward what Mr. Avant suggested, I'd like to raise this as a point of order at this point as to this being a substantive change.

MR. CASEY

Let's have the absence of a quorum, let everybody vote in, and then let's start discussion then.
O. K. Mr. Avant has suggested the absence of a quorum. The Clerk will open the machine for roll call.
Please, vote your machines, delegates.
Mr. Avant has appropriately pointed out that we're getting into a very important area. Please, take your seats.
Are you through voting?
The Clerk will close the machine.

MR. TATE

The amendment....

MR. CASEY

Just a minute, Judge Tate. We've got to announce the vote.
91 delegates present and a quorum.
Now, before you go forward, Judge Tate, Mr. Conroy....
Mr. Conroy, you rose to a point, now.

MR. CONROY

I think that the procedure we had agreed upon was that if there was a question as to being a substantive question, that we would raise it as a point of order. I do rise.

MR. CASEY

That's correct, Mr. Conroy. Are you raising that point to Amendment No. 42?

MR. CONROY

Yes.

MR. CASEY

That Style and Drafting has exceeded its authority, that it is a substantive change?

MR. CONROY

Yes.

MR. CASEY

O.K.
We're going to put the question to the convention. That's how it was more or less decided on yesterday that we would handle this.

Mr. Stagg, why do you rise?

O.K.

The question is on Amendment No. 42, as to whether Amendment No. 42 is in order. Mr. Conroy raises a point of order that it is not in order; that it is a substantive change.
Why do you rise, Judge Tate?
In just a moment, Judge Tate, it will be.
We're going to put the....Mr. Avant.

MR. AVANT

Is that point of order subject to debate or discussion?

MR. CASEY

When we put it to the convention, it is subject to debate, Mr. Avant. So, we'll put the question to the convention.
The question is whether we....whether the Amendment No. 42 is in order. So, when we finally vote, if you want to vote that it is in order, you'll vote yes. When you want to vote that it is not in order, you'll vote no. We have various people who have asked for recognition of the floor.

Judge Tate is recognized for the floor; and Mr. Stagg.
Mr. Stagg asked for recognition first.
O.K. Judge Tate is recognized for the floor.
Before we....get into the question, now, Judge Tate and all other speakers....we'd like to remind you that the discussion is whether it is a substantive change.
Let's not take a lot of time on arguing the merits of this thing.

Why do you rise, Mr. Champagne?

Please take your seats, delegates. Just a minute, Mr....

MR. CHAMPAGNE

Quite frankly, I suspect that some others like myself were not paying too much attention. I would like to ask you on what page, of what color, we are on right now?

MR. CASEY

Go ahead. You going to explain that, Judge Tate?

MR. TATE

Yes, sir.

On page 13, green, Section 5 (F), there's a second sentence at line 18 through 24 of Paragraph....Subparagraph 5 (F), says, "however, a first offender, never previously convicted of a felony, shall be eligible automatically for pardon upon completion of the state....of his sentence, without recommendation from the board." Of course, the word "automatically" is not necessary if....is not necessary....

MR. CASEY
Now, wait. Judge Tate, you're just pointing out right now where it is....

MR. TATE
Yes, yes.

MR. CASEY
Do you have that, Mr. Champagne?

MR. TATE
Then, on....

MR. CASEY
O.K. Now....

MR. TATE
Then, on your yellow copies on page 2, on the 5 (F), the recommended substitute language would, on pages 13 through 19 would add "and without action by the governor." On your white sheets.... on your white sheets it's page 10, and Amendment 42. Now, in brief.... I'm not arguing the merits either way. We thought it was subject to construction....

MR. CASEY
Just a minute, Judge Tate. Right now all you're doing is pointing out for the benefit of one of the gentlemen as to where it is.
Mr. Jack, did you rise on a point, or you wish the floor?
O.K. We'll recognize Judge Tate; then Mr. Stagg; then Mr. Jack, and Mr. Avant.
Mr. Roy.

MR. TATE
All right. Subject to your views, we thought it was subject to construction when they added the word "automatically." The question was, "What was in the convention's mind?" From the floor debate, they have talked about once that first offender finishes five years, he didn't have to go to the governor. He didn't have to go to a lawyer. He didn't have to go to any.... he's just automatically pardoned. So, we asked the Executive Branch Department if that was not the intent. They came back and recommended to you, language that carries out that idea in this yellow amendment. We realize it's a possibility that it's substantive, and that's why we put it on the yellow amendment, although we thought for that reason that it was appropriate for us to call it to your attention.

MR. CASEY
O.K. Any questions of Judge Tate?
Mr. Stagg is recognized for the floor.

MR. STAGG
Mr. Chairman and fellow delegates, I wish to begin by saying I think that the committee on Style and Drafting has done a yeoman job. They have, as they saw their duty, prepared on this yellow sheet under Section 5 (F) what they thought might be a substantive change.
When we were discussing in committee, and when we were discussing on the floor of the convention, we thought that the language that provided that a first offender, one never before convicted of a felony, when he completed the sentence assigned to him by the judge, that he was automatically to be pardoned—that he wasn't to go have to hire a lawyer; he wasn't to have to go over here to the pardon board and present a petition; he wasn't to have to do a darn thing. He was automatically to be pardoned. Well, the word that crept into our language was that "he shall be eligible automatically for a pardon." It is the word "eligible" that has caused Style and Drafting to scratch

MR. STAGG (Cont'd)
its collective heads to determine that this was, indeed, perhaps, a substantive change. What the committee believed it was doing, and what I think the convention believed that it was doing, is reflected on the yellow sheet in the right hand side that upon the completion of that first offender's sentence, he didn't need a recommendation of the Pardon Board; he did not need the signature of the governor; this constitution gave to him automatically a pardon. That was what we thought the sense of the convention was. We would trust that this convention, in its wisdom, would take the yellow amendment and approve Section 5 (F) as it appears in the right hand side of this yellow sheet.
Thank you, Mr. Chairman.

MR. CASEY
Mr. Jack is recognized for the floor.

MR. JACK
Mr. Chairman and fellow delegates, please give me your attention a minute.
I was the author of the amendment that set up this five person Pardon Board. Now, on the automatic pardon for the first offender, we track the language that was amendment several years ago, to the present constitution. The Committee on Styling and Drafting, unknown to them, has exceeded their authority and completely changed what is an automatic pardon entirely. Now, here, the column to the left, follow that. "However, a first offender never previously convicted of a felony, shall be eligible automatically for pardon upon completion of his sentence without recommendation of the board."
Now, if you'll read up right at (F) you'll see, though, the governor is the one that grants reprieves to persons convicted of offenses against the state. Upon recommendation of the Board of Pardons, may commute sentences, pardon those convicted of offenses." The governor is the one that grants the pardon. Now, the only exception made about the Pardon Board is down there in two, when the.... I mean under No. 1 down there where your first offender, never previously convicted of a felony, you are eligible for a pardon automatically—by automatically means without going to the Pardon Board. But, you still have to have the governor sign it. Now, that is what the present law is for first offenders. It's what we said in this to the left.
Now, over to the right where Styling and Drafting has handled it, they are saying "however, a first offender never previously convicted of a felony shall be pardoned automatically upon completion of his sentence without a recommendation of the board" correct so far. But, they are legislating when they say "and without action of the governor." That is not what the amendment and the thing that we passed. The governor is the one that grants the pardon. Now, I can see if you are going to say that the warden up there says this man leaves, he's a first offender, and we are automatically handing him this pardon, then you're going to have some pretty rough people that are granted pardons. Purposely, I tracked the present law because under the present law, even a first offender has to, to get a pardon, he don't go to the Pardon Board. He goes direct to the governor. You go through the local office. You do not have to have a lawyer. But, let me tell you, if you are going to let the warden hand everybody.... a first offender.... a pardon when he walks out, you're going to turn loose the worse type of man that wouldn't behave there, but did just finally serve out his full sentence; get no good time under 1, 2, or No. 3 provisions for good time. Now, that is not the amendment that is in the present constitution... put in there during Governor McKeithen's either first or second term, about these automatic....

MR. CASEY
Mr. Jack, I'm going to have to call time on you. But, I'd

MR. CASEY (Cont'd)

like to, also, point out that you are off the point.

The point of this discussion is whether it's a substantive change or not. Let's not discuss the merits of the actual change one way or the other.

MR. JACK

...and if they are legislating, I hope the others have caught on better than you, Mr. Acting Chairman.

MR. CASEY

Thank you, Mr. Jack.

Mr. Avant is now recognized for the floor.

You've exceeded your time.

MR. JACK

May I have one more minute, please, I ask the motion?

MR. CASEY

Mr. Jack moves for a suspension of the rules for an additional one minute.

Is there objection?

To which objection is urged.

Therefore, when the machine is opened, those in favor of granting Mr. Jack an additional one minute will vote yes. Those opposed will vote no. The Clerk will open the machine.

Are you through voting?

The Clerk will close the machine.

MR. JACK

I'm telling you this is a serious thing...

MR. CASEY

Just a minute, Mr. Jack, we still have to announce the vote.

O.K. We don't have a quorum vote and we can't conduct our business. We have to have sixty-seven people to operate business in this convention and to take votes.

Those in favor of a suspension of the rules for the purpose of giving Mr. Jack an additional one minute will vote yes. Those opposed will vote no, and the Clerk will open the machine.

Are you through voting?

The Clerk will close the machine.

77 years and 2 days, and the rules are suspended.

You have one minute, Mr. Jack.

MR. JACK

All right. I'm just saying this is a very serious thing and this is not what was passed. The governor should have to still sign those things. You can have a first offender down there, can be down there for attempted rape, manslaughter, and theft—all three—but still be a first offender because it all happened there for his first trip and you better not...and maybe he's been a terror down there. Now, you don't want just automatically give it, the governor ought to be able to consider that man but it don't need to go to the Pardon Board. I believe that if Styling and Drafting would think this over and they would see it. Unfortunately, very few lawyers as a whole know Pardon Board law. So, that's about all I can tell you; you're just changing the meaning entirely if you adopt this as amended by Styling and Drafting.

MR. CASEY

You've exceeded your time, Mr. Jack.

Mr. Avant is recognized for the floor.

Why do you rise, Mr. Duval?

MR. DUVAL

A point of parliamentary inquiry, Mr. Acting Chairman.

MR. CASEY

State your point, sir.

MR. DUVAL

What I'm wondering is, is the question before the convention whether this is in fact a substantive change or not and whether we want to hear it or not; which one is it?

MR. CASEY

The question is, Mr. Duval, is to whether it is a substantive change or not.

MR. DUVAL

And, what if it is?

MR. CASEY

...and, I believe that's the way it was put to the convention.

MR. DUVAL

What if it is a substantive change, but we do want to hear the matter?

MR. POYNTER

Well, the first thing to be determined, a point of order has been raised, is to whether it's in order or not. Mr. Conway is suggesting it's out of order because it is a substantive change and, therefore, exceeds authority or the committee. So, if you want to stay real pure, I guess, and you think it's out of order because it is a substantive change, you could vote "no" declaring it out of order, that it's not in order. Then, I'm sure that some of the proponents will make a motion to suspend the rules to call from the table a motion to reconsider.

MR. CASEY

Mr. Avant is recognized for the floor.

MR. AVANT

Mr. Chairman and fellow delegates, at the risk of maybe making somebody mad or even being ruled out of order, it's something that I feel that I've got to say at this point on this subject. I don't... people get up here and they say, "Well, the Style and Drafting Committee is recommending this or recommending that in the area of these yellow amendments." I'm speaking just for myself, but I think I want to put it in the proper perspective as I understand it. I don't think the committee is recommending anything. We are simply saying that in certain areas you have adopted certain language but based upon all of the discussion, it's the sense of the committee that the language you adopted did not accurately express what you intended. Now, here is what you've said and here is what we think you meant, now you tell us what you meant; we're not recommending anything. So, I want to...as far as I'm concerned clarify that; it simply...that as we go through these things and because of different ways of expressing what appears to be the same concept in maybe more than one place or based upon what was said on the floor at the time a certain amendment was adopted, we are not sure or were not sure what the true intent of the convention was. We just feel that we are duty bound in those circumstances to point those things out and then it's up to you to say what you meant, not for us to say what you meant. But, I just had to get up here when people keep saying that the committee is recommending that you do this or that you do that when it comes to simply matters of style, that may be true but in this area I don't think it is true; and I wanted to clarify that point.

MR. CASEY

Mr. Roy is recognized for the floor; then, Mr. Abraham and Mr. Asseff.

MR. ROY

Mr. Chairman, ladies and gentlemen, I'm going to make this as short as possible. In deference to what Mr. Jack understood, my understanding is just the opposite from his and I think this...what the Committee on Style and Drafting stated in the yellow sheet is exactly what this convention adopted because I remember the specific

MR. ROY (cont'd)

question that Burt Willis asked me after I explained, I said it was against my interest really to argue for this provision as a lawyer because it meant that a first offender would get a pardon without having to hire a lawyer. Burt Willis got up and said, "What you're saying Mr. Roy, isn't it, that the constitution of this state in the future will grant a pardon to a first offender and not the governor and no person will have to be known as 'no,'" and I said that's precisely what was said and that's precisely what we intended. I think we ought to get along with the program and get this passed as the committee has seen fit to put in the yellow sheet.

MR. CASEY

Mr. Abraham.

MR. ABRAHAM

As a member of the Committee on the Executive Department, I simply want to add my comments to Mr. Roy's and those others, this was the intent of this amendment. I feel that this particular recommendation of the Committee on Style and Drafting is not a substantive change, the intent of it was that the pardon would be automatic. So, I urge that we approve this and go along with our business.

MR. CASEY

Dr. Asseff.

MR. ASSEFF

Mr. Chairman, delegates, I am a member of both of the Committee on Style and Drafting and the Committee on the Executive Department. I have talked to Mr. Staggs and we discussed this numerous times. It is the opinion of our committee—disregarding Mr. Abraham—that it is in fact a substantive change. We, therefore, urge you to so declare and when it is Mr. Staggs on behalf of the Committee of the Executive Department will recommend the change which comes unanimously from our committee. But, we do feel that it is substantive and, therefore, we should ask for a suspension of the rules; it is substantive, thank you.

MR. CASEY

Mr. Burns.

MR. BURNS

Mr. Chairman and fellow delegates, the only reason I'm getting up here for one minute, maybe a half a minute, is because I'm not a member of this committee or either one of the committees. I just think reading the two together we're making a mountain out of a molehill, there's no difference in them, they left out the word "eligible" which I think is a very good change. So, let's vote whatever is necessary to get rid of this and let's proceed along with the business.

MR. CASEY

Do you yield to a question, Mr. Burns, of Mr. Staggs?

MR. STAGGS

If there are no further speakers, Mr. Chairman, I move the previous question on the point of order.

MR. CASEY

Mr. Staggs moves the previous question.

There are no further speakers on the list.

Is there any objection to the previous question?

Without objection, then, the previous question is ordered.

O.K. The Clerk is going to state the question now that we are going to vote on.

MR. POYNTER

This committee has presented Amendment No. 42 before you. Mr. Conroy has risen to a point of order and sought a ruling of the Chair that the amendment is out of order as containing a substantive change and, therefore, beyond the authority of the Committee of Style and Drafting. The Chair under the rules has declined to rule on the point of order and has put the question to the convention. The vote will be put in the affirmative. Therefore, those of you who are in favor of declaring the amendment in order would vote no. In opposition, those who feel it is a substantive change beyond the authority of the committee and, therefore, the amendment is out of order would vote no. I'm sorry, I did it wrong myself. Those who are in favor of declaring the amendment in order as not constituting a substantive change would vote yes. In order as not constituting a substantive change would vote yes. Those in opposition who feel it is a substantive change, therefore, out of order would vote no. I apologize.

MR. CASEY

O.K., Mr. Roy, why do you rise, sir?

MR. ROY

Maybe Mr. Poynter will answer this one or, you, Mr. Chairman. If we vote yes, it means we finish with this and we go on and it's adopted like the committee recommended it in the yellow sheet or what?

MR. POYNTER

Well, you would have to vote on it, this is just a point of order, Mr. Roy, as to whether it's in order or not. If the convention determines that it is in order, you would then proceed to vote on the amendment and dispose of it.

MR. ROY

O.K. In other words, if we want to proceed to vote on it to vote what the committee has come up with we would vote yes, and then vote yes again?

MR. POYNTER

Well, yes, but....again there are people who perhaps like Mr. Duval expressed himself may be in favor of the concept, yet feel it's out of order and should be handled through the other procedure, so that's kind of your conviction on that point. The question here....

MR. ROY

I've got my instructions, all right.

MR. POYNTER

All right.

MR. CASEY

Senator De Blieux.

MR. DE BLIEUX

Mr. Chairman, if I may ask the question: If you are with the committee proposal, you vote yes. If you are against the committee proposal, you vote no; that is, with the proposed amendment that the committee has proposed?

MR. POYNTER

Well, Senator De Blieux, you can certainly vote that way but there will be people who don't share the conviction that just because they are in favor of the concept that they want to declare the amendment in order, they would rather do it the other way. So, the question here is whether the amendment is in order because there

MR. POYNTER (cont'd)

is no substantive change contained in it or whether in the opposition, it is out of order in that it does constitute a substantive change, that's the sole question.

MR. CASEY

Mr. Stagg.

MR. STAGG

Mr. Chairman, would you inform me if I am correct? That if this convention finds that this is indeed a substantive change and, therefore, rules that it is out of order, then do we suspend the rules to call from the table the Section 5 in order that for the limited purpose of offering Amendment No. 42 for reconsideration, then to reconsider it and then to adopt it; is that not the proper procedure when Style and Drafting feels that it has gone beyond its purview?

MR. CASEY

That would be the procedure followed, Mr. Stagg, if somebody makes the motion, somebody would have to make the motion in order to do that.

MR. STAGG

If the point of order is upheld that it is out of order, then I intend to be recognized by the Chair to make that motion.

MR. CASEY

O.K. Now, let's take our vote.

Let's have the Clerk state the motion one last time and let's take the vote.

MR. POYNTER

Those who feel that the amendment is in order, as not constituting a substantive change, would vote yes. Those who feel the amendment is out of order because it does constitute a substantive change and beyond the committee's authority would vote no.

MR. CASEY

And the Clerk will open the machine.

Are you through voting?

The Clerk will close the machine.

27 yeas and 32 nays, and the amendment is in order, by a decision is declared in order...by a decision of the convention.

Why did you rise, Mr. Roy?

Judge Tate, Amendment No. 42 was declared in order by the convention.

Is there any further discussion on Amendment No. 42?

Then, without objection, the previous question is ordered.

Judge Tate, you have a right to close. Judge Tate waives.

Therefore, on Amendment No. 42 is there any objection to the adoption of Amendment No. 42?

To which objection is urged.

Therefore, when the machine is opened, those in favor of the adoption of Amendment No. 42 will vote yes. Those opposed will vote no, and the Clerk will open the machine.

Are you through voting?

Please vote your machines, delegates.

Are you through voting?

The Clerk will close the machine.

27 yeas and 19 nays, and Amendment No. 42 stands adopted.

Next amendment, Mr. Clerk.

Judge Tate, Amendment No. 43.

MR. TATE

All right. Amendment No. 43, again we have the situation that we've called to your attention as something that you may consider beyond our jurisdiction. As Mr. Avant said, we are not trying to do anything but call your attention, in this case, a possible

MR. TATE (cont'd)
inconsistency which could be a substantive change but still was in the jurisdiction of our recommendation to you. If you think our recommendation is wrong, you can simply vote it down. It has to do, Amendment No. 43, which is an amendment to Section 5 (1) that's in Committee Amendment No. 15 on this sheet, it's on Section 5 (1) as on page 17 on your green sheets and it's on page 3 on your yellow sheets. The effect of it is if it passes the floor, "the governor shall appoint, subject to confirmation by the Senate the head of each department." The effect is to add "public confirmation by the Senate." The reasoning is that you may wish to look on this as an inconsistency is that in Section 13 where the first assistants to statewide elected officials are concerned. . . Senator Brown after debate secured an amendment to say that those appointments are subject to public confirmation. You may remember Senator Brown was absent when [Section] 5 (1) came up, he was having a baby, he does that every couple of years—that's a joke and I hope I'm not quoted as predicting.

MR. CASEY
Any questions of Judge Tate?
Mr. Jenkins, has a question.

MR. JENKINS
You know, Judge Tate, I certainly think that all of these things ought to be public, but there was a distinction in this case. The distinction was that we were talking here about first assistants who were going to be moving up to the position of a statewide elected official; we provided in that case that there would be public confirmation. Now, in the case we are presently on with department heads, there's not nearly the arguments since these don't hold the equivalent of a statewide elected office. I don't understand how the Style and Drafting Committee can bring these things up when there is an obvious distinction in cases like that.

MR. TATE
Well, Representative Jenkins, you may well be right, some people thought there was not an obvious distinction, that's all, and they thought that it was a parallel idea. Mr. Chairman, I would prefer, for instance, that Senator Brown or someone spoke a little about it because it was brought to our attention as a discrepancy, had he been present he would have given this convention a chance to rule on it. As I understood what he said is that the public confirmation did not mean a public debate, but just....it could be an executive session on qualifications but a public confirmation by public vote. But, I mean I have no views on it, gentlemen, I'm just doing what I thought our duty might be.

MR. CASEY
O.K. Any further questions?
Is there any further discussion?
Mr. Duval is recognized for the floor.

MR. DUVAL
Mr. Acting Chairman and fellow delegates, we are purely getting into substantive changes now. I think you can open a Pandora's box by doing this. Confirmation as to the department heads is certainly different than the confirmation to the first assistants as pointed out by Mr. Jenkins. Senator Brown's amendment applied to first assistants and although he may have introduced it as to all confirmations it did not occur that way. I can tell you as a member of the Executive Department Committee it was certainly my intent that confirmations of department heads would not be an open forum. Certainly the announcement would be open and public but not the actual process of confirmation because I think with department heads you can end up either destroying a man or not bringing out things which are important because of the public confirmation nature. But, despite the merits, it's purely substantive; it's quite substantive. I urge

MR. DUVAL (cont'd)
you to vote it out of order because it's really substantive and we can just reopen the whole door on this stuff if we keep doing this.
MR. CASEY
Now, just a minute, Mr. Duval, there's been no motion that it.... no point of order except your mention right now that it was out of order; I just thought I would point that out to you.

MR. DUVAL
Well, I'll move that it's out of....to be declared out of order.

MR. CASEY
Mr. Denney, did you have a question?

MR. DUVAL
....in that it's substantive.

MR. CASEY
I recognized you to speak on the amendment, however.
Mr. Denney.

MR. DENNEY
I rise to the point of order, Mr. Chairman. I ask for a ruling from the Chair that this recommendation is out of order.

MR. CASEY
O.K. We'll put the question to the convention.

MR. POYNTER
The question before the convention is the identical question. Mr. Denney this time has risen to a point of order questioning whether Amendment No. 43 is not, in fact, out of order as constituting a substantive change. The question before the convention would be in the affirmative that the amendment is in order because it does not constitute a substantive change from the proposal as adopted and the alternative in opposition the fact that the amendment is out of order as constituting a substantive change and, therefore, beyond the authority of the Committee of Style and Drafting under the rules.

MR. CASEY
Is there any....
Mr. Duval.

MR. DUVAL
If it constitutes a substantive change, we should vote red; is that correct?

MR. POYNTER
If it is not a substantive change, you vote green. If it is a substantive change, you vote red.

MR. CASEY
Are you ready for the question?
Without objection, then, the previous question is ordered.
O.K. Those....

MR. POYNTER
Those in favor of declaring the amendment to be in order as not constituting a substantive change will vote yes. Those who feel that the amendment is out of order constituting a substantive change will vote no or red.

MR. CASEY
And the Clerk will open the machine.

MR. CASEY (cont'd)

Are you through voting?

The Clerk will close the machine.

11 yeas and 73 nays, and the convention has declared Amendment

No. 43 not in order.

Mr. Tobias, why do you rise?

MR. TOBIAS

A motion.

MR. CASEY

State your motion, sir.

MR. TOBIAS

For a suspension of the rules in order to call from the table the motion to reconsider that section.

MR. POYNTER

For the limited purpose, Mr. Tobias?

MR. TOBIAS

For the limited purpose.

MR. CASEY

O.K. Mr. Tobias moves for a suspension of the rules to call from the table the motion....the reconsideration on Section 5.

Is there objection?

To which objection is urged.

Mr. Brown.

MR. BROWN

Is the motion debatable?

MR. CASEY

It is debatable, sir.

It's sorry, it's a suspension of the rules, it is not debatable.

Therefore, when the machine is opened, those in favor of a suspension of the rules to call from the table the motion to reconsider the vote by which Section 5 was adopted for the limited purpose of offering Amendment No. 43 will vote yes. Those opposed will vote no, and the Clerk will open the machine.

Are you through voting?

The Clerk will close the machine.

37 yeas and 52 nays, and the convention has refused to suspend the rules.

MR. POYNTER

Judge Tate, you want to make a motion to have that amendment now withdrawn?

MR. TATE

Yes, sir.

MR. CASEY

Judge Tate moves to withdraw Amendment No. 43.

Is there objection?

Without objection, so ordered.

Amendment No. 44.

MR. TATE

Amendment No. 44 which is to Section 5 (1) which is on page 17 of your materials....green materials and which is on page 4 of your yellow materials. I do not believe you will find this—but I may be mistaken—this one to be as controversial or as subject to the construction that it is substantive, although you may. As it passed the convention floor it says, "Should the legislature be in session,

MR. TATE (cont'd)

the power shall submit for confirmation by the Senate the name of an appointee" and so....and so "failure shall constitute rejection." Then, it says, "If the legislature does not so approve, the governor may make appointments, which shall expire at the end of the next session." Now, the present constitution would have said it expires at the end of the next regular session. The effect of what was believed to be an unintentional change by the convention floor would be that if there is a special session such as that last one we had, all of those interim appointments would just expire automatically unless he remembered to put them in the call and special sessions normally don't have time to fool with that kind of stuff. So, it was believed that this will be a clarifying amendment to add "regular" in every place where you refer to "session." I'll yield. Again, I have no axe to grind. We don't care whether the amendments are rejected or accepted, but we are raising to your attention the possibility that there's an inadvertent change from the present constitutional provision which permitted interim appointees to serve until the next regular session, not for any little session that happened to be covered in the middle.

MR. CASEY

Mr. Newton, has a question.

MR. NEWTON

Judge, I would like to get you to repeat. It's your opinion that if there were these interim appointments were not in the call, then they could not be considered by that session of the legislature and they would lapse automatically; is that right?

MR. TATE

That is what my understanding of the legislative....people that know something about legislatures, which I don't, except from what I've learned here, so to speak.

MR. CASEY

Mr. Denney; then, Mr. Jenkins.

MR. DENNEY

Judge, I didn't quite understand the last answer you gave to the question. Did I understand you to say that a governor cannot submit to a special or extraordinary session...?

MR. TATE

I've just been informed that he could submit them, but if he forgot to submit them...if he forgot to submit them they'd all expire, although they...if this were adopted, if this were adopted unchanged, they'd all expire.

MR. DENNEY

I understand that. I just wanted to make sure that you didn't...it does not have to be included in the call of a special session.

MR. TATE

I have been corrected. That was a mistake on my part when I said that.

MR. CASEY

Mr. Jenkins.

MR. JENKINS

So, what you're saying, then, is Judge, is first, this is a substantive change. Is that not correct?

MR. TATE

Mr. Jenkins, I'm leaving it to you if it's a substantive change. I think we thought, and I think the other committee agreed with us, that this was the intent—we thought this was the intent—to carry on the present provision when it was passed. They were not thinking of the fact that a special session could be called that would disrupt the tenure of the interim appointee.

I will leave it to you, Mr. Jenkins. I don't care. You know, I mean, I honestly don't care. I'm not an advocate for the thing. We just...our duty is to bring it to your attention and let you think about it.

MR. JENKINS

Well, Judge, I do care because I want us to maintain the intent and the language, you know. I think many of us voted for that thing with the...just as we did for most things, knowing what we were voting for and knowing what was said. When the words are unambiguous, I don't see how you could...

MR. TATE

All right. Mr. Jenkins, the language has been interpreted-- session, to mean to the regular session, in the case of Saint versus Dowling 167, LA 907127593, a 1929 case. We really thought we were clarifying what the intent was and avoiding lawsuits like that in the future. It makes no difference, as I say. If you gentlemen think, and ladies, think it's substantive, raise a point of order and defeat it. If you think it shouldn't be, fine. I'm not here to advocate it, Mr. Jenkins. I'm just here to call it to your attention.

MR. JENKINS

One other question.

Inasmuch as it's in the governor's interest to have his appointees continue in office, there would be little doubt that in...if a special session were called in a given instance, he would include the confirmation of his appointees in the call. Isn't that true?

MR. TATE

Well, I would hesitate to speculate. But, I do remember one session when they forgot to confirm all the notary publics of the state, and they had to reconfirm them by act. But, I suppose they'd usually remember them, I guess. I don't know.

MR. CASEY

Is there any further discussion on Amendment No. 44?

Is there any objection to the adoption of Amendment No. 44?

Then without objection...O.K. you object?

Do you object or do you make...are you...?

Therefore, those in favor of Amendment No. 44 will vote yes.

Those opposed will vote no, and the Clerk will open the machine.

Are you through voting?

Are you now through voting?

Please vote your machines, delegates.

The Clerk will close the machine.

71 years and 2 days, and Amendment No. 44 has been adopted.

Why do you rise, Mr. Pugh?

Amendment No. 45, Judge Tate.

MR. TATE

Amendment No. 45, which is to the Committee Amendment No. 40, about the appointment of officials, Section 22 which is on page 45 of your green material, and on page 5 of your yellow material. The effect of it is, it says "at the time of adoption of the constitution-- after the first election of officials following adoption of this constitution." The recommendation was, and we have no strong views on it. Consistently-- we have been trying in most instances, unless it amounts to a change of substance, to use the consistent, "the effective date of" to make it clear...to clear up the ambiguity that may exist, whether the adoption means the date of the election, or the date the constitution becomes effective.

MR. CASEY

Any questions of Judge Tate?

Any discussion on Amendment No. 45?

Any objection to the adoption of Amendment No. 45.

Without objection, Amendment 45 stands adopted.

MR. TATE

Now, Amendments 46 and 47 are controversial. There will be a view of some that they are substantive. I am going to try to give you the balance of the debate. Then, I think for our committee, and for the Executive Branch Committee, you will have representatives speak.

Amendment 45...in the view of some, an ambiguity arises whether the attorney general is a member of the Executive Branch, or whether he is a member of the Judicial Branch. The ambiguity in the view of some results from the following:

There was an amendment to Section 1 (A) which is page 1 of your green materials, which took out the attorney general from those people listed as members of the Executive Branch. On the other hand, in subsequent articles of the Executive Branch Article, Sections 2, 3, 4, and 8, I believe, and maybe one more, the attorney general is spoken of in the same breath as the other members of the Executive Branch, and...within the title of Executive Branches includes the Department of Justice.

On the other hand, in the Judiciary Branch Article, they also have the Department of Justice, telling about the Executive Branch. So, in an effort to let this floor decide this question, and this question that has to do with whether there are going to be twenty or twenty-one departments. It may have to do with the power of reorganization. In an effort to let the floor resolve that issue, we have prepared first, Amendment 46 which has the effect of taking out of the Executive Branch the provisions 2, 3, and 4, that list the attorney general, and placing them in the General Provisions Article, because they refer not only to the attorney general, but other statewide elected officials. Also, of the leading Section 7, which talks about the attorney general, and which is repeated in the Judiciary Branch.

The alternative amendment, if that amendment is rejected,

* * *

MR. HENRY

Yes, sir, it is debatable.

Mr. Burson, if you will, proceed on your motion to reconsider.

MR. BURSON

Ladies and gentlemen of the convention, I have made an effort to talk to every delegate in the convention personally about the matter I wish to ask you to reconsider, which is Section 35(8) of the Judiciary Proposal which relates to the proposition that a person testifying at any stage in grand jury proceedings shall have the right to the advice of counsel while testifying. I'm sure there are a few of you that I have not talked to. In fact, I know there are, but I've tried to talk to most of you. When we completed the Judiciary Proposal and the Bill of Rights, I felt it would be inappropriate of me to conclude on my own that this particular provision would cause the difficulties that I thought it would. So, I requested counsel from every district attorney in this state, and thirty-two of the thirty-four said that in their opinion this measure would do more harm than good. Mark me well; I'm not saying that the good intentions of the original proponents of this measure were not valid. I'm not in my own personal opinion I think these abuses have occurred more often in the federal grand jury procedure than they have in the state. What I am saying is why this, that this would do more harm, far more harm than it could ever do good because, for instance, in parishes the size of mine, with ninety thousand people and fifty lawyers, it would simply be a practical impossibility to provide counsel for each and every witness we call before the grand jury when we may call as many as a hundred and fifty witnesses in a day. You cannot say that something is a right unless you give it to everybody. You can't just give it to those who can afford to pay for counsel. We don't do that at any other stage of the criminal law. We use the grand jury in state proceedings more often to kill bad charges, charges that were made out of spite, than we do to investigate. I'm here to tell you that if we impose upon the state grand jury system the absolute requirement of counsel that we will be to all practical effect, eliminating its use for that good purpose, for that purpose which helps the defendant and will be limiting its use only to those that we have absolutely mandated in this constitution, such as a capital crime. I think that would be a bad thing, and it would be a bad thing for criminal defendants. I would remind you also that when you create a vacuum in law, it's got to be filled. The governor mentioned this yesterday. I'm glad that he did. I'm glad that he did mention this proposal because I think it's in the best interest of the people of all the state if you allow me to reopen this to present an amendment which would leave this to the legislature and the Code of Criminal Procedure because we researched this matter, and the staff could find only one mention of it, and that was in the Code of Criminal Procedure of the State of Washington. I'll answer any questions.

MR. HENRY

Mr. Chatelain has a question.

You're next, Mr. Burns; then you, Mr. Champagne.

MR. CHATELAIN

Delegate Burson, is this the same amendment or the same thought that you discussed with me some one week ago, when myself and many other delegates joined with you on this thought?

MR. BURSON

Mr. Chatelain, it is not only the same thought; it is the identical language. The language in the amendment that has been passed out, sponsored by Henry, Gravel, Pugh, Graham, Alphonse Jackson, and myself, is the identical language I discussed with you, and I had that before the governor's speech, I had more than forty coauthors on it.

MR. CHATELAIN

Is it fair to say in our discussion over one week ago that I who voted for this in the first place, realized my mistake and considered to reconsider at that time? Is that correct, sir?

MR. BURSON

Yes, sir. I might mention that I made the same mistake, so you're not by yourself.

MR. HENRY

Would you yield to a question to Mr. Burns?

The gentleman yields; you're next, Mr. Champagne.

MR. BURNS

Mr. Burson, isn't it... doesn't it very often happen--I know it used to happen--that a district attorney, where they have a family quarrel between two big local families and he doesn't want to take either side, that he'll put the whole matter before the grand jury, and each side, each family may have ten witnesses apiece. In a situation like that every witness may demand an attorney. There'd be twenty attorneys there representing witnesses in a little two-bit misdemeanor case. Isn't that right?

MR. BURSON

Yes, sir. That's correct.

MR. HENRY

Will you yield to a question to Mr. Champagne?

MR. CHAMPAGNE

Is it correct that your intention to open this section is for this one specific purpose?

MR. BURSON

That one limited, specific purpose, yes, sir.

MR. HENRY

Mr. Schmitt, for a question. Passes.

Mr. Jenkins, for a question. You're next, Mr. Stinson.

MR. JENKINS

Mr. Burson, I know that we have included in this constitution a number of protections for those accused of criminal offenses, and that some of our district attorneys in the state have been concerned about the extent of that protection. Do you feel that if this change is made, on the basis of your discussions with the members of their association and the individual district attorneys that they will be able to support and enthusiastically defend the aspects of this constitution that deal with criminal justice and district attorneys?

MR. BURSON

In every case and every person I've talked to, I've been told that, and in fact, your district attorney here has authorized me to say that he would unquestionably support this document, if we can make...

MR. HENRY

Will you yield to a question to Mr. Stinson?

Oh, you want the floor?

Do you have a question, Judge Dennis?

MR. DENNIS

A point of information, Mr. Chairman.

MR. HENRY

State your point.

MR. DENNIS

I'd like to know the exact extent of Mr. Burson's motion. Is

MR. DENNIS (cont'd)

his motion solely to take from the calendar for the purpose of offering amendment to Section 35?

MR. BURSON

Yes, sir.

MR. DENNIS

Of the article?

MR. HENRY

When we get there, that's what I appreciate and understand his motion will be, but now...there's the motion to reconsider the adoption of that committee proposal which we have to dispose of before we can ever get in that posture, Judge.

MR. DENNIS

Well, then, could I ask him a question?

MR. HENRY

Yes, sir.

MR. DENNIS

Is this the only section that you are going to ask that be reconsidered, when you get to that point?

MR. BURSON

Absolutely, Judge. The only reason I'm discussing it at this time is so that the convention will be fully aware of my intention, and as I understand it, the motion to call from the table is to suspend the rules to reconsider the Section 35 is not a debatable motion. Therefore, I have to explain it now, or I don't get to explain it.

MR. DENNIS

Well, I appreciate your explanation. I just wanted to make that clear.

MR. HENRY

Mr. Tapper, for a question. This will wind it up.

MR. TAPPER

Really, it's for a point of information, Mr. Chairman. If Mr. Burson's motion carries, then I assume that the whole Judiciary Article would then be opened.

MR. HENRY

Well, no, sir. It won't. Now, if Mr. Burson's motion to reconsider is adopted, then his next motion would be to call from the table the motion to reconsider the vote by which Section 31... 35 was adopted, and then Section 35 would be all that we'd be talking about right then. A similar motion would have to be made to get into any other of the sections in that proposal.

MR. TAPPER

Well, Mr. Chairman, wouldn't you first have to call the proposal from the Chair before...from the table before you can consider a section within the proposal?

MR. HENRY

No, sir, because the proposal has never been tabled, the motion to reconsider. You see, we never acted on the motion to reconsider, on any of these proposals, if you recall, just for this specific purpose, in the event we did need to get back in to do something to one of the sections.

MR. TAPPER

One other question, or point of information, Mr. Chairman. How

MR. TAPPER (cont'd)

many votes would it then take after, if assuming that this motion passes, how many votes would it take to call that section off the table?

MR. HENRY

Sixty-seven, or two-thirds of those present and voting, whichever is lesser.

Mr. Stinson, you wanted the floor?

Proceed, sir.

MR. STINSON

Fellow members, I'm sure in view of a few of the past votes that I'm shouting in the dark, but I like to shout in the dark even if I'm by myself. Any time one group, especially the district attorneys, that they think they are so smart and so strong that they can come in here and say, "If you don't change one thing, then we're going to beat the constitution." Well, I say they should have written the constitution to start with instead of us here laboring for one year. Now, you get up here and talk about having a lawyer for a two-bit case. It may be a two-bit case, but if someone jumps in there and is questioned by the district attorney, and he can have two or three assistants with him, and some poor person that's not educated can, through error, make a false statement, it won't be a two-bit case as far as he's concerned; he's going to be sent to the penitentiary for lying before the grand jury. One person, now, if he doesn't testify the way they want him to, and can be tied up and confused, and unintentionally tell a falsehood, he can be prosecuted. It doesn't say he has to have a lawyer; it says he has one if he wants one, and he can afford it, or can get one. They used a two-bit case, but there are a lot of cases that are not two-bit cases, and two-bit cases shouldn't be put before the grand jury. Now, we came up here, and I don't know, but I'm advised there were ten votes against it, including Mr. Burson's, and he's an educated, smart person, but he didn't understand it, and we're going to still take some person who's not educated before a grand jury, and possibly send him to the penitentiary because he couldn't get advice when he needed it. You have to go before the grand jury. If you refuse to testify, they can send you away. But, we're going to take these people, we're supposed to be protecting everybody with a Bill of Rights, and we're going to take this out, that only ten people opposed, and that wasn't including Mr. Burson; he voted for it. Now, he comes up at this late date and says he made a mistake. We've got to change it; if we don't, the district attorneys are going to defeat the constitution. Well, I don't appreciate a threat like that from the district attorneys, or the governor or anyone else. Just because he couldn't win what he wanted, he's going to quit playing ball, and go against it. Now, if we're going to give in to threats like that—I personally don't care about this—but it's the principle of it, and the fact that we're supposed to protect these little people. If we're going to come up here this last week and after voting only ten against it, and say because the district attorneys threatened us, we're going to have to give in and bow down. Well, there's going to be one "no" vote up there when this comes up, I can assure you. If you think the legislature is going to pass this, well, you're just whistling in the dark. I've seen the district attorneys control the legislature so it is pathetic. We are considered as a nonpolitical group because we are not going to run for reelection, but the representatives and senators do. This will never stand a snowball in heck if it's left up to the legislature. What's wrong with letting someone have a lawyer to advise him as to what he should testify? I think we are taking away a right, and we are giving in to pressure from the district attorneys. If we've got to depend on the passage of this constitution by the district attorneys or anyone else, I'm sorry

MR. STINSON (cont'd)
that I'm here as a delegate. I wish I had not run, and if I was foolish enough to have won, I wish I had lost. I'm not coming here and let one group say, "If you don't do this, well, we're going to beat it." As far as I'm concerned, they can just take that and do whatever they want to with it. Yes, ma'am.

MR. HENRY
Will you yield to a question from Mrs. Warren?
The gentleman yields.

MRS. WARREN
Mr. Stinson, do you realize that whatever I do, I'm not doing it because of any special persons? I'm going to ask this just for information. What does a witness—I've never been a witness before a grand jury—what does one testify to when he's before the grand jury? Is he supposed to tell the truth, or does the attorney have to tell him to tell the truth?

MR. STINSON
But, the way they twist the questions around as all lawyers try to do to confuse the if there on the other side? You don't know whether you're telling the truth or not. Some witnesses don't, and they can prosecute then if they unintentionally do not state a fact that happened the way it did.

MRS. WARREN
Mr. Stinson, don't you think if a person doesn't know whether he's telling the truth or not, he shouldn't be there in the first place?

MR. STINSON
He didn't offer to go there. He was summoned and required to go there, Mrs. Warren. He wasn't there by choice.

MR. HENRY
The gentleman has exceeded his time.
Is there any further discussion?
Mr. Tapper.

MR. TAPPER
Mr. Chairman, fellow delegates, this has been debated before. I think we debated it quite extensively the first time. We all know what it means. The handwriting is on the wall. I still feel the same way as I did when I asked you to pass this amendment. I do understand the problems that the district attorneys will have with it. However, I still feel that this is necessary. If you will recall just a few weeks ago, the United States Supreme Court has issued an order ordering counsel in grand juries in certain cases throughout these United States. So, I'm asking you not to go along with Mr. Burson. I'm not making a forceful request of you because what I'm telling you is this, that regardless of what we do in this constitution--and Mr. Stinson is correct, it will never be passed in the legislature. Mrs. Warren, if you've never been before a grand jury, I can understand why you don't know why someone would need representation. It may be just to keep you from perjuring yourself, or to keep you from being held in contempt when you don't know whether you should answer a question or not, or whether you have to answer a particular question that might be discriminatory against you, or whether or not you--you may volunteer to go before a grand jury, and if you're not given immunity, then what you say there can be held against you. I don't think this is proper. I think you should be told first before and advised as to your rights before you appear before the grand jury. The passage of this amendment was not an indictment of the district attorneys in this state. It was just for the protection of the individuals who might be innocent that are called before a grand jury. I ask you not to go along with Mr. Burson, but if you do take it out of this constitution, the federal government

MR. TAPPER (cont'd)
and the United States' courts are going to do it for us anyway, so I don't think we're going to be hurting anybody. Thank you.

MR. HENRY
Would you yield to a question to Mr....
Will the gentleman yield to any questions?
Mr. Tapper, you don't yield?
The gentleman refuses to yield.
Are you ready for the question?
Without objection, the previous question is ordered.
You have the right to close, Mr. Burson. Do you waive?
The gentleman passes.
The gentleman has moved to reconsider the vote by which Committee Proposal No. 21 was adopted.
To which objection is urged.
Therefore, when the machine is opened...
The gentleman requests a record vote.
Will twenty-six members join him?
A record vote is ordered.
Therefore, when the machine is opened, as many of you as are in favor of reconsidering the vote by which the proposal was adopted will vote yes. Those opposed will vote no, and the Clerk will open the machine.
Vote your machines, ladies and gentlemen.
Are you through voting?
The Clerk will close the machine.
94 yeas and 11 nays, and the motion to reconsider is adopted.
Mr. Burson now moves to...for a suspension of the rules for a purpose of calling from the table the motion to reconsider the vote by which Section 35 was adopted for the limited purpose of offering his amendment.
Is there objection?
Mr. Tapper, you object?
You don't object?
Is there any objection?
Without objection, the rules stand suspended.
The gentleman now moves to reconsider the vote by which Section 35 was adopted.
Is there objection?
Without objection, so ordered.
Mr. Burson offers up amendments.
The Clerk will read the amendments.

MR. POYNIFE

I might point out this goes to the final enrollment so that if you have the first enrollment, the lines may not match up. On page 11, delete lines 24 through 26, both inclusive, in their entirety, being the entirety of Paragraph (B) of Section 35, and insert in lieu thereof the following:

"(B) Right to Counsel. The legislature may establish by law, terms and conditions under which a witness may have the right to the advice of counsel while testifying before the grand jury."

MR. HENRY

Mr. Sutherland, why do you rise, sir?

MR. SUTHERLAND

A point of information, Mr. Chairman. You, I think, said we called 35 from the table?

MR. HENRY

Yes, sir.

MR. SUTHERLAND

I think the Clerk is reading Proposal No. 21; at least that's what my copy says.

MR. HENRY

No, it's Section 35 to Committee Proposal No. 21, as I appreciate it, Mr. Sutherland.

MR. SUTHERLAND

Okay.

MR. HENRY

Mr. Burson, if you will, explain your amendment.

MR. BURSON

I think I've already explained it. What this will do will allow the legislature to respond to whatever the requirements may be in the future, either of the federal law, as Mr. Tapper pointed out, or simply of the needs of reform in our criminal justice system. I think we all know and we all admit it needs a lot of reform in a lot of ways. But, the legislature can respond to these needs, and we will not freeze in a rule. I might point out; I understand the depth of Mr. Stinson's commitment on this issue, but I did not say, and I hope I was not misinterpreted as saying that the D.A.'s would beat or fight this constitution if this amendment did not pass, 'cause I certainly would never say that. The only thing I will say, and I think this is true, is that the passage of this amendment will help to pass the constitution. I'm convinced of that.

MR. HENRY

Yield to a question from Mr. Stinson?
You're next, Mrs. Zervigon, Mr. Casey and Dr. Weiss.

MR. STINSON

Mr. Burson, when the legislature introduces this, you all will be there fighting it, won't you?

MR. BURSON

Mr. Stinson, of course, whatever the legislature presents will have to be considered on its merits at that time. I can think of a lot of circumstances where it might be justified.

MR. HENRY

Mrs. Zervigon, for a question.

MRS. ZERVIGON

Mr. Burson, your amendment doesn't say "Notwithstanding,"

MRS. ZERVIGON (Cont'd)

and then mention the section number of the secrecy section on the grand jury. But, what this is meant to do is to be an exception to the secrecy in the grand jury room, isn't that correct?

MR. BURSON

This is the reason why we're putting this language in here: because it might be susceptible if you didn't say it; that maybe the secrecy would prohibit anyone from going in there. I think it's quite clear with this language that this... they're in the same section. This whole section deals with the grand jury, and this permits the legislature to do whatever it thinks appropriate in this regard.

MR. HENRY

Mr. Casey.

MR. CASEY

Mr. Burson, you may have already made mention of this. If you did, I didn't hear you. Is there any need to distinguish between the word "witness" and the word "defendant"?

MR. BURSON

Well, I think that in order to answer this question you've got to understand that the law of the State of Louisiana right now, under the case of *State vs. Harrell*, which is an old case, the defendant in a criminal prosecution, if he's not advised that he's the focus of the interrogation before the grand jury and warned of his rights against self-incrimination, then anything he says in the grand jury can't be used to form an indictment against him or an information except on grounds of perjury or public bribery under an old constitutional section that we have.

MR. CASEY

Well, I guess my question is, then, under your answer, is the defendant going to have... can a defendant be granted a right by the legislatively established terms and conditions; can a defendant have the right to counsel?

MR. BURSON

There's no question if he's a witness before the grand jury. A witness, here, means any witness, if he's a defendant or any other witness.

MR. CASEY

Well, that's what I'm driving at. Under your interpretation, for the record, the term "witness" includes defendants?

MR. BURSON

Yes, sir. I think under present federal requirements the defendant, once he becomes an accused, and under our state law, he's got to be appointed counsel within forty-eight hours, I believe, anyway.

MR. HENRY

Yield to a question from Dr. Weiss?

MR. WEISS

Delegate Burson, the floor amendment you propose, would you say it's to the benefit or the detriment of a majority of people of the State of Louisiana?

MR. BURSON

If I didn't think it was to the benefit of the majority of the people of the state, Dr. Weiss, I wouldn't offer it.

MR. HENRY

Would you yield to a question from Mr. Avant?
The gentleman yields.

MR. AVANT

Jack, I'm just a little bit confused by the question and answer between you and Mr. Casey. But, to be, a defendant is a person who has been charged with a crime. In other words, a prosecution has been instituted, and he is the defendant; the state is the plaintiff.

MR. BURSON

That's right.

MR. AVANT

Under no circumstances could such a person be compelled to go before a grand jury with respect to the offense with which he has already been charged. So, you don't have any problem there, do you?

MR. BURSON

You're absolutely right. That's been the law of this state and of the United States under the self-incrimination provisions which we have. . . also have in this constitution in the Bill of Rights.

MR. AVANT

I just wanted to clarify that in the record.

MR. HENRY

Yield to a question from Mr. Giarrusso?

The gentleman yields.

This is going to wind it up.

MR. GIARRUSSO

Jack, I'd just like to clarify something: to be indicted, you don't have to appear before the grand jury. Is that correct?

MR. BURSON

That's correct.

MR. GIARRUSSO

But, it is possible, under the law, that if you are an accused that you can be summoned before the jury?

MR. BURSON

It's possible under federal law, I believe, Chief; but I do not think, as my understanding of state law—and I did quite a bit of research on this—that if you are subpoenaed, then you must be told at that time of your rights about self-incrimination or given some indication that you're more than just a witness: that you are, in fact, possibly a focus of the investigation. Or, if you're not given that warning about self-incrimination, then I don't believe, under the three cases I've read, the district attorney could use whatever you said in a bill.

MR. GIARRUSSO

I'm asking; I don't know. Would it not be better to say that an accused is entitled? This is the one that you are talking about, when he appears before the jury, that's entitled to counsel and not a witness.

MR. BURSON

The problem you get into is you may not know in all cases that he's the accused before he gets called. This is why "witness" gives you more protection, because it's a broader term. It includes everybody.

MR. HENRY

You've exceeded your time. You've exceeded your time. Is there any further discussion on the amendment? Any further discussion?

MR. HENRY (Cont'd)

Are you ready for the question?

Without objection, the previous question is ordered.

The gentleman has offered up an amendment to which objection is urged.

The gentleman requests a record vote. Will twenty-six delegates join him?

Therefore, when the machine is opened, as many of you as are in favor of the adoption of the amendment will vote yes. Those who are opposed will vote no, and the Clerk will open the machine.

Vote your machines, ladies and gentlemen, please.

Are you through voting?

The Clerk will close the machine.

99 yeas and 2 nays, and the amendment is adopted.

Mr. Burson moves to reconsider the vote by which the amendment was adopted, and lay the motion on the table.

Is there objection?

Without objection, so ordered.

The gentleman now moves the adoption of Section 35.

Are you ready for the question?

Without objection, the previous question is ordered.

Therefore, when the machine is opened, as many of you as are in favor of the adoption of Section 35 will vote yes. Those who are opposed will vote no, and the Clerk will open the machine.

Please vote your machines, ladies and gentlemen.

Are you through voting? Are you through voting?

The Clerk will close the machine.

102 yeas and 3 nays, and the section is adopted.

The gentleman moves to reconsider the vote by which the section was adopted, and lay the motion on the table.

Is there objection?

Without objection, so ordered.

Judge Dennis now moves the adoption of Committee Proposal No.

21.

Are you ready for the question?

Without objection, the previous question is ordered.

Therefore, when the machine is opened, as many of you as are in favor of the adoption of Committee Proposal No. 21 will vote yes. Those who are opposed will vote no, and the Clerk will open the machine.

Vote your machines, ladies and gentlemen. Please vote your machines.

Are you through voting? Are you through voting?

The Clerk will close the machine.

106 yeas and 2 nays, and the proposal is adopted.

Judge Dennis moves to reconsider the vote by which the proposal was adopted, but to leave the motion pending.

Is there objection?

Without objection, so ordered.

Mr. Roy, why do you rise?

MR. ROY

Mr. Chairman, I move to suspend the rules to consider the proposal in the local . . . general governmental provisions, particularly Section 9 which deals with multi-banking.

MR. HENRY

Well, then what you want to do, first, is move to suspend the rules for the purpose of calling it from the Committee on Style and Drafting. Is that right?

MR. ROY

That's correct.

MR. HENRY

Mr. Newton, why do you rise, sir?

MR. NEWTON

Mr. Chairman, I believe we suspended the rules to call that Proposal No. 21 from Style and Drafting. Would it be necessary

* * *

MR. CASEY
Any other questions on Amendment No. 18?
Any discussion?
Any objection to the adoption?
Without objection, Amendment No. 18 is adopted.
Amendment No. 19.

MR. TATE
Amendment 19 once again singularizes. Instead of saying plural "local governmental subdivisions", it says "no local governmental subdivision shall", and otherwise is simply stylistic changes, leaving out words as we ordinarily leave them—"except as may be" and "except as" provided by law, mean the same thing.

MR. CASEY
Any questions on Amendment No. 19?
Any discussion?
Any objection to the adoption?
Without objection, Amendment No. 19 is adopted.
Amendment No. 20.

MR. TATE
Amendment No. 20, which is to Section 9 (B) on page 19 of your green material ...simply adds a title, and otherwise, no change in language.

MR. CASEY
Any questions on Amendment No. 20?
Any discussion?
Any objection?
Without objection, Amendment No. 20 is adopted.
Amendment No. 21.

MR. TATE
Amendment No. 21 is to Section 10 on page 20, talking about the Singletary codes. It shortens the language and has the same effect. I want you all from now on when these municipalities and other local governmental units start to enact these codes, we got to remember to call them the Singletary codes. That will be Alvin's...one of Alvin's immortalities.

MR. CASEY
Any questions on Amendment 21?
Any discussion?
Any objection to the adoption?
Without objection, Amendment No. 21 is adopted.
Amendment No. 22.

MR. TATE
Amendment 22 is to Section 11. Again, it just...omitted as unnecessary the repetition of the words "of any governing authority," and it felt that "from single-member districts" with a hyphen said the same... the same thing a little bit more—with a little more punch than "on the basis of single-member districts."

MR. CASEY
Any questions on Amendment 22?
Any discussion?
Any objection?
Without objection, Amendment No. 22 is adopted.
Amendment No. 23.

MR. TATE
Amendment No. 23 is to Section 12 on page 22 of your green copy. It is simply using standard punctuation and renumbering the sections to conform to the new section, singularizing, and the usual rules of consistency we have been trying to follow.

MR. CASEY (In the Chair)
Any discussion on Amendment No. 35?
Are you ready for the question?
Without objection, the previous question is ordered.
Therefore, when the machine is opened, those in favor of the adoption of Amendment No. 35 will vote yes. This is a record vote. Any opposed will vote no, and the Clerk will open the machine.
Are you through voting?
It's a record vote, delegates.
Please, vote your machines.
Are you now through voting?
The Clerk will close the machine.
101 yeas and 0 nays, and Amendment No. 35 is adopted.
Judge Tate moves to reconsider the vote by which Amendment No. 35 was adopted and lay that motion on the table.
Without objection, so ordered.
Amendment No. 36.

MR. TATE
Amendment No. 36 is to your Section 17 on page 31. It's the last of the stylistic amendments to Committee Proposal No. 15, and it leaves out a few "its" in the series of "the state, its agencies, boards, commissions"...instead of "its boards, its commissions" and so on and "to secure federal participation" we thought "in fundings of capital improvement" was more accurate. In the cost of capital improvement projects," and recommended that change as stylistic.

MR. CASEY
Any questions on Amendment No. 36?
Any discussion?
Any objection to the adoption of the amendment?
Without objection, then, Amendment No. 36 is adopted.
Does that complete your report on that, Judge?

MR. TATE
Yes, Mr. Chairman, that completes our report on Amendment No. 36.

MR. POYNTER
Judge Tate has sent up further reports. I believe there is to be a motion in a few minutes to take up other orders anyway and let these lie over. But, at any rate, Judge Tate sends up report that Delegate Proposal No. 22 is reported with amendments, Committee Proposal No. 9 is reported with amendments, Committee Proposal No. 10 reported with amendments, Committee Proposal No. 32 with amendments, Committee Proposal No. 34 with amendments.
Respectfully submitted, Judge Tate.
Of course, these reports contained just above, all lie over under the rules.
The secretary of the Convention sends up the following report: that Committee Proposal No. 16 has been enrolled in final form as, also, has Committee Proposal No. 26.
Respectfully submitted, Moise Denny.
In addition to that, Delegate Proposals Nos. 17, 18, and 28 have all been enrolled in proper form. The above proposals contained in the report were read and signed by the Chairman of the Convention and attested by the secretary in accordance with the rules.
At this time Delegate Asseff moves to advance to Morning Hour No. 8, Proposals on Introduction and First Reading.

MR. CASEY
Without objection, so ordered.

MR. POYNTER
A proposal sent up by Delegates Asseff, Anzalone, Miller, Bergeron, O'Heilly, Kelly, Velazquez, and many other coauthors.
A proposal to provide with respect to an alternative provision relative to the Executive Branch. Becomes Delegate Proposal No. 98.

MR. HENRY

...Resolution on second reading, to be referred.

MR. HARDIN

Delegate Resolution No. 50, introduced by Delegate O'Neill, a resolution to amend the standing rules of the convention and to provide for the printing of an abbreviation clause for the proposed draft of the constitution and for the distribution of copies of the proposed draft.

MR. HENRY

Should be referred to the Committee on Rules and Credentials. Under the rules.

Without objection, so ordered.

Regular Order No. 5. Proposals on the calendar for approval of final style and drafting.

Before we start that, Mr. Clerk, the...we've been advised by the management of the hotel that we will not be able to use the convention hall afternooon on Friday, or at all on Saturday. So, in all probability we may move out of here...might even move out tomorrow, sometime, to finish up our work over in the House chamber. But, just thought I would advise you of that.

Proceed, Mr. Clerk.

MR. HARDIN

Regular Order No. 5.

Justice Tate.

Justice Tate now moves to take up Delegate Proposal No. 22.

MR. TATE

Delegate Proposal No. 22 was circulated yesterday. It's the one that has just two pages. It's done a little differently than before because the changes were so nominal, they just marked in ink on the green, the green that should be on your desk, the slight changes of adding a title, and the changes are self-explanatory. A title was added, "any" was changed to "a", "for the relief of was changed to "relieving"...an extra "p" was left out, and a title was added, and the changes were passed. They are so nominal, but they are obvious stylistic changes. I move the adoption of the amendments 1 through 4 of that on Delegate Proposal No. 22, Mr. Chairman, unless there is any questions. This is to do with prohibited local and special laws.

Mr. Chairman, I move the adoption of Amendments 1 through 4 to Delegate Proposal 22, including minor stylistic changes.

MR. HENRY

Is there any objection to the adoption of these amendments? Then without objection, the amendments stand adopted.

MR. HARDIN

Justice Tate now moves to call from the calendar Committee Proposal No. 9.

MR. HENRY

Without objection....

MR. TATE

Mr. Chairman, has that been distributed by the staff, yet?

MR. HENRY

Has it been distributed, Mr. Clerk?

MR. HARDIN

...one moment.

MR. TATE

Supposedly, look and see if you see in front of you a package of papers....

MR. HENRY

You've extended your time, Mr. Graham.

Is there any further objection to the question?

Is there any objection to the adoption of the amendments? Any objection?

Then, without objection, the amendments stand adopted.

Mr. Graham now moves for the adoption of Section 9.

Are you ready for the question?

Without objection, the previous question is ordered.

Therefore, when the machine is opened, as many of you as are in favor of the adoption of Section 9 will vote yes.

Those opposed will vote no, and the Clerk will open the machine.

Please vote your machines, gentlemen.

Are you through voting?

The Clerk will close the machine.

104 yeas and 2 nays, and the section is adopted.

Mr. Graham moves to reconsider the vote by which Section 9 was adopted and to lay the matter on the table.

Without objection, so ordered.

The gentleman now moves the adoption of Committee Proposal

No. 15.

Are you ready for the question?

Without objection, the previous question is ordered.

Therefore, when the machine is opened, as many of you as are in favor of the adoption of Committee Proposal No. 15 will vote yes. Those opposed will vote no, and the Clerk will open the machine.

Are you through voting?

The Clerk will close the machine.

108 yeas and 11 nays, and the proposal is adopted.

Mr. Cheahady moves to reconsider the vote...

The machine malfunctioned, so we're going to vote on the proposal once again.

Therefore, when the machine is opened, as many of you as are in favor of the adoption of Committee Proposal No. 15 will vote yes. Those who are opposed will vote no, and the Clerk will open the machine.

Please vote your machines.

Are you through voting?

The Clerk will close the machine.

109 yeas, 0 nays, and the proposal stands adopted.

Mr. Cheahady moves to reconsider the vote by which the proposal was adopted, and to leave the motion pending.

Without objection, so ordered.

Mr. Graham now moves to reconsider the proposal to the Committee on Style and Drafting.

Without objection, so ordered.

Mr. Derbes now moves to revert to Regular Order No. 4. Proposals on Third Reading and Final Passage.

Is there objection?

Without objection, so ordered.

Mr. Derbes now moves to call from the calendar Delegate Proposal No. 43.

Is there objection?

Without objection, so ordered.

Read it, Mr. Clerk.

MR. POYNTER

Delegate Proposal No. 43 was introduced by Delegate Johnny Jackson, Gauthier, and others.

A proposal providing for juvenile courts having exclusive original jurisdiction except in certain offenses.

Now, that proposal has been amended and includes, in fact, an amendment which deleted lines 5 through 23 thereof, as printed.

MR. HENRY

Mr. Derbes offers up amendments. The Clerk will read the amendment.

Proceed, Mr. Clerk.

MR. POYNTER

The gentleman sends up amendments, read as follows:
Amendment No. 1. On page 1, line 5, add the following:
"Providing for special juvenile procedures.
Be it adopted by the convention:
Article _____, Section _____, Special Juvenile Procedures.
Section _____. Except for a person fifteen years of age or older who is alleged to have committed a capital offense or attempted aggravated rape, the determination of guilt or innocence, the detention, and the custody of a person who is alleged to have committed a crime prior to his seventeenth birthday shall be exclusively pursuant to special juvenile procedures which shall be provided by law. However, by law enacted by a two-thirds vote of the elected members of each house, the legislature may (1) lower the maximum ages of persons to whom juvenile procedures would apply and (2) establish a procedure by which the court of original jurisdiction may waive such special juvenile procedures in order that adult procedures would apply in individual cases."

MR. HENRY

Explain the amendment, please, sir.

MR. DERBES

Ladies and gentlemen, I respectfully request your attention for a brief explanation or for an explanation of this amendment. I would like to call further to your attention the fact that accompanying each copy of the amendment is a short explanation drafted by me which explains the scope of the amendment. This is the subject matter on which there has been considerable debate back and forth with respect to the effect that such an amendment would have on the jurisdiction of juvenile courts and on the ability of the legislature to merge and abolish juvenile courts. The amendment that is currently before you has nothing whatsoever to do with the jurisdiction of juvenile court as such. It does not bear upon or affect in any way the ability of the legislature under the Judiciary Article as we have adopted it to merge juvenile courts into other courts or to abolish juvenile courts. In other words, it represents no impediment to a unified court system. What it does do, it forces the legislature to consider separately, juvenile procedures from adult procedures, that is to say when the legislature decides by what procedures a child is to be tried, the legislature must designate those procedures as special juvenile procedures. It prevents a child from arbitrarily being tried under adult procedures, and preserves what has come to be an important part of our judicial history: namely, the concept of separate and specialized treatment for juveniles. Furthermore, this particular amendment permits the legislature by two-thirds vote to change the juvenile ages, and of course, it does not represent any hindrance or impediment to the legislature in making juvenile laws applicable to people of older ages. It does, however, require that the legislature have a two-thirds vote in order to make juvenile procedures applicable to anyone in order to make adult procedures applicable to anyone under the current juvenile ages. The amendment has been drafted in the spirit of compromise and we have worked long and hard over it. I would like to state for the record now, and I would request that the clerk add the following names as cosponsors to the amendment. In addition to myself, to Judge Dennis, to Mr. Johnny Jackson, Mr. Fugh, Mr. Vesich, and Mr. Tobias who appear on the copy of the amendment before you, the following people have consented to have their names included as cosponsors as well: they are: Alphonse Jackson, Mr. Henry, Mr. Gravel, Mr. Graham, Justice Tate, Mr. Kelly, Mrs. Warren, Sheriff Edwards, Mr. Gauthier, Mr. Casey, and Mr. Ginn. I would request that the Clerk insert their names as cosponsors of the amendment in the record. This amendment creates an atmosphere of flexibility while requiring the legislature to deal specially with matters relating to

MR. DERBES (cont'd)

juvenile procedures. It does not affect juvenile court jurisdiction. I urge its adoption, and I yield to any questions.

MR. HENRY

Mr. Abraham, for a question.

MR. ABRAHAM

Jim, why did you limit the legislature to being able only to lower the maximum age for persons whom general procedures would apply? If you wanted it to be flexible, why didn't you just say "revised"?

MR. DERBES

Because, this is a very, very specific point, Mack. The legislature may increase the juvenile age by majority vote. This would prohibit the legislature from lowering the juvenile age by anything but a two-thirds vote. This will allow the legislature to increase the juvenile age by a majority vote. That is already committed under the Judiciary Article as we have adopted it. The legislature may increase the juvenile age by a majority vote. In other words, it's not specifically prohibited in the Judiciary Article, and therefore, the legislature may do this. This will not prohibit the legislature from increasing the juvenile age by a majority vote. This will prohibit the legislature from making juvenile procedures... from making adult procedures applicable to persons who are now juveniles except by two-thirds vote. In other words, the legislature must have a two-thirds vote in order to make adult procedures applicable to persons who are now governed by juvenile procedures.

MR. HENRY

Will you yield to a question?

Mr. Jack. You're next, Mr. Burns.

MR. JACK

Mr. Derbes, by the term "juvenile procedures" what are you talking about?

MR. DERBES

I'm talking about the juvenile procedures and the methods for treatment of juveniles which are currently spelled out in the revised statutes, Mr. Jack.

MR. JACK

All right. Now, that's what I'm getting at. We passed, already, jurisdiction of juvenile courts shall be set by the legislature.

MR. DERBES

May I interrupt you? What we've said is that the current... the existing jurisdiction of juvenile court is retained subject to change by a majority vote of the legislature.

MR. JACK

That's right. Now, on this, couldn't all this be done very simply by legislative acts instead of nailing this down in the constitution?

MR. DERBES

Many of us think, Mr. Jack, that it is necessary to preserve the distinction between adults and juveniles so that the legislature will be hopefully governed by that distinction by stating it in the constitution. This says that wherever a child is tried—he can be tried in a district court; he can be tried in an adult court; he can be tried in a civil court; you can call it whatever you want—you can try him in any manner that you want to, as provided by law, but he must be tried under special juvenile procedures.

MR. JACK

But, before you introduce this amendment, the legislature by majority vote could set whatever the juvenile age they want. Isn't that correct?

MR. DERBES

If you're talking about what this convention has done, that's correct.

MR. JACK

That is correct. Now, what you, in effect, are doing is changing that so that unless it's a capital offense, then all the juveniles are those under seventeen; isn't that correct?

MR. DERBES

Yes, let me try to explain because I think it's a very important distinction. As... what we have done so far, we have left juvenile court jurisdiction up to the legislature, and we've said nothing about procedure. What we are saying here is that we are not in any way disturbing the concept of a unified court system. In other words, we're permitting merger; we're permitting abolition under the rules as adopted by the convention. We are saying that wherever a person of this particular age is tried, he should be tried only pursuant to special juvenile laws.

MR. JACK

But, what I am getting at, isn't it a fact, Mr. Derbes--and if I'm correct, go on and admit it--this is a way of setting the juvenile age at a boy or girl that hasn't reached their seventeenth birthday, except if that boy or girl is charged with a capital offense, or attempted aggravated rape, then it applies to those fifteen and up to the seventeen? I mean...

MR. DERBES

Yes, Mr. Jack, it has the effect of setting a juvenile age, but it permits the legislature to lower the age by a two-thirds vote. It does not require a constitutional amendment, and it permits the legislature to increase the age by a majority vote, and furthermore, it permits the legislature to provide by law for the juvenile procedures. So, the legislature by implementing this provision, may make the juvenile procedures as juvenile or as adult as the legislature pleases. But, they are nevertheless required to consider a separate distinction between adults and juveniles, which I think is a distinction worthy of being in this constitution.

MR. HENRY

Would you yield to one question of Mr. Burns?
The gentleman yields.

MR. BURNS

Mr. Derbes, just exactly what did you mean by when you said that this amendment was being offered in a spirit of compromise? Compromise what?

MR. DERBES

Well, Mr. Burns, when I said "spirit of compromise" I meant that I had worked for many hours literally with Judge Dennis, and Judge Tate, and Mr. Tobias, and Mr. Jackson over trying to resolve a problem where many of us felt that it was necessary to preserve some special distinction for juveniles. Now, on the one hand there are people who want to spell out all juvenile court jurisdiction in the constitution, and only change juvenile court jurisdiction by a constitutional amendment. On the other hand, there are those of us who felt that nothing should be said about juvenile court at all, but everything should be left up to the legislature, and midway of those two alternatives, I happen to feel that by saying that the legislature should consider separate juvenile procedures when they say how a person should be

MR. DERBES (cont'd)

tried, I felt that that was an adequate middle ground to satisfy both parties. It didn't prevent a constitutional amendment. It didn't have anything to do with jurisdiction, and I presented the legislature by various personnel to try to make appropriate changes. This is a constitutional distinction of jurisdiction. It is a constitutional distinction of procedures, but changeable by a two-thirds vote. That to me is the definition of a compromise. I hope it fits your definition.

MR. BURNS

I thought you meant you were going to compromise on the other three or four times this same thing has been voted on. I mean, practically, it's the same subject matter, not the same...

MR. DERBES

Well, it is a completely different approach to the problem. It has only to do with procedure, and it has nothing to do with jurisdiction. It's a different approach, and one that is not nearly so obstructive to the same problem.

MR. HENRY

You've exceeded your time, there, Mr. Derbes.

MR. DERBES

I urge the adoption of the amendment.

MR. HENRY

Judge Dennis is recognized for the floor.

MR. DENNIS

Mr. Chairman, fellow delegates, I rise in support of Mr. Derbes' amendment, and if his amendment is adopted, then I urge the support of the delegate proposal. Now, ladies and gentlemen, as you will certainly recall, I have several times asked you to vote down Mr. Johnny Jackson's delegate proposal, and each time you have done so. The reason that I have opposed Mr. Jackson's proposal in the past is because it would have frozen into the constitution the structure of juvenile courts, and the age limits by which we determine who is a juvenile and who is not a juvenile. Mr. Derbes' amendment does not do either one of these things. All Mr. Derbes' amendment does is afford two juveniles a measure of protection by requiring that the legislature vote by a two-thirds vote before reducing the age limit at which a person becomes a juvenile, or becomes an adult, and that the legislature must likewise by two-thirds vote get such a super majority before it can transfer or provide how someone is transferred from the juvenile court to the adult court. Now, personally, I would be in favor of taking out of this constitution all super majority votes of the legislature because I think the legislature is responsible enough, and would be even more responsible if everything that it determined would be determined by a majority of those voting. However, as you know, this convention has not followed that approach. We have in many instances put into this constitution a requirement that the legislature reach its conclusions by a super majority vote. For example, in this Judiciary Article we have said that before the legislature may change Supreme Court or court of appeal districts, it must do so by a two-thirds vote of the legislature. We have said that before a district court district may be changed that the legislature must act, and then there must be a referendum of the people in all of the parishes affected. For this reason, I think, there is ample precedence for giving some issues which have a great deal of sensitivity, some cloak of protection so that the legislature will not act overly hastily. I think the juvenile... the definition of who is a juvenile, the definition of who will be transferred from a juvenile court to an adult court is worthy of this same type of protection. So, I am asking you to approve Mr. Derbes' amendment because if it

MR. DENNIS (cont'd)
is approved, it will simply set up a special procedure for juveniles. It will simply require that the legislature must get a two-thirds vote before it changes the age limit of juveniles; likewise, the same vote before transferring a juvenile to an adult court. I think that this protection is justified, and I ask you to adopt his amendment, and if his amendment is adopted, I will support the delegate proposal as amended.

MR. HENRY
O.K. Mr. Wellborn Jack.
Mr. Kean, why do you rise?
The gentleman has exceeded his time, Mr. Kean. I'm sorry.

MR. JACK
Mr. Chairman and fellow delegates, this is a slick way of undoing what we've done. Now, we have set up about the jurisdiction of the juvenile court in the constitution shall be set by the legislature. The present law by statute—and this should be by statute—we've got a fluctuating thing. People get groom quicker. We've seen fit all over the country to say you're groom when you're eighteen. You're groom, just same as your father. Now, I want you to listen to this: there is today... you're a juvenile until you reach your seventeenth birthday. It used to be you wasn't groom till you're twenty-one. So, you were juvenile then till you were seventeen. Then there was three, four years before you were twenty-one. People are more knowledgeable, more educated; they move faster; they get in trouble, too. That's why I'm standing here defending what I'm saying. Therefore, today you may find the legislature want to change this age to sixteen because the way it is now, a person jumps in one second from a juvenile to a grown person—one second. One second before a boy, or girl, is seventeen, he is a little juvenile, as so many people say. As soon as that second is up, he's eighteen instead... I mean, he's gone on to the seventeenth birthday, and he gets tried in district court. Now, I say, you are setting a dangerous thing. Now, where this is slick, they are calling this "juvenile procedures." Procedures are not substantive. This is substantive. This applies to setting the age limit for what's a juvenile. Number one, "juvenile procedures shall apply to all children under fifteen and, except those charged with capital offense or attempted aggravated rape, to all children under seventeen." They might as well instead of saying "procedures" should have said "a juvenile is a child under fifteen, and except those charged with capital offenses, attempted aggravated rape, a juvenile is one under seventeen." Procedure is like a matter of what's legal evidence, or how you start, like by an information, indictments, and criminal matters, or a petition and exceptions. Those are procedural. This is not. This is doing just exactly what we defeated several times. Now, you go on. I know Judge Dennis says he voted against the others, and he did, and I can't see how he can turn right around and vote for this. This is no more procedural than anything. I'm against it.

MR. HENRY
You've exceeded your time.
Mr. Pugh.

MR. PUGH
Mr. Chairman, fellow delegates, I rise in favor of this proposed amendment for your consideration. I shall not speak at length to you of my warm personal feelings relative to juveniles of this state and the procedures by which they have been considered in the past in relation to the juvenile court. I regret sincerely that we did not see fit to provide for the jurisdiction in these courts. I bow, however, to your overwhelming defeat of that proposal. I ask that you give consideration to this amendment. It serves a very good purpose. Perhaps,

MR. PUGH (cont'd)
it's not so important where the issues related to these children are heard. Perhaps I'm in error and perhaps you're right. It's not the form so much, as the manner in which the matters are to be considered. This relates solely to one of procedures. It provides a method by which we may continue the philosophy of the past as it relates to the treatment of the youth of this, our noble state. I ask that you give serious consideration to this amendment, that you study it carefully, and that upon its presentation for your vote, that you cast your favorable vote therefor. Thank you.

MR. HENRY
Do you have a question, Mr. Roemer?
Gentleman yields to a question to Mr. Roemer.

MR. ROEMER
Mr. Pugh, we can sum up your feelings by saying that in your opinion, this provision would be a protection for the juveniles of our state; isn't that true?

MR. PUGH
Yes.

MR. ROEMER
Well, don't you think that that's really the basic point that we're trying to make here; it would be a protection to the juveniles of Louisiana?

MR. PUGH
Well, yes, that goes without saying. If I support a provision because I think it relates to the best interest of the juveniles, then in turn it refers to the protective measures that should be made for those children.

MR. HENRY
Would you yield to a question to Mr. Kean?

MR. KEAN
Mr. Pugh, if I understand this proposal correctly, it would be necessary for some type of special juvenile procedures to be adopted by the legislature; would it not?

MR. PUGH
In my opinion, they may take the very same procedures that have been available for years and also provide for their use. I think that the transitional provisions can take the ones that we presently have relating to juveniles, and as they will have to do in so many other matters, provide for their transition to the legislature.

MR. KEAN
In other words, you would assume that we would also have to have some transitional provisions with respect to present juvenile statutes in order to make this workable?

MR. PUGH
Not juvenile statutes, but juvenile jurisdictional provisions as they are now in the constitution.

MR. HENRY
You've exceeded your time.
Mr. Jenkins.

MR. JENKINS
Mr. Chairman, it's unfortunate that we have to deal with this issue again because we've disposed of it before on many occasions. If I may, I'd like to review why this issue is so

MR. JENKINS (cont'd)

important to the people of this state. We face a most serious juvenile crime problem, particularly in the urban areas. Many of our rural delegates are not as aware of it. But, in East Baton Rouge Parish, for example, a majority of all the serious crimes committed here are committed by juveniles, and it's quite obvious that the time has long passed when it's safe to walk the streets of our major urban areas. One of the main reasons has been that our juvenile justice system has not permitted anything to be done with the juveniles who commit offenses, primarily because of the provisions of the 1921 Constitution. This is an attempt to continue to some degree, and in some form, the restrictions in that 1921 Constitution on what can be done to juveniles. You may remember that in 1973, May session, the legislature passed legislation to try to deal with the juvenile crime problem. The governor vetoed that bill even though it was passed with more than eighty-five votes because he felt that it was unconstitutional because of the restricted nature of the language in the 1921 Constitution. Let me give you some examples of what the problems are: suppose a child, we'll say, sixteen years old, shoots an elderly man, eighty years old; he falls; the child, sixteen years old, goes again and points the weapon right at his head, and shoots him again and leaves him for dead. But, the man lives. The authorities find out who that child is, and so they bring him to juvenile court. He has to be tried in juvenile court under the present law, and under this he would be subject to so-called juvenile procedures. Now, suppose this happened last year, and he were brought to trial in September. Do you know, chances are he would be released from L.T.I. in three months, even though he committed eight or nine or ten or more serious offenses before. I can tell you that not only will happen; it has happened. The case I tell you is just one of hundreds of examples. Standard procedure when a juvenile is found delinquent on the basis of committing aggravated assault, aggravated battery, aggravated arson, attempted murder, armed robbery; no matter how many offenses he had before, he is tried by the juvenile court, and if found delinquent, he is sent to L.T.I. Procedure there is that as soon as he gets thirty merits, regardless of what he committed, offenses he committed, he is released, which he can do in three or four months. We have these people on the streets. They're not juvenile delinquents. They are criminals, and there's no reason they should be treated with kid gloves. Now, that's why this provision was deleted originally. It needs to be deleted so that the legislature can deal with this problem.

MR. HENRY

Wind up your remarks.

MR. JENKINS

I'd like to ask for two more minutes, if I may.

MR. HENRY

Any objection? So proceed.

MR. JENKINS

Now, we're not talking here about kids who are throwing rocks at somebody's house, or commits some minor act of vandalism. The problem has come with these extremely serious offenses, which endanger other people, like armed robbery in particular. Now, notice that this language says that except for persons fifteen years of age or older who are alleged to have committed a capital offense, or attempted aggravated rape, then he has to be tried under juvenile procedures. What are capital crimes in Louisiana? There's only one right now—first degree murder. So, only in the case of first degree murder and attempted aggravated rape can a child under this—so-called child—be treated by anything other than juvenile procedures. Now, it says in the exception

MR. JENKINS (cont'd)

number one that the age can be lowered for dealing with people by juvenile procedures. But if the age is lowered under that number one, it has to be lowered for all offenses. There's no need to lower it for all offenses. We don't want to lower the juvenile age from seventeen to sixteen or fifteen. What we want to do is provide that in certain crimes like armed robbery and attempted murder, and things like that, that you can deal with people according to standard criminal justice procedures, not juvenile procedures. This provision does not allow that. Only if you lower it in all instances, can you lower it at all. That second exception deals with waiver of jurisdiction by a juvenile court. We don't want the juvenile court to waive jurisdiction in those cases. We want the district attorney to be able to demand that it be tried in a district court or according to criminal justice procedures. We want to be able to write down in the law that in case of multiple offenses like armed robbery or other things that it will be an automatic thing that it's tried in the district court, not that some juvenile judge will have the discretion to waive jurisdiction if he so chooses. That's the only way that in the legislature we can deal with this problem. So, I urge you to reject this amendment.

MR. HENRY

The gentleman has exceeded his time.
Are you ready for the question?
Without objection, the previous question is ordered.
You have the right to close, Mr. Derbes.

MR. DERBES

I'd like to state something for the record. Could you pull this thing down, please?

MR. HENRY

Please take your seats, gentlemen.

MR. DERBES

The legislative act to which Mr. Jenkins refers would not be unconstitutional under this provision. It's purely and simply a matter of truth, and to say anything other than that, is to obfuscate and obstruct this particular issue. If eighty-five votes of the House of Representatives were cast in order to lower the juvenile ages, that would clearly constitute sufficient votes under the particular provision to permit the changes in the law that were contemplated by that particular act.

The flexibility with which—or the flexibility that this particular act provides is quite clear. The legislature may establish a procedure by which the juvenile court would decide on a case by case basis, whether a person should be tried under adult procedures or under juvenile procedures. If the person is a recidivist, if the person has committed a particularly heinous crime, or even for particular categories of crimes, the legislature may authorize waiver, but the waiver must be by the juvenile court, based on the totality of the circumstances. Furthermore, the legislature may lower the juvenile age with respect to certain crimes, as well as with respect to all crimes, by a two-thirds vote. So, if the legislature were to decide, for example, that armed robbery should have a maximum age of fifteen for juvenile court, and the legislature did so by a two-thirds vote, then that would be the law. If the legislature were not able to muster a two-thirds vote, it would not be the law. There is ample flexibility for people who are concerned with the rising crime problem, and I am one of those people. I did not support amendments for juvenile court jurisdiction until those amendments included waiver provisions. This amendment does include a waiver provision that permits me to support it. I suggest to you that there is nothing in this amendment which will prohibit the legislature from adequately dealing with this problem of juvenile crime. But, it will force and require the legislature to consider separately the issue of juvenile crime versus adult crime because as a person who has had more than four years of very specialized experience in this area I can tell you that it is a matter where arbitrary and clear decisions are not very convenient and very possible. The court should be granted, in my opinion, the right to decide on a case by case basis whether a juvenile is to be tried under adult procedures or under juvenile procedures. There should continue to be that distinction between adult and juvenile procedures to protect youthful offenders.

Thank you.

MR. HENRY

Would you yield to a question from Mr. Willis?
The gentleman yields.

MR. WILLIS

Mr. Derbes, you are familiar with Charles Dickens', Oliver Twist?

MR. DERBES

Yes.

MR. WILLIS

You know that as soon as young Oliver, who was below seventeen, reached London, he was recruited to thievery by Fagin who was over eighteen years of age...much more...through the artful dodger?

MR. DERBES

I'm not sure where you're leading, Mr. Willis, but....

MR. WILLIS

Well, I'm asking you this final question. Isn't this a vehicle to reward crime or improperly deter it by inappropriate punishment under the guise of procedure, thereby destroying the law and order we need in this state?

MR. DERBES

Absolutely and emphatically not, Mr. Willis.

MR. HENRY

You've exceeded your time, sir.

MR. DERBES

Absolutely and emphatically not. There is ample flexibility in here for everybody who is concerned with law and order. I say that to you very seriously.

MR. HENRY

You've exceeded your time, sir.
Sir?

MR. WILLIS

For an extension for another question?

MR. HENRY

One minute extension?

MR. WILLIS

Half a minute.

MR. HENRY

The gentleman requests a half minute....a minute for an additional question.
Is there objection?

MR. WILLIS

Isn't it a fact that before a juvenile is tried he has to pass through the discretion first of the district attorney and that of the honorable district judges and juvenile judges of this state? Don't you think he receives fair justice?

MR. DERBES

Mr. Willis, as you may be aware, the proceedings brought in the interest of juveniles may be initiated by the judges. If the legislature changes the law they will eventually be initiated by the district attorney or by the judges. This would give the juvenile court—the court, namely, the judge—the right, subject to certain procedures, to say that a child should be tried under adult procedures. Yes.

MR. WILLIS

What is wrong with the legislature providing the procedure to protect our law and order when you consider that all crimes, or most of them, are committed by juveniles between fifteen and sixteen-and-a-half years of age?

MR. DERBES

For this very simple reason, Mr. Willis. Because when one person tries to defend on a crime by crime basis who is to go to what court and under what procedure he is to be tried, one eventually does a certain amount of injustice....

MR. HENRY

You've exceeded your time.

MR. DERBES

...because certain particular types of crimes, although they may qualify as such, are relatively minor.

MR. HENRY

You've exceeded your time, Mr. Derbes. Why do you rise, Mr. Jackson?

MR. A. JACKSON

Mr. Chairman, I rise to ask for a record vote, and suggest the absence of a quorum.

MR. HENRY

The gentleman requests a record vote. Will twenty-six delegates join him?

A record vote is ordered.

Ask for a record quorum call, you say?

The gentleman suggests the absence of a quorum, and requests a record quorum call. Will twenty-six join him?

A record quorum call is ordered.

The Clerk will open the machine for roll call.

Vote your machines, ladies and gentlemen.

Please vote your machines.

Are you through voting?

The Clerk will close the machine.

109 delegates present and a quorum.

Mr. Derbes has offered an amendment, to which objection has been urged.

Therefore, when the machine is opened, as many of you as are in favor of the adoption of this amendment will vote yes. Those who are opposed will vote no, and the Clerk will open the machine.

Vote your machines, ladies and gentlemen.

Please vote your machines.

Are you through voting?

The Clerk will close the machine.

78 yeas and 35 nays, and the amendment is adopted.

Mr. Derbes moves to reconsider the vote by which the amendment was adopted and lay the motion on the table.

Without objection, so ordered.

Why do you rise, Mr. Tobias?

MR. TOBIAS

Are there any amendments?

MR. HENRY

Are there any other amendments, Mr. Clerk?
No, sir.

MR. TOBIAS

Then, I move the previous question on the entire subject matter.

MR. HENRY

We have one speaker on the list---Mr. Jenkins.
Do you insist on your motion?

MR. TOBIAS

To limit debate to five minutes.

MR. HENRY

The gentleman moves to limit debate to five minutes on the section.

Is there objection?

Without objection, so ordered.

Proceed, Mr. Jenkins.

MR. JENKINS

Mr. Chairman, think back, if you will, to the Bill of Rights.... think back if you will, to the Bill of Rights.... think about the protections we gave to people accused of crimes. You know, I've voted in favor of every single protection for people accused of crimes included in that Bill of Rights. You know what we are talking about here, though? We're talking about people who we know to be guilty, and what's going to be done with them; whether or not there is going to be adequate safeguards and protections for the public. I don't think that this procedure here grants to the legislature the authority to deal with different crimes differently, or different people differently. For example, look at Exception Number 2. Now can that square with the equal protection clause? Now could you give one juvenile accused of armed robbery the protection of juvenile procedures, and not give it to another juvenile also charged with armed robbery? You could not. Think about Number 1--Exception Number 1. It does not say exceptions can be made for people accused of specific crimes. It only says you can lower the age for juveniles as to whether or not they are going to be tried under juvenile procedures.

MR. DE BLIEUX (In the Chair)

Just a minute, Mr. Jenkins.

MR. JENKINS

Mr. Derbes said that he did not--I believe it was Mr. Derbes--no, or Mr. Fugh said, that he did not feel the acts passed by the legislature would be unconstitutional under this provision. Was that you, Mr. Derbes? Judge Dennis told me, not fifteen minutes ago, and he is the coauthor of this, that he thought it would be unconstitutional--

MR. DE BLIEUX

Just a minute, Mr. Jenkins. Mr. Chehardy, Mr. Morris, Senator Nunez, Mr. D'Gerolamo, will you all please sit down, break up that little conference over there so we can get going?
....All right. Continue, Mr. Jenkins.

MR. JENKINS

This section needs sixty-seven votes to pass. A similar provision in the 1921 Constitution has hampered seriously the prosecution of people who have committed serious offenses against the people of this state. I certainly urge you not to lock into this constitution a similar provision which can do nothing more than hamper the prosecution of such individuals. You can be sure the legislature will provide protection for juvenile delinquents. But we need procedures to deal with people who have engaged in serious offenses. I certainly urge the rejection of this section.

MR. DE BLIEUX

You have thirty seconds left, now.

Any further discussion?

Are you ready for the question?

The previous question is ordered.

You have a right to close, Mr. Derbes.

Will you yield to Judge Dennis?

Judge Dennis will close.

MR. DENNIS

Mr. Chairman, fellow delegates, I'll be very brief. The reason I am supporting this, the reason that I think this is different from what I have opposed in the past, is that this does not constitutionalize the age limits. It allows the legislature flexibility. The only thing it does, it requires the legislature to get a two-thirds vote before bringing into adult court, people who are now being treated as juveniles. I think that we are entitled to that. Or the juveniles are entitled to that much pause and reflection before the legislature takes an act in this area. So, I ask you to support this delegate proposal as it has been amended.

MR. DE BLIEUX

Any questions of Judge Dennis?
Mr. Burson recognized for a question.

MR. BURSON

Judge Dennis, is it clear to you that under the language of this proposal, in this amendment, that the legislature could classify, let us say, in the example of a multiple juvenile offender, just as they classify in criminal law for a third offender who will get a greater sentence than a first offender for a particular crime?

MR. DENNIS

It's clear to me that under the last part of this amendment, in establishing a procedure by which the court of original jurisdiction could waive juvenile procedures and have adult procedures apply, that the legislature could use that as one of the criteria. The legislature could say when a juvenile has committed X number of offenses of a certain nature, then the juvenile court may use this as one of the criteria by which it can determine that it shall waive its juvenile jurisdiction, and let that person be tried as an adult.

MR. BURSON

So that they could classify both by the gravity and frequency of the offenses then?

MR. DENNIS

I think they could use any reasonable criteria. I think that would be a reasonable criteria.

MR. DE BLIEUX

All right. Mr. Roy is recognized for a question.

Mr. Roy, did you want to ask the question?

All right. Ready to vote?

The question is, amendment sent up by Mr. Derbes—for final passage of this section.

Therefore, as many of you as are in favor of the final passage of this section will vote yes, when the voting machine is opened. Those opposed will vote no, and the Clerk will open the machine.

Are you through voting?

All right, are you through voting?

The Clerk will close the machine.

80 yeas and 29 nays, and the section has passed.

Mr. Tobias moves to reconsider the vote by which this section passed and lay that motion on the table.

Any objection?

Without objection so ordered.

MR. HENRY (In the Chair)

The gentleman now moves the adoption of the proposal. Are you ready for the question?

MR. HENRY (Cont'd)

Without objection, the previous question is ordered.

Therefore, when the machine is opened, as many of you as are in favor of the adoption of the proposal will vote yes. Those opposed will vote no, and the Clerk will open the machine.

Please vote your machines, ladies and gentlemen.

Are you through voting?

Gentlemen, please take your seats.

The Clerk will close the machine.

88 yeas and 13 nays, and the proposal is adopted.

Mr. Derbes moves to reconsider the vote by which the proposal was adopted and leave the motion pending.

Without objection, so ordered.

We'll take about a one-minute recess.

RECESS

MR. HENRY

The Convention will come to order.

Outsiders, outside.

Mr. Leithman suggests the absence of a quorum.

The Clerk will open the machine for roll call.

Please, vote your machines, ladies and gentlemen.

Please, vote your machines.

Please, take your seats, delegates. I know you are all tired and restless, but we don't have but about four more days to enjoy one another. Let's make the best of it.

Are you through voting?

The Clerk will close the machine.

93 delegates present and a quorum.

Mr. Planchard is recognized on a point of personal privilege. Get you next, Mr. Velasquez.

MR. PLANCHARD

Mr. Chairman, fellow delegates, Mr. Conway LeBlau asked me to make a little announcement to you. We don't want to forget the jambalaya that we are going to have tonight on the seventh or eighth floor of the roof, for the delegates and the staff and the news personnel. So, come one, come all. The only requirement, or the entrance fee is to leave your cares and woes downstairs because nothing but a good time is going to be had upstairs.

Thank you.

MR. HENRY

Thank you, Mr. Planchard.

Mr. Velasquez,....

What time, Mr. Planchard?

MR. PLANCHARD

Eight o'clock.

MR. HENRY

Eight o'clock.

Mr. Velasquez on a point of personal privilege.

Mr. Graham, come to the desk, please.

MR. VELASQUEZ

Mr. Chairman, fellow delegates, I rise to a point of personal privilege to notify the convention and the entire State of Louisiana that one of my constituents, Mrs. Marie Soule, has reached her one hundred and fifth birthday yesterday. She is now believed to be the oldest person in the State of Louisiana. She was born in Pointe a la Hache in Plaquemines Parish. But, being a very intelligent person, she moved to the Seventh Ward of New Orleans as soon as it was possible. This, perhaps, has been part of the reason why she has lived so long. However, at this time, I would like the convention—I would move for the convention to

* * *

MR. BAYBURN (cont'd)
or not, but if he is, let him come down. This is a letter bound by his signature and it is a letter sent out by his office; it is signed, and I have the original....a copy of it, it is a letter signed by him. He's got a right to call me a careless speaker. I can't really call him what I think he is because I don't want to get engaged in that, but he called me that to the governor--and that's all right with me--but it is a letter that came directly from PAR's office sent to the governor of this state; I can assure you that.

MR. HENRY
Why do you rise, Mr. Pugh?

MR. PUGH
Well, Mr. Chairman, we got four days and eight hours to get through here; can we get on with the regular course of some business?

MR. HENRY
Well, I agreed to recognize Mr. Drew. Mr. Drew, did you want the floor? I think we will proceed with the business at hand. Mr. Burson now moves for a suspension of the rules for the purpose of reconsidering the vote by which Section 8 of Committee Proposal No. 4 was adopted for the limited purpose of considering an amendment.

Mr. Avant.
MR. AVANT
Is that a debatable motion?

MR. HENRY
No, sir, it's not a debatable motion. We are going to read the amendment here and let Mr. Burson sort of make his quick explanation of it.
Read it, Mr. Clerk.

MR. HARDIN
This amendment is sent up by Delegates Henry, Gravel, Pugh, Graham, and Alphonse Jackson.
Amendment No. 1. On page 5--this is in your first enrollment, Mr. Abraham--delete lines 22, 23, and 24 in their entirety and all amendments thereto and insert in lieu thereof the following:
"Section 8. Department of Justice
Section 8. (A) There shall be a Department of Justice, headed by the attorney general, who shall be the state's chief legal officer. The attorney general shall be elected for a term of four years at the state general election. The assistant attorneys general shall be appointed by the attorney general to serve at his pleasure.

(B) As may be necessary for the assertion or protection of any right or interest of the state, the attorney general shall have the authority to
(1) to institute, prosecute, or intervene in any civil action or proceedings;
(2) upon the written request of a district attorney, to advise and assist in the prosecution of any criminal case;
(3) for cause, when authorized by the court which would have original jurisdiction and subject to judicial review,
(a) to institute, prosecute, or intervene in any criminal action or proceeding, or
(b) to supersede any attorney representing the state in any civil or criminal action.
(C) The attorney general shall exercise such other powers and perform such other duties as may be authorized by this constitution or by law."

MR. HENRY
All right. Mr. Burson, if you will, give it a brief....state your reasons for your....

MR. BURSON
Mr. Chairman and fellow delegates, I again direct your attention to Article VII, Section 56 of the old constitution and Section 26 of Committee Proposal No. 21, the Judiciary Article. If you will look at these, and first of all looking at Section 26 in this amendment, you will find that the relevant change in this amendment is not in....(B)(1) remains the same, that is, the power to institute, prosecute, or intervene in any civil action or proceeding. (3) (2) remains the same, that is, upon the written request it says "written request", the other one simply said "request of a district attorney to advise and assist in the prosecution of any criminal case." The change comes in Section 3. Now, you will recall that I was very vociferous among other people in opposing any original criminal jurisdiction for the attorney general on the thesis that this was the responsibility of the locally elected district attorney. However, on examination of this issue in the spirit of trying to compromise here and reach a solution--which I frankly confess to you like most compromises will not totally satisfy either the district attorneys or the attorney general because the attorney general would like the discretion to bring a criminal prosecution whenever it's necessary in his judgment, whereas the D.A.'s would probably be just as happy for him not to have any such jurisdiction. The D.A.'s, at least, have agreed that in the spirit of compromise it would be proper "for cause, when authorized by the court which would have original jurisdiction subject to judicial review" as was suggested in the original Judiciary Committee Proposal for the attorney general (a)--and here if you refer to Section 56 of Article VII of the old constitution you will find that (3) (a) of this amendment is....the language is taken from that language "to institute, prosecute, or intervene in any criminal action or proceeding"--that it is clear by this amendment that the attorney general would have, if he went to court and showed cause for doing so, the power to institute a proceeding. But, it is subject to the same necessity of showing for cause as was in the original Judiciary Committee Proposal which was somewhat ambiguous when it talked about a proceeding or affidavit because an affidavit, of course, is how you normally institute a criminal proceeding anyway. But, this language clarifies and makes it clear that under the terms and conditions set out in this amendment the attorney general would, in that instance, be able to exercise original criminal jurisdiction and that is the change.

MR. HENRY
Mr. Burson has moved to suspend the rules for the purpose of reconsidering the vote by which Section 8 of Committee Proposal No. 4 was adopted for the limited purpose of considering this amendment.

Is there objection?
Then, without objection, the rules stand suspended.
The gentleman now moves to reconsider the vote by which the Section was adopted.
Is there objection?
Without objection, so ordered.
All right, Mr. Burson, if you have any more comments, proceed.

MR. BURSON
Only this: It seems to me at this stage of the convention when we've been through so many battles that it's incumbent on us to try to be reasonable and to compromise our more extreme positions. I took the extreme position that he ought not to have any original criminal jurisdiction. This would permit him if the attorney general can go into court and show cause because the district attorney, for whatever reason, has not done his duty in a particular case and can convince the courts of this; then, in that limited instance, he could

MR. BURSON (Cont'd)
come in and exercise original criminal jurisdiction. Otherwise, of course, he cannot and I know this won't satisfy him; that's why it's a compromise. I'll answer any questions.

MR. HENRY

Are there any questions?

Is there any objection to the adoption of this amendment?

To which objection is urged?

Are you ready for the question?

Then, without objection, the previous question is ordered.

Therefore, when the machine is opened, as many of you as are in favor of the adoption of this amendment will vote yes. Those who are opposed will vote no, and the Clerk will open the machine.

Are you through voting?

The Clerk will close the machine.

101 yeas and 2 nays, and the amendment stands adopted.

MR. BURSON moves to reconsider the vote by which the amendment was adopted and to lay the motion on the table.

Without objection, so ordered.

MR. BURSON now moves for the adoption of Section 8.

Are you ready for the question?

Without objection, the previous question is ordered.

Therefore, when the machine is opened, as many of you as are in favor of the adoption of Section 8 will vote yes. Those who are opposed will vote no, and the Clerk will open the machine.

Vote your machines, ladies and gentlemen.

Are you through voting?

The Clerk will close the machine.

102 yeas and 2 nays, and the section is adopted.

MR. BURSON moves to reconsider the vote by which the section was adopted and to lay the motion on the table.

Without objection, so ordered.

The gentleman now moves the adoption of Committee Proposal No. 4.

Are you ready for the question?

Without objection, the previous question is ordered.

Therefore, when the machine is opened, as many of you as are in favor of the adoption of this proposal will vote yes. Those opposed will vote no, and the Clerk will open the machine.

Close the machine.

103 yeas and 1 nay, and the proposal stands adopted.

MR. BURSON moves to reconsider the vote by which the proposal was adopted and leave the motion pending.

Is there objection?

Without objection, so ordered.

Now, we have some Style and Drafting to take care on this, Mr. Clerk?

MR. HARDIN

To this point, Amendments Nos. 1 through 40, 42, 46, and 45 have been adopted by the convention, the amendments proposed by the Committee on Style and Drafting. Amendments Nos. 41 and 43 have been withdrawn by the committee which leaves still pending Amendments Nos. 46, 47, and an amendment styled as Amendment No. 1 to Section 25.

MR. HENRY

All right. Mr. Tobias moves that the proposal be recommitted to the Committee on Style and Drafting.

Is there objection?

Then, without objection, so ordered.

MR. BURSON now moves for a suspension of the rules for the purpose of calling from the Committee on Style and Drafting, Committee Proposal No. 21.

Is there objection?

Judge Dennis, you object?

MR. RAYBURN

Mr. Acting Chairman and fellow delegates, I tried to get recognized about five minutes before now because I just wanted to state that Mr. Chehardy and I was behind the rail talking to Mr. Stetmel, who is back there now, trying to get our business straight with him. We got called out of order when we were out of this Chamber. But, I resent the fact that I could not be recognized by the presiding officer or even by the temporary presiding officer and if I'm wrong, I'm wrong. But, I came to this convention by a choice of my people and as long as I'm here I'm going to try to do what I think is right. You can not recognize me or pass me by, and I don't care. I'll take my chances with the people of this state in the final analysis. You denied me, you denied me, he denied me, and just keep on denying me, but old Rayburn will be there.

MR. CASEY

O.K. Please proceed, Mr. Clerk.

MR. POYNTER

Mr. Denberry, Secretary of the Convention, sends up report that Committee Proposal No. 13 has been reenrolled in final form. Respectfully submitted, by Mr. Denberry, signed by the secretary and by the Chairman in accordance with the rules.

Mr. Denberry sends up report that Delegate Proposal No. 43 has been properly enrolled for the first time.

Respectfully submitted by Mr. Denberry. That goes to Style and Drafting under the rules and gives you a little bit more work, Judge Tate.

Mr. Denberry sends up notice that Committee Proposal....the following Committee Proposal has been enrolled in final form, being Committee Proposal No. 9, Committee Proposal No. 10, Committee Proposal Nos. 30, 34, and 36.

Respectfully submitted, by Mr. Denberry.

All of the above has been signed by the Chairman and attested by the secretary in accordance with the rules.

Reports that Delegate Proposal No. 22 has been properly enrolled in final form and properly signed in accordance with the rules.

Committee Proposals Nos. 15, 17, and 37 have all been enrolled in proper form and in accordance with the rules have been signed in open session.

Mr. Abraham now asks for a suspension of the rules to advance proposal on third reading and final passage. I can tell you what he wants to do is withdraw some instruments to help clear up the calendar.

MR. CASEY

Is there any objection?

Without objection, so ordered.

MR. POYNTER

Mr. Abraham now moves to call from the calendar, Delegate Proposal No. 67 having to do with the pieceage of the attorney general.

MR. CASEY

Any objection?

Without objection, so ordered.

MR. POYNTER

The same gentleman now moves the proposal be withdrawn from the files of the convention.

MR. CASEY

Without objection, so ordered.

* * * * *

* * *

MR. HARDIN (Cont'd)
The Journal will be read and corrected later in the day.

MR. HENRY
Morning Hour No. 6. Introduction of Resolutions.

MR. HARDIN
Delegate Avant sends up the following resolution:
Delegate Resolution No. 51.
A resolution to amend Rule 37 of the Standing Rules of the Constitutional Convention to add a Paragraph (F) to provide for the vote required by the people for the adoption of an alternative to the proposed constitution.
Be it resolved that Paragraph (F) of Rule 37 of the Standing Rules of the Constitutional Convention is adopted to read as follows:
"Rule No. 37.1. Submission of Alternative Provisions
* * *

(F) No alternative proposition submitted to the people for ratification shall become a part of the constitution unless it receives a favorable vote equal to at least a majority of the number of persons voting for and against the basic document."

MR. HENRY
The resolution has been read in full.
Lies over under the rules.
Without objection, so ordered.
Morning Hour No. 7. Reports of Committees.

MR. HARDIN
Justice Tate, Chairman of the Committee on Style and Drafting submits the following report. It's a supplemental report on Committee Proposal No. 4.
Committee Proposal No. 4 is submitted with amendments.
Committee Proposal No. 15 is submitted with amendments.
Delegate Proposal No. 43 is submitted with amendments.
Justice Tate, Mr. Chairman, now moves for a suspension of the rules for the purpose of considering the proposals contained in the reports at this time.

MR. HENRY
Without objection, so ordered.

MR. HARDIN
In just a moment the pages will be passing out the amendments that were previously adopted to Committee Proposal No. 4, which are affected by the new amendments submitted by the Committee on Style and Drafting. This is for your information.

MR. TATE
All right. While we are waiting for that, I would first bring up the stylistic changes recommended to Delegate Proposal No. 43, by Mr. Jackson, about juvenile procedures. It is a two page thing. Your green copy is blue, as you notice, and it reads from top to bottom instead of from side to side like the other ones. So, you do presto and... that's a joke. Thanks, Boysie.
The only amendment suggested is Amendment No. 1. It's shown on the blue copy, which is your green copy, on line 19 to delete "a" and to delete the word "vote," in line with the usual way we say "enacted by a". . . "a law enacted by two-thirds of the elected members."

Mr. Chairman, if there is no discussion, I move for the adoption of that amendment.

MR. HENRY
Any question on the amendment?
Any objection to the adoption of the amendment?
Then, without objection, the amendment stands adopted.
Proceed, Judge.

* * *

MR. POYNTER

Judge Tate has a motion he's going to make in a few minutes but in order that that motion can have some advocacy, it's necessary for me to read a few reports from the Secretary.

Mr. Denberry, Secretary, reports Delegate Proposal No. 43 has been enrolled in final form.

In addition, Committee Proposal No. 4, enrolled in final form.

Committee Proposal No. 21, reenrolled in final form.
Committee Proposal No. 26, reenrolled in final form.

All respectfully submitted by Nolise Denberry, Secretary of the Convention, and in accordance with the rules of the convention, the above named proposals were all signed by the Chairman of the Convention and attested by the Secretary.

* * *

MR. POYNTER

Mr. Pugh in a minute...we don't have the distribution. He's going to ask you in a second to reconsider the adoption called from the committee in the usual motion No. 4, Committee Proposal No. 4, which is the Executive Branch with the view of offering an amendment there that deals with seeing that the governor faithfully executes the laws of the state. The amendment that he will be speaking about reads as follows:

Amendment No. 1. On page 2, at the end of line 27, change the period "." to a comma ",", and insert the following: "and shall see that the laws are faithfully executed."

That's the amendment. The distribution copies are not here, but that is the amendment that his motion will relate to.

MR. CASEY

Mr. Pugh, would you give a brief explanation now as to what the problem is?

MR. PUGH

Mr. Chairman, could we have a quorum call, please?

MR. CASEY

Mr. Pugh now suggests the absence of a quorum. The Clerk will open the machine for roll call.

Are you through voting?

Please vote your machines, delegates; we need sixty-seven members to operate.

The Clerk will close the machine.

78 delegates present and a quorum.

Mr. Pugh is now recognized.

MR. PUGH

Mr. Chairman and fellow delegates, the purpose for opening the Executive Section is to provide as the present constitution provides relative to the faithful execution of the laws of this state. The present 1921 Constitution places the responsibility on the governor to see that the laws are faithfully executed. The way the article presently reads, it says that he shall support the laws and the constitution. As you all know, that language is contained in his oath. This will also provide for the 1921 language and shall see that the laws are faithfully executed, and I ask for your favorable consideration of this amendment.

MR. CASEY

Mr. Pugh now moves for a suspension of the rules to discharge from the Committee on Style and Drafting, Committee Proposal No. 4.

Is there objection?

Without objection, so ordered.

The same gentleman now moves to reconsider the vote by which Committee Proposal No. 4 was adopted.

Any objection to that motion?

Without objection, so ordered.

The same gentleman now moves for a suspension of the rules to call from the table the motion to reconsider the vote by which Section 5 was adopted for the sole purpose of offering the Pugh amendment. Is that correct, Mr. Pugh?

MR. PUGH

Yes, but I have the authority to announce that the Executive Committee is one hundred percent in accordance with this provision.

MR. CASEY

Any objection to a suspension of the rules?

Without objection, so ordered.

The same gentleman now moves to reconsider the vote by which Section 5 was finally adopted.

Is there any objection to that motion to reconsider?

MR. CASEY (cont'd)

Without objection, so ordered.

Mr. Pugh now offers his amendment.

The Clerk will read the amendment.

MR. POYNTER

Again, on page 2, at the end of line 27, change the period "." to a comma ",", and insert the following: "and shall see that the laws are faithfully executed."

Now, if you all don't have copies, presently Section 5(A) begins...Paragraph (A) says, "Executive Authority. The governor shall be the chief executive officer of the state. He shall faithfully support the constitution and laws of the state and the United States." At the end of the words "United States" take the period "." out; put a comma "," and say, "and shall see that the laws are faithfully executed."

MR. CASEY

Mr. Pugh is recognized to explain his amendment.

MR. PUGH

Mr. Chairman, I have already indicated to the delegates the purpose of the amendment, and I ask your favorable consideration.

MR. CASEY

Mr. Singletary has a question.

MR. SINGLETARY

Mr. Pugh, just as a technical amendment, shouldn't you state that "the laws of the state will be faithfully executed"?

MR. PUGH

I suggested that to the committee, but the committee felt that they wanted to use the very same language that was in the 1921 Constitution.

MR. CASEY

Any further questions of Mr. Pugh?

Mr. Singletary.

MR. SINGLETARY

Does the present constitution have the language about the laws of the state and the United States?

MR. PUGH

Yes, it does.

MR. CASEY

Any further questions of Mr. Pugh?

Any further discussion on the amendment?

Any objection to the adoption of the amendment?

Without objection, the amendment is adopted.

The same gentleman now moves final adoption of Section 5.

Therefore, when the machine is opened, those in favor of the adoption of Section 5 vote yes. Those opposed, vote no. The Clerk will open the machine.

Are you through voting?

This is a record vote.

The Clerk will close the machine.

100 yeas and 0 nays, and Section 5 is adopted.

The same gentleman moves to reconsider the vote by which

Section 5 was adopted, and lay that motion on the table.

Without objection, so ordered.

The same gentleman now moves the final adoption of Committee

Proposal No. 4.

Therefore, when the machine is opened, those in favor of the adoption of Committee Proposal No. 4 will vote yes. Those opposed will vote no, and the Clerk will open the machine.

Are you through voting?

★

★

★

MR. POYNTER

Next section:

Section 5. Continuation of Actions and Rights

Section 5. All writs, actions, suits, proceedings, civil or criminal liabilities, prosecutions, judgments, sentences, orders, decrees, appeals, rights or causes of action, contracts, obligations, claims, demands, titles, and rights existing on the effective date of this constitution shall continue unaffected except as modified in accordance with this constitution. All sentences as punishment for crime shall be executed according to their terms."

MR. HENRY

Explain it, please.

MS. ZERVIGON

Mr. Chairman and fellow delegates, this section is taken out of the Florida Constitution and is standard transitional material. It will go in the Part III section and will not be subject to the limitations of Section 1. I'll yield to any questions, Mr. Chairman.

MR. HENRY

Mr. Duval, for a question.

MR. DUVAL

Mary, I just want to understand your intent. I assume this is to preserve rights that are vested at the time the new constitution is adopted. Is that basically right?

MS. ZERVIGON

That's correct. "Except as modified in accordance with this constitution."

MR. DUVAL

Now, that's what I mean. That's the little phrase that I'm asking you about: "except as modified in accordance with this constitution." Does that mean that we, by this constitution, can, in your opinion, take away vested rights that were vested before the adoption of the constitution?

MS. ZERVIGON

No, sir, and the reason those words are in there is some of these are vested rights; some of them are not. For example, as I understand it, we couldn't abrogate contracts, but that we'd change certain other things that could easily not be vested rights, be rights that are not yet vested.

MR. DUVAL

So, to express your committee's intent, then, the "except as modified" only applies to those things which would not be vested rights, then?

MS. ZERVIGON

Well, we didn't intend to, nor do we think we are able to, overturn the federal constitution, no--or the jurisprudence thereunder.

MR. DUVAL

I'm talking about rights vested in under the '21 Constitution that are modified by the new constitution. If those rights are vested rights, the new constitution would not prevail, would it?

MS. ZERVIGON

You're going to have to give me an example, Stan.

MR. DUVAL

I hate to belabor the point. I'm merely wondering: If someone was granted a certain right under the '21 Constitution, and this right is now vested in that individual, and under the new constitution they would not have this right, would the right be taken away or would it remain in effect? Retirement, for example.

MS. ZERVIGON

There's an amendment coming to knock those words out, Stan.

MR. DUVAL

Thank you. Thank you.

MR. HENRY

Would you yield to a question to Mr. Pugh?
The lady yields.

MR. PUGH

May I ask you whether or not, in your opinion, lines 10 and 11 of this section would mean that one could not be either be pardoned or paroled for a crime which occurred during the time of the '21 Constitution?

MS. ZERVIGON

Mr. Pugh, you're the attorney; I'm not. But, I assumed, when I read this in the Florida Constitution, that it was the term of all sentences for punishment of a crime that they were subject to the laws under which the guy was sentenced, and those laws include the laws on pardon and parole.

MR. PUGH

I'll fix an amendment.

MR. HENRY

Yield to a question to Senator Rayburn?
The lady yields.

MS. ZERVIGON

I'll yield to a question of any nonlawyer in the house.

MR. RAYBURN

Thank you, Mary. Mary, where you say there that "rights existing on the effective date of this constitution shall continue unaffected except as modified in accordance with this constitution," did the committee elaborate any on just how far-reaching that could be? In other words, if you have some rights today, and then the new constitution language modifies them, would that supersede the new constitution?

MS. ZERVIGON

No, it's not intended to.

MR. RAYBURN

Well, do you follow what I mean...

MS. ZERVIGON

I understand that there is an amendment drawn to knock it out in any case, Senator.

MR. RAYBURN

You're going to knock all of it out?

MS. ZERVIGON

No, sir. "Except as modified in accordance with this constitution" will be...there's an amendment to be offered to knock it

MS. ZERVIGON (cont'd)

out. In addition to that, Mr. Pugh informs me that he has an amendment drawn to lines 10 and 11. I'm not certain what his amendment does.

MR. HENRY

Mr. Schmitt, for a question.

MR. SCHMITT

Under the new constitution, the International Trade Mart Building, specifically, will be placed upon the tax rolls. There's no specific provision for this. In the 1911 Constitution, there was a specific provision which exempted it, so they paid no ad valorem property taxes for that building or the parking garage. On your transitional matters, would this building remain nontaxed?

MS. ZERVIGON

Jay, I think you have to read this section in concert with all the other sections. The section that continues that exemption is repealed by the first sentence of Section 10, so I don't believe that that's one of the vested rights that we're worried about protecting here. As I understand it, this mostly has to do with your rights to action in court.

MR. SCHMITT

So, you're saying it would not apply, and they would not get the exemption in the future, in your opinion?

MS. ZERVIGON

In my opinion—you're the attorney—but, in my opinion, when you read the two things together, and all other sections of the constitution are repealed, that's repealed. It's no longer the law, so you no longer have that right.

MR. HENRY

Are there any other questions?
We have an amendment, Mr. Clerk?
Read it.

MR. FOYNTER

An amendment sent up by Delegate Conroy, joined by Delegate Duval. The amendment reads as follows:

Amendment No. 1. On page 2, line 9, after the partial word "fected" delete the remainder of the line and on line 10, delete the partial word "tion".

MR. DUVAL

Mr. Chairman and fellow delegates, I just think this clarifies... By deleting this language, it makes the provision a lot clearer, I think. By having this phrase in there could cause a lot of problems. I think deleting it, the purpose of the section could be accomplished with a lot more clarity. I move for the adoption of the amendment.

MR. HENRY

Are there any questions of the gentleman?
Senator De Bileux.

MR. DE BILEUX

Mr. Chairman and ladies and gentlemen of the convention, I want to call your attention to a few things. We might be taking something out of here we don't want to take out. We have made a number of changes in this constitution. Do not forget that. Every-one of them modifies somebody's right, somebody's action. For instance, we've made some tax changes in this constitution that didn't exist prior to that time. We've made some changes insofar

MR. DE BILEUX (cont'd)

as prescriptions are concerned—for and against the state. We have waived the immunity of the state insofar as tort actions are concerned. Local government has a number of changes in it, and I'm just wondering if we might not be treading upon serious territory and have somebody stating that they still have the rights that they had under the old constitution, rather than under this new constitution, as a result of our having taken that out and inserting this particular clause as it has been now. If you're not going to delete the whole section, I certainly do not feel that you ought to delete this particular phrase out of that section. I'll just tell you that right now because that's the whole purpose of this constitution is to make some changes. You might not be making the changes where you think you made them, if you delete this particular phrase. That's to tell you to check it over; then, think it over very carefully before you delete that particular phrase.

MR. HENRY

Any further discussion?
Are you ready for the question?
Without objection, the question is ordered.
You have the right to close, Mr. Wood.

MR. DUVAL

Let me explain, briefly, what the purpose of this amendment is. Anyone having rights which the courts would declare to be vested rights, under the '21 Constitution, their rights would not be taken away—if these rights vest prior to the adoption of this constitution—is all it's saying. I don't think you'll have any problem in taxes or anything like that. I think that's handled further on here. I think it'll just protect those people who relied on the '21 Constitution and their rights that are vested prior to that time. After the new constitution, other changes, in my opinion, will come into play.

MR. HENRY

Yield to a question to Senator De Bileux?
You're next, Mr. Avants.

MR. DE BILEUX

Mr. Duval, if this constitution did not change any of those rights, how could they be affected?

MR. DUVAL

It changes all vested rights, Senator De Bileux, which accrue after the adoption of this constitution—would be governed by the new constitution. I'm merely saying those rights which are determined as vested rights—such as rights of contract—would not be abrogated if they accrue prior to the adoption of the new constitution.

MR. DE BILEUX

I just think you're getting on serious territory there.

MR. DUVAL

Well, I think it's real serious territory if you leave this in there.

MR. HENRY

Mr. Avants.

MR. AVANT

Stanwood, this thing refers to suits and proceedings and prosecutions and judgments and sentences and all those type of things. If you leave this language in here that you want to take out, isn't it a fact that any kind of judicial proceeding or an

MR. AVANT (cont'd)
appeal or a suit or a criminal prosecution that was in effect and going on at the time the constitution became effective—the new constitution became effective—you have to go back and start all over again with all of those procedures? Isn't that right?

MR. DUVAL
That's the whole point of the amendment.

MR. HENRY
Any other questions?
The gentleman has offered up amendments to which objection is urged.
We'll try a voice vote.
As many of you in favor of the adoption of the amendment, say
aye. Opposed, no.
The amendment is adopted.
Are there further amendments, Mr. Clerk?

MR. HENRY
We have an amendment reading?
Go ahead and read the amendment, Mr. Clerk.

MR. POYNTER
The amendment sent up reads as follows:
On page 2, at the end of line 11 delete the period and add a comma and the following: "Subject, however, to the provisions relative to pardon, parole, and commutation of sentence existing at the time this section becomes effective."

MR. PUGH
Mr. Chairman, fellow delegates, this is in response to the inquiry I made of the author of this section of this committee proposal earlier. I'm of the opinion that unless we are going to adopt an amendment of this nature, that it would be impossible for one to get a pardon, a parole, or a commutation of sentence after the effective date of this constitution. I ask your consideration and that you vote favorably on the amendment.

MR. HENRY
Are there any questions?
Any objection to the adoption of the amendment?
The amendment has not been passed out?
Let's wait just a minute and get the distribution copies.

MR. HENRY
Gentlemen, ladies, please take your seats and give the Clerk your attention. Let him read this amendment slowly again so that you can get the benefit of it. We don't have the distribution copies and we are just so pressed for time. I'll ask that the Clerk read it very slowly.
Proceed, Mr. Clerk.

MR. POYNTER
On page 2, at the end of line 11, delete the period and add a comma, and add the following: "subject, however, to the provisions relative to pardon, parole, and commutation of sentence existing at the time this section becomes effective."

MR. HENRY
Mr. Pugh, if you would, please give this another explanation. I think some people have some questions.
Judge Dennis for a question.

MR. PUGH
Somebody asked us to read it one more time.

MR. HENRY
All right. Read it one more time, Mr. Clerk.

MR. POYNTER
"Subject, however, to the provisions relative to pardon, parole, and commutation of sentence existing at the time this section becomes effective."

MR. PUGH
Are there any questions, Mr. Chairman?

MR. HENRY
Judge Dennis has a question.

MR. DENNIS
My question was directed to the Clerk. Did I understand you to put a semicolon in there somewhere; it didn't sound like it ought to be one?

MR. POINTNER

I think you're right. My last grammar course would put me... instead it seemed like to me that the semicolon probably should go after "terms", and it should be semicolon "subject" comma "however". I think that's probably.... Do you want me to make that change, Mr. Pugh?

MR. PUGH

Yes, may I withdraw it and have you make the change, and then refile it?

MR. POINTNER

All right. I believe that Style and Drafting, I know, is looking over all of this anyway so--this, I guess is what Judge Tate is going to mention--so if we miss a few of these, they can pick them up.

MR. HENRY

Will you yield to a question from Mr. Abraham?

MR. ABRAHAM

If I remember the language correctly, it says "subject to the provisions of this section?" Would you explain to me what you mean by saying "section", or do you mean subject to the provisions of this new constitution?

MR. PUGH

Let me see it.

MR. HENRY

Judge Tate, why do you rise?

MR. PUGH

It should say "constitution." I'm sorry, Mack, you're absolutely correct.

MR. TATE

Mr. Chairman, if Mr. Pugh—who missed the discussion early this morning—Section 1...this shall no longer be limited, I guess, by Section 1 which says in effect "subject to the preceding portions of the constitution." But I was there when the transitional people were discussing this, and the thing is it's automatically subject to the new provisions that have to do with pardon and parole. That was why they did not think you needed a clarifying amendment, for what it's worth.

MR. HENRY

Mr. Avant.

MR. AVANT

Bob, I'm going to tell you something, and then I'm going to ask you a question. My question is going to be: Point out to me where I'm wrong. I think that your amendment is doing just exactly what we don't want to do and what you don't want to do and the reason you said you offered the amendment. I'll tell you why. You say "subject, however, to the provisions relating to commutation, pardon, and parole in effect at the time this constitution becomes effective." That's the way your amendment reads.

MR. PUGH

My amendment was when this proposal becomes effective.

MR. AVANT

Well, this proposal or whatever you want to call it. We've got a man that's sitting in the penitentiary serving a life

MR. AVANT (cont'd)

sentence for murder. When this constitution becomes effective, he hasn't been up there but just two days, he just started serving his sentence. He won't become eligible for parole until the new parole procedures and the new board has been appointed and all of that. There's not going to be any machinery to give him a pardon or parole in accordance with the procedures that were in effect at the time this constitution became effective, so you're really going to be fixing him where he can never be pardoned or paroled. Now, tell me why I'm wrong.

MR. PUGH

Well, I don't know how he would not be entitled to the rights relative to pardon, parole, and commutation of sentence, which were in existence at the time that he was sentenced. I don't know how you can avoid that now.

MR. AVANT

Well, I really hate to get up here and talk about something when I haven't seen it, but I thought your amendment said "subject to the procedures..."

MR. PUGH

Provisions is what I said.

MR. AVANT

Provisions, well, the provisions are, to me, mean: how is the Parole Board constituted? Who sits on it? And all of that. The ones that were in effect at the time this constitution becomes effective is going to be dead and gone and forgot about by the time he becomes eligible for pardon, parole, commutation of sentence; so how's he ever going to get one?

MR. PUGH

Now is he going to be deprived of any greater right he may have had in existence at the time he was sentenced? Are you telling me all his rights are going to be greater under the new constitution than they would have been...

MR. AVANT

Well, I'm telling you this that I don't think your amendment is necessary. I think that anybody with ordinary common sense would interpret this to mean that if a man's in the penitentiary and he went there before these provisions in the new constitution became effective and he became eligible for parole at a later date after the new Parole Board was in, that the new Parole Board could pardon him in accordance with the procedures that exist at the time he becomes eligible. That's what I think.

MR. PUGH

Well, I protest to falling in whatever category you just put me in because to me it's explicitly clear that he must serve in accordance with his time--period, and that the new laws won't be applicable to him because he's got to serve based on what he was given. But, in the interest of saving time for the convention, I withdraw the amendment.

MR. HENRY

Do you withdraw the amendment, Mr. Pugh?

MR. PUGH

Yes, I will.

MR. HENRY

The gentleman now moves to withdraw the amendment. Without objection, so ordered.
Are there further amendments, Mr. Clerk?

MR. POYNTER
No further amendments to this section.

MR. HENRY
Are there any further amendments?

MR. POYNTER
No, Mr. Chairman.

MR. HENRY
Any further discussion on the section?
Are you ready for the question?
Without objection, the previous question is ordered.
Therefore, when the machine is opened, as many of you as are in favor of the adoption of the Section vote yes. Those opposed vote no, and the Clerk will open the machine.

MR. POYNTER			
Blair	Yes	Lanier	Yes
Bollinger	Yes	Leithman	Yes
Brown	Yes	Jones	Yes
Casey	Yes	Loose	Yes
Comar	Yes	Munson	N.V.
Edwards	N.V.	Perkins	Yes
Fayard	Yes	Rayburn	Yes
Gauthier	Yes	Roy	Yes
Clarrusso	N.V.	Segura	N.V.
Gravel	N.V.	Stephenson	Yes
Jackson, A.	Yes	Tobias	Yes
Juneau	Yes	Wall	N.V.
Kelly		Womack	N.V.
Lambert	Yes		

MR. HENRY
The Clerk will close the machine.
104 yeas and 2 nays. The section is adopted.
The lady moves to reconsider the vote by which it was adopted and leave the motion pending.
Without objection, so ordered.
Proceed.

MR. POYNTER
"Section 6. Protection of Existing Taxes
Section 6. All taxes, penalties, fines, and forfeitures owing to the state or any political subdivision levied and collectible under the Constitution of 1921 and valid laws enacted thereunder shall inure to the entity entitled thereto. The provisions of this constitution shall not be construed or applied in such a manner as to invalidate taxes levied or authorized under the Constitution of 1921."

MR. HENRY
Proceed, Mrs. Zervigon.

MRS. ZERVIGON
The first sentence of this Section 6 which will be in Part III was taken from the Florida Constitution and says in essence if there is a lien on your property or you have back taxes due, just because we have a new constitution, don't think you're forgiven that debt. The second sentence came...are combined wordings of similar sections in the local government provision and in the revenue, finance and taxation provision just to make certain that everyone knew that validly authorized or levied taxes will continue to be authorized under this constitution. If you'll recall what we've done in the way of taxes in this constitution, as far as levying or authorizing them, if you'll think over them in your mind, we really haven't made any changes. The problem is that

MR. HENRY (cont'd)
All yeas and 0 nays, the section is adopted.
The lady moves to reconsider...leave the motion pending.
Without objection, so ordered.
Ms. Zervigon.

MS. ZERVIGON
Mr. Chairman, at this point I'd like to move that we pass over all sections until Section 12...and consider Section 12 next.

MR. HENRY
Without objection, so ordered.
Proceed, Mr. Clerk, Section 12.

MR. POYNTER
"Section 12. Constitution Not Retroactive
Section 12. Except as otherwise specifically provided in this constitution, this constitution shall not be retroactive and shall not create any right or liability which did not exist under the Constitution of 1921 based upon actions or matters occurring prior to the effective date of this constitution."
There is an amendment to go in immediately prior to line 8, between lines 7 and 8 which would make this a portion of Part III.

MS. ZERVIGON
Mr. Chairman and delegates, this is a standard provision from all transition schedules that I've read except for one provision and that is, the first line "except as otherwise specifically provided in this constitution." We put that in to cover the case, if you'll remember, we've authorized survivors' benefits to the widows of certain people who had not been authorized to receive them before. It covered about seventeen people as I understand from the author of the amendment, Mr. Velasquez. One of them was the widow of the cadet shot by the Howard Johnson's sniper who had not been eligible for benefits because her husband had not been a policeman at the time, but a cadet. Other than that, it's absolutely standard language and we intend for this to go in Part III of the schedule.

MR. HENRY
That completes your remarks?
All right. Mr. Clerk, are there any amendments to this section?

MR. POYNTER
I have an amendment sent up by Mr. Casey, Lanier, Tate, Flory, Avant, and many others.

MR. HENRY
Read it.

MR. POYNTER
On page 5, between lines 7 and 8 insert the language: "PART III".
I asked them not to run the distribution copies. What it does is between lines 7 and 8 insert the language, "PART III," which would then have the effect, of course, of putting that said Section 12 in Part III as Mr. Perez has previously explained.

MR. HENRY
Gentlemen moves the adoption of the amendment.
Is there objection?
Any objection?
Without objection, the amendment stands adopted.
You got further amendments?
Any further amendments, Mr. Clerk?

MR. POYNTER
No further amendments to Section 12.

121st Days Proceedings—January 18, 1974

MR. HENRY

Any further discussion on the section?

Mr. Denney has a question, Ms. Zervigon, if you will.

MR. DENNEY

Maty, what happens to the waiver of immunity provision? Suppose the cause of action . . . suppose somebody had a right of action against the State of Louisiana that occurred before the effective date of the constitution; could they then file a suit without getting a special waiver from the legislature since you say there's nothing retroactive here?

MS. ZERVIGON

Mr. Denney, I'm not sure I fully understand your question, but I believe we've taken care of it in two other places. If Section 5 doesn't cover it, we've specifically said later on in Section 23 of this, Mr. Denney . . . in Section 23 of this we've specifically said that those procedures that you operated under before for suits against the state remain active.

MR. DENNEY

In other words, it's clear that it is not retroactive then?

MR. HENRY

Any other questions?

MR. DENNEY

Because it shall apply only to a cause of action arising after the effective date of this constitution. Now, is that the intention?

MS. ZERVIGON

Maybe, I'm not understanding your question.

MR. DENNEY

Well, my question is, suppose you have a contract with the state that's in effect on the date on which the constitution becomes effective?

MS. ZERVIGON

A contract.

MR. DENNEY

Either a contract or the state's run into your automobile. Now, at the present time you have to get permission to sue. You're not going to have to get permission to sue after the constitution becomes effective. Now, apparently, or based upon this present section plus Section 23, it's the committee's idea that that right to sue does not change by virtue of the adoption of the constitution for anything that occurred before the constitution was adopted. I just want to be sure what it means.

MS. ZERVIGON

Mr. Denney, may I tell you what we did intend to do and perhaps our inference you can figure out what it doesn't do because I believe you're getting over my head on this. What we intended is that we have a rather more extensive Bill of Rights for example than we had in the '21 Constitution. We have an equal protection clause, for example. What we intended was that you may not say someone violated equal protection of the laws section to the '73 Constitution as it applied for me in 1955, and I may therefore sue. We're saying things like that begin again, that the Bill of Rights becomes effective when it becomes effective and only for acts occurring after it becomes effective. Does that answer your question, Mr. Denney?

MS. ZERVIGON

Okay.

MR. HENRY

Are there any other questions?

Is there any further discussion on the section?

Are you ready for the question?

Without objection, the previous question is ordered.

Therefore, when the machine is opened, as many of you as are in favor of the adoption of the section vote yes. Opposed, vote no. Clerk will open the machine.

MR. POYNTER

Blair	Yes	Gauthier	Yes
Bollinger	Yes	Giarrusso	Yes
Brown	Yes	Gravel	Yes
Casey	Yes	Jackson, A.	Yes
Comar	Yes	Juneau	Yes
Edwards	N.V.	Kelly	Yes
Fayard	Yes	Lanier	Yes

MR. HENRY

Gentlemen, let's hold down the noise, please. Let's hold down on all of this talking.

MR. POYNTER

Lambert	Yes	Roy	Yes
Jones	Yes	Segura	N.V.
Leithman	Yes	Stephenson	Yes
Lowe	Yes	Tobias	N.V.
Munson	N.V.	Wall	N.V.
Perkins	Yes	Womack	Yes
Rayburn	Yes		

MR. HENRY

Close it, Mr. Clerk.

112 yeas and 0 nays, the Section is adopted.

The lady moves to reconsider the vote by which it was adopted and leave the motion pending.

Without objection, so ordered.

Proceed.

MR. POYNTER

"Section 13. Legislative Provisions

Section 13. (A) President of the Senate. The lieutenant governor in office on the effective date of this constitution shall continue to serve as president of the Senate until his term expires in 1976.

(B) First Session. The provisions of Article III of this constitution shall become effective for the first session of the legislature to be held in 1975. However, in 1976, the legislature shall convene in regular session at twelve o'clock noon on the second Monday in May, at which time the members elected at the statewide election in 1976 shall take office; otherwise the legislature shall conduct that session as provided in Article III of this constitution."

MR. HENRY

Explain it.

MS. ZERVIGON

Mr. Chairman and delegates, this section is to effectuate the provisions of Article III of the new constitution which will be the Legislative Section.

MR. HENRY

The lady moves to dispense with the balance of the reading of the section.

*

*

*

MRS. ZERVIGNO

Mr. Chairman, this just clarifies the language as I assured Mr. Abraham we would. It changes the word "revers" in line 14 to "provisions" and specified exactly when in May they're going to take office. I move its adoption.

MR. HENRY

The lady has offered an amendment, and moved the adoption of the same.

Is there any objection?

Without objection, the amendment stands adopted.

Is there any further discussion?

Mr. Clerk, are there any further amendments?

MR. POYNTER

No, Mr. Chairman.

MR. HENRY

Any further discussion on the section?

Are you ready for the question?

Without objection, the previous question is ordered.

Therefore, when the machine is opened, as many of you as

are in favor of the adoption of the section will vote yes. Those opposed will vote no, and the Clerk will open the machine.

MR. POYNTER

Mr. Blair	Yes	Lambert	N.V.
Bollinger	Yes	Lanier	Yes
Brown	Yes	Leithman	Yes
Casey	Yes	Jones	Yes
Comar	N.V.	Lowe	Yes
Edwards	N.V.	Munson	N.V.
Fayard	Yes	Perkins	Yes
Gauthier	Yes	Rayburn	Yes
Giarrusso	Yes	Roy	Yes
Gravel	Yes	Segura	N.V.
Jackson, A.	Yes	Stephenson	N.V.
Juneau	Yes	Tobias	Yes
Kelly	Yes	Wall	N.V.
		Womack	Yes

MR. HENRY

Close the machine, Mr. Clerk.

113 yeas and 0 nays, and the section is adopted.

The lady moves to reconsider the vote by which it was adopted and leave the motion pending.

Without objection, so ordered.

Proceed.

MR. POYNTER

I understand that Mr. Kelly wants to prepare an amendment to Section 20, and so it wouldn't slow it down, Mrs. Zervigno moves to pass over Section 20 and take up 21 at this time.

MR. HENRY

Without objection, so ordered.

Mr. Roy, in the Chair.

MR. POYNTER

"Section 21. Pardon Board

Section 21. Until a pardon board is appointed under the terms of this constitution, the lieutenant governor, attorney general, and presiding judge of the sentencing court shall continue to serve as a board of pardons."

MR. ROY (in the Chair)

Explain the amendment.

MRS. ZERVIGNO

If you'll remember in the Executive Department Article, we

MRS. ZERVIGNO (cont'd)

established a pardon board of five citizens, not members of the Pardon Board by virtue of their office. Until that is set up, and those people are appointed by the governor, this continues the present Pardon Board in office so that their work can continue to be done. I'll yield to any questions, Mr. Chairman.

MR. ROY

Are there any questions?

Is there any discussion?

Is there any objection to the section?

Are you ready for the question?

Without objection, the question is ordered.

Therefore, when the machine is opened, as many of you as are in favor of the section will vote yes. Those opposed will vote no, and the Clerk will open the machine.

MR. POYNTER

Senator Blair	Yes	Lambert	N.V.
Bollinger	Yes	Lanier	Yes
Brown	Yes	Leithman	Yes
Casey	Yes	Jones	Yes
Comar	N.V.	Lowe	Yes
Edwards	N.V.	Munson	N.V.
Fayard	Yes	Perkins	Yes
Gauthier	Yes	Rayburn	Yes
Giarrusso	Yes	Roy	Yes
Gravel	Yes	Segura	N.V.
Jackson, A.	Yes	Stephenson	Yes
Juneau	Yes	Tobias	Yes
Kelly	Yes	Wall	N.V.
		Womack	Yes

MR. ROY

Close the machine.

109 yeas, 0 nays, and the amendment...the section stands adopted.

The motion to reconsider is vote pending.

Read the next section.

Mr. Reeves in the Chair.

MR. POYNTER

"Section 22. Levee Districts; Compensation for Property
Section 22. The provisions of Article XVI, Section 6 of the Constitution of 1921 shall be continued as a statute, subject to change by the legislature, and the amount of compensation therein required to be paid for property used or destroyed for levee or levee drainage purposes shall be paid as provided in Section 6 of Article XVI of the Constitution of 1921 until the legislature enacts a law to effectuate Article VI, Section 43 of this constitution."

MR. REEVES (in the Chair)

Mr. Lanier, explain.

MR. LANIER

Mr. Chairman and fellow delegates, if you refer to Section 43 as adopted by local government, you will see that we made a major change in the law with reference to the compensation paid for the exercise of the riparian servitude. The present law is that you're paid the assessed value for the last preceding year. What we have done is provided that in the future, after the effective date of this constitution, that the legislature shall have the right to determine what compensation should be paid. Because of the fact that the present provisions for compensation are constitutional rather than statutory, the Committee on Local and Parental Government felt that a special transitional schedule provision was necessary to insure and make certain that

*

*

*

MR. HENRY

Explain it, Mr. Perez.

MR. PEREZ

I just hope now that we've straightened the language out to satisfy just about everybody. I would move the adoption of the amendment.

MR. HENRY

Are there any questions on the amendment?
Is there any objection to the adoption of the amendment?
Then, without objection, the amendment stands adopted.

MR. POYNTER

There are no further amendments, Mr. Chairman?

MR. HENRY

No further amendments.
Any further discussion on the section?
Are you ready for the question?
Without objection, the previous question is ordered.
Therefore, when the machine is opened, as many of you as are in favor of the adoption of the section will vote yes. Those who are opposed will vote no, and the Clerk will open the machine.

MR. POYNTER

Blair	Yes	Lanier	Yes
Bollinger	N.V.	Leithman	Yes
Brown	N.V.	Jones	Yes
Casey	Yes	Low	Yes
Comar	N.V.	Munson	N.V.
Edwards	N.V.	Perkins	Yes
Fayard	N.V.	Rayburn	Yes
Gauthier	Yes	Roy	Yes
Giarrusso	N.V.	Segura	N.V.
Gravel	N.V.	Stephenson	Yes
Jackson, A.	Yes	Tobias	Yes
Juneau	Yes	Hall	N.V.
Kelly	N.V.	Womack	Yes
Lambert	N.V.		

MR. HENRY

Close the machine, please.
91 yes, 1 nay and the section is adopted.
The lady moves to reconsider the vote by which it was adopted and leave the motion pending.
Without objection.
Read Section 11, Mr. Clerk.

MR. POYNTER

"Section 11. Existing Laws
Section 11. (A) . . .

MR. HENRY

Gentleman moves to dispense with the reading of the Section.
Is there objection?
Without objection, so ordered.
Ms. Zervigon.

MS. ZERVIGON

Mr. Chairman and delegates, as above in Section 10, we have amendments which change this considerably. The result of which will be that with some drafting changes Section (A) stands relatively unchanged, but, the major change will be that in

MS. ZERVIGON (cont'd)

Section (B) the final sentence will be deleted. In every schedule provision . . . in every constitution that I've read the schedule provisions-- there is a provision for what happens to existing law because of the question that's been raised earlier in discussion as to whether the government under the new constitution is an entirely new government. What we've done is retain the old law to the extent that it is not in conflict with this constitution. We've retained it so that it can be repealed or altered or it can expire by its own limitation. In other words, it's not our intention to incorporate it by reference into the constitution and provided that inconsistent laws shall cease upon the effective date of this constitution.

MR. HENRY

Would you yield to a question from Mr. Jenkins?

MR. JENKINS

I'd just like for you to take my name off this amendment because these amendments keep coming up not in the form that we agreed to in our discussions earlier.

MR. HENRY

Scratch Jenkins on the amendment.
Are there any further questions?

MS. ZERVIGON

Mr. Chairman, as a point of clarification because I don't think there's any evil intent involved, we didn't really agree to a precise form; we agree to concepts and if . . . when you go to put a concept in words, of course, you always run into trouble as whether the words mean the same thing to me as they mean to you. So, I have no objection to Mr. Jenkins removing his name. It's just that we really didn't agree to a precise form and, therefore, I don't think that we're reneging on any agreement, as such.

MR. HENRY

Are there any other questions on the amendment?
Is there any further discussion on the amendment?

MS. ZERVIGON

Mr. Chairman, I'm not sure the amendment has been introduced, has it?

MR. HENRY

I beg your pardon.
Why do you rise, Mr. Avant?

MR. AVANT

I'd like to request that Mr. Poynter read the section as it would read if this amendment was adopted.

MR. HENRY

Read the amendment for us and then . . .

MR. POYNTER

A set of four amendments sent up by Mr. Conroy, Perez, and others read as follows:
Amendment No. 1. On page 4, line 29, after the word "not" and before the word "with" . . .

MR. HENRY

Gentleman moves to dispense with the reading of the amendments, and request that you read the section as it would be read.
Proceed, Mr. Clerk.

121st Days Proceedings—January 18, 1974

MR. POYNTER

Okay. It would read with the four sets of amendments-- Ms. Zervigon you might follow me, I think I've got them all-- as follows:

"Section 11. (A) Retention. Laws in force on the effective date of this constitution, which were constitutional when enacted and are not in conflict with this constitution, shall remain in effect until altered or repealed or--pick up on line 31-- until altered or repealed or until they expire by their own limitation.

(B) Expiration of Inconsistent Laws. Laws which are in conflict with this constitution shall cease upon its effective date."

MS. ZERVIGON

By way of explanation, let me say that I had no idea what an unclear word "inconsistent" was until we began to discuss it. We decided that "in conflict" was a much clearer, more crystallized way of saying what it was we wanted to say. In addition to that, because of changes we've made in the constitution, the laws that are in effect may be repealed in some way other than by the authority which enacted them. Then, in addition to that, you see we've changed "inconsistent" and deleted the last sentence as I pointed out before. This language was taken from the project and there is similar language in most schedules.

MR. HENRY

Will you yield to a question from Mr. Abraham?
Lady yields.

MR. ABRAHAM

Mary, I understand that the purpose of the last sentence in Paragraph (B) was sort of a grace period, so that if a law is in conflict, it would give the legislature time to repeal it, or amend it, or whatever may need to be done. You don't foresee any problem here if you do not have a grace period?

MS. ZERVIGON

We have a delayed effective date. We feel certain that there will be legislative sessions in between now and then. The point of it in the project was that if there needed to be enabling legislation for any section of the new constitution and there was already a law on the books but it was in conflict with the new constitution, this would continue them. Mack, as you think about it, you can see that that's a very confusing thing as to how they could be proper enabling legislation for the new constitution and at the same time in conflict. We just decided that rather than try and have the courts figure out exactly what it meant we would delete it. I think I would venture to guess that the scheduled provisions of the project weren't written with the same care as the rest of the project. It's when you are starting an effective date in the face and begin to think exactly what's going to happen to each and every section of the old constitution and each and every old law that you begin to be very, very careful with your words in this area.

MR. HENRY

Will you yield to a question from Mr. Flory?
Lady yields.

MR. FLORY

Ms. Zervigon, would you be kind enough to give me the definition of the word "inconsistent" and then tell me what difference there is in the words "in conflict with"?

MS. ZERVIGON

I'm not. . . it's not the intention of the authors of his amendment to make any real change. It's just that I think,

MS. ZERVIGON (cont'd)

what "in conflict" does as opposed to "inconsistent" makes it in direct conflict with something that's stated, rather than just generally inconsistent with something that might be implied. For example, as we came to sections of the old constitution that says, "the legislature shall enact the following laws," if we retained laws that were old laws that had been enacted in the past tense where "shall" is a future tense verb, that might be considered inconsistent with that segment in the constitution, but it's certainly not in conflict with it in that it's not the intention of the law on the books to overturn that provision of the constitution.

MR. HENRY

Are there any other questions?
Is there any further discussion on the amendment?
Is there any objection to the adoption of the amendment?

MR. POYNTER

Mr. Chairman, I believe they are going to want to withdraw it. They overlooked changing the title of Paragraph (B), and I think the lady and gentleman would like to withdraw this amendment and offer another one so that they could correct that at this time.

MR. PEREZ

Only for the purpose of deleting the word "inconsistent" and inserting in lieu thereof, the word, "conflicting," so the title would read "Expiration of Conflicting Law."

MR. HENRY

Gentleman moves to withdraw the amendment for the purpose of making that change.
Without objection, so ordered.
Resubmits it with the change.

MR. POYNTER

Resubmits it with an Amendment No. 5.

On page 5, line 1, after the words "Expiration of" strike out the word "Inconsistent" and insert in lieu thereof "Conflicting".

MR. HENRY

The gentleman moves the . . . or the lady moves the adoption of the amendment.

Is there any question?

Is there any further discussion on the amendment?

Is there any objection to the adoption of the amendment? Any objection?

Then, without objection, the amendment stands adopted.

Are there further amendments, Mr. Clerk?

MR. POYNTER

No, Mr. Chairman.

MR. HENRY

Is there any further discussion on the section?

Are you ready for the question?

Without objection, the previous question is ordered.

Therefore, when the machine is opened, as many of you as are in favor of the adoption of the amendment will vote yes. . . of the section will vote yes. Those who are opposed will vote no, and the Clerk will open the machine.

MR. POYNTER

Blair	Yes	Lanier	Yes
Bollinger	N.V.	Leitchman	Yes
Brown	N.V.	Jones	Yes
Casey	Yes	Lowe	Yes
Comar	N.V.	Munson	N.V.
Edwards	N.V.	Perkins	Yes
Payard	N.V.	Rayburn	Yes
Gauthier	Yes	Roy	Yes
Giarrusso	N.V.	Segura	N.V.
Gravel	N.V.	Stephenson	Yes
Jackson, A.	Yes	Tobias	Yes
Juneau	Yes	Wall	N.V.
Kelly	N.V.	Womack	Yes
Lambert	N.V.		

MR. HENRY

Close the machine, Mr. Clerk.

Gentlemen, please take your seats.

56 years and 1 day, and the section is adopted.

The lady moves to reconsider the vote by which it was adopted, and leave the motion pending.

Without objection, so ordered.

Section 16. Read it, Mr. Clerk.

MR. POYNTER

"Section 16. Ports; Transition to Statutes

Section 16. All provisions of Article VI, Sections 16, 16.1, 16.2, 16.3, 16.4, 16.5, 16.6, 17, 29, 29.1, 29.2, 29.3, 29.4, 33.1, 34 and Article XIV. . .

MR. HENRY

Let's dispense with the reading of the section.

Explain it, Mr. Lanier.

MR. LANIER

Mr. Chairman and fellow delegates, if you refer to Section 50 of Local Government as originally enrolled, I think it's now Section 44 on the final enrollment—I'm not positive about that number—you'll notice that with reference to the deep-water ports we provided that they were ratified and confirmed, that the legislature could change

MR. POYNTER

All right, Judge Tate sends up the report from Style and Drafting in accordance with the rules of the Convention. All proposals previously adopted by the Convention with the exception of Committee Proposal No. 38 and I think, Committee Proposal No. 98, and other exceptions perhaps, are hereby reported with final styling amendments as a proposed Constitution for the State of Louisiana.

Respectfully submitted, by Judge Tate.

MR. HENRY

All right, Mr. Clerk, have you got everything straight?

MR. POYNTER

Yes, Mr. Chairman.

MR. HENRY

All right. Mr. Abraham is recognized for a motion.

Mr. Abraham.

MR. ABRAHAM

Mr. Chairman, I move we adjourn until 12:01 a.m. the 19th.

MR. HENRY

The gentleman now moves that we adjourn until 12:01 a.m. on the 19th of January; that will give us about twenty minutes for a little break to get all of the Style and Drafting stuff in here so we can go with that. We would have to start a new day anyway. That's right, so . . . well, we're going to stay a while working here. I've got about eighteen minutes, so we will now stand adjourned.

Is there objection?

Without objection, . . . Mr. Pugh, I didn't catch you; go ahead.

MR. PUGH

Mr. Chairman, may I inquire, after 12:01, what the schedule will be?

MR. HENRY

We're going to get through the Style and Drafting -- all that we can do-- then we're going to adjourn until 9:00 in the morning.

MR. PUGH

Thank you, sir.

MR. HENRY

Is there any objection to the motion?

Without objection, . . .

Reverend Landrum, proceed.

Just a minute. Gentlemen, please take your seats.

We have not voted on the motion yet, and there's still some concern about it apparently.

Reverend Landrum.

MR. LANDRUM

Mr. Chairman, could you tell me and do you have any idea about how long . . .

MR. HENRY

We're going to work about thirty or forty minutes -- hopefully, no longer than that Reverend Landrum--but we've just got to do it, even if we have to work until daylight.

Without objection, so ordered.

ADJOURNMENT

121st Days Proceedings—January 18, 1974

Saturday, January 19, 1974
12:01 a.m.

MR. HENRY

The Convention will come to order.
Outsiders, outside.
Good to see all of you this morning.
The Clerk will open the machine for roll call.
Please vote your machines, ladies and gentlemen.
Please vote your machines.

MR. FOYNTER

Blair	Here	Lanier	Here
Bollinger	Here	Leithman	Here
Brown	Here	Jones	Here
Casey	Here	Low	Here
Comar	Here	Munson	Here
Edwards	Here	Perkins	Here
Fayard	Here	Rayburn	Here
Gauthier	Here	Roy	Here
Giarrusso	Here	Segura	Here
Gravel	Here	Stephenson	Here
Jackson, A.	Here	Tobias	Here
Juneau	Here	Wall	N.Y.
Kelly	Here	Womack	Here
Lambert	Here		

MR. HENRY

68 people and a quorum.
The Convention will now be opened with prayer by the
Monsignor, Hunt Odum, pastor of the L.S.U. Tiger Tabernacle Church.
No, will be opened with prayer by Delegate Tobias.
Would every member please stand.

MR. TOBIAS

Lord, God, please guide us on this last day of the
work of this Convention. Amen.

MR. HENRY

I'll ask that Mr. Kelly lead us in the Pledge of
Allegiance.

MR. KELLY

I pledge allegiance . . .

MR. HENRY

Mr. Casey now moves to pass over Morning Hour No. 4.
Without objection, so ordered.

MR. FOYNTER

We need a motion to advance to Regular Order No. 5.
Mr. Chairman.

MR. HENRY

Mr. Stagg so moves.
Without objection, so ordered.
Proceed, Mr. Clerk.

MR. FOYNTER

All right. Judge Tate has before you a set of amendments.
The first amendment constitutes and sets forth a proposed
organization. In addition to that, he has before you—which
has been done by the enrolling room pursuant to the amendments
contained in here—a draft of what the constitution would look like—
double spaced and printed on one side—as the Constitution would look,

MR. FOYNTER (cont'd)

If these amendments are adopted. Now, this does contemplate,
of course, the inclusion at the particular time of Article XIV
dealing with transitional provisions.

Judge Tate, are there other particular . . . are these
the only documents? I think there are another set of green
amendments there or something.

MR. TATE

Mr. Clerk, may I in my usual incoherent way, explain . . .

MR. FOYNTER

Surely.

MR. TATE

What you have before you . . . what you will be technically
working from is this set of amendments which says . . . a set of
amendments which includes in only two instances these blue copies . . .
the green copies where it involved a substantial amount of renumbering
for your ready check and for the check of those concerned with Civil
Service who have already checked it. That is what we'll be working
with. It starts Amendment No. 1. Renumbering. This is for your
ready reference to where if should you approve it, the provisions
and all of the delegate proposals will end up as thus article and
section numbered. You do not have here only the Article XIV,
Transitional Provisions, that were taken out . . . that we
mentioned occasionally during the day that will be Part I. Presumably,
those will come back tomorrow with a final report on the things
you adopted today in the Transitional Article only. In other words,
at the end of the day, hopefully, we'll reach final approval on
Articles I through Articles XIII leaving --though, tentatively,
transfer some things into Article XIV, Transitional Provisions,
leaving the final arrangement of that article until tomorrow. All
right. As one correction sheet to the amendments that we'll hit
as we go along to forty-six, etc. All right. Now, earlier this
morning we passed out a table of contents, which . . . yesterday
we passed out a table of contents and also a table showing how the
committee proposals and the delegate proposals adopted in
numerical sequence and where their present provisions are found.
That's for your cross-check. Now, the series of amendments we have
will do the following: First, we will ask your approval of the re-
organization into the fourteen articles listed in Amendment No. 1.
Then, we will ask your approval of . . . the first three or four
are transferring sections from one article to another. Then, finally
we will just ask your approval to the renumbering and rearrangement.
We will hope that a quorum remains present because, occasionally, when
a Section (B) becomes a new section under the interpretation of some,
it needs sixty-seven votes. Now, with that explanation, should I
yield to any questions on the general organization, Mr. Chairman,
or . . .

MR. HENRY

Any questions?
All right, Judge Tate, proceed.

MR. TATE

Mr. Chairman, I move the adoption of Amendment No. 1,
which provides for the organization of the Constitution of 1974 as
noted there in the fourteen articles listed. Once that is approved,
as from time to time we will go and transfer into each one of those
articles the various delegate proposals and committee proposals.

MR. HENRY

You have a question, Mr. Kean?

MR. KEAN

Mr. Chairman, would it be possible to suspend the rules
and adopt these amendments in globe?

MR. HENRY

Why don't we just proceed without doing it like that-- in

*

*

*

MR. TATE (cont'd)
couple of prior sections into general provisions, it would be Section 16.

MR. HENRY
Do you have a question, Mr. Kean?
Mr. Kean pauses.
Are there any other questions?
Any objection to the adoption of the amendment?
Without objection, the amendment is adopted.
Proceed.

MR. TATE
Now, Amendment No. 3 is to the Executive Branch, and it represents combining Paragraphs (D) and (E) of the Section 5 of the Executive Branch Proposal, which had a separate paragraph about the operating budget and the capital budget, which were found word for word and are found word for word in Article VII, which is Revenue and Finance, Section 11, of your . . . and so, rather than repeat the same word, word for word, word for word, the recommended changes to delete those two and combine them into the paragraph noted "The governor shall submit to the legislature an operating budget and a capital budget, as provided by Article VII, Section 11, of this constitution."

MR. HENRY
Any questions?
Any objection to the adoption of the amendment?
Without objection, the amendments are adopted.
Proceed, Judge.

MR. TATE
All right. Amendment No. 3 (A), which is . . . Executive Branch--it was the former Section 18--which as passed by the floor said, "A vacancy, as used in this constitution" it said, "shall occur in the event of death, resignation, removal by any means, or failure to take office for any cause." When we restyled the Executive Branch, we -- because we hadn't yet got to this point -- recommended that you put it "Article"--as used in this Article--referring to the Executive Branch. We're now recommending you go back to "constitution"--and this thing will be, in line with Mr. Duval's question at the time, transferred into General Provisions by a subsequent amendment. It will apply. . . . definition throughout the constitution what a definition makes. In other words, "a vacancy as used in this," we're going to say, "Constitution," as the floor originally said, "shall occur in the event of death, resignation, removal by any means, or failure to take office for any reason." In other words, that applies not only to the Executive Branch, but throughout the state and local government. It was the appropriate amendment to put it in Article X: Public Officials and Employees.

MR. HENRY
Would you yield to a question from Mr. Abraham?
Gentleman yields.

MR. ABRAHAM
If I understand you correctly, Judge, this was Section 28 of Article IV, but now it has been taken out. I'm looking at Section 18 of Article IV, and it has to do with the determination of inability of statewide elected officials.

MR. TATE
Yes. This Section 18 will become--and if you look at your table--it will become Section 28 of Article X and that list of tables, if you approve that amendment subsequently. It's a matter of general definition throughout the constitution. It

* * *

MR. HENRY
Gentleman moves the adoption of the amendment.
Is there any objection?
Without objection, the amendment stands adopted.
Proceed, Judge Tate.

MR. TATE
All right. Amendment No. 8 simply adds the words "by law" in line with . . . we didn't catch this in the early stylizing when it says "the legislature may abolish or merge"--by law may do it. On about the 5th line--then--"the legislature by law may establish trial courts."--we just said the legislature "may", and the intention, of course, was to "by act", and in line with the stylization through the rest of the constitution . . .

MR. HENRY
Gentleman moves the adoption of the amendment.
Is there any objection?
Amendment stands adopted.
Proceed.

MR. TATE
All right. Amendment No. 9, Mr. Chairman, takes out of Committee Proposal No. 26 the tax measure. . . the property taxation measure, the transition measure on the effective date of the property tax, being Sections 18 to 22--the former Sections 1 to 5 of C.P. 26 become Sections 18-20 of Article VII. It tells when they shall become effective.

MR. HENRY
Gentleman moves the adoption.
Any questions?
Is there any objection to the adoption of the amendment?
Without objection, so ordered.
Judge, try to explain it in thirty words or less, please.

MR. TATE
Mr. Chairman, Amendment No. 10 simply--all it does is shortens the title.

MR. HENRY
Shortens the title?

MR. TATE
Yes, sir.

MR. HENRY
Gentleman moves the adoption of the amendment.
Any questions?
Without objection, the amendment stands adopted.
Proceed, Judge.

MR. TATE
Mr. Chairman, I do not know if the court wishes . . . if the Chief Justice-- I mean if the Speaker wants to look . . . let me bring up amendments 11, 12, 13, 14, and 15--wait a minute-- Mr. Chairman, I'll just move the adoption of Amendments Nos. 11 and 12, as just simply changes of title.

MR. HENRY
Nos. 11 and 12 both change the title?

MR. TATE
Yes, sir.

MR. HENRY
Is there any question on Nos. 11 and 12?
Any objection to the adoption of the amendments?
Without objection, the amendments stand adopted.
Proceed, Judge.

MR. TATE

All right. On Section 13, Mr. Chairman, again to simply... 13, 14 and 15 are all simply changes of title of measures... of sections that remain in the same committee proposal or delegate proposal as adopted.

MR. HENRY

Nos. 13, 14, and 15 changing the title?

MR. TATE

Yes, sir.

MR. HENRY

Any question on those amendments?
Any objection to the adoption?
Without objection, Nos. 13, 14, and 15 are adopted.
Proceed, Judge.

MR. TATE

All right. Amendment No. 16, as a change of reference to be accurate under the newly numbering of a certain section of Paragraph (B) of Section 1 of C.P. No. 4.

MR. HENRY

Any questions?
Any objection to the adoption of the amendment?
Without objection, stands adopted.
Proceed.

MR. TATE

All right. Mr. Chairman, Amendments Nos. 17-24, at least, are self-explanatory changes of reference that will fall into shape in order to change the reference from the former numbering to the new numbering recommended.

MR. HENRY

Any questions?
Any objection to the adoption of the amendments?
Without objection, stand adopted.
Proceed, Judge.
Time out just a minute.

MR. TATE

No. 25 in the Transitional Measure, it... because it simply changes the references again 5, 6, 7 to the renumbered article of the Education Article, Article VIII. It's again... and Amendment No. 26, again, is a change of reference.

MR. HENRY

Wait a minute, Judge; which one are you going into now-- you've got to sort of...

MR. TATE

Nos. 24, 25 and 26-- I stuck so many by a minute ago.

MR. HENRY

Judge, if you'd speak directly into the mike there, if you would, please.

MR. TATE

All right, Mr. Chairman, it's hard for me to speak to the fellow in back.

Amendment No. 24 is a change of reference.
Amendment No. 25 is a change of reference-- in other words, it used to be Sections... other numbers of Article VIII. I'll look them up if you want, but we're now renumbering them in accordance

* * *

MR. HENRY

Proceed, Judge.

MR. TATE

Mr. Chairman, 26 is the other great amendment. I believe that's the only other one that's for tonight. It is a similar rearrangement of state and city civil service from those long... one section that... with subparagraphs going to Paragraph (C) as (B) or something into sections in line with the organization and the rest of the constitution.

MR. HENRY

Any objection to the adoption of that amendment? Any objection?
Without objection, stands adopted.
Proceed, Judge.

MR. TATE

Now, Mr. Chairman, 29 through 62--through 61--and on the correction sheet a 62, are simply renumbering amendments. In a few instances, they may transfer something from another article into Article XIV, although I believe we've... I've explained those. Article XIV, as we mentioned, we may come with the renumbering tomorrow. But, all the rest of these, Mr. Chairman, are simply renumbering in line with the organization that you've adopted by Amendment No. 1 of the proposals that have been passed...

MR. HENRY

That's Amendments 29 through 61--62.
The gentleman moves the adoption of Amendments 29 through 62.
Are there any questions? Are there any questions?
Without objection, Amendments 29 through 62 are adopted.
Proceed, Judge.

MR. TATE

All right. Mr. Chairman, with that...

MR. HENRY

Wait just a minute, now.

MR. TATE

The correction 62...

MR. HENRY

Wait.

MR. TATE

While the Clerk's office is catching up, I think I probably should have explained one of them a little more fully. No. 60... no?

MR. HENRY

No, no, that's not fair, now. You've already gone over that.
All right. Are you all... Mr. Clerk, are you ready?
Justice Tate, Proceed.

MR. TATE

Well, I move the adoptions of 29 through 62.

MR. HENRY

We've already adopted those, Judge. Try Amendment No. 63, if you will.

MR. TATE

Well, Mr. Chairman, I've got good news for you. Sixty-two, we just did, too, Senator De Blieux. We snuck it by when you weren't looking on the other sheet.

Mr. Chairman, I have good news for you. What you have done tonight, you now have as... subject to your final ratification, the reorganization of everything that you... through today--that has passed up until today, permanently, we trust, and are up through

* * *

MR. HENRY

Mr. Tuck, that was a beautiful speech.
Therefore, when the machine is opened, as many of you as are in favor of the adoption of the resolution will vote yes. Those opposed will vote no, and the Clerk will open the machine.
Call the roll, Mr. Clerk.

MR. POINTNER

Mr. Blair	Yes	Lanier	Yes
Bollinger	Yes	Leithman	Yes
Brown	Yes	Jones	N.V.
Casady	Yes	Low	No
Comar	Yes	Munson	Yes
Edwards	Yes	Perkins	Yes
Favard	Yes	Rayburn	Yes
Gauthier	Yes	Boy	Yes
Giarrusso	Yes	Segura	Yes
Gravel	Yes	Stephenson	Yes
A. Jackson	Yes	Tobias	Yes
Jumeau	Yes	Wall	N.V.
Kelly	Yes	Womack	Yes
Lambert	N.V.		

MR. HENRY

Close the machine.
108 yeas and 14 nays, and the resolution stands adopted.
Mr. Pugh moves to reconsider the vote by which it was adopted, and lay the motion on the table.
Without objection, so ordered.
Morning Hour No. 7, Reports of Committees.
The gentleman moves to move there. Without objection, so ordered.
Proceed, Mr. Clerk.

MR. POINTNER

Mr. Denney, Secretary of the Convention, sends up the following report:
Committee Proposal No. 38 has been properly enrolled, respectfully submitted by Moise Denney.
At this time Judge Tate sends up notice that the Committee on Style and Drafting reported with respect to Committee Proposal No. 38, which is returned with some fifteen amendments, respectfully submitted, Judge Tate, Chairman of that committee.
At this time Judge Tate asks for a suspension of the rules for the purpose of considering the adoption of the amendments contained in the report.

MR. HENRY

Without objection, so ordered.
Judge Tate.

MR. TATE

Mr. Chairman,...

MR. POINTNER

The amendments are being passed out at this time. Am I appreciate it, they go up through Part III but do not include Part IV; is that correct?

MR. TATE

Of Article XIV.

MR. POINTNER

Of Article XIV.

MR. TATE

Mr. Chairman and fellow delegates, while the amendments are being passed out, I will try to explain very briefly something that I hope will take little time for your consideration and approval. The Committee on Style and Drafting approved these recommendations unanimously. The Chairman of the Committee on Legislative Liaison has checked with the subcommittee of her committee; they find no objection. As you may remember last night, we reached agreement on the rearrangement of all the provisions we have adopted up through what would be Article XIII of our new proposed constitution. We're now talking about the transitional measures... provisions that will appear in Article XIV. If you have your outline, it's the last article, the one we did not get to last night. We had transferred before-- in last night's action--about twelve provisions that had earlier been adopted as part of the constitution, and they in the main form Part I, Part I of your new Article XIV. This morning we had circulated, thinking we would reach it about ten and had no time to retype... (That's a funny, supposed) what up here says "Committee Proposal No. 38, First Enrollment". We cut and pasted it to show the general changes in ink that we had added to these proposals. We are right now circulating... They are mostly, as you notice, renumbering--renumbering and changing certain language and certain numbers to conform with the previous renumbering we've just gone through. Attached to the back of that as it was circulated is a yellow page, which is the one caveat amendment which involves the deletion of some language that was thought to be unnecessary. I'll explain that. Then, subsequently, circulated to you was a corrected yellow page, which, if you want to follow the instructions, you go "Presto!" throw the first sheet away, take the second one, and so on. Now, without explanation--and Senator Rayburn says he figures I get by with this because nobody figures a fellow who talks this dumb can be slick. Now, with that little preface, these amendments, Amendments 1 through 15, that you see there... that you see before you on the front and back of that page, they are to the final enrolled copy or the first enrolled copy of Committee Proposal No. 38, which you may have. But you may also use if you want the xeroxed copy.
I'll yield to a question, Mr. Chairman.

MR. HENRY

Mr. O'Neill has a question.

MR. O'NEILL

Judge Tate, I was wondering if you thought it would be possible that we could adopt Amendments Nos. 1 through 14 all at once together?

MR. TATE

Well, Mr. O'Neill, that would deprive me of the chance to waste your time, but I think simply speaking... simply yes because it's simply renumbering and a reordering that has been checked throughout. I would, Mr. Chairman, in the absence of objection, then, move the adoption of Amendments 1 through 14. If there's even one objection, I'll go in a slower series, but in the absence of objection, I move the adoption of 1 through 14, subject to any...

MR. HENRY

The gentleman moves the adoption of Amendments 1 through 14.
Is there any objection?
Without objection, so ordered.
Proceed, Judge.

MR. TATE

Mr. Chairman, Amendment No. 15 may require a brief moment of explanation. Amendment No. 15--now if we will look at page 13 of this dummy (not me, at the top of that page it says-- the former Section 24--it says "(A) Property Taxes. The provisions

* * *

Chapter V

Minutes of Committee Meetings Relative to the Administration of Criminal Justice

MINUTES

Minutes of the Meeting of the Bill of Rights
and Elections Committee of the Constitutional
Convention of 1973

Held pursuant to notice mailed by the Secretary
of the Convention on March 28, 1973
Conservation Auditorium of the Natural Resource
Building, Baton Rouge, Louisiana
Friday, April 6, 1973 (10:00 a.m. - 4:00 p.m.)
Saturday, April 7, 1973 (10:00 a.m. - 5:00 p.m.)

Presiding: Mrs. Judy Dunlap, Vice Chairman (presided until
11:00 a.m., April 6; thereafter Rep. Alphonse
Jackson, Jr. presided).

* * *

After a break for lunch, Mrs. Charlotte Felt, representing
the Women's Auxiliary of the Chamber of Commerce of the
Greater New Orleans Area and Mrs. Nelson K. Brown, president
of the Women's Protective League of Baton Rouge, spoke in
opposition to an equal rights provision.

The committee then began a discussion of its internal
business. The minutes were approved with one change.

Chairman Jackson called attention to a letter from David
Poynter on the question of minority reports.

Delegate Jenkins made a presentation to the committee on
freedom. He suggested that one could talk about economic
freedom and social freedom. He criticized the liberal-
conservative analysis of contemporary politics saying that
conservatives advocated less social freedom and more economic
freedom, and liberals advocated more social freedom and less
economic freedom. He claimed that this was becoming irrelevant
analysis for the youth of today. He considers that the new
polarization in politics is tending toward competition between
those who believe in both economic and social freedom and those
who would have less of both. He urged on the committee a pro-
posed "Declaration of Individual Rights", designed to maximize
both economic and social freedom. Delegate Jenkins suggested
that Americans have three ultimate protections, (1) the jury
system, (2) the Bill of Rights, and (3) the Constitution.
After the presentation by Delegate Jenkins, the meeting
resumed at 4:30 p.m.

THE MEETING RECONVENED

Saturday, April 7, 1973, 10:00 a.m.

(6)

Presiding: Rep. Alphonse Jackson, Jr., Chairman

Present

Rep. Alphonse Jackson, Jr.
Anthony J. Guarisco, Jr.
Rep. Louis "Woody" Jenkins
Chris J. Roy
Mrs. Novyse E. Soniat
Ford L. Stinson
Ronald Vire
Dr. Gerald N. Weiss

Absent

Mrs. Judy Dunlap
Rep. Shady Hall

was present. Chairman Jackson asked for the first speaker to
come forward and the hearings continued.

The first speaker was Mrs. Nancy Weiler of Bossier City
who represented herself and urged support for an equal rights
provision.

Mrs. Linda Martin, representing the Shreveport-Bossier
Chapter of the National Organization for Women (NOW), called
for a human rights clause that would insure that all citizens
are protected, including minorities and women. She also
stated that the 14th Amendment to the United States Constitution
did not protect the women of our country.

Mr. John Martzell, representing the Louisiana Trial
Lawyers Association as its president, called for a right of
trial by jury with no review of the facts on appeal. He
pointed out that Louisiana is the only jurisdiction in the
western world where a jury trial is recognized that permits re-
view of facts on appeal.

Mr. A. J. Plaisance, a Lafayette attorney, supported Mr.
Martzell's testimony and urged that jury trials should be
granted without additional cost to the plaintiff. He pointed

(7)

out that papers can get a jury trial by right but that the
average working person often feels he cannot afford the
\$1300 a day (the amount varies by parish) that a jury trial
costs.

Mr. Arthur Cobb, representing the Louisiana Trial Lawyers
Association, supported the position of Messrs. Martzell and
Plaisance. He did not believe that a right to a jury trial
should be determined by cost.

Ms. Quincy Hamilton, representing the National Association
for the Advancement of Colored People (NAACP), addressed the
committee in support of an "Equal Protection Clause."

Ms. Roberta Madden, representing the Consumer Protection
Center, expressed her views about protection of the consumer,
regardless of sex. Ms. Madden asked for consideration of a
clause guaranteeing equal protection in the marketplace in
our new state constitution.

Mr. Chester L. Martin, past president of the Lafayette
Board of Realtors, representing himself, urged recognition of
family, property, and cultural rights. He pointed out that
Cajuns have been denied, for a long time, the right to speak
the French language in school. He urged support for a pro-
vision on cultural rights in the constitution.

Ms. Madine Henneman, representing the State Board of the
League of Women Voters, called for a bill of rights written
in concise language easily understood by all the people.
Ms. Henneman supported an equal protection clause in the bill
of rights. She also urged the bill of rights to include a
statement on the environment.

Dr. Francine Merritt, representing Common Cause and the

(8)

American Association of University Women, submitted the
following statements to the committee:

"THE RIGHT TO KNOW"

No person shall be deprived of the right to
examine documents or to observe the deliberations

Roll call was taken by the committee secretary. A quorum

ations of all public bodies or agencies of state government and its subdivisions, except in cases specified by statute in which the demand of individual privacy clearly exceeds the merits of public disclosure.

"THE RIGHT TO PRIVACY"

The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

Dr. Francine Merritt also called for an equal protection clause.

Mr. Roger Bats, representing Common Cause and for Paul Y. Burns, vice president of the Louisiana Council on Human Relations submitted the following suggested language for inclusion in the bill of rights:

All persons have the right to freedom, equality, and adequate conditions of life in a safe, healthful, and attractive environment that permits a life of dignity and well-being. All citizens are responsible for protecting and improving the environment for present and future generations.

Mrs. Debra Millenson, representing the Council for a New State Constitution informed the committee that the council had adopted resolutions in support of:

- (1) equal rights, (2) abolishing capital punishment,
- (3) a newsman's shield provision, (4) right to counsel in grand jury investigations, (5) a strong right to redress, (6) a strong right to privacy,
- (7) a provision for equal housing, and (8) greater

(9)

facilities for bail in criminal cases.

She praised Dr. Weiss's proposal on the right to vote but suggested a 30 day period instead of a 50 day period for registration in advance of an election.

Chairman Jackson called for a discussion on the time and agenda for the next meeting. Delegate Roy suggested that the committee first consider the subject of minority reports. Chairman Jackson suggested that the next committee meeting start at 10:00 a.m. and go on to an evening session.

Delegate Soniat proposed and it was agreed that the committee use the Louisiana Law Institute Project for a guide in the preparation of the bill of rights.

Delegate Jenkins proposed and it was agreed that the committee would not have speakers at the next meeting and instead proceed immediately to draft a rights article.

Delegate Roy moved, that for a minority report to be attached to the preliminary majority report to be sent to the Committee on Style and Drafting, it should receive a vote of 30 percent of those voting on the committee. (See Resolution No. 4).

Delegate Stinson introduced a substitute motion that the vote of only one person was sufficient for a minority report. Delegate Stinson withdrew his substitute motion after Delegate Roy explained that his motion only applied to preliminary submissions and not to the submission to the convention in July.

Senior Researcher, Walter Landry, suggested preparation of a composite working document putting together all the proposals of the delegates and project for the use by delegates next time

(10)

in their drafting of a proposed bill of rights. There was general agreement that they should produce.

Walter Landry recommended the provisions from the 1971 constitution that should be considered definitively by the committee in response to Research Director Duncan's letter of March 28, 1973, to Chairman Jackson. The committee made several changes with respect to specific provisions and then authorized Mr. Landry to reply to Mrs. Duncan's letter on behalf of the committee.

There being no further business, the meeting adjourned at 5:00 p.m.

Rep. Alphonse Jackson, Jr., Chairman

(11)

MINUTES

Minutes of the meeting of the Bill of Rights and Elections Committee of the Constitutional Convention of 1973

Held pursuant to notice mailed by the Secretary of the Convention on April 9, 1973
State Capitol, Baton Rouge, Louisiana
Room 205

Monday, April 16, 1973 (10:00 a.m. - 5:30 p.m.)
Tuesday, April 17, 1973 (9:00 a.m. - 3:45 p.m.)

Presiding: Rep. Alphonse Jackson, Jr., Chairman

Present

Mrs. Judy Dunlap
Anthony J. Garisno, Jr.
Rep. Alphonse Jackson, Jr.
Rep. Louis "Woody" Jenkins
Chris J. Roy
Mrs. Novyse E. Soniat
Ford E. Stinson
Kendall Vick
Rep. Shady Wall
Dr. Gerald W. Weiss

Absent

Roll call was taken by the committee secretary. A quorum was present. The chairman asked for the approval of the minutes by the committee. The minutes were adopted as printed. Chairman Jackson asked for the adoption of the proposed agenda. The agenda was approved and adopted by the committee. Chairman Jackson stated that the first item on the agenda was a report from Mr. Landry of Item 6 on potential election dates at which the proposed constitution may be submitted to the people. Mr. Landry said the secretary of state's office advised him that the election could be held six weeks after that office received the ballot material. If the material is submitted to the governor on January 4, 1974, he could conceivably call an election six weeks thereafter on a Saturday which would be mid-February, 1974. This is the earliest possible time a special election can be called. The latest possible time is November 5, 1974, which is the date for the next general election. After general discussion, it was decided that Chairman Jackson would refer this matter to the Executive Committee.

Chairman Jackson stated that at the last meeting the committee had agreed to consider the Louisiana Law Institute Project on the

... of rights, in consultation with proposals by committee members. He said Mr. Landry, the majority on the committee the CBRE working document (Document 23). Mr. Landry stated that he had combined ... matter using the President order as a guide in preparing the working document.

The working session commenced with Mr. Roy proposing a section on the origin and purpose of government based on the Project (See TP No. 6). Dr. Weiss moved to substitute his proposal entitled "Individual Dignity" but this was defeated 4-3 (See TP No. 7).

Delegate Jenkins offered a substitute proposal (TP No. 8) for TP No. 6 which was in the nature of an amendment to TP No. 7, but it was also rejected after Delegate Vick argued that TP No.

Mr. Roy's proposal with TP No. 9 and this was accepted by Mr.

(2)

Delegate Weiss and Stinson offered an amendment (See TP No. 10). Delegate Vick's proposal, but it was rejected. Delegate Jenkins stated that "for the good of the whole," is undefined or undefinable. He stated that it is important to talk about the individual. In support of his position he offered TP No. 6 which was rejected.

Delegate Jenkins next proposed TP No. 12 which was adopted by Messrs. Roy and Vick.

Delegate Jenkins proposed TP No. 13 which was rejected 2-5 after Mr. Roy spoke against it.

Delegate Roy offered TP No. 14 which was accepted by Messrs. Jenkins and Vick.

Delegate Stinson proposed that the title for the section be "Origin and Purpose of Government," (See TP No. 15). This was accepted by Messrs. Roy, Vick, and Jenkins.

The original TP No. 6 as amended by TP Nos. 9, 12, 14, and 16, was then adopted (See TP No. 16).

Delegate Jenkins stated that the basic rights of each human being are not contradictory and that he would like the courts to accept this principle in the constitution. He therefore proposed TP No. 17 which was tabled.

An original sentence was proposed by Dr. Weiss entitled "Right to Life" (See TP No. 18), but he agreed after discussion, to defer the matter.

Dr. Weiss proposed TP No. 18 entitled "Rights of the Family." Mr. Jenkins attempted to amend it (See TP No. 20) and then the matter was referred to the research staff.

(3)

... it doesn't provide needed protection, proposed TP No. 21, which was adopted by Messrs. Roy and Vick. Mr. Stinson moved to amend it.

Delegate Roy and Delegate Weiss submitted identical proposals (See TP No. 23).

Delegate Vick moved to strike the first sentence of TP No. 23 as having no legal effect and this was accepted by Messrs. Roy and Weiss (See TP No. 24).

Delegate Jenkins made several attempts to amend TP 23 further (See TP Nos. 25, 26, 27, and 28) but all were rejected. TP Nos. 27 and 28 were rejected by roll call votes.

TP No. 23 as amended by TP No. 24 was then adopted 7-2 by a roll call vote (See TP No. 29).

Delegate Weiss offered a TP No. 30 based on the Louisiana Law Institute Project, Article I, Section 3

Delegate Jenkins moved to substitute TP No. 31 which was adopted 7-3 after several amendments to it (TP Nos. 31, 32, 33, and 34) were rejected.

Mr. Guarisco proposed TP No. 35 on freedom of religion based on Louisiana Law Project, Article I, Section 4 with the first sentence deleted as having no legal effect. After a brief discussion regarding the sensibilities of the public if the sentence were removed, Mr. Guarisco agreed to add the sentence at the end. Mr. Stinson suggested "Freedom of Religion" as the title of the section and this was adopted (See TP No. 36).

(4)

April 16, 1973

CBRE Tentative Proposal No. 23 by Messrs. Roy and Weiss

Background: An original proposal based on an adoption of Article I, Section 4, Individual Dignity of the 1972 Montana Constitution. See also CBRE Staff Memo No. 12.

Section ____ Right to Individual Dignity

The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws nor shall any law discriminate against a person in the exercise of his rights on account of birth, race, sex, social origin or condition, or political or religious ideas. Neither slavery nor involuntary servitude shall exist except in the latter case as a punishment for crime after the accused has been duly convicted.

Disposition: Amended and tentatively adopted, April 16, 1973.

April 16, 1973

CBRE Tentative Proposal No. 24 by Mr. Vick

Background: An amendment to TP No. 23.

delete the first sentence of TP No. 23.

Disposition: Accepted by Messrs. Roy and Weiss.

April 16, 1973

CBRE Tentative Proposal No. 25 by Mr. Jenkins

Background: An amendment to TP No. 23 as amended by TP No. 24.

delete the words "social origin or condition, or political or religious ideas," and insert the words "religion or social origin."

Disposition: Rejected 2-5.

April 16, 1973

CBRE Tentative Proposal No. 26 by Mr. Jenkins

Background: An amendment to TP No. 23 as amended by TP No. 24.

delete the words "or political or religious ideas."

Disposition: Rejected 3-6.

April 16, 1973

CBRE Tentative Proposal No. 27 by Mr. Jenkins

Background: An amendment to TP No. 23 as amended by TP No. 24.

After the words, "nor shall any law," add the word

"unreasonably."

Disposition: Rejected by a roll call vote 4-5.

The Roll Call

Dunlap	Yes
Guarisco	Yes
Jackson	No
Jenkins	Yes
Roy	No
Soniati	No
Stinson	Yes
Vick	No
Wall	Absent
Weiss	Yes

April 16, 1973

CBRE Tentative Proposal No. 28 by Mr. Jenkins

Background: An amendment to TP No. 23 as amended by TP No. 24.

After the words, "equal protection of the laws," delete the words "nor shall any law discriminate against a person in the exercise of his rights on account of birth, race, sex, social origin or condition, or political or religious ideas-".

Disposition: Rejected by a roll call vote 2-7.

The Roll Call

Dunlap	No
Guarisco	No
Jackson	No
Jenkins	Yes
Roy	No
Soniati	No
Stinson	Yes
Vick	No
Wall	Absent
Weiss	No

April 16, 1973

CBRE Tentative Proposal No. 29 by Messrs. Roy,
Jenkins and Stinson

Background: Text of TP No. 23 as amended by TP No. 24.

Section _____. Right to Individual Dignity

No person shall be denied the equal protection of the laws nor shall any law discriminate against a person in the exercise of his rights on account of birth, race, sex, social origin or condition, or political or religious ideas. Neither slavery nor involuntary servitude shall exist except in the latter case as a punishment for crime after the accused has been duly convicted.

Disposition: Tentatively adopted, April 16, 1973 by a roll call vote 7-2. The comment is to explain that the committee does not intend to endorse the concept of racial or other quotas.

The Roll Call

Dunlap	Yes
Guarisco	Yes
Jackson	Yes
Jenkins	No
Roy	Yes
Soniati	Yes
Stinson	No
Vick	Yes
Wall	Absent
Weiss	Yes

April 16, 1973

CBRE Tentative Proposal No. 31 by Mr. Jenkins

Background: An original substitute proposal for TP No. 30.

Section _____. Freedom of Expression

No law shall abridge the freedom of every person to speak, write, publish, photograph, illustrate or broadcast on any subject or to gather, receive and transmit knowledge and information, nor shall such activities ever be subject to censorship, licensure, registration, control or special taxation.

Disposition: Tentatively adopted April 16, 1973 with the understanding that the comment to the proposal will explain that one may still sue for libel and slander and that truth is always a defense. The roll call vote was 6-3. Several attempted amendments, were rejected.

The Roll Call

Dunlap	No
Guarisco	Yes
Jackson	Yes
Jenkins	Yes
Roy	Yes
Soniati	Yes
Stinson	No

Vick Yes
Wall Assent
Weiss No

April 16, 1973

CBRE Tentative Proposal No. 41 By Mr. Jenkins

April 16, 1973

CBRE Tentative Proposal No. 32 by Mr. Stinson

Background: Amendment to TP No. 31

After the words "special taxation," add the words ", provided that every person shall be responsible for the abuse of that freedom. In all proceedings or prosecutions for libel, slander, or defamation, the truth thereof may be given in evidence."

Disposition: Rejected.

April 16, 1973

CBRE Tentative Proposal No. 33 By Dr. Weiss

Background: Amendment to TP No. 31.

Add the following sentence, "Everyone has the right to liberty of speech and expression, being responsible for the abuse of this liberty.", at the beginning of the section.

Disposition: Rejected.

April 16, 1973

CBRE Tentative Proposal No. 34 By Mr. Stinson

Background: Amendment to TP No. 31.

After the words "or broadcast", add the words "the truth"

Disposition: Rejected 2-6.

April 16, 1973

CBRE Tentative Proposal No. 40 By Dr. Weiss

Background: A proposal based on Louisiana Law Institute Project Article 1, Section 5.

Section ____.

The people have the right peaceably to assemble and to apply to those vested with the powers of government for a redress of grievances by petition or remonstrance.

Disposition: Amended and tentatively adopted. See TP No. 43.

Background: Amendment to TP No. 40.

Amend TP 40 to read as follows:

Section ____

No law shall prohibit the right of each person to assemble peaceably, to petition government officials for a redress of grievances, to travel freely within the state and to enter and leave the state.

Disposition: Accepted as an amendment by Dr. Weiss. See TP No. 43.

April 16, 1973

CBRE Tentative Proposal No. 42 By Mr. Vick

Background: Amendment to TP No. 40 as amended by TP No. 41.

delete the word "officials".

Disposition: Accepted as an amendment by Messrs. Weiss and Jenkins. See TP No. 43.

April 16, 1973

CBRE Tentative Proposal No. 43 By Dr. Weiss

Background: Amendment to TP No. 40 as amended by TP No. 41 and TP No. 42.

Section ____ Right of Assembly and Freedom of Movement

No law shall prohibit the right of each person to assemble peaceably, to petition government for a redress of grievances, to travel freely within the state and to enter and leave the state.

Disposition: Accepted as amendment by Messrs. Vick and Jenkins and tentatively adopted, April 16, 1973.

April 16, 1973

CBRE Tentative Proposal No. 46 By Mr. Roy

Background: An original proposal.

Section ____ Freedom from Discrimination

All persons shall have the right to be free from discrimination on the basis of race, color, creed, national ancestry and sex in the sale or rental of property.

Disposition: Amended and tentatively adopted. See TP No. 48.

[Minutes, Addenda, April 17, 1973, p. 1200
this volume]

OFFICIAL TRANSCRIPT
OF THE
CONSTITUTIONAL CONVENTION

STATE OF LOUISIANA

1973

COMMITTEE ON BILL OF RIGHTS AND ELECTIONS

MEETING OF APRIL 17, 1973

(Article I, (5) General discussion of Search and Seizure. Taking of blood for DWI text was discussed in relation to Search and Seizure.)

MR. VICK
Let me read, if I may, from the Illinois constitution which I think may help everyone.

"The people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable search or seizures, invasions of privacy or interceptions of communications by eavesdropping devices or other means. No warrant shall issue without probable cause supported by affidavit particularly describing the place to be searched and the person or things to be seized."

Now, that might be helpful, and it might not, but it's helpful insofar as "and other possessions".

MR. STINSON
Was this not "of possessions?"

MR. LANDRY
And this invasion of privacy is the thing that

MR. VICK
What's that?

MR. STINSON
It's not any possession of the individual, it's the possession of hospital.

MR. ROY
But invasion of privacy would protect that.

MR. LANDRY
That's right.

MR. ROY
Invasion of privacy would do it.

MR. VICK
Walter, you might...you know, I might make this as a penalty amendment to the...let's see, I'll offer this, if you like, as a friendly amendment.

MR. STINSON
You think privacy would do it?

MR. JENKINS
Here's the problem we have with your provision, Chris, you say, "and no search or seizure shall be made except upon a warrant therefor issued upon probable cause." Now, the traditional language, I believe, is "no such search or seizure". In other words, "no unreasonable search or seizure", but it does not prohibit a reasonable search and seizure. As, for example, in the arrest of someone...the search of someone when he's arrested.

MR. VICK
No, this traditional language doesn't have that. It just says, "and no search or seizure".

1

MR. JENKINS
No, it's--I believe if we check that--Walter, do you have the U. S. constitution?

MR. LANDRY
Yes, I have it here. I was following my own Section 7. The U. S. Constitution... Alright. The U. S. Constitution on search and seizure provides:....

MR. JENKINS
Alright. Let me have that.

MR. LANDRY
"The rights of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated. And no warrant shall issue without probable cause."

MR. JENKINS
I think that it must be from the state then that I got that....from the state constitution.

MR. ROY
No. Well, the project doesn't have it.

MR. LANDRY
This is the U. S. Constitution I just quoted.

MR. ROY
Let me see if there is any change.

MR. LANDRY
Well, we have the project right here....

MR. STINSON
It might come out of the constitution--state constitution."

MR. VICK
They didn't change it in the project, did they?

MR. JENKINS
.....I think they did. I think it says, "such"

MR. VICK
....."and no such". It does have "no such"

MR. JENKINS
I think the effect, really, is different.

MR. STINSON
This would prohibit most any without a.....

MR. ROY
But, Woody, though that may be--I don't know. When you say "no such search" suppose incidental to an illegal search you get something about?

MR. LANDRY
"Such search." They say "such search" in the Louisiana....

MR. ROY
I know it says that.

MR. LANDRY
They drop out the "such" here.

MR. ROY
Yeah. They just say.....

MR. STINSON
I'm afraid they outlaw all searches and seizures when they drop that...

MR. JENKINS
You know, I would like us--I would really like us to have some language that would protect the people against some of these arbitrary seizures that are made, such as taking their blood. I mean, I don't think the state has

2

MR. JENKINS (cont'd)
the right to take your blood. You know, I don't see any justification for it or anyone that it does to cut off your arm or your head or anything else.

MR. WEISS
Well, certainly, I agree with you one hundred percent. I most certainly don't believe they have a right to take it without consent.

MR. JENKINS
Right. Well, they do. I know it has and it's been justified under court decisions, such as a man is unconscious and as they think he's been drinking while driving, well, they take his blood.

MR. WEISS
Well, from the medical side help me understand this, but, first of all we never take blood unless we have to.

MR. JENKINS
No, I mean to determine his alcoholic content, not taking....

MR. WEISS
The Gestapo does this.

MR. JENKINS
No, no, wait a minute.

MR. WEISS
This is where we come into what the state does to protect its citizens. I rather feel strongly about pronouncing little children dead because of a bunch of lunatic drunks on a highway. I have some very strong feelings about that and the only way to stop them sometime is to determine in the court that they are drunk. And one way to ascertain that is a blood alcohol... or their alcohol level. I don't think that we should take blood from people without their consent, but it's my understanding that before you can get a driver's license now, you would have to admit to consent of drawing blood or you don't get a driver's license. Is that correct?

MR. ROY
Well, no. Right now we don't consent to the taking of the blood, giving the blood or taking the breath analyzer test as a presumption that you're guilty of DWI. I understand that's how that works. But I'm not--I feel kind of strongly with Dr. Weiss. I know people are worried about people being convicted, but I'd much--it's a much more accurate test if the presumption that we use, the .10 is a valid test to show how inebriated one is. It's much more accurate to have a blood alcohol test which shows a specific, scientific fact than the testimony of a policeman or somebody else who said, "He was slurring in his speech and his eyes were red", and junk like that. And insofar as--and the Supreme Court of the United States has accepted tests even without the consent. They can forcibly take it from them just like they can forcibly pump a man's stomach who swallowed a capsule of heroin, or what have you, upon probable cause. And, I--except for the fact that you're abusing even to allow to take hair off of a person in rape cases to compare with the victim's. Other than the fact that it kind of seems gross--it provokes you not a little bit, fact of the matter is it's the best evidence as to the person's condition, and, more than likely, if it's not proved up to the standard, he's going to be acquitted rather than convicted whereas he's usually convicted with a snap

7 Supported by affidavits particularly describing the place to be searched or persons or things to be seized.

MR. STINSON
We'd better put "or affirmation".

MR. ROY
Okay. Alright.

MR. STINSON
Don't you think we should leave "affirmation"?

MR. ROY
Yeah. He's got it. He's just rewriting it.

MR. VICK
Walter's got the rest of mine.

MR. JENKINS
On the purpose or reason, why don't we say "and the lawful purpose or reason for the search". In other words, they can put down a reason but there may be no statutory or other authority for searching for this particular purpose. It should be a lawful purpose that the search is made for.

MR. VICK
Alright now, the last part...

MR. JENKINS
Would that be all right?

MR. VICK
Yes. I think, quite frankly, there should be as strong an article as we write.

MR. WEISS
Are we retaining here the warrantless search?

MR. ROY
Yes.

MR. WEISS
Because this is the most sacred right of citizens of a democracy to be secure in person and property.

MR. VICK
There is an old saying "The wind and rain may blow through this humble house, but the king of England shall not enter."

MRS. DUNLAP
I will be--sleep many nights knowing that I am secure, can't I?

UNINTELLIGIBLE

MR. ROY
Kendall, suppose arresting somebody for speeding, the policeman does not have the right to search the car just because he stops you for speeding, does he?

MR. JENKINS
Well, you know what the court's decision....

MR. VICK
Incidental to a lawful arrest.

MR. JENKINS
It's under....

MR. ROY
Does it have to have a connection?

MR. VICK
No. No. It does not have to.

MR. ROY
No. You can't go around searching a car just because you stop a guy for speeding.

MR. VICK
It's what's within reasonable It's not only incidental to a lawful arrest.

MR. JENKINS
Could you read this thing again....

MR. VICK
There is a most recent test wherein the supreme court held that it's anything within reach, which is a spin-off from Terry versus Ohio which upheld the "stop and threats". Okay? Not "stop and search", but "stop and threats". They held in a subsequent case (I can't give you the name now, it just doesn't come to mind) that they held that anything within reasonable distance surrounding the person to be stopped and frisked or arrested in commission of a felony or even a misdemeanor if the instrumentality: (1) could be used in evidence against him, or, (2) could be used to do harm to the arresting officer, i.e. weapon, or; obviously in the case of narcotics on hand ... or anything else that could be responsible could be destroyed. You see? They held that was incidental to a lawful arrest which was a spin-off of all the cases from now to today. Now, if that offends you....

MR. ROY
It does.

MR. VICK

It does offend me. (He looks at Stinson, Mr. Roy, and Mr. VICK) It does offend me.

MR. ROY
Okay.

MR. JENKINS
I don't think we should leave it.

MR. JENKINS
You continue to come up with more affidavits, and I will continue to write the warrantless search, will you not?

MR. ROY
No. "Inexpedient" would be.

MR. JENKINS
Search and seize.

MR. ROY
We don't need a statute.

MR. LANDRY

Alright. Before we start, "Every person shall be secure in person, houses, papers and other possessions against unreasonable searches, seizures or invasions of privacy. No warrant shall issue without probable cause."

MR. JENKINS
Now, wait a minute.

MR. LANDRY

The warrant shall issue without probable cause, supported by sworn affirmation particularly describing the place to be searched and the persons or things to be seized and the lawful purpose or reason for the search. Wait. I'm not finished.

MR. JENKINS

You've got an "or" there before "the persons or things to be searched."

MR. LANDRY

"Particularly describing the place to be searched and the persons or things to be seized."

MR. JENKINS

Alright. We don't need an "and" there, I don't. We just need a "or", right?

MR. LANDRY

Oh, yeah. Okay. "Describing the place to be searched, the persons or things to be seized, and the lawful purpose or reason for the search. Any person adversely affected by a search or seizure conducted in violation of this Article shall have standing to raise the illegality of that search or seizure in the appropriate court of law." My question is whether the last one is necessary in view of our broad based right of redress. If so, we already have a right of redress....

MR. VICK

You see the thrust of that is to tend to the bank seizures of bank and other personal For example, confidential records.

MR. LANDRY

Do you think we should have some way to make sure that the copies so you can have the copies before you, or do you think that you understand it?

MR. JENKINS

I think that I'd like to have a copy.

MR. STINSON

Would that cover private detectives taking pictures in divorce cases.

MR. ROY

But the person--with respect to a civil action, no person has a right to be secure from subpoenas or depositions and everything. They can't take the Fifth Amendment.

MR. JENKINS

This is at top of page 15. In the amendment 24. In the amendment, it says, "No law shall permit the interception of telephone calls, private communication or message." And this is added, "It shall be unlawful to intercept, wiretapping and this sort of thing. I hope we never get to the point in this country where the government would have the right to tap and listen to our phone conversations and things of this nature. It's just not acceptable and that would be a gross protection for our property in this regard I think."

MRS. DUNLAP

Isn't it an ideal way to catch criminals?

MR. VICK

There's some debate about that.

MR. JENKINS

I guess the ideal way is just to go out and arrest anybody you want to, but we've got to protect people's rights, their right to be secure and knowing that the government's not listening to them. I'm not concerned so much about criminals, I'm concerned about everybody else.

MRS. DUNLAP

Well, why would they want to listen to us if we're not....

MR. JENKINS

Well, I don't know. If you look at some of the congressional investigations, they were Chuck Bursie, Adlai Stevenson, all these people were being--the FBI was listening to them. I mean you know, all sorts of reasons. They like to do these things.

MRS. DUNLAP

Well, they must have suspected them of criminal intent.

MR. JENKINS

That's right. They suspect things, you know.

MR. VICK

But, they've denied that, Judy. They've denied that specifically, that--they absolutely denied it. Swore on stacks of Bible, got bishops and what have you there to help them out.

MR. JENKINS

It's a good way to begin...

MR. VICK

Oh, no, no. What we were doing was just watching them. They said, "Well, what for? What were you watching them for? Well, we're just watching them and just listening."

MR. ROY

And LBJ used to get excited reading that stuff. How he racked it on Gray and Naxson.

MR. LAMBRY

Are you making this as a separate proposal, Woody, or...

MR. ROY

Why don't we attach that?

MR. GUARISCO

Attach this to the previous one.

MR. JENKINS

Just put it at the end?

MR. ROY

Yes. An addendum.

MR. GUARISCO

Well, why don't we go to the next one then and when we get there, we'll attach it.

MR. VICK

Allright. Let's wait until we get that back and then we'll consider

9

MR. VICK (cont'd)

attaching that to....

MR. JENKINS

Perhaps, perhaps it would be good to rephrase it slightly as regards my provision 26, so that it would read like this, "No law shall permit the interception or inspection of any private communication or message, except that laws may permit the interception and inspection of communications to and from persons lawfully incarcerated in jails or prisons to the extent necessary to maintain the security of the institution."

MR. GUARISCO

I think that belongs in the statutes.

MR. ROY

Yeah, but how would you put it in the statutes with something as strong as this other thing?

MR. VICK

I wouldn't. I'd leave that. Section 23?

MR. ROY

As it is?

MR. VICK

I'd leave it to be attached to the 4th Amendment.

MR. GUARISCO

But how are you going to make the exception?

MR. ROY

Okay. But how are you going to make the exception to--the exception he just read.....

MR. VICK

Incarcerated people are exceptions. I'd say that portion that in Section 26 belongs, if anywhere, in the statutes, the exception. I don't think we're going to put exceptions....

MR. JENKINS

Well, that doesn't need to be in there because we know that people can be deprived of some of these rights by due process, like criminal conviction, so that's obvious that that's a right of the state to do that.

MR. WEISS

May I ask a question.

MR. GUARISCO

When someone's in custody, their rights have been rather severely curtailed, you know.

MR. A. JACKSON

Dr. Weiss.

Dr. WEISS

Do the courts and jury accept private communications--of course, they accept messages but tape recordings and telephone conversations as evidence against someone?

MR. ROY

Ask Jack Fruge

DR. WEISS

I mean, do they? I don't know Jack Fruge.

MR. ROY

It's admissible in evidence.

DR. WEISS

What about those that are under criminal charges, could you make an exception there? Also those that are under criminal charges? Put

10

DR. WEISS (cont'd)

this in? The reason I say that is it reminds me of these blood testing bits. It seems that the juries and the courts and the police have difficulty proving what is obvious sometimes. Namely, if someone's highly incriminated is responsible for a crime. The same might be true in a situation where someone admits that they've created a situation such as that which they admit through a communication by phone or by letter, so when they're under criminal charges, couldn't that be an exception? In other words I do think there are exceptions to this interception and inspection of messages.

MR. ROY

You mean if a man--what your thought is if a man is either accused of a crime and/or indicted that you have a right to tap his telephone line?

MR. WEISS

That you have a right to introduce this material. Yeah.

MR. JENKINS

Of course, that would not bear on his conviction anyway....

MR. WEISS

Well, a suspected criminal conviction then.

MR. ROY

Well, first of all we're starting out with the proposition that you may not under any circumstance intercept or inspect his private communication or messages.

MR. WEISS

Except.

MR. ROY

No. There's no exception.

MR. WEISS

Well, that's the point. You want to suggest an exception?

MR. ROY

So the exception would be if you're dealing with a convicted person who was on the outside....

MR. STINSON

You said "suspicious".

MR. ROY

A suspected person? Well, then you can throw away this 23. We don't need it....

MR. WEISS

That's what I say. I don't know.

MR. ROY

Well, we don't need it. I mean it's not worth a damn if you can't if you just suspect somebody and you can eliminate this then.

11

MR. WEISS

That about someone plotting to overthrow the government then you would have no right to interfere with any of his messages.

MR. ROY

You see, the federal legislation will apply; this is going to stop our state from doing it. There's no way we can stop the attorney general of the United States. Don't they have the right, for national security reasons, to wiretap?

MR. JENKINS

This is just for....

MR. ROY

This is just state.

MR. JENKINS

Judy, did you have a question?

MRS. DUNLAP

If something is not lawful, is it therefore unlawful?

MR. ROY
No.

MR. JENKINS
If it's not lawful, it's unlawful. Yeah.

MR. ROY
The lawful right to do something doesn't mean that anything else that you don't have the right to do is unlawful.

MR. STINSON
No, but you can't like you said.

MR. ROY
Well, that's what she said. If something's not lawful, is it not lawful? That's not--it may not be on law on the subject. So it's not lawful or unlawful.

MR. STINSON
Suppose there's no law saying it's lawful to take a drink of water, but if she takes a drink of water, it wouldn't be unlawful.

MS. DUNLAP
What if there is no law to?

MR. JENKINS
Well, they can't....

MR. STINSON
If there's no law at all on the subject, well it's legal.

MR. ROY
It's legal if--that's that old ex post facto thing. There's no crime but that which is defined as a crime.

MR. JENKINS
No, but I think what she's trying to say is where you don't have any law so they can go out and....

MR. GUARISCO
That's not what that means.

MR. JENKINS
The courts would say, "Well, this doesn't permit it",

UNINTELLIGIBLE

MR. JENKINS
Alright, suggest that we put that in the comments regarding the prisons, etc. I think it's obvious, but we may just want to mention this in the comments.

MR. VICK
I agree with Joe. It should be a statutory type thing if it's not too strong and limits us from making any exceptions in the statutes. I don't think it does. I don't think it does.
Alright now, Woody, you're asking that we add another paragraph on to this Search and Seizure document--proposal. Go ahead and read it, Walter, what is it exactly--what are you adding?

12

MR. LANDRY
Woody, it's just your identical Section 23? Alright, there'll be an additional sentence at the end of Searches and Seizures. "No law shall permit the interception or inspection of any private communication or message." And we can put in the comment, if you like, that there would be an exception in the case of people that have lost their rights by virtue of incarceration.

MR. JENKINS
Right. For criminal offenses, obviously.

MR. LANDRY
Pardon?

MR. JENKINS
For criminal offenses.

MR. LANDRY
For criminal offenses.

MR. JENKINS
Convicted?

MR. GUARISCO
Convicted.

MR. ROY
Well, no, wait. You've got a guy who's up in the...

MR. GUARISCO
Well, now he's....

MR. JENKINS
Not as regards like people confined for mental problems.

MR. ROY
No. No, but I mean you got a fellow up in jail awaiting trial for murder.

MR. JENKINS
No. He's got right.

MR. ROY
If he's incarcerated, I guess you have the right. He's in jail, that right.

MR. GUARISCO
You're making no distinction between the convicted persons and the accused persons and I think we should.

MR. JENKINS
That's kind of bad.

MR. GUARISCO
And I think we should.

MR. ROY
Alright, that's what we want to get at but the way it was at "innocentated", and if a person is in prison, he's incarcerated, whether he's there as an accused or as a convicted person.

MR. JENKINS
Why don't we just mention in the comments "innocentated or incarcerated".

MR. GUARISCO
Well, that's what I said, convinced. You're making no distinction between a guy who's in jail, if he's just accused and not convicted and not convicted.

MR. VICK
Maybe he's sending him a file or something and he's not convicted, you can do that.

MR. JENKINS
Well, I think the right of counsel and all will protect him in that regard as far as his papers and files and all.

MR. A. JACKSON
Alright. Do you accept this--whose proposal is this? Do you accept the Jenkins amendment? Whoever's proposal it is.

MR. LANDRY
Let's see. The situation--wait a second. Our situation, Jenkins has proposed his Jenkins A Proposal. Roy substituted the Roy A Proposal, and then Vick is proposing an amendment to the Roy amendment.

MR. ROY
I accept and I checked Woody's.

MR. A. JACKSON
Alright, read the entire proposal. Are you ready to vote?

MR. JENKINS
No, No.

MR. VICK
And then Jenkins proposed the amendment to....

MR. ROY
And I accepted. "No law shall permit the inspection or...."

MR. LANDRY
So we're complete right now with the Roy proposal amended by Vick and Jenkins.

MR. A. JACKSON
Alright, everyone has a copy of the proposal so I won't ask Walter to read it. Are you ready for the vote?

MR. JENKINS
No, I have a question of Kendall. Kendall, I'm not sure that this will protect us in case of the bank records.

MR. VICK
Alright, well, let's talk about it

MR. ROY
Well, it does. The invasion of privacy, that's what you're dealing with there and you have a standing "any person adversely affected by a search or--shall have a stand to raise the illegality of that search or seizure", so you would raise for the reason that the bank or the state went in and got a copy of your records at the bank, or the bank's records, that without probable cause they went and did these things, then you could suppress it.

MR. JENKINS
No, but here's what I mean, you see. Look, it says, "They shall have standing to raise the illegality of any search or seizure by the state, now go back to the first and let's see what's illegal. It has to be an unreasonable search, seizure or invasion of privacy."

MR. ROY
Right.

MR. JENKINS
Well, if a bank's consented to let you see--let the government see certain records of yours, who's to say that that's an unreasonable search?

MR. JENKINS (cont'd)
a warrant? They wouldn't do it. It probably wouldn't be, you see?
And thus, something that wouldn't be illegal.

It certainly would be an invasion of your privacy.

MR. ROY
It's your privacy.

MR. JENKINS
Would it be unreasonable?

MR. ROY
Well, sure.

MR. VICK
And it's been so held. But the unfortunate thing is....

MR. JENKINS
Oh, oh, I see, but look, you see, it says, "Every person shall be secure in his person, houses, papers and other possessions"--"in his possessions", but this is not his possession, you see.

MR. ROY
"And other possessions against invasions of privacy."

MR. JENKINS
But it's only his possessions that are protected.

MR. LANDRY
Well, why don't you add the word "in his person, privacy", "secure in his privacy". Would that solve it?

MR. STINSON
Secure in him....

MR. JENKINS
No.

MR. STINSON
Well, yes.

MR. VICK
Well, it's a term that I think's in the Fourth Amendment.

MR. JENKINS
Well, do you all agree with what I'm saying?

MR. GUARISCO
Yeah.

MR. VICK
It's in the Fourth Amendment and that's "effects"

MR. GUARISCO
Don't you think effects and possessions are the same thing?

MR. JENKINS
Some of us effects are--I mean your records about me are not my effects.

MR. STINSON
No.

MR. VICK
Yeah, but--look, Woody, if we're dealing with bank accounts or other personal, confidential documents that you accumulated in the army or--you

12

MR. VICK (cont'd)
cannot deny that--no one can deny, nor has it been denied by the United States District Court for the District of Columbia and the District of Columbia Circuit that a bank record is yours and they chastised the House Un-American Activities Committee, or whatever it's called today, for seizing.... nor seizing, they didn't seize, I don't believe, they sent a national team to get the records without a warrant and the United States District Court for the District of Columbia said they couldn't do that. But I wonder the fact that.... or whatever committee had gotten the records already had them, they reviewed them, xeroxed them, passed them around, or what have you. Now that's always the unfortunate thing about search and seizure that the defense to it, or the illegality of it is always raised after the fact. Now, I don't know how to cure that because that's the lawless law enforcement, you see. And I don't know how to cure lawless law enforcement, quite frankly, and if you have any suggestions maybe we can do something about it.

MR. JENKINS
Well, certainly we could say something in the comments about this regarding confidential information in the hands, either of government or of your agencies.

Records or information.

MR. VICK
Walter has a suggestion. After "possessions" put "as well as records or information about him held by others".

MR. GUARISCO
Where is that in the.....

MR. VICK
After "possessions". "as well as records or information about him held by others against unreasonable search or seizures."

MR. STINSON
This would not cover credit bureau records, would it?

MR. ROY
No, I can't go with that.

MR. VICK
Why not?

MR. ROY
Well, because we're getting too--suppose a guy has a butler working for him and this butler's been taking copies of the material that his boss has there and he's engaged in some type of underworld activity, and he keeps all of this stuff, and later he's out on his own and there's a charge made against the person for underworld influence and what have you.

MR. VICK
This is state action though; you're talking about a private theft.

MR. ROY
According to this, since this would be a possession about this person in somebody else's hands....

MR. GUARISCO
Well, that person could go and give it to the police.

MR. STINSON
Well, certainly he could.

MR. GUARISCO
There's nothing to prevent him from doing that.

MR. VICK
Nothing could prevent that, but it stops the constable from going to get it. I think that's our intention, huh? We're trying to stop the law enforcement officials, or the administrative agencies from invasion. If somebody has personal knowledge, certainly he can testify--he can just as well testify against the guy, too, if he knew it.

MR. ROY
Alright, and then he could issue on probable cause anyway. Okay. Alright.

MR. JENKINS
Maybe we should phrase this in terms of state action more specifically.

MR. GUARISCO
It's always been held--it always applied to state action.

MR. ROY
Well, the only way a warrant can be issued is by state action. Isn't that right?

MR. GUARISCO
That's right.

MR. JENKINS
No, but you see we're talking about two different things, this first sentence and this second sentence. It says, "Every person shall be secure against unreasonable search and seizures and invasions".

MR. GUARISCO
Yes.

MR. JENKINS
Then it talks about warrants. I mean, that's two different things, don't you see? I mean it doesn't say that you're protected against reasonable searches and seizures. It doesn't say a warrant is necessary.

MR. GUARISCO
It's not.

MR. JENKINS
For reasonable searches and seizures.

MR. GUARISCO
On certain occasions it's not.

MR. JENKINS
So who's going to determine what's reasonable or unreasonable? We know that pursuant to a lawful arrest is probably reasonable.

MR. GUARISCO
Got a lot of jurisprudence on that, Woody, to what's reasonable or unreasonable. Lot of jurisprudence on....

MR. ROY
That's the only thing we'll ever get.

MR. GUARISCO
I think our intention is that if you want something from the bank you have to get a warrant. Huh? Is that our intention?

MR. VICK
Yes. Certainly that's one of the concerns of the committee. I think that perhaps there are other concerns as well, but I think what we're concerned about is these sweetheart agreements where the local police call the bank and call a friend in the bank, or maybe even the chief officer, the

MR. VICK (cont'd)

President or one of the other officers. Look, I'm investigating Joe Doe. Have you got an account over there on Joe Doe? Well, let me see. You know, doesn't seem any. Well, I can't tell you that. You know, get a warrant. Like you, that's inevitable. I can't tell you that stuff. They tell it all the time.

MR. ROY

After the first sentence, "In securing, . . .

(END OF SIDE 1 OF TAPE)

14.

MR. ROY

houses, papers and other possessions against unreasonable searches, seizures or invasions of privacy, and no search or seizure shall be made except upon warrant therefor."

3

Well, that does away with the lawful arrest thing.

MR. JENKINS

Yes. That's right.

MR. A. JACKSON

Let's get back to order here, everybody's standing around. . .

MR. ROY

What about "and no search or seizure from another", "from an agent", "from his agent." What about that? "and no search or seizure from his agent shall be made except upon warrant therefor," and then go on with "no search shall issue without probable cause." That would then imply that you have to get the warrant to get to the bank.

MR. JENKINS

I didn't follow that amendment. Where is it now?

MR. ROY

Alright. Listen. "Every person shall be secure in his person, houses, papers and other possessions against unreasonable searches, seizures or invasions of privacy, and no search or seizure from an agent--from his agent shall be made except upon warrant therefor."

7

Is the bank or the doctor the agent of the person?

3

Well, sure. It is.

MR. ROY

What is the bank but his agent?

3

He's in a contractual arrangement.

MRS. DUNLAP

Aren't . . .

MR. WEISS

No, we're not an agent.

MRS. DUNLAP

Well, isn't it the only way that a person can get their medical records from you is through another doctor?

DR. WEISS

Actually, I can see the constitutional trouble. You don't know it. The patient releases that. . .

MRS. DUNLAP

But he can't get them himself. Like I can't walk into the hospital and get . . .

UNINTELLIGIBLE

MR. VICK

Look at that, Chair. What do you say, Chair?

19

MR. A. JACKSON

I think that we ought to pass on this for now and maybe get some testimony on any extraneous material we're going to put, or what we have in this thing because it's pretty darn complicated when we get to . . .

DR. WEISS

I'd like very much to have comments on this. This is a very, very sensitive point amongst the medical profession because what's happening is that this right is being violated against the patient that we treat in which he testifies against himself, and we think that--I believe--I feel that it's against the constitutional amendment to testify against yourself. Now this bullet, for example, if this man has to be killed to show it, then he is testifying against himself. The court should make that decision. If he refuses, he should have the right to refuse.

MR. A. JACKSON

Alright. Look, let's move along. This is what we'll do now. I will go ahead--the Chair will ask that we vote on Woody's amendment to what we've already done and then however that vote comes out, then let's defer the proposal until . . .

MR. JENKINS

Well, let's tentatively adopt it.

MR. VICK

Yeah. That's what we're saying. That's what we're saying. As written or as typed, with Jenkins' 21 added to the roll and . . .

MR. A. JACKSON

Alright. We call for a vote on the Vick-Roy proposal, for the Roy Vick proposal, whatever you want . . .

MR. VICK

Amended by Mr. Jenkins.

MR. A. JACKSON

As amended by Mr. Jenkins. All in favor of the proposal raise your hands. It's unanimous so let's move onto page 21, Weiss' 21, "Right to Bear Arms."

MR. WEISS

Well, I suggest that Roy and Jenkins carry this language. . .

MR. A. JACKSON

Okay. Woody.

MR. WEISS

Basically, it's what Roy says almost and Jenkins is in the other side so maybe. . .

MR. A. JACKSON

Okay. Go ahead, Woody. Page 27, Section 11.

MR. JENKINS

There's a major difference between this Roy's proposal and the one I think that there are two major distinctions. First off, his continues the present language, which I feel is very weak. It says, "A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be abridged." Now in a way that seems kind of clear, but it's been interpreted to mean that the reason you have a right to keep and bear arms is so we'll have a well regulated militia. Well, that is really no protection at all to speak of. Obviously, a government's going to have some defense force to protect it from foreign invaders. That's not what the right to keep and bear arms is all about though. The right to keep and bear arms is a right which people have to protect themselves against others and to protect themselves against government. Should the event ever arise when government has become so tyrannical that they have a need to

20

MR. JENKINS (cont'd)

overthrow it, so I think that we will weaken and seriously damage this provision on the right to keep and bear arms if we started off with this clause, "A well regulated militia, et cetera." I think we should simply say something like "the freedom of each person to keep and bear arms shall not be abridged," or "the right of the people to keep and bear arms shall not be abridged."

MR. A. JACKSON

Now. . .

MR. JENKINS

Now. . .

MR. A. JACKSON

I'm sorry.

MR. JENKINS

The second point is--maybe this'll be more controversial, but Mr. Roy says in his provision that "this provision shall not prevent the passage of laws to prohibit the carrying of concealed weapons or otherwise to regulate reasonably the keeping and bearing of arms." Whereas, my provision will say that no law shall not be subject to licensure, registration, control or taxation." And, of course, the reason for that is--and I don't think that that would prevent something against carrying concealed weapons, because you would still then have the right to keep and bear arms otherwise, but it would mean that you could not force people to license their weapons and tax them through the state for the state to have a central listing of all your weapons so that they could then go out and confiscate them. It would not provide for this sort of unreasonable governmental control and interference in this important right. I just want to emphasize again, and I think that I can say that I speak, without any doubt, for a strong majority of the people of this state when I say that we have three protections for our liberty--the jury box, the ballot box and the cartridge box, and I think our people want, deserve and need the right to keep and bear arms. And I'm talking about the right. This is something I think is a right and we talk about, "Oh, it can't happen here", and all this stuff. It won't happen here as long as our people are well armed.

MR. A. JACKSON

Do you yield, Brother Jenkins?

MR. JENKINS

Yes, I will.

MR. VICK

Alright. I know this is a gun oriented country, and this is a gun oriented state so therefore I yield to the will of, what I assume, is the majority, overwhelming majority. Therefore, I move to substitute for all three of the following: "Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed." And I will repeat.

MR. STINSON

Well, that's saying that the legislature can pass anything that want to and doesn't do it police power.

MR. ROY
Well, then the majority votes, we vote. Let's go. How many more votes...how many want to vote?

MR. A. JACKSON
Alright. How many in favor of calling the question?

?
One, two, three, opposed.

?
Four.

?
One, two, three, four opposed.

MR. A. JACKSON
All those opposed to calling the question?

?
Four.

MR. A. JACKSON
It failed. Go ahead, Woody.

MR. JENKINS
24
Would you give me just one second?

MR. ROY
I didn't understand amending this thing that has been in the constitution for fifty, since 1921, just like that. We give him a chance to tell them that we're giving them the right that they don't have.

MR. VICK
I strongly urge the members of this committee to read It's just incredible. It's just so short and sweet with little comments and

MR. JENKINS
It is incredible.

MR. ROY
And I know, it's incredible
Why don't we leave what we have there? They accepted it in '21.

MR. JENKINS
It's a beautiful document.

MR. ROY
And I agree with it.

MR. STINSON
What's your definition of a beautiful document?

MR. ROY
It's what you told your constituents you were coming down here to do.

MR. STINSON
No, I 'll be damned if that's so.

MR. ROY
Well, you told me you told your constituents you were coming down here to write a short, sweet document.

MR. STINSON
I did not do that. I did not. I said that it's ridiculous to say you can write one that a fifth grader can read.

MR. ROY
Somebody concurred with Governor Wallace.

MR. STINSON
No, I didn't either. I said it doesn't make any difference whether it's in the revised statutes or in the constitution. It's ridiculous.

MR. JENKINS
I'm ready on my amendment.

MR. A. JACKSON
Alright, Woody, offer your amendment to project Section 9.

MR. JENKINS
Alright. It's very simple and I don't think that anybody really would object to this. It's simply one sentence to go on the end. "Nothing contained herein shall allow the confiscation or taxation of personal arms."

MR. A. JACKSON
Any objection to that?

MR. ROY
No. I have no objection to that. Read it again.

MR. JENKINS
"Nothing contained herein shall allow the confiscation or taxation of personal arms."

MR. VICK
I agree with that.

MR. STINSON
Well, now would you add registration too?

25

MR. JENKINS
No.

MR. STINSON
This is just in the state.

?
No.

MR. STINSON
If we're going to let the federal do it, well, why not let us see, if we want.

MR. LADNEY
Okay, so now what we have in the project with the Jenkins amendment saying "Nothing contained herein shall allow the confiscation or taxation of arms."

MR. ROY
Let me call the question.

MR. STINSON
Wait. Wait. Wait.

MR. ROY
We accept it and we call the question.

MR. STINSON
Wait now. That's saying that you can't put sales tax on a weapon, doesn't it?

MR. ROY
No, it doesn't say that.

MR. STINSON
It says it can't be taxed. Taxation.

MR. ROY
If you have any type of sale you've got a sales tax, Ford.

MR. JENKINS
Maybe we should say "special taxation."

MR. ROY
Alright, "special taxation."

?
How about the sewage tax? That's a special tax.

MR. A. JACKSON
Okay. The question's been called. All those in...Walter.

?
I have a question.

MR. A. JACKSON
The question's called. You're all right. Walter, read what we got.

?
All right.

MR. ROY
Wait. Woody, does that wouldn't mean that if they picked up a criminal with a concealed .38 Smith & Wesson in his coat that they couldn't confiscate it, does it?

MR. STINSON
We'd better think about that.

MR. JENKINS
No. I don't think so.

26

MR. ROY
Well, wait a second you-all better think about that. I don't accept that. We've got a good provision that we've had all along, and I don't know about that. What do you do if you pick up a guy who's got a .387 Haggan concealed?

MR. WISS
Alright. Call for the question.

MR. DUBRAP
How about "universal confiscation"?

MR. STINSON
What if they passed a law that it would be lawful?

MR. VICK
Criminal action is against law.

MR. JENKINS
Listen. Any time if somebody's convicted of a crime, Chris, these rights in this Bill of Rights can be taken away from him as punishment for crime.

MR. ROY
But he's not convicted if he's carrying a concealed weapon.

MR. JENKINS
Well, then if he's not convicted, the weapon ought to be returned to him.

[857]

It's a good reason.

MRS. DUNLAP
It's a good reason.

MR. JENKINS
No, but don't you think we have that right anyway. I mean we don't have a militia. We don't have a militia.

There's the National Guard.

MR. JENKINS
The National Guard is not the militia.

MRS. DUNLAP
No, No.

MR. JENKINS
The state militia and the National Guard are two different things. We don't have a...

MR. ROY
If we don't have a militia, maybe we ought to organize one.

I think that's fine.

MR. JENKINS
The court interpretation hinges the right to keep and bear arms on this militia thing.

MR. ROY
You're not going to trick me this time, Woody. I ain't for taking that out.

MR. JENKINS
Why?

MR. ROY
I want to make sure that that's what we're talking about.

MR. STINSON
He wants a militia.

MR. JENKINS
In other words you don't want any rights to keep and bear arms, really.

MR. ROY
Yeah. I want a right to keep and bear arms.

MR. JENKINS
Subject only to--only because people have a right to have a militia. Is that why?

30

MR. ROY
That's one of the reasons, but that's not the reason.

MR. JENKINS
The courts are saying more and more the only reason you have a right to keep and bear arms is this militia thing...

MR. ROY
They're saying that more and more because more and more people are getting killed by more and more n--s who go around with more and more guns and kill.

Tony.

MR. STINSON
Well, let's just say, "Nuts shall not bear arms."

Squirrels.

MR. A. JACKSON
Alright. Are we ready to vote on the motion to reconsider?

MR. ROY
Well, doesn't he--wait, doesn't he have to need something more than just a request that we reconsider?

That's right.

MR. STINSON
He's got to vote on a vote to reconsider.

MR. A. JACKSON
I think he needs a second. I think he needs a second. No seconds? Alright.

MR. STINSON
He's got to get more votes than one though.

MR. A. JACKSON
No, that's right. Alright, call the question on motion to reconsider the former proposal that we adopted. All those in favor of reconsidering signify by raising your hand. Taken 2 two-thirds to get it back out now.

MR. STINSON
Well, you made a mistake. If you had voted him and gotten here you could have gotten your hand, but you didn't do that.

MR. A. JACKSON
Okay. I think that's the last order of business for the day. I think we should adjourn.

MR. STINSON
The National Rifle Association prevails again, see?

MINUTES

Minutes of the Meeting of the Political Rights
and Elections Committee of the Constitutional
Convention of 1973

Held pursuant to notice mailed by the Secretary
of the Convention on April 24, 1973

State Capitol, Baton Rouge, Louisiana

Room 206

Friday, May 4, 1973 (10:00 a.m. - 4:30 p.m.)

Saturday, May 5, 1973 (9:00 a.m. - 3:30 p.m.)

Presiding: Rep. Alphonse Jackson, Jr., chairman

Present

Mrs. Judy Dunlap
Anthony J. Guarisco, Jr.
Rep. Alphonse Jackson, Jr.
Rep. Louis "Woody" Jenkins
Chris J. Roy
Mrs. Novyse E. Soniat
Ford E. Stinson
Kendal Vick
Rep. Shady Wall
Dr. Gerald N. Weiss

Absent

Roll call was taken by the committee secretary. A quorum was present. The chairman asked for the approval of the minutes by the members. Two corrections were made in the minutes; one was to TP No. 27 in which Mrs. Judy Dunlap should have been recorded as voting "no" instead of "yes". The second correction was to TP No. 29 in which Rep. Jenkins pointed out that the phrase "and is inconsistent with the proposal" should be added after the word "quotas" under the heading entitled "disposition". The minutes were accepted and adopted with the proposed corrections. Chairman Jackson made a report to the committee on the response of the public around the state. He stated that the tentative proposals of the committee will be submitted to the press and will be the subject of further public hearings. He asked the committee members to give reports of meetings attended through out the state. Mr. Vick gave a report from the New Orleans meeting in which he represented the committee chairman. He stated that a gentleman made a presentation for the Council on Aging and asked that his remarks be directed to the appropriate committee.

Mr. Roy reported on a memo from Caddo Parish District Attorney John Richardson. Mr. Roy was encouraged by the generally laudatory comments in the memo regarding the Preamble, Access to Courts, and Freedom from Discrimina-

tion. The section entitled "Right and Assembly and Freedom of Movement" was the subject of some concern with regard to the system of parole. Mr. Roy thought the memo was in error on this point but that it could be considered later.

Mr. Stinson suggested that both Mr. Richardson and the head of the District Attorneys' Association be invited to address the committee and there was general agreement with this idea.

The committee first took up the question of the right to property and briefly considered Staff Memo. No. 32 on the subject. Mr. Jenkins introduced his own Tentative Proposal (TP) No. 72 entitled "Right to Property". In the

2

course of discussion and debate, Mr. Jenkins began amending the proposal and accepting amendments proposed by others. Dr. Weiss wanted to provide that the disposition of property may be subject to reasonable laws to protect the family.

After lengthy discussion, the committee recessed for lunch at 12:35 p.m.

After lunch, Mr. Jenkins' "Right to Property" was debated and amended further and finally adopted in amended form as TP No. 73.

Mr. Guarisco stated that the comment should indicate that the intent of this proposal is to abolish the law of appropriation.

Mr. Roy introduced TP No. 74 involving rights of accused persons. Mr. Jenkins introduced TP No. 75 as a substitute. Mr. Roy and others proposed amendments to the substitute which was adopted as TP No. 76.

Mr. Roy then introduced TP No. 77 dealing with the initiation of prosecution and other matters, Mr. Jenkins proposed amendments which were accepted by Mr. Roy as TP No. 78. Mr. Jenkins then attempted to delete a phrase from TP No. 78 but Mr. Roy opposed this and the attempt was defeated. See TP No. 79. TP No. 78 was then adopted.

THE MEETING RECONVENED

Saturday, May 5, 1971

3

Presiding: Rep. Alphonse Jackson, Jr., chairman

Present: Absent

Mrs. Judy Dunlap
Anthony J. Guarisco, Jr.
Rep. Alphonse Jackson, Jr.
Rep. Louis "Woody" Jenkins
Chris J. Roy
Mrs. Novyse E. Soniat
Ford E. Stinson
Kendall Vick
Rep. Shady Wall
Dr. Gerald N. Weiss

Roll call was taken by the committee secretary. A quorum was present.

Mr. Roy introduced TP No. 80 involving criminal pros-

ecutions and grand jury proceedings. During the course of debate Mr. Roy accepted amendments limiting the section to grand jury proceedings, TP No. 81, and as such, the section was adopted, after an attempt by Dr. Weiss to amend it was rejected. See TP No. 82.

Mrs. Dunlap assumed the chair in the absence of the chairman.

Mr. Jenkins introduced TP No. 83 on a fair trial. It was amended in committee debate and adopted as TP No. 84.

Mr. Jenkins introduced TP No. 85 on trial by jury in criminal cases. Over Mr. Jenkins' objection Mr. Roy introduced an amendment, TP No. 83, to raise the number of jurors that must concur to convict in certain cases. The amendment was adopted 4-3.

There were various additional amendments to TP No. 85

4

and it was then adopted as TP No. 87. A minority report is to be submitted on the tentative proposal.

Dr. Weiss introduced TP No. 88 on the right to humane treatment. It was amended twice and then adopted. See TP Nos. 89 and 90.

Mr. Roy introduced TP No. 91 on the right to bail, after considerable discussion it was replaced by a substitute proposal of Messrs. Jenkins and Roy that was adopted. See TP No. 92.

Mr. Roy introduced TP No. 93 relating to treason, an amendment by Mr. Jenkins, TP No. 94, to delete a phrase was accepted by Mr. Roy, a motion to strike the entire section was defeated 3-5 but a second motion to approve the section was also defeated 3-4. Inclusion of the section is to be the subject of a minority report.

Dr. Weiss introduced TP No. 94 on habeas corpus. Mr. Jenkins introduced a substitute proposal, TP No. 95, which was adopted. Mrs. Soniat introduced TP No. 97 on the right to civilian government. It was adopted but with the understanding that it would be included elsewhere in the constitution but not in the rights article.

Dr. Weiss introduced TP No. 98 on cultural rights, after considerable debate, Mrs. Dunlap moved to amend it by deleting the last two sentences. See TP No. 99. Dr. Weiss accepted the amendment for the purpose of adopting at least part of his proposal and as such TP No. 99 was adopted 4-3.

5

Mr. Jenkins proposed TP No. 100 on unenumerated rights. Mr. Roy introduced a substitute, TP No. 101, which was defeated 2-4 after which the Jenkins' proposal was adopted.

Dr. Weiss introduced TP No. 34 based on CBRE Staff Memo No. 34 prepared at his request. The proposal was adopted 4-2.

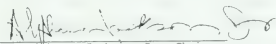
Dr. Weiss then introduced TP No. 103, a proposal on

the rights of the child based on the 1972 Montana Constitution. See also CBRE Staff Memo No. 33. TP No. 103 was rejected 1-5.

The committee then discussed the forthcoming television hearing on May 11, 1973, scheduled for 3 to 5 p.m. utilizing the facilities of the Louisiana Hospital Television Network. In the absence of Chairman Jackson, Delegate Jenkins agreed to serve as moderator. However, the committee voted to have Dr. Weiss serve as moderator.

The committee decided to emphasize in its notice of meetings for May 18 and 19 that it wished to have comments on distributions of powers, elections, general government, and constitutional revision. After hearing witnesses the committee will proceed to draft appropriate sections.

There being no further business, the meeting adjourned at 1:10 p.m.


Rep. Alphonse Jackson, Jr., Chairman

6

April 16, 1973

CBRE Tentative Proposal No. 27 by Mr. Jenkins

Background: An amendment to TP No. 23 as amended by TP No. 24.

After the words, "nor shall any law," add the word "unreasonably."

Disposition: Rejected by a roll call vote 4-5.

The Roll Call

Dunlap	Yes	No
Guarisco	Yes	No
Jackson	No	Yes
Jenkins	Yes	No
Roy	No	Yes
Soniatt	No	Yes
Stinson	Yes	No
Vick	No	Yes
Wall	Absent	Yes
Weiss	Yes	No

April 16, 1973

CBRE Tentative Proposal No. 29 by Messrs. Roy, Weiss and Vick

Background: Text of TP No. 23 as amended by TP No. 24.

Section ____ Right to Individual Dignity

No person shall be denied the equal protection of the laws nor shall any law discriminate against a person in the exercise of his rights on account of birth, race, sex, social origin or condition, or political or religious ideas. Neither slavery nor involuntary servitude shall exist except in the latter case as a punishment for crime after the accused has been duly convicted.

Disposition: Tentatively adopted, April 16, 1973 by a roll call vote 7-2. The comment is to explain that the committee does not intend to endorse the concept of racial or other quotas.

The Roll Call

Dunlap	Yes
Guarisco	Yes
Jackson	Yes
Jenkins	No
Roy	Yes
Soniatt	Yes
Stinson	No
Vick	Yes
Wall	Absent
Weiss	Yes

May 4, 1973

CBRE Tentative Proposal No. 74 by Mr. Roy

Background: A proposal based on a modification of Project Article I, Section 11.

Section ____.

In all criminal prosecutions the accused shall be precisely informed of the nature and cause of the accusation against him and when tried by jury shall have the right to voir dire and to challenge jurors peremptorily, the number of jurors and challenges to be fixed by law.

Disposition: Replaced by a substitute proposal, TP No. 75.

CBRE Tentative Proposal No. 75 by Mr. Jenkins

Background: A substitute proposal for TP No. 74.

Section ____ Arrest

When a person has been arrested, he shall immediately be advised of his legal rights and shall soon thereafter be informed of the nature and cause of the accusation against him. Every person shall be entitled to assistance of counsel at each stage of the prosecution, if he is charged with a serious offense.

Disposition: Amended in committee debate by Messrs. Roy, Weiss, and Jenkins and tentatively adopted. See TP No. 76.

May 4, 1973

CBRE Tentative Proposal No. 76 by Messrs. Roy, Weiss and Vick

Background: An amended version of TP No. 75.

Section ____ Rights of the Accused

When a person has been detained, he shall immediately be advised of his legal rights. In all criminal prosecutions, the accused shall be precisely informed of the nature and cause of the accusation against him. At all stages of the proceedings, every person shall be entitled to assistance of counsel of his choice, or appointed by the court in indigent cases if charged with a serious offense.

Disposition: Tentatively adopted as a section of the rights article, May 4, 1973.

CBRE Tentative Proposal No. 77

by Mr. Roy

Background: A proposal based on a modification of the last three sentences of Project Article I, Section 10.

Section ____.

Prosecution shall be by indictment or information, but the legislature may provide for the prosecution of misdemeanors on affidavits. No person shall be held to answer for capital crime, or felonies requiring punishment at hard labor unless on a presentment or indictment by a Grand Jury, except in cases arising in the militia when in actual service in time of war or public danger or where he specifically waives the necessity of the presentment or indictment. No person shall be twice put in jeopardy of life or liberty for the same offense, except on his own application for a new trial or where there is a mistrial or a motion in arrest of judgment is sustained.

Disposition: Amended by Mr. Jenkins; amendments accepted by Mr. Roy; and tentatively adopted. See TP No. 78.

May 4, 1973

CBRE Tentative Proposal No. 78 by Messrs. Jenkins and Roy

Background: An amended version of TP No. 77 accepted by Mr. Roy.

Section ____ . Initiation of Prosecution

Prosecution shall be initiated by indictment or information, but the prosecution of misdemeanors may be initiated by affidavits. No person shall be held to answer for capital crime, or felonies necessarily punishable by hard labor except on indictment by a grand jury, unless he specifically waives the necessity of the indictment. No person shall be twice put in jeopardy of life or liberty for the same offense, except on his own application for a new trial or where there is a mistrial or a motion in arrest of judgment is sustained.

Disposition: Tentatively adopted as a section of the rights article, May 4, 1973 after an amended version, TP No. 79, was rejected and an attempt to refer the matter to the research staff was also rejected.

May 4, 1973.

CBRE Tentative Proposal No. 79 by Mr. Jenkins

Background: An amended version of TP No. 78 which was not accepted by Mr. Roy.

Section ____ . Initiation of Prosecution

Prosecution shall be initiated by indictment or information, but the prosecution of misdemeanors may be

initiated by affidavit. However, no person shall be held to answer for a capital crime unless upon indictment by a grand jury. No person shall be twice put in jeopardy of life or liberty for the same offense, except on his own application for a new trial or where there is a mistrial or a motion in arrest of judgment is sustained.

Disposition: Rejected.

May 5, 1973

CBRE Tentative Proposal No. 82

by Mr. Jenkins

Background: An original proposal regarding fair trial.

Section 14. Fair Trial

Every person charged with a crime shall be entitled to a speedy, public, and impartial trial in the parish where the offense or an element of the offense occurred, unless venue be changed on motion of the defendant.

No person shall be compelled to give evidence against himself and no confession shall be used unless given voluntarily. All evidence presented shall be competent, relevant, and material, unless the accused waives this right. The accused shall be entitled to confront and cross-examine the witnesses against him, to present a defense, and to take the stand in his own behalf.

Disposition: Amended in the course of committee debate and tentatively adopted. See TP No. 84, May 5, 1973

CBRE Tentative Proposal No. 84

by Mr. Jenkins

Background: An amended version of TP No. 83 resulting from committee debate.

Section ____ . Fair Trial

Every person charged with a crime shall be presumed innocent until proven guilty, and shall be entitled to a speedy, public, and impartial trial in the parish where the offense or an element of the offense occurred, unless venue be changed in accordance with law. No person shall be compelled to give evidence against himself and all evidence presented shall be competent, relevant, and material. The accused shall be entitled to confront and cross-examine the witnesses against him, to compel the attendance of witnesses, to present a defense, and to take the stand in his own behalf.

Disposition: Tentatively adopted as a section of the rights article, May 4, 1973.

May 5, 1973

CBRE Tentative Proposal No. 85

By Mr. Jenkins

Background: An original proposal on trial by jury in criminal cases.

Section _____. Trial by Jury

Any person charged with an offense or set of offenses punishable by imprisonment of six months or more may demand a trial by jury. In cases involving a crime necessarily punishable by hard labor, the jury shall consist of twelve persons capable of rendering a fair and impartial verdict. All of these jurors must concur to render a verdict in capital cases, and nine must agree in others. In cases not necessarily punishable at hard labor, the jury may consist of a smaller number of persons, all of whom must concur to render a verdict.

Disposition: Amended and tentatively adopted. See TP No. 87.

May 5, 1973

CBRE Tentative Proposal No. 86 by Mr. Roy

Background: Amendment to TP No. 85 not accepted by Mr. Jenkins.

after the words "capital cases" add the words "or cases in which no parole or probation is permitted"

Disposition: Adopted 4-3. See TP No. 87 regarding a minority report.

May 5, 1973

CBRE Tentative Proposal No. 87 by Messrs. Roy and Jenkins

Background: Various technical amendments to TP No. 85 including the addition of the last sentence proposed by Mr. Roy and accepted by Mr. Jenkins.

Section _____. Trial by Jury

Any person charged with an offense or set of offenses punishable by imprisonment of six months or more may demand a trial by jury. In cases involving a crime necessarily punishable by hard labor, the jury shall consist of twelve persons, all of whom must concur to render a verdict in capital cases or cases in which no parole or probation is permitted, and nine of whom must agree in others. In cases not necessarily punishable by hard labor, the jury may consist of a smaller number of persons, all of whom must concur to render a verdict. The accused shall have the right to voir dire and to challenge jurors peremptorily, the number of challenges to be fixed by law.

Disposition: Tentatively adopted as a part of the Bill, article, May 5, 1973. A minority report is to be submitted to the Senate. The Senate is to no parole or probation is permitted.

May 5, 1973

CBRE Tentative Proposal No. 88 by Mr. Jenkins

Background: A proposal by Mr. Jenkins to the Montana Convention on Human Rights, Article V and the 1972 Montana Constitution, Article II, Section 23.

Section _____. Right to Humane Treatment

- (A) Every person has the right to have his physical, mental, and moral integrity respected.
- (B) No one shall be subjected to torture or to cruel and unusual punishments or treatments.
- (C) Accused persons shall, save in exceptional circumstances, be separated from convicted persons.
- (D) Minors, while subject to criminal proceedings, shall be separated from adults.
- (E) Laws for the punishment of crime shall be founded on the principles of reform and prevention. Full rights are restored by termination of state supervision for any offense against the state.

Disposition: Amended and tentatively adopted. See TP No. 90.

May 5, 1973

CBRE Tentative Proposal No. 89 by Messrs. Roy and Jenkins

Background: Amendments to TP No. 88.

delete Paragraphs A, C, D, and part of E and modify paragraph B so that the section would read as follows:

Section _____. Right to Humane Treatment

No person shall be subjected to torture or to cruel, unusual, or excessive punishments or treatments, and full rights are restored by termination of state supervision for any offense against the state.

Disposition: Tentatively adopted 5-2.

May 5, 1973

CBRE Tentative Proposal No. 90 by Messrs. Roy and Jenkins

Background: Amendments to TP No. 88 to broaden the protection of rights and to improve the language. Adopted by Dr. Weiss.

Section ____ . Right to Humane Treatment

No person shall be subjected to torture or to cruel, or excessive punishments or treatments, and full rights shall be restored by termination of state or federal supervision for any offense.

Disposition: Tentatively adopted as a section of the rights article, May 5, 1973.

May 4, 1973

CBRE Tentative Proposal No. 94 by Mr. Jenkins

Background: An amendment to TP No. 93 accepted by Mr. Roy.

delete "or adhering to its enemies, giving them aid and comfort" so that the section would read as follows:

Disposition: Tentatively adopted 7-1 as a section of the rights article, May 5, 1973.

May 5, 1973

CBRE Tentative Proposal No. 91 by Mr. Roy

Background: A proposal on the right to bail based on a modification of Project Article I, Section 14.

Section ____ . Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted. All persons shall be bailable by sufficient sureties, except the following: Persons charged with a capital offense where the proof is evident or the presumption great; persons convicted of felonies, provided that where than a maximum sentence at hard labor is actually imposed, bail shall be allowed pending appeal until final judgment, at the discretion of the judge.

Section ____ . Treason

Treason against the state shall consist only in levying war against it. No person shall be convicted of treason except on the testimony of two witnesses to the same overt act or on his confession in open court.

Disposition: A motion to strike the entire section as amended was defeated 3-5. A motion to approve the section was then defeated 3-4. It was then announced that Messrs. Stinson, Roy, and Weiss would propose inclusion of the section as amended in the rights article as a minority report.

May 5, 1973

CBRE Tentative Proposal No. 95 by Dr. Weiss

Background: A proposal on habeas corpus.

Section ____ . Habeas Corpus

The privilege of the writ of habeas corpus shall never be suspended except by the Legislature in the case of rebellion, insurrection, or invasion, when the public safety may require it.

Disposition: Replaced by a substitute proposal. See TP No. 92.

May 5, 1973

CBRE Tentative Proposal No. 92 by Mr. Jenkins and Roy

Disposition: Replaced by a substitute proposal. See TP No. 96.

Background: A substitute proposal for TP No. 91

Section ____ . Right to Bail

Excessive bail shall not be required. Before and during trial, all persons shall be bailable by sufficient sureties, unless charged with a capital offense and the proof is evident and the presumption is great. After conviction and before sentencing, persons shall be bailable if the maximum sentence which may be imposed is less than five years and may be bailable in the discretion of the judge if the maximum sentence which may be imposed is greater. After sentencing and until final judgment, persons shall be bailable if the sentence actually imposed is less than five years and may be bailable in the discretion of the judge if the sentence actually imposed is greater.

OFFICIAL TRANSCRIPT
OF THE
CONSTITUTIONAL CONVENTION
STATE OF LOUISIANA
1973

COMMITTEE ON BILL OF RIGHTS AND ELECTIONS
MEETING OF MAY 4, 1973

Friday, May 4, 1973
Baton Rouge, Louisiana

MR. ? Chris, would you like to just take a minute and kind of bring us up to date on the ... recap on Richardson?

MR. ROY
Chairman Jackson sent me a memorandum from the Caddo Parish District Attorney's office, Mr. John A. Richardson, whom, I think, is a fine person and a real good district attorney. And first of all the encouraging

thing about this memorandum is that he had a lot of laudatory comments to make with respect to the Preamble that we have come up with. He felt that our ... we had an excellent summary on the access to courts. He mentioned ... a particular thing that I'll get into with it ... that I think he's correct about, he said that our freedom of religion expression was excellent and no suggestions. Our right of assembly and freedom of movement he has some comment about it. Woody, with respect to it maybe prohibiting or being somewhat of an impediment to judges giving probation, suspended sentences and what have you to people throughout the state ... leaving the state. But I think he's got about that but we can get into that later. His ... on freedom from discrimination, he said this is a concise statement on this subject and we have no suggestions as to it. Our due process of law he felt was good. Trial by civil jury cases he ... and review of facts he pointed out and I noticed that the day we left here that we had nothing with respect to criminal cases, so it looks like we're saying that that you can review facts in criminal cases, which is one thing we didn't want.

MR. STINSON
Well I did. That's the reason I didn't ...

MR. ROY
He suggested ...

MR. VICK
We can find it in the Federal Constitution anyway.

MR. STINSON
Yes.

MR. ROY
Well, but he suggested very simply that we ought to just say that the determination of facts in other civil or non-criminal cases before any subject shall be subject to review, so we can change that pretty easily. He had ... he's really concerned with the searches and seizures proposed ... a draft which we had in there. I think he must have misunderstood. The paper reported it as tentative, but it wasn't even tentative. If you'll recall, we talked the whole thing on these searches and seizures. Now, Mr. Richardson feels that ... and I take issue with him to some extent. He feels, first of all, that Mapp vs. Ohio, which is a supreme court case of the United States and held that you had a right to ... that a defendant had a right to appear in a preliminary hearing and quash or suppress certain evidence upon which a prosecution would be based. He disagrees, I think, fundamentally with Mapp vs. Ohio. Secondly, he feels that the present Supreme Court hopefully, in his opinion, I believe, will overturn Mapp vs. Ohio. And his argument is that we shouldn't ... he has a two-fold argument, he doesn't think that, he doesn't feel so

MR. ROY (cont'd)
satisfied about the substantive issue about suppressing evidence that's illegally obtained. The second thing is that procedurally he doesn't feel that you should be able to suppress it in advance of the trial. Ford, did you read his, I think I'm right, if he's mistating it I want you all to correct me. Now, I disagree with him on the procedural issue completely because I think that it's ... I think it saves the state money and it saves people time if prior to a jury being called and sent on ... for a case which is filed strictly on evidence that may or may not be admissible, that it saves the state time and money to allow the defendant to suppress the evidence in a preliminary hearing without the cost and expense of selecting a jury. See, before the evidence goes in if you are trying a case with a jury, you've selected a jury, it's taken five or six days to maybe select a jury. You finally get to the day that you're gonna put the evidence in and the court holds that it's inadmissible. The whole case hinges on this evidence, so the whole case then falls. Now look what you've gone through. You've gone through all kinds of pre-trial hearings and everything else, you've selected a jury, you've gotten maybe fifteen days into a trial and bam, the whole thing is out. My opinion is that Mapp vs. Ohio insofar as allowing you a preliminary motion to suppress evidence without bringing in fifty people or without bringing in the jury and everything else is a much better procedure. That's subject to argument, of course.

MR. VICK
May I interject something?

MR. ROY
Go ahead.

MR. VICK
A point we can defer to are professors, but Mapp dealt with the fruit of the poison tree concept and that is that you can't have the state cannot offer or ... this Federal, the Federal Government cannot offer illegally seized evidence ...

MR. ROY
Right.

MR. VICK
... back and forth and if the original search or seizure was tainted in any way, that's grounds for suppression. As I say I defer to our professors here and furthermore, I might add this, for the information of the committee, and perhaps you all due deference to the District Attorney, the Supreme Court of the United States has gone a long way down the road from Mapp. I mean Mapp was just in '63 was it not, Lee? '62, '63, my goodness they've gone a long way. Now if he's bothered with Mapp, well, you know, he's ... because that's ... he ought to "shepherdize" Mapp.

MR. ROY
Well you're right, Kendall, but he's against a pre-trial or a preliminary hearing of a sort to suppress illegally obtained evidence

that Mapp told was illegally obtained. And he thinks it's too tricky, he thinks our search and seizure paper, he says that there is too much of a subject, please open the committee statement and you can see what we've done. As a result of the removal of rules and other papers, and other papers, not for making it any tougher, you know, we added that clause.

MR. VICK
Well, again you see, I'm confused because ... and I can't get protection to enlighten me, but preliminary hearing is really not an answer shall it was a motion; it's a motion to suppress. And a motion to suppress goes back to common law times. I don't see that the preliminary hearing as it were is involved here at all. Do you agree, Lee?

MR. HARGRAVE
Mapp simply required that the illegally obtained evidence not be used. It doesn't address itself to the mechanism the state uses to

MR. HARGRAVE (cont'd)
allow questioning the evidence.

MR. VICK
I didn't think we were satisfied with our ...

MR. ROY
We're not.

MR. VICK
Our search and seizure and we weren't satisfied with it because we didn't think it was strong enough.

MR. ?
That's right. We didn't adopt this thing for plenty of reasons.

MR. ?
We did adopt something tentatively, but it ...

MR. ?
With the understanding that we would work it over again later on.

MR. VICK
Because the problem, gentlemen and ladies, has I think been made manifest by the news in the past, you know, week insofar as surveillance and the ... I'm not talking about electronic surveillance only, but, my goodness, for a law and order administration, I mean you know, we've ... we have seen a lot in the past week or so. And I think it commands us to look at our search and seizure article very carefully.

MR. A. JACKSON
I wanted simply to make the committee aware of the fact that he had ... what has been suggested and I concur completely with the notion that we invite Mr. Richardson at the next meeting to come to the committee to make known his views and at that time we will have a chance to question him fully about his concerns. And then by way of procedure, I think we can get this out of the way and won't have to deal with it tomorrow.

MR. ?
Excuse me, a point of information. I think Mr. Roy hastily went over this ...

MR. ROY
I'm sorry.

MR. A. JACKSON
Can you suggest anything.

MR. ROY
Well, the only other thing is that I think he's got a pretty good point on freedom of expression. I know it was real close and I'm ... on out, I feel, on our voting and I would be ... because I feel that ... I think ... and he may be right. He contends that there's no way that any form of pornography could be dealt with. I don't ... I'm not certain he's right on that. His other point is that you could never have a libel or slander suit filed because we've taken out of the ... we've got it the abuse of freedom of expression of the press principle. And I voted last time to leave that out even if it ... even when it was proposed, I think Ford proposed it, because I felt technically that came from the common law and we didn't need it.

MR. ?
Yes.

MR. ROY
But obviously if the district attorney of Caddo Parish feels that way, that we have eliminated defamation suits altogether, I'm sure there are gonna be many, many citizens who won't understand that and I would be for reinsinuating just the phrase that one will be responsible for the abuse of that freedom. It's not that I think that it's legally technically necessary, but I'm just worried about what may happen.

MR. VICK

Alright now, I think when the district attorney comes then we can really have a chat about this.

MR. ?

Right.

MR. VICK

Remember, the government didn't bother to open at page 27.

MR. VICK

That means that's going to what?

MR. VICK

Page 27. It's gonna move that we adopt No. 11 there, which deals with the right of information, that the accused is entitled to know. I think that's... you then move into the other thing on the work that you had done. I think that's right. MR. Chairman.

MR. A. VICK

Yes.

MR. ROY

What I understand, what Kendall has done is good and supportive of things that have been proposed. If you will turn to page 27 of the working thing. The first proposal deals with the nature of the charge against the accused and I followed the project and the only thing I changed was I added, if you'll look at the project on that you'll see that I say "precisely informed of the nature and cause of accusation, rather than just 'informed.'" And also that the accused shall have the right to voir dire and to challenge jurors preemptively. Now, let me explain to the non-lawyers on the committee what that means.

MR. DUNLAP

Must be all this voir dire stuff?

MR. ROY

Alright. When you talk about, you understand that before anybody can be brought to trial for a crime of any type, he must be charged either by way of a grand jury indictment or the district attorney may charge him on a bill of information on his own, except for capital crimes, or he may be charged by a simple affidavit. Now, that means just a sworn statement that he's committed a crime. Historically under the old common law the only way a man could be charged then, of course, was to be informed clearly and precisely all what he did wrong that constituted the crime. Because there are certain crimes that are pretty complicated as to how you commit it. And the defendant had the right to be told what he did which made up the essential elements of crime. 1942 the short...

MR. VICK

Short form.

MR. ROY

... short form. In 1942 the legislature of Louisiana passed a bill called... allowing for a short form indictments, meaning that certain crimes were presumably so well known and their elements so well known and so well defined in the statutes that all they had to say was, "AB committed murder by killing CO," let's say. And that was enough on certain such a day. This thing, now goes back to... but if you have a grand jury indictment it's got to be a little more precise and some crimes cannot be charged by a short form bill of information because they're just too complicated. All this does is... okay, that's No. 1. It says that it will precisely inform you of the nature of your charge. Because let me give you an example; the other day I was representing a policeman who was charged with negligent homicide; he had picked up a fellow who was paroled... not paroled, who was on a work detail from Angola working at Camp Beauregard, who had been charged with... who was at Angola for six years for burglary. The guy goes home and the first night he gets home on his weekend pass, he steals an automobile. They bring him into the police station and while he's in there he breaks for it. And when the man tells the woman whose car he stole to come identify him, the policeman got excited and fired two warning shots, one of which hit the guy and unfortunately killed him. I'm not...

MR. DUNLAP

The warning shot hit him?

MR. ROY

Yes, one of them hit him.

MR. ?

Was it the first or the second?

MR. ROY

Well the second shot hit him.

MR. ?

The shots were flying.

MR. ROY

In any event, let me tell you what happened. The guy is charged... the guy is charged with negligent homicide and that...

MR. STINSON

Is this the speech you made to the jury?

MR. ROY

No.

MR. VICK

The... speech he made to the D.A.

MR. ROY

So I made it to the jury... that he criminally... by criminal negligence killed this fellow. The important thing is that I... they wouldn't tell me how he killed the guy. I filed a motion for a bill of particulars saying "how was the man killed?" Was he ran over, was he shot, was he poisoned are all things that you have a right to know. The district attorney just... the district attorney of this state thinks that the law saying that they must inform you means that all they have to say is that you committed a crime. Not tell you how you did it.

MR. STINSON

Keep it a secret and give it to the jury.

MR. ROY

Keep it secret to you. Now I knew how the thing came about but in a lot of cases you really don't know what the heck they're relying on.

MR. ?

Did the D.A. know?

MR. ROY

The D. A. wouldn't tell me. Finally the judge said, "Now, Mr. Newell, I think you have to say that. You have to at least tell him how he set his death." So, that's just an example of how ludicrous it gets. I'm sure Ford tries a lot more criminal law cases than I do and there are a lot more silly episodes where he has not been informed adequately of what his client has done. You understand, they say he stole something but they won't say what he stole, how he stole it or anything else and you have a right to know that. So, I added the word "precisely informed," because the courts have had the habit of taking up too much for the state on that point, saying, "Well, they will tell you that you committed a crime, so therefore you figure out how you committed it." Now, I added that "precisely." The other thing I did on voir dire duty which is a... voir dire means to literally in French to hear and say on to see and say which means that when you're questioning prospective jurors who may serve on a jury, you have a right to question them and if you can determine that they are either biased or prejudiced or what have you, you can challenge them for cause and the judge will take them off. If you can't, you have certain peremptory challenges which means that I may... I may exclude you from serving on a jury merely because I don't like your blue eyes. Understand? You see I don't want blue-eyed women on my jury and I can challenge you and you've got no... you can't gripe about it. I get so many of those challenges. The only way you can... you can effectively exercise a peremptory challenge in most cases, is by questioning jurors pretty closely about their attitudes on things.

6

MR. ROY (cont'd)

Now the courts, especially in Rapides Parish, took the position that you had your peremptory challenges alright, but you could not ask a jury if they felt that they could... if you would say something like, "Will you... do you conscientiously believe in the principle of... that this man is presumed innocent until proved guilty." This is a fundamental concept. If a juror hedges on you on that, you may wanna challenge him, because you may have a close case. A guy gets up there and doesn't believe in a fundamental principle of your presumption of innocence even though you don't take the stand, the only way you can... you challenge him to say, "I don't want you in any event." Now, so that's why it says the present constitutional article doesn't say that you have the right to voir dire and challenge. And the Supreme Court has been batting this thing back and forth on three cases coming out of our... of Alexandria. Well, one case they finally said on a four-three decision, "You can't question the jurors about their personal feelings." Then they later reversed and then they're back all arguing about it because the district judges in Rapides, or one of them, is particularly limiting voir dire. You ought to have... if a man is gonna be put on trial for his life or his liberty, and his lawyer thinks it's imperative that he be able to question a prospective juror about many things which say or may not be relevant to decide whether he likes the attitude of that juror or not, he should have the right to. It's this bird's tail who's on the hot seat, not the judge who says, "Well it's taking a little too long and I want to expedite matters and we're asking too many questions." The judge doesn't go anywhere, he sits and draws his salary. The guy who's on the hot seat may go to the pen. So, if his lawyer thinks that he needs, or the man thinks he needs to question jurors more in more detail, he ought to be able to. That's why I added the word "to voir dire". So that the Supreme Court and the courts will know that we mean that a man, a defendant, has a right to question and see these jurors and then to exercise his peremptory challenges. And that's the reason that the two words... three words are in there.

MR. GUARISCO

Chris, I would like to comment on that right now. I think one thing we should do, you and I, I think we ought to remove the word "voir dire" and actually put the English.

MR. ROY

No, the courts don't want it in.

MR. GUARISCO

Just take the French out. No, I think we should take the French out. People... I saw a person, why the other day, said, "My put French words in an English country?"

MR. VICK

Wait a minute, wait a minute, that... to be precise that is Anglo Anglicized French... Anglo-French.

MR. ROY

Okay, well... yes... but...

MR. GUARISCO
A man that ...

MR. VICE
Well, I think we ought to leave that to Gyle and Bruffins. You'll get a chance to bat that about in State and Bruffins. If ...

MR. LAUREY
That would not change the meaning of contacts.

MR. ROY
If you say "to question", you see ...

MR. VICE
If the Honorable Judge Tate wants it put, will you bring it out.

MR. ROY
"To question" is not the same, as your date means something to lawyers particularly and to the courts. It means to demand question.

MRS. DEMLAP
See and say, I thought.

MR. GUARISCO
The only other thing I've got ... like to add to some ... I think we might add, is that some way we let these ... the number of jurors ... jurors and challenges to be fixed by law ... not to go to less than these afforded the state.

MR. ROY
Well, no, no, we don't have to say that.

MR. GUARISCO
Why ... why don't we?

MR. ROY
Because ...

MR. STINSON
They won't let us.

MR. ROY
... there's just no way that would be allowed. I mean, we don't have to say that, let's not ... the legislature ...

MR. GUARISCO
Well, suppose they give the state twelve and the defense six?

MR. ROY
Well, you'd have ... you'd be denied due process of law.

MR. GUARISCO
Really?

MR. ROY
They'd be favoring the state over the defendant; that ain't no problem there.

MR. A. JACKSON
Mr. Wall.

MR. WALL
You know, with all respect to Mr. Roy and defense lawyers, the longer they can take in selecting juries the more they can charge.

MR. WEISS
They charge by the hour?

MR. WALL
They can cost the state much more. It takes like in state court, it takes forever sometimes to select a jury in a controversial case and an Federal Court where the judge decides they ... this ... as you ... and it doesn't take over a day and I don't want to lengthen the time ... I think defense lawyers have enough prerogatives now; they cost the state enough money in the selection of juries and I don't think any injustice is done by the lack of their prerogatives. And I'm gonna have to disagree with my good friend over there, Mr. Roy.

MR. ROY
Let me answer Mr. Wall, first of all to say that ... for a matter of fact, in Federal Courts you need a unanimous jury every time; state courts it takes nine out of twelve to send you to the pen for ninety-nine years for armed robbery. There's a lot ... there's a lot of difference here. If the judge ... if the federal judge expedites matters, but it takes twelve out of twelve, how come ... you have a hunk of a lot, you know, the rights are not the same. The other thing is that I've found and I'm sure there are not many defense lawyers who spend a lot of time questioning prospective jurors just to antagonize them.

MR. ROY (cont'd)
And if they do, they're fools for doing it and their clients pay for it. All I'm saying is that we should have the right to, if we choose, to question a particular juror pretty closely. And that's ... Shady, it goes back to the same thing, the man whose tail is on the hot seat is the guy I'm interested in, not the judges, not the state costing a little more money.

MR. WALL
Well, "if we" don't need to spell it out that that's ... But ...

MR. ROY
You say, "if we", because of what the Supreme Court has done lately. That's the only reason I brought it up and said "to voir dire and challenge the prospective jurors". Because the Supreme Court has done that, the Supreme Court of Louisiana has become entirely restrictive. A guy was not allowed to ask ... the judge said, "If you ask the question again, I'm gonna hold you in contempt." He was asking a juror, "Could you conscientiously give the presumption of innocence to this client, to this defendant, even if he didn't take the stand?" The judge said, "I'm gonna instruct him about the law ..."

MR. WALL
You need to vote that judge out.

MR. ROY
Oh, yes. But for six years the guy got out of Angola, if he gets the right to vote, he may try to do it.

MR. WALL
Well ...

MR. STINSON
And it's protecting the judge, 'cause some of them got out of Angola and shoot the judge. I would.

MR. WALL
I didn't know you were a violent man, Ford.

MR. STINSON
I would if I had to go to the penitentiary.

MR. WALL
I know Walter Bigby ... Walter Bigby said you were a violent man. And I thought that was just political talk.

MR. STINSON
If I had to go to the penitentiary wrongfully for six years, I would become violent.

MR. GUARISCO
Shady, Shady, do you think that the state has a disadvantage in the criminal proceedings?

MR. WEISS
They've got the ... they've got the ...

MR. WALL
I don't think the state ... certainly the state should not be at an advantage, but I just hate to see anything that will prolong the actions in the courts. I think that one of our greater injustices is because too much time in court now. I don't think that it ... I think that everyone, every defendant has sufficient delays if he ... if he and his lawyer exercise them to protect the innocent, even though you don't have a perfect system. Sometimes you're going to have somebody that gets injustice. That's life.

MR. A. JACKSON
Mr. Stinson.

MR. ROY
No, Shady, not if he pleads guilty.

MR. STINSON
I don't think there's any ... saving money, but you mean ... I'd like to throw it in as to whether we're taking advantage of the state ...

MR. STINSON (cont'd)
state has the sheriff's department, police department ...

MR. WEISS
That's right.

MR. STINSON
... investigators in the district attorney's office ...

MR. ?
F.B.I.

MR. STINSON
... F.B.I. and everything and the poor defendant offentimes with an appointed lawyer if he can't hire. How can they match investigators on that basis? That ...

MR. ?
No way.

MR. STINSON
We agree we need all the possible chances.

MR. ?
No way.

MR. STINSON
That's right.

MR. VICE

It was once ...

MR. S

Question.

MR. VICE

... it was once put this way, you stop and think of the awesome power of the government in the abstract. Then you think of it in a very personalized way like the United States of America vs. Shady Wall. It's sort of frightening.

MR. WALL

It's been that way. I think. It really didn't frighten me but it could be bad.

MR. JENKINS

Shady, what was said ...

MR. VICE

I know it'd intimidate the hell out of you.

MR. WALL

I have the wage and hour section over me now.

... the ... pressing that the challenges afforded the defense are met by the state's ploy to take up time at the expense of the state. And I don't agree with that.

MR. WALL

Well, wait, I don't say it's merely that, but there's many of them that these delays are used for that purpose. I have used it myself. I have used it myself for delays. When I was trying to get in jail, I have used it in jail. I wanted to get it out for six months. I wanted to go away when the legislature was in session. I get more publicity and more exposure, you. Okay. I'll let you all go ahead. I don't want to break up the meeting.

10

MR. JENKINS

I know for the previous question.

MR. JENKINS

Well, the only thing I was gonna say was, that I would like for us to preserve open our existing law and on the project. I think that in ... we have a lot of different ideas in project Article 1, Section 10, and project Article, Section 12. It seems, I think, all jumbled up. I don't think there's well presented. What I would like to see is to take these things in chronological order, step by step, and grant the various protections that would be granted. And I would like you to look at ... I think that before we would adopt Chris' we'd want to consider something like mine on page 15 which is for Section 12. Dealing, first of all, with the arrest itself. And second with the initiation of prosecution, and then with the trial. For example under arrest, we can deal with the fact that he ought to be advised of his legal rights and of the nature of the ... and charged at the accusation and also granting from the very beginning, the right to counsel. And then after we have established these protections with regard to the arrest procedure, go on to the prosecution, we're gonna give him when the prosecution is initiated. Talk about indictment, information, affidavit, the protections for a capital, and then go into the trial, and the fact that he is entitled to a speedy public and impartial trial. Talk about venue. Then talk about trial by a jury and have one article devoted to trial by jury, describing the various protections that we're giving there. And then go on like through with some other protections like with ... under, what I call evidence, but I don't know if that's a good title; the fact that all evidence should be relevant, material and confident; his rights to present a defense; to examine and cross-examine witnesses. Things that ... I think that ... I think it would be a more logical approach. I don't wanna just be tied to my particular proposal, but I think it's a more logical approach than ... than what the project took.

MR. VICE

Well, let me answer Woody's question since it's here in mind. First of all, I think as long as we can ... we can state nearer what the project has, the better off we are with respect to not having too much of a change. But your section 12 as we have is just no way that you can indicate the purpose at the time you arrest him of the nature and cause of the accusation against him, because ...

MR. JENKINS

Is that was before.

MR. VICE

Well, that's what it says.

MR. JENKINS

Is, "shall within thereafter".

MR. VICE

When ... when he's ...

MR. JENKINS

MR. VICE

So, this is a constitutional and what we're trying to do is to protect the individual from the state at transportation stage and leave

some things to ... for instance, the idea of how you're gonna prosecute under your 13. I just think your 13 is too general. It's got to be specific and you're protecting the individual from. "Soon thereafter", you don't want something that is.

11

MR. JENKINS

It's obviously before ...

MR. ROY

What's a serious offense. Every person ... is he charged at that time ...

MR. JENKINS

The courts have, I mean, they'll say that anything punishable by more than six months, I'm sure will probably be their standard. But ...

MR. ROY

Well, okay, then ...

MR. JENKINS

The ...

MR. ROY

... then section thirteen, Woody, says ... my section 12 ... and my next 12 goes into it and it goes into certain and ...

MR. STIRSON

You're combining the sections in your ...

MR. ROY

Right, right.

MR. JENKINS

For instance in your number ...

MR. ROY

14 is essentially what mine is.

MR. JENKINS

You see, you don't tell when he's gonna be informed of the nature and accusation ... nature and cause of the accusation.

MR. ROY

Well, you ...

MR. JENKINS

You'd say "in all criminal prosecutions". You don't say, "Does that mean when the trial comes?" When is he going to be informed under that article?

MR. ROY

Well when he's billed, he's informed.

MR. JENKINS

Well, what I'm saying is that soon after his arrest, he should be informed.

MR. ROY

Informed of what? That he's arrested for what?

MR. JENKINS

The nature and charges ... no, the nature and cause of the accusation against him.

MR. ROY

But you can't, you can change ... you can change any number. They arrest a guy for murder and find out that he really wasn't guilty of that, he was guilty of something else. What would happen then? The guy says, "I go free cause you arrested me for murder and now you're only charging me with manslaughter." Now that ... that doesn't ... I ... mine is to ... to protect the individual so that when he is charged, you precisely tell him what he's charged with and then, I think, it is a little ahead and I should have come first. But in any event, then he gets his chance before the jury in selecting ... selecting the jury.

MR. JENKINS

Well, you even have 12 you start off with a speedy public trial in your ...

12

MR. ROY

All right.

MR. JENKINS

Then you get down to grand juries. I mean, you should talk about grand juries before you talk about your speedy public trial. I mean, let's ... let's try to let it through in a logical fashion so that it ... it's easy to discern what people's rights are. I agree with your basic approach. I think you and I are in a lot of agreement on ...

MR. ROY

Yeah, we got the same ...

MR. JENKINS

I'm just trying to say that I think it would ... I think we should divide it more in chronological order and have the sections ... for instance, I'd like titles on these sections. I don't know what we're gonna title these sections ...

MR. ROY
Well ...

MR. JENKINS
... the way the project has them. There's no real generic name you can understand.

MR. STINSON
Well, the one thing that I see that conflicts between the two of yours, I'd like to ask. You, Chris, said only can they be prosecuted for anything that's punishable by hard labor only by indictment by the grand jury.

MR. ROY
Right. Unless they waive it.

MR. STINSON
Now he says that it can be by indictment or be bill or ...

MR. ROY
Bill of information, by affidavit.

MR. STINSON
Now you don't think everything punishable at hard labor should have to be presented to the grand jury, do you?

MR. ROY
Well, say ... say ... any ... no, not ... not ... we're not talking about relative felonies, we're talking about punishable ...

MR. STINSON
That's what you said.

MR. ROY
... punishable by hard labor ...

MR. STINSON
I know, but you say all felonies requiring punishment at hard labor.

MR. ROY
Right. That's ... that's a jury of twelve, to convict. Come out of twelve to convict or more.

MR. STINSON
You want all of these presented to the grand jury?

MR. ROY
I want ... unless you waive it. You see, it says that. Alright look, "no person shall be actually held in a capital crime ... unless on presentment or indictment by a grand jury except in cases where he's in the militia when training with the militia."

MR. ROY (cont'd)
... or where he specifically waives the necessity of presentment of indictment." Now, we've got ...

MR. STINSON
... in fact a counsel in ... if a man is brought up for arraignment before the judge and he ... it's not based on the grand jury he can refuse to plead at that time unless it's presented to the grand jury?

MR. ROY
No, no, he can waive it.

MR. STINSON
I said unless he waives it.

MR. ROY
Right. If you can't ... if a man is gonna be charged with a felony, for instance, armed robbery, unless he's charged by the grand jury ... if he's charged by a grand jury he may be tried, if not, unless he waives it, he may not be prosecuted on a bill of information by the D.A. You remember, you and I talked about it, and you brought up the fact, suppose a guy wants to plead. He can now ... and I said, "Well", then that's when I added the part "if he waives it". Because there will be a lot of times where a fellow would say, "Look, I'll plead and I'll waive it, but I ... you know, I just think that a man is being ... these D.A.'s have too much arbitrary power in my book.

MR. STINSON
Well now, also on both of you-alls, I want to ask you now. You say, "right to counsel." Well don't you think we should put in there if he's unable to employ one that he will have one appointed. I don't believe it's covered in either one of yours, is it?

MR. ROY
Well, Ford, I think ...

MR. STINSON
"Right to counsel". You usually think that that's one that you have employed.

MR. ROY
I said "to have the assistance of counsel." I didn't say the right to have one.

MR. STINSON
Well, don't you think we should spell it out and say if he financially is unable to that one will be appointed.

MR. ROY
I think that's automatic. I didn't think that's strictly the jurisdiction in any ...

MR. STINSON
If it can only be automatically charged in the federal ...

MR. JENKINS
He has the right to retain counsel if he wants to.

MR. STINSON
I know it, but we want to put in there a provision that if we can't retain them that we would be substituting on the record ...

MR. JENKINS
I didn't ... really I disagree somewhat. I don't believe ...

MR. STINSON
... of the power"

MRS. DUNLAP
... of the lawyer? Well I thought they already had that.

MR. JENKINS
Who on earth would he want to put that in the Bill of Rights. My goodness, it would be going to force some people to represent others."

MRS. DUNLAP
I thought we did that now, don't we, Shady?

MR. JENKINS
It's not in our Bill of Rights.

MRS. DUNLAP
I mean not in the Bill of Rights, but in the courts.

MR. STINSON
This should guarantee that man that he's gonna be entitled to a lawyer. I think that's ...

MR. ROY
I think he is.

MRS. DUNLAP
Well, I mean, I'm sorry, but we have more than that.

MR. ROY
Well he's not in this, in the constitution he's not. I mean we ...

MR. JENKINS
If we say ...

MR. ROY
Have the assistance ...

MR. STINSON
We're talking what rights should be guaranteed a person. I think that's the greatest right a person can be guaranteed is to be assured he's gonna have a lawyer if he can't pay for it.

MR. JENKINS
Well, the purpose of this Bill of Rights is to protect individuals against government. And that's why they should be guaranteed the right to retain counsel. But you can't say that to protect ... that you can force some one man to serve at another man's pleasure, that's a protection not ...

MR. STINSON
We're not saying that he can force his to. We're saying that the court will appoint someone. We're not saying who.

MR. JENKINS
Oh, but we can't ...

MR. STINSON
Well ...

MR. JENKINS
You're not going to say who in your constitution but ...

MR. STINSON
Well if there are one or two lawyers ... there are one or two lawyers that don't want to free of charge represent people, well fine, but the great majority of us are willing to do that.

MR. ROY
Well, of course.

MR. STINSON
... Shouldn't he be supposed to.

MR. ROY
I said suppose you pick up ... and you arrest ... you know you can arrest people that are ...

MR. ROY
How does it read?

MR. A. JACKSON
The right to ... Will you read it, Walter?

MR. LANDRY
Do you accept this amendment ...

MR. A. JACKSON
You accept it?

MR. LANDRY
Okay. The ... we had an original motion by Mr. Roy which is his original one, Number 11.

MR. ROY
11.

MR. LANDRY
Eleven ... and then when we had the amendment by Mr. ... then we had the proposal by Mr. Jenkins. Then Mr. Jenkins moved to amend Mr. Roy's to read as follows ...

MR. JENKINS
Somebody took what we have now ...

MR. LANDRY
... well it's ... and then Mr. ... Doctor Weiss moved to amend that. And the total thing reads as follows: "When a person has been arrested he shall immediately be advised of his legal rights. In all criminal prosecutions the accused shall be permitted to consult with counsel and to have the assistance of counsel of his own choosing, or appointed by the court in indigent cases," ...

MR. ROY
What about "of his choice" instead "of his own choosing" ... "but the assistance of counsel of his choice"?

MR. LANDRY
Of his choice ...

MRS. DUNLAP
Or ...

MR. LANDRY
... "or appointed by the court in indigent cases, at each stage of the prosecution, if he has been charged with a serious offense."

MR. ROY
You have our first one ...

MR. ROY
I don't accept that language.

MR. STINSON
Don't you think that ...

MR. ROY
Not that line.

MR. STINSON
... each stage should be fitted in at the beginning? One thing I wanted to ask you, it started out, says "When a person has been arrested," how ... how do you all define "arrested"? I think it should read, "When he's taken into custody." Because a lot of times they don't arrest them at the time they're picked up for investigation.

MR. ROY
Yea, they arrest them later.

MR. STINSON
And it's they ... their protection is when they are taken into custody, not when they're arrested, don't you think?

MRS. DUNLAP
Should know ... immediately, that's true.

MR. WEISS
Is detained?

MR. STINSON
Detained or taken into custody. Custody, I think, would do it. Because a lot of times they don't arrest them for maybe ... they've been held ... hold them for ten days before they arrest them.

MRS. DUNLAP
Before they ever book them, yea.

MR. JENKINS
I think that the courts have interpreted the word "arrest" very broadly. As soon as you take them into custody if it's an accusatory thing, they arrest.

MR. ROY
Once it become accusatory ...

MR. STINSON
I've fought two cases on that point, they don't ... that until they ...

MR. VICK
Let's face it, Lord, whenever a man's lost freedom of movement, he's under arrest.

MR. STINSON
You mean because of a bench rule, law ...

MR. WEISS
Oh, yea. I think they have.

MR. ROY
Alright the other thing that I can't ... I'm afraid that ...

MR. VICK
They certainly have.

MR. ROY
... I'm afraid that the way it now reads, is that the ... that the man will have the chance of making the court appoint an indigent ... what occurred in South.

MR. VICK
... that's ... that's ...

MR. ROY
Well, that's what it says on here if you read it.

MR. WEISS
... be appointed ...

MR. ROY
Or ... well ...

MR. WEISS
Appointed by the court ...

MR. STINSON
That occurred about four years ago but they held this man and said they questioned him for three days.

MR. WEISS
That's the point exactly.

MR. STINSON
Questioned him ...

MR. ROY
When a person ... when a person ... "every person shall be entitled to assistance of counsel of his choice or appointed."

MR. WEISS
"Or appointed by the court in indigent cases." No, that's a phrase unto itself.

MR. JENKINS
Why don't we put, "At each stage of the prosecution," at the beginning of that sentence?

MR. STINSON
Yea. That's where I think it should be; that's what I said.

MR. WEISS
No that's certainly not true, you must interpret that it doesn't say that.

MR. JENKINS
"At all stages of the prosecution every person shall be entitled to assistance of counsel of his choice or appointed by the court in indigent cases if he is charged with a serious offense."

MR. ROY
Well, ...

MR. JENKINS
I don't see why we should appoint a ... put "appointed by the ..."

MR. STINSON
Well now, do you think that ... you still use that "serious offense" now, don't you think he should ... or ... clarify that "serious offense"?

MR. JENKINS
I think, when the ... when we say "serious offense" the courts would judge that as anything that's punishable by six months or more. I think that's the way they interpret it.

MR. VICK
Yea, but ...

MR. ROY
That's a ...

...the very least from the standpoint of the public at that point.

...waiter Roman.

...waiter.

...waiter.

...waiter.

...waiter.

MR. VICK: ...right? Not under six.

MR. LANDREY:

...prison or more.

MR. VICK:

Yes, don't think we oughta put in there ...

MR. LANDREY:

...prison or more.

MR. STINSON:

...he is subject to ...

MR. VICK:

Right.

MR. STINSON:

...jail ... prison.

MR. VICK:

Law and I discussed that. Any time there's jail ... any time there's a potential jail, that's serious these days. Now, it used to be serious with a year in the penitentiary, and the scale has been coming down and down and down and now any time ...

MR. STINSON:

Well, do you think we should use the word "serious"?

MR. VICK:

It's cited in your ... it's cited in your brief, Argensinger the most recent supreme court pronouncement, any time.

MR. STINSON:

So, I'm talking about, should we use the word "serious" here or something more ...

MR. ROY:

Well, I think any time a guy is gonna go to jail it's serious and should be so.

MR. STINSON:

I know, but I ...

MR. ROY:

If that's what it means. That's what it means, Ford!

MR. LANDREY:

Okay, if you look at the memo, the courts have held that you are entitled to a right to counsel if you are going to be in prison, even if it's for one day, you are entitled to a right of counsel. Now, you're entitled to a jury trial if you're subject to imprisonment for up to six months, or for six months.

MR. ROY:

...jail ...

MR. VICK:

...jail ...

MR. ROY:

...jail ...

MR. VICK:

...jail ...

MR. ROY:

...jail ...

MR. VICK:

...jail ...

MR. ROY:

...jail ...

MR. VICK:

I mean, if we serious, don't use that we oughta spell it out.

MR. VICK:

He's entitled to imprisonment, it should be considered a serious crime.

MR. ROY:

But, if serious ... I don't don't see that that the ...

MR. VICK:

Don't you think that it could be more explicit?

MR. JENKINS:

Okay, what would you like?

MR. STINSON:

Instead of saying "serious".

MR. ROY:

Subject to ...

MR. VICK:

Just subject to ...

MR. ROY:

Subject to jail.

MR. WEISS:

Imprisonment over two weeks.

MR. VICK:

Subject to imprisonment.

MR. ROY:

Subject to imprisonment.

MR. VICK:

Why certainly. Because that's the law of the land.

MR. JENKINS:

If you're put in parish jail, is that imprisonment?

MR. VICK:

Yes, sir. One day. One day in the ...

MR. STINSON:

Not for appointment of counsel though, is he?

MR. VICK:

Sir?

MR. STINSON:

Our court only appoints it if it's possible to be over six months in indigent cases.

MR. VICK:

Well, they're not following Argensinger, because that was a traffic case.

MR. WEISS:

Point of information. Suppose you're fined for \$50,000, that's not serious.

25

MR. LANDREY:

So, Roman told over ... as serious.

MR. VICK:

Yes, sure, well, of course.

MR. WEISS:

Well, I mean, but if you're just for imprisonment then you don't get representation.

MR. JENKINS:

Well, that is the court ...

MR. VICK:

Well see, they made a difference there, Doctor. You see that's the whole point. Imprisonment is a very, very serious business. Much more serious than a mere monetary cost in the eyes of the Supreme Court. But, they in a ... wait a minute ... they put it up five hundred bucks or over. You gotta have a jury. You gotta have a jury trial.

MR. JENKINS:

Well, in traffic cases now?

MR. VICK:

Yes, sir. Or in ... if you ... if there is a potential jail sentence ...

MR. LANDREY:

No, not potential, if it's actual.

MR. VICK:

Actually ...

MR. STINSON:

... mandatory?

MR. LANDREY:

Yes, if it's actually imposed and he did not have counsel, it was thrown out.

MR. STINSON:

Well, we never do that at home. The only time we do it is ...

MR. VICK:

Ford, you know, it's just incredible that judges, you know, that who have been on the bench for many, many years, you know, they don't follow the law.

MR. STINSON
Man by the time they did that they'd be ...

MR. WEISS
That's why the constitution oughta be simpler. So that even judges could understand.

MR. STINSON
And it should be amended that doctors can serve as judges.

MR. WEISS
Well, we ... I got ...

MR. VICK
Well, as I recall it ...

MR. ROY
Where are we?

MR. VICK
... you correct me if I'm wrong but was a doctor and also a judge.

MR. ROY
That's right

MR. VICK
All you need know ...

MR. ROY
They go astray sometimes.

MR. ROY
Where are we?

MRS. DUNLAP
I'm getting a headache. Let's move, come on.

MR. STINSON
With doctors.

MR. JENKINS
I think what we got right now ...

MRS. DUNLAP
Serious offense.

MR. JENKINS
Want me to read it?

MR. ROY
Yea.

MR. JENKINS
"When a person has been arrested he shall immediately be advised of his legal rights. In all criminal prosecutions the accused shall be informed of the nature and cause of the accusation against him. At each stage of the prosecution every person shall be entitled to assistance of counsel of his choice or appointed by the court in indigent cases if he is charged with a serious offense."

MR. STINSON
Now, when did you say he would be advised? I didn't ...

MR. ROY
On arrest.

MR. JENKINS
Advised of his legal rights on arrest.

MRS. DUNLAP
When his ...

MR. STINSON
Well now, I'm still worried about this word "arrest". I think it should be "in custody", "taken into custody".

MR. JENKINS
Well, if you are taken into custody, though, and the thing is not accusatory at that point, I think the courts have held they don't have to be advised ...

MR. ROY
Yea, suppose you voluntarily ...

MR. STINSON
Yea, but ...

MR. ROY
... an arrest ... presupposes a ... that you ... without your permission, you're picked up. But you could ... they could come up there and say, "Now look, Mr. Stinson, how about walking with us to the police station, we wanta talk to you about something." At that stage you are in their custody, but if you voluntarily go, but you are not under arrest. Is that ... is that about right?

MR. JENKINS
You are not under their custody.

MR. STINSON
So you suppose you got ...

MR. ROY
All that stage ...

MR. STINSON
I don't see how ...

MR. ROY
No, it's at the stage ...

(END OF TAPES)

MR. VICK
... and ...

MR. ROY
Alright, let's let ...

MR. VICK
... and ...

MR. JENKINS
Okay, what do you say?

MR. ROY
Do you say when a person is ...

MR. JENKINS
Well, what's your suggestion, Kendall?

MR. VICK
Well, wait a minute, wait a minute.

MR. ROY
He agrees with you. What's your suggestion now? When a person has been ... becomes a suspect ...

MR. VICK
Of course, you heard what I said before.

MR. ROY
Yea, but that doesn't apply now.

MR. VICK
Well, wait a minute, you heard what I said before and that is when a person ...

MR. ROY
is questioned.

MR. VICK
Now, wait a minute now. I don't ... I don't want to use this language in the constitution, but nevertheless, the import is still there and I think we have to use constitutional language to define it, and that is when a person has lost the freedom of movement.

MR. WEISS
How about detention? Would it not ...

MR. VICK
You see. In other words, let's take ...

MRS. DUNLAP
If you don't ...

MR. VICK
"Well now, you have to come to the station." Well then, what's that?

MR. DUNLAP
Arrest. That's arrest. That's right ...

MR. VICK
You'd better believe, you'd better believe, what's arrested ...

MR. LANDRY: ... what it means at this time.

MR. STINSON: ...

MR. VICK: ...

MR. VICK: ... what I said, Walter, to come up with.

MR. LANDRY: ... "detained" is the word that's usually used.

MR. STINSON: ...

MR. ROY: ...

MR. STINSON: ...

MR. ROY: ... The person has been detained.

MR. STINSON: ...

MR. VICK: ...

MR. ROY: ... Well, no, that would include arrested. "Detained" is a much broader word than "arrested".

MR. STINSON: ... The Bill of Rights should place different emphasis on rights. But I think that is the most important right that we're gonna consider.

MR. ROY: ... Right. "When a person has been detained he shall immediately be advised of his legal rights." Okay? Alright.

MR. VICK: ... And what harm is there? You know, this is the thing that's been a part of the common law of England since the Magna Carta and it's just incredible that Miranda had to give us that right in this country. Why that was never incorporated into the laws of the United States I will not know. But I mean it is so simple to inform a man of his rights. And in many cases their ... the suspect is gonna ...

MR. WEISS: ... Tell it anyway.

MR. VICK: ... right. The Catharsis, the psychological burden that a person has is "Gosh, I mean, we've got the wrong guy," or "Wait, let me tell you my side." They in many ... they've found, studies upon studies, I'm sure you would agree and could probably pull out of the files without any trouble. Study upon study has found that Miranda had no effect.

MR. VICK: ... That's right.

MR. VICK: ... Or very little effect, let me put it that way. Very, very little.

MR. ROY: ... And the only ones it had an effect on were the poor people who didn't know any better anyway. Because the people with mouthpieces never say anything anyway.

MR. A. JAMESON: ... Alright. We're ready to vote.

MR. ROY: ...

MR. A. JAMESON: ...

MR. STINSON: ... You didn't hear the grand jury in this, did you?

MR. ROY: ...

MR. A. JAMESON: ... Want to read it? Want Walter to read it before you vote on it?

MR. LANDRY: ... I'll try. Now, "When a person has been detained he shall immediately be advised of his legal rights."

MR. ROY: ... Now why don't we put a comma instead of so many sentences? "And in all ..."

MR. DUNLAP: ... "Criminal prosecutions."

MR. ROY: ... "Criminal prosecutions the accused shall be provided, informed of the nature ... nature and the cause of accusation"

MR. LANDRY: ... We were talking at one time about detention and another time about a criminal prosecution; they are different things. He can put an "and" ...

MR. STINSON: ... Do you think we should put detained for what purpose?

MR. ROY: ... No, anything.

MR. DUNLAP: ... Or by whom?

MR. LANDRY: ... Do you want the comma or a period?

MR. ROY: ... Well, you can't ... we're talking ... this is ... this involves detention by the state. It's got to be somebody else and they want to say it, they can say it. There's no problem there.

MR. JENKINS: ... I think we need a period there.

MR. ROY: ... Alright, alright, let's put a period. Okay.

MR. LANDRY: ... Alright. "When a person has been detained he shall immediately be advised of his legal rights. In all criminal prosecutions the accused shall be precisely informed of the nature and cause of the accusation against him. At each stage of the prosecution every person shall be entitled to assistance of counsel of his choice or appointed by the court in indigent cases if he is charged with a serious offense."

MR. STINSON: ... You say, "at all stages of the prosecution?"

MR. DUNLAP: ... "At each stage of the prosecution."

MR. JENKINS: ... "Each stage."

MR. STINSON: ... Well, what is ... when does prosecution start?

MR. ROY: ... Okay not, "At every stage of the prosecution?"

MR. STINSON: ... I think that would be better than "prosecution."

MR. VICK: ...

MR. STINSON: ... "Every stage of the proceeding."

MR. DUNLAP: ... "At every stage" ...

MR. LANDRY: ... "Of the proceedings."

MR. ROY: ... Why don't we put ...

MR. STINSON: ... Prosecution ...

MR. ROY: ... Why don't we then change and put, "All persons charged with serious offenses shall be entitled to assistance of counsel" instead of rewording it ...

MR. JENKINS: ... No, let me ... let me say this, I was just gonna point out that. I think that that clause, "If he is charged with a serious offense," has to modify "appointed by the court in indigent cases." Because a person should have an absolute right to have assistance of counsel of his choice no matter what the seriousness of the offense is. Follow what I'm saying? See if you put it where you just said, Chris, ...

MR. ROY: ...

MR. JENKINS: ... you'll be making it clear that only in serious offenses can you ... do you have a right to counsel assistance.

MR. ROY: ... Alright, "At all stages of the proceedings every person shall be entitled to assistance of counsel ..."

MR. JENKINS
of his choice.

MR. ROY
... "of his choice and in indigent cases ...

MR. STINSON
You said it was in indigent ... "in all cases" ...

MR. JENKINS
The way we had it is alright, isn't it?

MR. ROY
"And at every stage ... at every stage of the proceedings every person shall be entitled to assistance of counsel of his choice." I don't know why we have to put "of his choice."

MR. JENKINS
I think the important reason we need to is that we always ... we want to make it clear that a person has a right to designate who among all the lawyers he will want to retain. That you do have a right to retain people as a counsel, that the court ... that the court or the state can't just say that this particular person will represent you and you don't have a right to get somebody else. I don't know, that's the way it is in Russia. You are assigned an attorney. And you can't choose somebody else.

35

MR. LANDRY
The important reason ... because technical issue? You are only giving the right to counsel in serious offenses. You don't have the right to choose anybody at all."

MR. JENKINS
No, we're giving the right to counsel in all cases. We're giving the right to have appointed counsel in indigent cases if that person is charged with a serious offense.

MR. ROY
Right. Alright, let's go with it then, again.

MR. A. JACKSON
You ready now?

MR. LANDRY
Alright, then we don't have a comma after "cases" then, right?

MR. JENKINS
We didn't have one.

MR. LANDRY
"Or appointed by the court in indigent cases if", in other words, that ... that ... that stays together, there's no comma after "cases" because otherwise it'd be ... modify ...

MR. ROY
That's good. "At all stages", after "him" we go then to "at all stages" what? "At all stages of the proceedings".

MR. LANDRY
"Proceedings", yes.

MR. ROY
"Of the proceedings."

MR. LANDRY
Okay. Shall I read them now?

MR. WEISS
"Every person shall."

MR. LANDRY
"When a person has been arrested ... when a person has been detained".

MR. ROY
Let's go with "at all stages".

MR. LANDRY
... "detained ... he shall ... he shall be advised of his legal rights".

MR. JENKINS
Well let me ... let me raise a point. Let me raise a point, with respect to "proceedings". Now is it "at each stage of the proceedings", don't you think that's too restrictive, because, does that mean ...

MR. ROY
At all stages.

MR. JENKINS
... for instance between arraignment and trial, is that a stage of the proceeding?

MR. ROY
At all stages of the proceedings.

MR. JENKINS
Is that interim period, is that a stage of the proceedings? Does the accused have a right to confer with his counsel then?

36

MR. ROY
... "at all stages" ...

MR. LANDRY
... "at all stages" ...

MR. VICK
... "at all stages" ...

MR. HARRIS
You want the court to appoint counsel, ...

MR. STINSON
Well, the question is, are the proceedings serious?

MR. LANDRY
Well, you can bring motion before arraignment.

MR. VICK
Under the law of Louisiana, Walter, does one at arraignment?

MR. STINSON
It starts with arraignment.

MR. LANDRY
Correct.

MR. STINSON
On arraignment, I think is when the ...

MR. ROY
But the proceedings start before that.

MR. LANDRY
You can bring motions before arraignment.

MR. STINSON
The prosecution, I think.

MR. ROY
Yes, but we are using "proceedings" which is as broad as you can get, isn't it?

MR. STINSON
On the D.A.'s part, couldn't we use "prosecution"?

MR. LANDRY
Okay, now, well ...

MR. ROY
All stages of the ...

MR. LANDRY
... proceedings will be ... of the ... the accusation against him. At all stages of the proceedings.

MR. ROY
"Proceedings".

MR. LANDRY
"Proceedings" yes plural, "every person shall be entitled to assistance of counsel of his choice, or appointed by the court in indigent cases if he is charged with a serious offense."

MR. ?
"Court appointed", I think is ... or "court appointed", doesn't want ...

MR. STINSON
Chris, you don't think you should finish when they're supposed to give you the ...

MR. ROY
Not at the present.

MR. STINSON
... charge against him.

MR. LANDRY
Okay, as that ...

MR. ROY
Well they got ... when they first detain you they've got ... your rights and the only time they give you a charge is ... it's up there ... "In all criminal prosecutions, when they first detain you ...

MR. VICK
Call the question.

MR. A. JACKSON
Are you ready to vote?

MR. ?
All in favor of the proposed amendment ... proposal as amended, let it be known by saying "aye". Those opposed, "no". The motion is carried.

[879]

MR. JENKINS: "Necessarily punishable by..." The person shall be held accountable for capital crimes or felonies necessarily punishable by hard labor... I just think that's a little better language. "Necessarily punishable by hard labor."

MR. ROY: Hold on. Well, let me see if that takes care... the substance of it is that, of course, in any crime punishable at hard labor you... is by indictment only. Now, we know because that said of it.

MR. JENKINS: I'm just... I'm just... I think this here...

MR. ROY: It's not taken out of it.

MR. JENKINS: ... usual language "necessarily punishable by hard labor" in there.

MR. ROY: Okay.

MR. STINSON: You're leaving the indictment requirement...

MR. JENKINS: I'm not... I'm not dealing with this substance. Now, I want to raise the question, are these acceptable to you?

MR. ROY: Yeah, so far.

MR. JENKINS: On this thing about except in cases arising in a militia when in actual service in time of war.... Do we really need that? I mean, why do we need that?

MR. ROY: Because... well, I don't know but I was following the old stuff and I just... in case it would ever come up, I...

MR. VICK: Well, it's the same old humbug. I don't believe that militia belongs in the right to bear arms either. I think... what do you say, Walter, do we have a militia in this state?

MR. LANDRY: Well, I think whenever you're talking about war, war or public danger, you might have a federal supervision... it'll be in federal court to start with.

MR. ROY: Alright, well I'll eliminate that.

MR. LANDRY: In all cases. I don't think its necessary either in...

MR. ROY: Alright. Okay.

MR. WEISS: Point of information, this policeman you tried, wasn't this a public danger, this business...

MR. LANDRY: Yeah, but the courts are open...

46

MR. JENKINS: Same old, same old...

MR. JENKINS: Who can't we just... who can't we...

MR. VICK: ... on the right of our, Walter

MR. LANDRY: Fudge?

MR. VICK: I say, you gonna let the courts remain open in time of war?

MR. LANDRY: I imagine they would be.

MR. VICK: Okay.

MR. JENKINS: Why don't we just delete that...

MR. ROY: Let's delete "except in cases arising in a militia in actual times of war."

MR. JENKINS: The language says, it simply says... "except when waived."

MR. ROY: Alright.

MR. JENKINS: I don't know...

MR. ROY: Unless he specified otherwise... depends on specific cases... necessity of presentment or indictment.

MR. JENKINS: ... decides on how because... waived...

MR. ROY: Alright.

MR. JENKINS: ... presentment and indictment...

MR. ROY: ... "hard labor except on". "Who can't we put 'except on presentment or indictment'?" Kendall.

MR. VICK: "No."

MR. ROY: "Presentment". Do we need that word, can't we just use "indictment"?

MR. LANDRY: You don't need that either. No, it's not used anymore.

MR. ROY: "Except... except on indictment by a grand jury."

MR. JENKINS: Well, we want the grand jury to have the power to initiate prosecution, don't we?

MR. ROY: Right. Right. Yeah.

MR. JENKINS: That would be presentment, wouldn't it?

47

MR. ROY: No, no, it said "presentment or indictment." Under the old law apparently presentment was the same as an indictment.

MR. LANDRY: It's under the civil code now.

MR. JENKINS: They can't remove presentment?

MR. LANDRY: They dropped the presentment.

MR. VICK: What's it doing in the civil code?

MR. LANDRY: It's... it's... they don't use the word "presentment" anymore.

MR. VICK: I say, what's it doing in the civil code? You mean criminal code?

MR. LANDRY: I mean the criminal code. It was dropped out of the criminal code.

MR. JENKINS: Well, in other words, they can initiate prosecution, and still call an indictment?

MR. LANDRY: Yes, yes.

MR. VICK: Ossie might be sneaking up on us there.

MR. ROY: "At hard labor except on indictment by a grand jury unless he specifically waives the necessity of the indictment."

MR. : Shortens it too.

MRS. DUNLAP: Understand an "unless" there?

MR. STINSON: Could we discuss that... I'm glad to have the waiver, but do you think it should be necessary for every felony to be presented to the grand jury? There's so many... as defense counsel, I'd rather take... have two shots at it than one.

MR. ROY: What are you talking about, two?

MR. STINSON: That's the language ... some language the criminal code uses.
That's the language we're going to use, and I'm speaking of my own parish.
The grand jury is going to be composed of members of the bar who are as many
as possible.

MR. ROY: It depends though, Earl, whether the D.A. chooses to present to the
grand jury. It may mean that the crimes now that the D.A. is billing on
his own as armed robbery ...

MR. STINSON:
This is all ...

MR. ROY:
Now, no, this is punishable at ... necessarily punishable. Your
relative felonies ... five man jury will not be under there. The
law says it's ... don't ... right on that, Randall?

MR. STINSON:
Burglary ...

MR. ROY:
Armed, yea, aggravated burglary, not simple burglary.

MR. STINSON:
That's over certain of what value.

MR. ROY:
Well, that's over what? So it's ... alright ... crimes necessarily
punishable at hard labor. What I'm trying ... felonies necessarily
punishable at hard labor are those felonies that mandate a sentence at
Angola. And that requires nine out of twelve or twelve out of twelve at
a jury trial. Now many crimes are that; there's armed robbery. ...

MR. VICK:
Five. Five ...

MR. ROY:
Aggravated burglary. Let's take others in account.

MR. STINSON:
Suppose you say "with or without" now, ...

MR. ROY:
No, I didn't say with or without.

MR. STINSON:
No, you said at hard labor. You should put some qualifying statement
before that. Mandatory hard labor?

MR. ROY:
No, I said in five man juries. And your with or without felonies.
That's your five man jury. The D.A. can bill ...

MR. STINSON:
But you just said punishable at hard labor. You've got to put ...

MR. ROY:
No, no. One that is with or without hard labor is not necessarily
punishable at hard labor. Am I right? Relative felonies ...

MR. VICK:
Relative felonies, yes.

MR. ROY:
... are not punishable, necessarily punishable at hard labor.
They're included. The D.A. may bill.

MR. STINSON:
Well, I think we should qualify them so they're sure ... sure that
we mean that. Don't you?

MR. ROY:
There's no problem.

MR. LANDRY:
It says "requiring punishment at hard labor."

MR. JENKINS:
Can I make two more technical amendments?

MR. ROY:
Now wait now, now wait now. Moody wanted to amend that to say
"necessarily punishable." Does that ... that's the same as requiring?

MR. LANDRY:
Leave it like it is?

MR. ROY:
Yes.

MR. JENKINS:
And here's what I think about this proposal. I really ... I was
sympathetic to the way ...

MR. VICK:
The application for his trial is made in the form of a motion, you
see.

MR. JENKINS

I'm sympathetic to what Chris is trying to do, really. I don't think I have enough information on it. And I think this will be one good thing when the District Attorneys come, they should ... and we should have hearings on it. So, what I'm gonna propose is if this gets a majority vote, I'm gonna propose a minority report which would differ from Chris' proposition with regard to the fact that only grand juries could initiate indictments requiring punishment at hard labor. I'm gonna keep ... try to conform to his language except in that regard. And if I have two other people that agree with me well we can make that a minority report. And then, this is just gonna be tentative because I'd like to see what they have to say about it.

MR. ROY

We can send it to the D.A.s that we invite in advance and let them come here and see what the heck they're gonna say.

MRS. DUNLAP

Let's see what they can get out of it.

MR. ROY

Well, let's call ...

MR. STINSON

... check on it. "No person shall be twice ...", was that used in the present law?

MR. ROY

Yes.

MR. STINSON

Suppose you charge him three times?

MR. ROY

Well, I think ... well ... that would have been ... I followed the language ...

MR. STINSON

More than once put in jail.

MR. ROY

No, no, no, I followed the language of the ... of the ...

MR. STINSON

It's twice in the language?

MR. ROY

Yes. And that's the language and that's ...

51

MR. STINSON

Supposed you're using double jeopardy enough.

MR. ROY

... been that way ... been that way for a thousand years.

MR. STINSON

They call it ... use the word "twice".

MR. ROY

Yes.

MR. GUARISCO

Why don't we get criminals who are convicted in each category to come testify before us.

MR. ROY

No.

MR. GUARISCO

Like the District Attorneys are gonna ...

MR. JENKINS

There's another problem in that regard that I think is a very serious problem with regard to double jeopardy, and that is the propensity of different governments to try and punish people for one act which are considered to be crimes against different problems and I think that is a terrible injustice.

MR. ROY

The supreme court has done away with that.

MR. JENKINS

You know.

MR. STINSON

The supreme court has ...

MR. VICK

No, it has not. Only in very ...

MR. JENKINS

Here a person commits one offense and he can be tried by both the federal government and the state government or by a local government.

MR. VICK

It used to be ... well it used to be by local government ...

MR. ROY

You mean three?

MR. JENKINS

That's right.

MR. VICK

Now ... now, I'm gonna propose ...

MR. JENKINS

But, uh ...

MR. STINSON

You use the word "twice".

MR. JENKINS

Couldn't we limit that to "twice" the ...

MR. ROY

"No person shall be twice put in jeopardy."

MR. STINSON

So that if ... if, for instance, the federal government tried a person for this offense, we should not try them for it again, should we? I mean, now, some states should have ... some states should have ... in this jurisdiction ...

MR. ?

Are we ...

MR. ROY

It begins when the first jury acquits.

MR. VICK

Well the problem ... the problem ...

MR. GUARISCO

Well, I don't know. Maybe ... maybe it began before that, you know, really.

MR. VICK

... it's a ... it's a fairly typical one. That's why, of course, the supreme court says that very obviously a municipality is not a sovereign when they have a state, it's a creature of the state, it's a corporate entity. But, aside from that, you know, I think you're really, you know, it's a matter of ... of really of philosophy, and I don't know how to answer that, quite frankly. And I don't know if we did that, I just don't know how it would ... how it would wash, do you? I mean ...

MR. ?

I'd say that the state couldn't prevent the feds from trying.

MR. VICK

No.

MR. ?

... trying them ...

MR. JENKINS

No, but we could ...

MR. ?

... another crime, of course ...

MR. ?

You could prevent the state from trying someone who has been acquitted by the feds.

MR. VICK

Well, no, acquitted now, found guilty.

MR. ?

Found guilty.

MR. VICK

You see, now there you've got the other side of the coin. What if a guy was acquitted of something by the feds and the state wanted to bash at him too?

MR. JENKINS

Well, that happens.

MR. VICK

Sure it happens. I mean, I think that's ...

MR. JENKINS

It doesn't seem just to me.

MR. VICK

... that requires some reflection. I think from a standpoint of fair play, it's bothered scholars for years, this question of multiple sovereigns.

MR. ?

To answer Vick's question, could we just change the word "twice" to "again"? And that would be ...

MR. ROY

So ... we ... we ...

MR. JENKINS: ... person shall more than once.

MR. ROY: You're talking about ...

MR. STINSON: More than once.

MR. GRANISON: Don't do it again.

MR. JENKINS: ... his rights they came from ...

MR. ROY: They can be ... twice can be ...

MRS. SONTAT: I know it can't be ...

MR. STINSON: Let me ask a point, Chris, you said when does jeopardy start, suppose you have a charge against the person and the district attorney nol-prosses it?

MR. ROY: That's uh ...

MR. VICK: When the first ...

MR. ROY: After the jury is sworn then he's ...

MR. STINSON: I'm talking about a misdemeanor ...

MR. ROY: Well, I know it, jeopardy never attached.

MR. STINSON: You're wrong. But you know they object to the nol-pros.

MR. ROY: Oh, yea.

MR. STINSON: If they do, then it is.

MR. ROY: Because that's because you have a right to a speedy trial.

MR. STINSON: Yea. You can object and if they still go ahead they can't charge him again. If you don't object they can charge him the next day if they want to.

MR. ROY: But that's on the old speedy trial issue not the fact that jeopardy ... you have to add a ...

MR. STINSON: You can jeopardize ...

MR. ROY: ... you have to add an ingredient to it.

MR. STINSON: But they can't charge him again though if you object to their dismissing the charges.

MR. ROY: Right. That was that Mississippi case where they kept doing this to that man ... and then they ... and then they went on and on for about three years.

MR. STINSON: ...

MR. STINSON: It was ... about a federal and the state charge, of course, at the same time ... the state and then on the federal, we, of course, wouldn't mean anything but we could maybe put it if he's convicted on a federal that he can't be tried for the state charges if that's ...

MR. VICK: Should we consider it "twice in jeopardy", as the man ... Well, I think it's an area that requires some more reflection than we are prepared to give at this afternoon.

MR. ROY: Yea.

MR. VICK: Because it's ...

MR. STINSON: Why don't we ask Walter to look into that and see what we can ...

MR. STINSON: In other words, if we could prohibit it, if he's already been prosecuted in the federal.

MR. JENKINS: You see, the problem, I think that comes in defining "for the same offense". Because someone may be charged and acquitted of mail fraud in the federal courts and the state charge may be theft, well I mean, is it the same offense? You've got a real problem there. Could we ask Walter to look into that and see if there's something we could do in that, but we'll go ahead and adopt something now ...

MR. ROY: Yea.

MR. JENKINS: ... and let him look into it? Would that be alright? Well here's the minority report I'm gonna propose, I guess it would be a minority report.

MR. STINSON: ... the grand jury ...

MR. JENKINS: ... suggest in that regard ...

MR. ROY: What, what?

MR. JENKINS: Why don't we adopt this?

MR. WEISS: At a point of information, they're not put in jeopardy of life or liberty, but you could charge them twenty thousand dollars for the same offense, isn't that right? Their liberty is not affected nor their life; they'll have to pay for it.

MR. ROY: ... when you are tried, Dr. Weiss, there are two things that can happen to you, that are implicit in every charge, either that you get a jail sentence or you get a fine and/or both. Therefore, your liberty has been put in jeopardy the first time. There's no case and there's no law that is simply punishable by a fine only. No violation ...

MR. WEISS: Oh yea, sure there is, if I'm speeding ... if I'm speeding, I think that's a ...

MR. ROY: And as to ...

MR. WEISS: If I can't put the fine.

MR. ROY: Well, yes, liberty is in jeopardy when you can go to jail.

MR. STINSON: Well that's what I'm trying to find, it will come under ...

MR. WEISS: ... my liberty is not impaired. The law of retaliation comes into play, doesn't it?

MR. STINSON: The law of what? There's nothing that just has a fine?

MR. WEISS: "Lex talionis". In other words you substitute ...

MR. ROY: What ... what crime is punishable only by a fine?

MR. STINSON: City ordinances.

MR. WEISS: Sure.

MR. STINSON: Some city ordinances just have a fine.

MR. VICK: Some city ordinances. Some ... I think some technical crimes in anti-trust and what have you ...

MR. WEISS: Sure, you can steal a million dollars and they'll only charge you for fifty thousand or something.

MR. VICK: Criminal damages and things like that ...

MR. JENKINS: Well, that's civil ... that's civil, that's right.

MR. STINSON: There's never been a fine for fifty thousand.

MR. WEISS: On a million?

MR. ROY: "No person shall be put in jeopardy ...

On a grand jury, it comes out, "The grand jury returns so many true bills. John Jones charged with murder." That's what you see. And it has an influence on that petit jury. I don't care what they say. The fact that he's been there and he's been indicted by a grand jury, it does go against him. And it's very important that we be very careful on these things because it isn't a question of trying to get the criminals out; it's trying to ... I've always argued to the jury, it's best to let fifty criminals go than have one innocent person sent to the electric chair or sent to the penitentiary.

MR. J. : I don't know if I agree with that.

MR. STINSON : You don't ...

MR. J. : They solved that in my section the supreme court of the United States solved it in our section. They changed venues.

MR. STINSON : Changed venues.

MR. J. : All you have to do is move them, because you can't influence, you know, like television ...

MR. ROY : You're talking about the Redos ... you're talking about the Redos case. A long time ago.

MR. GUARISCO : Let's don't tell any stories, gentlemen.

MR. ROY : No, but that's true, what you're saying.

MR. JENKINS : I think you've gotta problem with your proposal like it is, Chris. And that is this: where you say, "Unless he specifically waives the necessity of indictment." What that means is, the way it's worded I believe, is that even in capital cases, they can waive the necessity of indictment.

MR. ROY : That's right but they can't be ... by sentenced to death. No one can plead guilty and get the death sentence, Woody. You can only get life imprisonment.

MR. JENKINS : But he shouldn't be allowed to waive ... you're making it more liberal there than it is now and worse for the defendant than it is now. The fact that ...

59

MR. ROY :

MR. JENKINS :

MR. STINSON : ... he would be able to waive indictment by a grand jury in a capital case.

MR. ROY : But he can't ... he can't get the chair in any event.

MR. STINSON : Well, they're gonna change that ... in the paper today they're gonna have a bill.

MR. ROY : Mr. Chairman, I know, but you can't ... you can't plead guilty and get the chair. You can only plead guilty and get life imprisonment. But you could waive the grand jury indictment for that if you wanted, but if you didn't you make them indict you.

MR. J. JACKSON : Are we ready ... yes ... move ...

(End of Tape)

410

UNITED STATES DEPARTMENT OF JUSTICE

OF THE

COMMUNITY RELATIONS DIVISION

STATE OF MISSISSIPPI

DATE

COMMITTEE ON CIVIL RIGHTS AND ELECTIONS

MEETING OF MAY 5, 1973

MR. ROY : ...because they're less apt to commit a crime in the interim than somebody's been sentenced to six years.

MR. JENKINS : I think that's the basic rationale of why. Yes.

MR. STINSON : Well, why not then say that--put what you said and then put "Those who are sentenced..."

MR. ROY : Okay, I think I got it.

MR. STINSON :sentenced to longer terms than five years or pending sentence after conviction may at the discretion of....

MR. ROY : Alright. Let's do it this way. "Excessive bail shall not be required. All persons shall be bailable by sufficient sureties except persons charged with a capital offense where the proof is evident or the presumption great, and persons convicted of felonies provided that where less than a maximum sentence at hard labor is actually imposed...."

MR. STINSON : "Persons convicted of felony."

MR. ROY :"shall be allowed bail pending appeal."

MR. LANDRY : "Sentencing and appeal."

MR. STINSON : No. No. An appeal

MR. LANDRY : "Sentence and appeal."

MR. STINSON : "Convicted of felonies". That'll take care of both of them.

MR. LANDRY : "Pending sentencing and appeal".

MR. ROY : You see, at present....

MR. STINSON : But now, that's not going to bring in discretion.

MR. ROY : "Provided that where less than a maximum sentence" (I use "maximum sentence" to get away from the five years.)

MR. STINSON : I think you had better put the "five" in.

MR. ROY : Well, alright. "Shall be". Alright, let's use the word "five" just for a second. "Provided that where less than a five year sentence at hard labor is actually imposed shall be allowed bail pending an appeal and"....

MR. STINSON : As I see it, we want to say that a minor crime, not over five years, automatically they can get appeal whether at the discretion of the judge or not. "and all other pending sentence and appeal shall at the discretion of the judge...."

MR. ROY : Okay. Okay. "And in all...."

MR. STINSON : Now, to continue on.

MR. ROY : other"....

MR. STINSON : I would like to use the word "continue" for this reason. You got some bond and bail, bailing companies, bonding companies, that they'd like to make two fees on that bond, and they shouldn't have to get a new bond; they should continue the old one.

MR. JENKINS : Well, I don't think there should be any problem with that.

MR. STINSON : I mean, what you said it, if you don't clarify "continue on".

MR. ROY : Alright. Let me restate it and see and then we can argue about it. "Excessive bail shall not be required. All persons shall be bailable by sufficient sureties except persons charged with a capital offense where the proof is evident or the presumption great and persons convicted of felonies provided that where less than a five year sentence at hard labor is actually imposed shall be allowed bail pending appeal and in all other cases...."

MR. JENKINS
"Sentence and appeal" didn't you say?

MR. ROY
No. It doesn't make any difference. "And in all other cases be allowed bail until final judgment at the discretion of the judges."

MR. JENKINS
Well, we got a logical problem here.

MR. STINSON
"Pending sentence and final judgment."

MR. ROY
No, No, because you got the sentence. You got the sentence. Suppose you got a man for armed robbery the judge gives him years to and he wants to give him bail. He can't give him bail. Well, you shouldn't be allowed to allow him bail pending his appeal. He's been sentenced.

MR. STINSON
Well, that's a logical error, but I don't see any date of the man that hasn't been sentenced.

2

MR. ROY
Well, he's automatically taken care of because it says, "and persons convicted of felonies provided that where less than a five year sentence at hard labor is actually imposed". So since it hasn't been imposed, they're allowed bail anyway. Now it's imposed they're allowed bail at the discretion of the judge if it's five years or more.

MR. JENKINS
What does this say?

MR. ROY
"And in all other cases shall be allowed bail until final judgment, at the discretion of the judge. You understand, Ford? I think I've answered it. If he hasn't been sentenced to five years, he's eligible for bail. Doesn't matter what he's convicted of, if he's sentenced to five years, I mean to five years or more, then he's eligible for bail at the discretion of the judge."

MR. STINSON
You didn't say "pending an appeal", you just said...

MR. ROY
Until--I said "until final judgment."

MR. JENKINS
I don't see how you've provided anything between conviction and sentencing except that they won't be bailable.

MR. VICK
Well, unless you want to say

MR. ROY
Except....

MR. VICK
"Final", of course....

MR. ROY
"And persons convicted of felonies"--that includes everything. "Provided that where less than a five year sentence at hard labor is actually imposed shall be allowed bail pending appeal and in all other cases shall be allowed bail until final judgment at the discretion of the judge", in all other cases over five years are allowed bail at the discretion of the judge.

MR. JENKINS
Well, what I'm saying is you haven't said a thing about after conviction and before sentencing except that people convicted of felonies aren't bailable. You haven't provided anything about that.

MR. ROY
Look. Until they're sentenced to five years they're eligible for bail.

MR. JENKINS
No. That isn't what you've said.

MR. ROY
Well, that's what it says.

MR. JENKINS
You've said "all persons shall be bailable except persons convicted of felonies. Persons convicted of felonies are not bailable unless they've been sentenced to less than five years at hard labor. That's what that says."

MR. ROY
Alright. Well, let's put a period here. "Persons convicted of felonies:"

MR. DUNBAR
Who says that?

3

MR. DUNBAR
These persons here and all these is really something.

MR. ROY
"Except" is what's doing it.

MR. JENKINS
When we have an "except" followed by a "provided"

MR. ROY
Yeah. Alright let's omit the "provided". "Persons convicted of felonies."

MR. JENKINS
Look, "after conviction and before sentencing" if it's a capital crime like with the maximum way five years or more. Does it matter to be in the discretion of the judge, don't you think? And he'll consider, probably, what he's going to give. If he thinks he's going to give a severe sentence, he probably won't let them out; if he thinks it will be a light, it's going to be leave, but between conviction and sentencing it seems like it has to be at the discretion of the judge unless it--if it's a crime, it's not a sentence--fable, then they have a right to it.

MR. ROY
Alright, let's put it in there and see what it says. "Persons convicted of felonies".....

7
Proceed, Woody.

MR. JENKINS
I think this--I'd like to offer this as a substitute. "Excessive bail shall not be required. Before and during trial all persons shall be bailable by sufficient sureties unless charged with a capital offense and the proof is evident and the presumption is great. After conviction and before sentencing persons shall be bailable if the maximum sentence which may be imposed is less than five years and shall be bailable at the discretion of the judge if the maximum sentence which may be imposed is five years or more. After sentencing, persons shall be bailable if the sentence actually imposed is less than five years and shall be bailable in the discretion of the judge if the sentence actually imposed is five years or more."

MR. ROY
You may put "and may be bailable" there instead of "shall". Leave it to the discretion of the court, do you understand, a second time, Woody?

MR. JENKINS
Yes.

7
And I'm wondering if we....

7
Let's see if we can't cut it just a little, it's getting long.

7
Yes.

UNINTELLIGIBLE

MR. JENKINS
"They may be bailable" or "they shall be in the discretion of the judge."

MR. LANORY
Well, I think we're getting to using the word "may" in there because it doesn't mean a thing because when used at the discretion of the judge, whether you use "may" or "shall". What's the difference, it's in the discretion of the judge.....

MR. JENKINS
We'll read it one more time. We shortened it a little bit.

7
Okay, Woody.

MR. JENKINS
"Excessive bail shall not be required." Before and during trial all persons shall be bailable by sufficient sureties unless charged with a capital offense and the proof is evident and the presumption is great. After conviction and before sentencing persons shall be bailable if the maximum sentence which may be imposed is less than five years and may be bailable in the discretion of the judge if the maximum sentence which may be imposed is greater. After sentencing persons shall be bailable if the sentence actually imposed is less than five years and may be bailable in the discretion of the judge if the sentence actually imposed is greater. It's a lot of language but in order to make the distinctions that we're making I don't see how we can cut it down too much and be grammatical.

MR. ROY
Well, let's go with it because it's what we--what I think we agreed to. Let's see if somebody else can do a better job of styling.

MR. STINSON
Read it once more, Woody.

MR. JENKINS:
"Excessive bail shall not be required. Before and during trial all persons shall be bailable by sufficient sureties unless charged with a capital offense and the proof is evident and the presumption is great. After conviction and before sentencing persons shall be bailable if the maximum sentence which may be imposed is less than five years and may be bailable in the discretion of the judge if the maximum sentence which may be imposed is greater. After sentencing, persons shall be bailable if the sentence actually imposed is less than five years and may be bailable in the discretion of the judge if the sentence actually imposed is greater."

MR. STINSON:
Now, does that take care of appeal cases, too?

MS. DUNLAP:
Yes. It takes care of everything.

MR. VICK:
Is this amendment versus?

MR. ROY:
It's a substitute.

MR. VICK:
Call the question.

MR. A. JACKSON:
Alright. The question has been called on the--I don't know if it was Jenkins' proposal or Mr. Roy's.

Jenkins' amendment. Jenkins' amendment.

MR. JENKINS:
All those in favor signify by raising their hands.

MR. ROY:
Wait, let me say something. We may be able to put it "until final"--Woody, is there anything that you in Angola could say that he's subject to be bailed even after he's there?

MR. JENKINS:
Well, why don't we say "after sentencing and pending appeal persons shall be bailable"?

MR. ROY:
Okay. Yeah.

MR. A. JACKSON:
Alright. All those in favor of signify by raising their hands.

MR. ROY:
Or "until final judgment". "Until"--how did the other thing work?

MR. STINSON:
Well, you weren't going to be in Angola...

MR. JENKINS:
Well, "after sentencing and until final judgment persons shall be bailable."

MR. ROY:
Right.

MR. A. JACKSON:
Alright. All those in favor. Get a count, Wait.

MR. LANDRY:
One, two, three, four, five, six, seven, eight, nine.

MR. A. JACKSON:
We have--okay let's go to the next. Alright. Let's proceed to the next. The right of Habeas Corpus.

MR. WEISS:
In hopes that these words are not confusing too much this is simply taken from the project with one addition and that is insurrection. "Habeas Corpus. The privilege of the writ of habeas corpus shall never be suspended except by the legislature in the case of rebellion, insurrection or invasion when the public safety may require."

I move to adopt.

MR. JENKINS:
I object strongly to this. I think the writ...

MR. VICK:
The writ of habeas corpus...

MR. JENKINS:
The writ of habeas corpus is one of our most basic rights and it simply demands an official to render up the lawful cause why someone is held in captivity or custody. The way it works, suppose a person up in Angola is being held and he thinks he got a raw deal in a particular trial, well, his attorney may go to federal court and ask for a writ of

habeas corpus and the warden at Angola will have custody of that particular prisoner will have to show reason in federal court why he has custody, and

MR. JENKINS:
he'll say, "Pursuant to a lawful court order and sentencing there," and...

MR. WEISS:
Mr. Jenkins, why don't you direct your comments to the subject. That has nothing to do with it; one confined in an institution.

MR. JENKINS:
That's exactly what habeas corpus pertains to...

MR. WEISS:
No, but the "rebellion, insurrection or..."

MR. ROY:
That's right. That's right.

MR. WEISS:
...invasion" is the only exception in the event.

MR. JENKINS:
Yes, I know, and I'm trying to explain, if you'll just let me explain. Then he has to just give the lawful reason why he has custody. Now, this is a very simple thing. It just means that no one is allowed to detain people without having some lawful authority to do so. Now, I don't see any justification in any circumstances for that ever being suspended and the time you must need the writ of habeas corpus is in emergencies and cases of turmoil, and so forth. That's when your rights are most going to be abridged. That's when you need to have officials, and so forth, demonstrate some lawful reason why you're in custody. We don't need it generally, everyday times; it's more theoretical in many cases. When you need it is when things are in turmoil, so I don't think it should ever be suspended. It's not that great an encumbrance on the state or anyone else. But in a--suppose we're in a state of insurrection or something, or the public officials decree that we are, and they go around rounding up people and they don't have to demonstrate any lawful cause to do so. They just keep them. We've had that in Northern Ireland, you see, where these people be--they're detained; they're put away; no one's told where they're put; the officials don't have to show any lawful reason for putting them away. They just want to put them away.

MR. VICK:
I concur with Delegate Jenkins' proposal and the thrust of his argument. The most famous case in the archives of supreme court jurisprudence is in *Re Young* when Abraham Lincoln suspended the writ during the Civil War and the supreme court--well, the supreme court held that that was unconstitutional. Now, if that's not, you know, about as far out as you can get, well, pretty far out, then you see, if it was not suspended during the so-called War Between the States, or whatever you choose to call it, well then I think that Delegate Jenkins' proposal deserves our vote, and I move the question.

MR. JENKINS:
Well, I would move as to--as a substitute that we adopt my proposed amendment as an addition to the substitute for Mr. Jenkins'.

MR. A. JACKSON:
Alright. It's been moved for the previous question that we accept the Jenkins proposal, "The writ of habeas corpus shall not be suspended." All those in favor...

MR. WEISS:
Wait, let me ask--let me ask Mr. Jenkins. How could this be enforced in a state of insurrection and war? Practically, how can you enforce this?

MR. JENKINS:
Well, the way you do it is by passing laws in a case of violent confrontation...

MR. VICK:
But the legislature...

MR. WEISS:
The law may not make it as effective that, would it?

MR. JENKINS:
Oh, the government can decree any...

MR. WEISS:
You must the Governor would have precedence.

MR. JENKINS:
You'll know when you listen, the government can decree under what provision. He may say, "We're in a state of rebellion."

MR. WEISS:
No. It doesn't say that.

MR. JENKINS:
Habeas corpus is suspended.

DR. WEISS
That's not--you did--that's not what you...

MR. JENKINS
He couldn't do this. No one would have lawful authority to suspend the writ of Habeas corpus under my proposal. The only way we enforce things is through the courts. Now, if the courts are in turmoil, we might have--we may not have a means of enforcement, but that doesn't mean we shouldn't have this legal protection.

DR. WEISS
Well, why write laws that are not enforceable?

MR. JENKINS
Well, in a state of insurrection, Dr. Weiss...

DR. WEISS
What's the name of that case, Lincoln versus who?

MR. VICK
Ex parte Young. Y-o-u-n-g.

MR. A. JACKSON
The previous question has been moved. All those in favor of the Jenkins proposal signify by raising your hand. Get a count, Walter.

MR. LAMBEY
Six votes.

MR. A. JACKSON
Alright. The Jenkins proposal is adopted. All those opposed? Two. The Jenkins proposal is adopted so I suppose that the Roy proposal died.

Televised Hearing of the Committee on the Bill of Rights and Elections of CC/73

Time: 3 to 5 p.m., May 11, 1973

Place: Louisiana Hospital Television Network Facilities at Earl K. Long Hospital in Baton Rouge and at similar facilities in Shreveport, Monroe, Alexandria, Lake Charles, Lafayette, and New Orleans.

Members Present

Baton Rouge - Rep. Louis "Woody" Jenkins
Mrs. Judy Dunlap
Anthony Guarisco, Jr.
Kendall Vick

Shreveport - Ford E. Stinson
Rep. Alphonse Jackson, Jr. x (Corrected in accordance with the Minutes of May 11, 1973.)

Monroe - Rep. Shady Wall

Alexandria - Chris J. Roy

Lake Charles - Gerald N. Weiss

New Orleans - Mrs. Novysee Soniat

MODERATOR - Rep. Louis "Woody" Jenkins

A representative of the Louisiana Hospital Television Network introduced Delegate Louis "Woody" Jenkins, who served as moderator for the televised hearing. Delegate Jenkins introduced the delegates and the members of the research staff who were present in the studio in Baton Rouge.

After explaining the procedure to be used in the televised hearing, Mr. Jenkins called for the witnesses who were to testify. The first witness, William J. Guste, attorney general of Louisiana commented on several aspects of the Bill of Rights. He generally praised the section entitled "Rights to Individual Dignity", but suggested that the inclusion of "sex" in the section be made an alternative on the ballot. He had reservations on the section entitled "Freedom of Expression" and other sections dealing with criminal procedure rights.

The second witness, Aaron John of the Metropolitan Police Commission of New Orleans, expressed concern generally over the provision involving criminal procedure rights. He emphasized the responsibilities of citizenship and urged that the committee not do anything to hamper the prosecution of criminals.

The third witness, former Congressman James Domengeaux, who is president of the Council for the Development of French in Louisiana, generally praised the proposed new provision in the rights article involving cultural rights. He also urged that the committee adopt initiative and referendum both at the state and local level so that the people would have a greater voice in the operation of their public institutions.

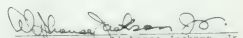
The fourth and fifth witnesses, Mrs. Phyllis Landrieu, second vice chairman of the Democratic State Committee and a member of the Democratic National Committee, and Jay Stone, executive director of the Republican Party of Louisiana, both urged caution in the election provision to be included in the new Louisiana Constitution. They both tended to favor broad general provisions and opposed specific language which might nail down an open primary system. They favored flexibility with regard to election laws. Both spoke in support of strengthening the operation of political parties in the state.

Mr. Russel Gaspard of the Board of Registration, the last

(2)

speaker on the program, urged a right to vote provision which would facilitate registration and voting by virtually all citizens in the state.

During the course of the hearing, delegates and others from the various cities in the television network asked questions of the witnesses and brought out further details with regard to their respective positions. The program ended right on time at 5 p.m. as scheduled.


Representative Alphonse Jackson, Jr.
Chairman

(3)

MINUTES

Minutes of the meeting of the Bill of Rights and Elections Committee of the Constitutional Convention of 1973

Held pursuant to notice mailed by the Secretary
of the Convention on May 9, 1973

Natural Resources Building, Conservation Auditorium,
Baton Rouge, Louisiana

Friday, May 18, 1973 (9:00 a.m. - 5:30 p.m.)

Saturday, May 19, 1973 (9:00 a.m. - 3:30 p.m.)

Presiding: Mrs. Judy Dunlap, vice chairman

Present

Mrs. Judy Dunlap
Anthony J. Guarisco, Jr.
Rep. Louis "Woody" Jenkins
Chris J. Roy
Mrs. Novyse Soniat
Ford E. Stinson
Kendall Vick
Rep. Shady Wall
Dr. Gerald N. Weiss

Absent

Rep. Alphonse Jackson, Jr.

Roll call was taken by the committee secretary. A quorum was present. Chairman Dunlap asked that the reading of the minutes be suspended until after the speakers had testified. A total of 18 speakers addressed the committee during the two-day meeting.

The first speaker was MR. JOHN A. RICHARDSON, the district attorney from Caddo Parish. Mr. Richardson addressed himself to the problem areas in the proposed Bill of Rights, especially with reference to criminal procedure rights. He urged deletion of the sentence "providing that anyone adversely affected by search or seizure could raise its illegality". He also urged deletion of the flat prohibition of interception of private communication.

Mr. Richardson suggested a technical amendment with reference to trial by jury in civil cases. He urged that a responsibility clause be added to the section on Freedom of Expression.

With reference to Freedom of Assembly and Movement he suggested that the words "and leave" be deleted because it might cause problems with reference to probation and parole. However, it was pointed out to Mr. Richardson that a person undergoing punishment had his rights suspended and that this would include a person still under supervision for an offense as provided by the section on the Right to Humane Treatment.

Mr. Richardson suggested deletion of the first sentence in the section of Rights of the Accused. With reference to initiation of prosecution, Mr. Richardson urged the deletion of the phrase "or felonies necessarily punishable by hard labor" because this would cause great expense and require grand juries to remain in almost continuous session in major metropolitan areas.

Mr. Richardson urged deletion of the entire section on grand jury proceedings suggesting that this section would create another adversary proceeding and needless expense.

On Trial by Jury in Criminal Cases, Mr. Richardson suggested that "more than six months" replace "six months or more", because

(2)

of the six months maximum for most misdemeanors. It was pointed out that the Duncan case used the language "six months or more" in requiring jury trials. With respect to the same section Mr. Richardson suggested deletion of the words "or cases in which no parole or probation is permitted" in the second sentence and a change in the third sentence involving deletion of the words "all" to "two-thirds" or "three-fourths" since unanimous verdicts in noncapital cases cause mistrials. With reference to the section on Access to Courts Mr. Richardson suggested that sovereign immunity not be abolished or if it is, it be abolished as to the state and not as to present governing officials.

The second witness, District Attorney ED WARE of Alexandria, representing the District Attorneys' Association, generally endorsed the comments of District Attorney Richardson. He also urged that the section on the Right to Keep and Bear Arms be revised by deleting everything after "concealed weapons".

The third witness, MRS. STEPHEN LICHTBLAU, representing the League of Women Voters of Louisiana, presented specific language to the committee on Suffrage and Elections and urged a liberal provision on the Right to Vote plus a recognition of the principle of permanent registration.

MR. JAY STONE, executive director of the Republican Party of Louisiana, had to leave before he was scheduled to testify but he submitted a statement stating that no specific election system, especially specific open primary systems, be locked into the constitution.

MR. M. G. (MARC) ANSEMAN, chairman of the Citizens Initiative Committee submitted a detailed statement on Initiative and Referendum and urged that initiative and referendum both on a state and

(3)

local basis be included in the constitution.

Former congressman, JAMES DOMENGEAUX, who is president of the Council for the Development of French in Louisiana (CODOFIL), praised the committee for its inclusion of the section on Cultural Rights and urged that the principle of local initiative and referendum be included in the constitution so that the cultural rights provision could be effectively implemented.

MR. J. A. BADEAUX, Thibodaux, of the National Rifle Association urged strengthening of the section on the Right to Keep and Bear Arms. He suggested the following language:

The right of the people to keep and bear arms and ammunition, and components thereof, shall not be abridged or infringed. This provision shall not prevent the passage of laws to punish those who carry weapons concealed.

DR. JERRY MILLETT of Lafayette, state chairman of the Libertarian Party, urged the committee to adopt the principles of the Libertarian Party where applicable in the Bill of Rights. He praised the idea that a section on the Right to Property be included in the Bill of Rights but urged deletion of the requirement that the Right to Property be subject to the law of forced heirship. He also urged that there be a provision in the constitution prohibiting Sunday blue laws and price-fixing.

MR. ROSS BANISTER, an attorney for the Louisiana Department of Highways, urged that the section on the Right to Property be retained. He pointed out that the section that was drafted would prohibit the removal of billboards and if this happens the state would lose substantial federal funds in connection with the interstate highway system. He also expressed fear that the quick-taking statute would be affected by the section.

(4)

May 19, 1973

CBRE Tentative Proposal No. 118 by Mr. Roy

Background: A proposal to amend the section on the right to keep and bear arms.

Section 21. Right to Keep and Bear Arms

A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be abridged. This provision shall not prevent the passage of laws to prohibit the carrying of concealed weapons.

Disposition: Tentatively adopted with one abstention on May 19, 1973.

MR. JACK COUSIN, representing the Central Louisiana Electric Company (CLECO), urged that the word "purpose" replace the word "use" in the Right to Property section since it had a settled judicial meaning. He also urged deletion of the last two sentences of the section.

MR. JOE KEOGH, representing the Louisiana Municipal Association, also criticized the section on the Right to Property. He criticized particularly the provision which would prohibit a municipality from acquiring ownership in a private utility.

MR. BURT W. SPERRY of Monroe, representing various gas transmission companies, expressed agreement generally with the remarks of the other speakers on the section, the Right to Property, and urged that the language on expropriation in the old constitution be retained.

The minutes of the previous meeting were adopted with one correction to the effect that Chairman Jackson was present at the television network outlet in Shreveport. (See attached corrected sheet.)

The meeting adjourned at 5:30 p.m. for the day.

THE MEETING RECONVENED

Saturday, May 19, 1973, 9:00 a.m.

Presiding: Mrs. Judy Dunlap, vice chairman

Present

Mrs. Judy Dunlap
Anthony J. Guarisco, Jr.
Chris J. Roy
Mrs. Novyse E. Soniat
Ford E. Stinson
Kendall Vick
Rep. Shady Wall
Dr. Gerald N. Weiss

Absent

Rep. Alphonse Jackson, Jr.
Rep. Louis "Woody" Jenkins

(5)

Roll call was taken by the Executive Secretary. A quorum was present. Chairman Dunlap asked for the first witness to come forward.

MR. MERTZWEILLER, representing the Society of Louisiana Iris, spoke on behalf of having a native flower of Louisiana known as the "Louisiana Native Iris (Iris Giganticaerulea, Blue Form)" included in the constitution as the official state flower. He also made an interesting slide presentation.

DR. BENJAMIN M. SHIEBER of the L.S.U. Law School urged that the last sentence of the section on the Right of Privacy be deleted and agreed that inclusion of the word "communications" in the first sentence will not present any problem.

Following testimony of the witnesses the committee proceeded to vote on specific proposals.

Dr. Weiss proposed that the title of the rights be "Declaration of Rights" and this was approved. See TP No. 104

Dr. Weiss moved to accept changes proposed in Staff Memo No. 40 including the titles to four sections and this was approved. See TP No. 105

Mr. Roy offered a proposal on the Right to Vote. See TP No. 106

A substitute proposal on the Right to Vote was presented by Delegate Vick. See TP No. 107.

Mr. Roy proposed an amendment to TP No. 107 which was accepted by Mr. Vick. See TP No. 108

Delegate Stinson moved to amend TP No. 108 to keep parolees from voting but this was rejected 3-5. See TP No. 109.

Dr. Weiss offered an amendment (TP No. 110) to TP No. 108 which was accepted by Delegates Vick and Roy.

(6)

The Vick proposal as amended by Delegates Roy and Weiss was then tentatively adopted. See TP No. 111.

A proposal (TP No. 112) regarding direct participation in government was submitted by Delegate Weiss and rejected 2-6.

In the absence of Delegate Jenkins, Delegate Roy submitted TP No. 113 regarding government competition and monopolies but this was rejected 3-3 with two abstentions. Delegates Guarisco and Soniat said they abstained out of deference to Delegate Jenkins who was absent.

Dr. Weiss presented a proposal regarding civil service rights. See TP No. 114. It was rejected 3-5 but Delegates Weiss, Roy, and Soniat are to submit a minority report urging its inclusion.

Delegate Roy submitted a proposal (TP No. 115) to amend Section 4, Right to Privacy which was previously tentatively adopted and the change was adopted. Mr. Roy then proposed

other changes to Section 5. Right to Property (TP No. 116),
Section 15. Grand Jury Proceedings (TP No. 117), and Section 21.
Right to Keep and Bear Arms (TP Nos. 118) all of which were
adopted.

Moving on to a new topic "Distribution of Powers", Mr. Roy
proposed adoption of the Law Institute Project Language of two
moved that the constitution be silent on general election pro-
visions other than the Right to Vote and this was also approved.
See TP No. 120.

(7)

There being no further business the meeting adjourned at
11:00 p.m.


Rep. Alphonse Jackson, Jr., Chairman

(8)

May 13, 1973

CBRE Tentative Proposal No. 111 By Messrs. Vick, Roy
and Weiss

Background: TP No. 107 as amended by TP Nos. 100 and 110.

Section 20. Right to Vote

No person eighteen years of age or older who is a resident
or domiciliary of the state shall be denied the right to vote ex-
cept that this right may be suspended while a person is inter-
dicted or under an order of imprisonment for conviction of a
felony. The legislature shall enact laws providing for the
registration of voters embodying the principle of permanent
registration.

[Addendum, May 19, 1973, p. 1202 this volume]

Disposition: Tentatively adopted as a section of Article I.
Declaration of Rights on May 19, 1973.

OFFICE OF THE CLERK

OF THE

CONSTITUTIONAL CONVENTION

STATE OF LOUISIANA

1973

COMMITTEE ON BILL OF RIGHTS AND ELECTIONS

MEETING OF MAY 15, 1973

MRS. DENHAM

Our first speaker on the agenda this morning...

MR. LANDRY

Is Mr. John Richardson. He was an especially invited guest; he had
submitted a rather excellent message to the committee on the Bill of
Rights, so we call Mr. John Richardson.

MR. RICHARDSON

Members of the committee and other ladies and gentlemen, I appreciate
very much the opportunity of being here at your invitation, and for
the other people who are present, I would like to simply state that I
was so interested in the matters in connection with the Bill of Rights
which contains a great deal of substantial rights of people particularly
in the field of criminal law that when we had the group of the committee
chairman in Shreveport, at the suggestion of one of the members of the
committee chairman I prepared a memorandum and gave it to the committee
chairman at that time which I hope has been distributed to members of
this committee in pertinent part. And that was the reason why I was
invited to come and it's glad to be here. Also, I think I should
I'd like to hand to the proper person thirty copies of a sheet which I
would like to speak from.

There are twenty-four separate sections in this article and in
order that you might know how I'm speaking, if you would follow along
with me you'll notice that I stated at the very beginning the various
articles as to which--or sections as to which I'm not making any comment
and there are fourteen, at least, of those, but I do want to speak to
some of the others and I was requested to make suggestions, changes or
amendments that I thought would be pertinent. Now, when I say "I", of
course, I'm speaking about myself and the other attorneys in my office
and there're not a great many, but there are seven and they all work
actively in this field, and I have reviewed the memorandum with them.
I'll not enlarge upon it except that it may be necessary simply to
explain what I'm speaking about.

The first one I want to speak about in order would be on Section 4,
"Searches and Seizures". I discussed this briefly with Mr. Roy a moment
ago. Perhaps I did not explain myself adequately enough in the same way
random that I did distribute with the chairman. We feel this way, Iapp
versus Ohio is a decision of the United States Supreme Court which
follows the rule of evidence that was imposed upon all the states who
keep the Fourteenth Amendment of the constitution. Nevertheless, it has
given rise to a whole new field of law in our state. In fact, our state
at first even had to borrow from the federal system in order to make it
make sense in connection with a motion picture which is the basis of
that nature. So as a result we just feel like that any extension to
this should not be made in this constitution because what would be
happening will be that the constitution will then become a codification
of jurisprudence as it arises. It will be almost a court or trial
procedure in miniature and we feel like that only in the very basic
should it be there. For example, the very first two sentences in the
proposed article of Section 4 which is very much like its companion.

MR. RICHARDSON (cont'd)

In the 1921 Constitution, really I think gives all the protection that
is really needed and our objection with Section...to the fourth sentence
which I would suggest be deleted simply is that the constitutional protection
afforded the people is in their person, in their houses or their vehicles,
but under this sentence, as written, where it says, "Any person adversely
affected by a search or seizure shall have a right to challenge it in
court. You give rise to situations where officers could find a pistol
or find bloody clothes or some other kind of articles of evidence, even
separate from contraband and if it were not taken by breaking down a
door, then that person, could under this proposed sentence, could make a
challenge even though his rights were not violated. It would be to that
someone else's rights, if any were violated, but not his. I think...
discussed it with Mr. Roy and it probably can be straightened out in the
matter of grammar. But our feeling is that the person in his own
house of his own person and not other articles that are found.

The second--that's the second to last sentence--the last sentence
we suggest could be very easily deleted. I've explained a little bit
more in the memorandum than I have on the sheet, but we feel it's
too broad; it's too far-reaching. We think that this is something that
can be left to the legislature. There's many ramifications; it could
even reach private conversations between people, could even reach con-
fessions or other statements or admissions to give interest and we just
feel like that it's not really necessary.

On the next one, Section 8, while it seems not very important at
first blush, we know that so frequently courts will catch it as
not being all-inclusive, and the title to Section 8 does actually say
"trial by jury in civil cases", but the second sentence says "The deter-
mination of fact in any other case". It doesn't say "any other civil
case", it says "in any other case before any court or administrative
body shall be subject to review." Well, our system in Louisiana, of
course, is that facts in criminal cases are not reviewable by the state
supreme court except on bills of exception, errors of law as perfected
in the bills of exception. We just simply ask that just really to be
really certain and sure that you just simply say that any other civil
case or any other civil or noncriminal case.

In Section 9, Freedom of Expression, this is probably a touchy sort
of a thing because it has to do with all types of freedoms, freedom of
press, freedom of speech, freedom of other kinds, freedom of expression,
but it has absolutely no responsibility clause as we can read it and
we're only asking, or suggesting that you just pick up the words from
the 1921 Constitution. We just quoted one, or just put a comma at the
end of Section 9 and add, as I have on the sheet, "All persons, firms
and corporations being responsible for the abuse of that liberty." Now
those last words "being responsible for the abuse of that liberty" comes
direct from the 1921 Constitution, it doesn't show how anyone would object
to that. The real reason that we feel like it should be in there that

If something along that line is not in there, then there'll be no more lack of obscenity; there will be no more laws requiring pornography, there'll be no more lack of libel and slander, defamation, either civil or criminal, and no suits for damages. I know that we in public office are shaken on a point and we might do very much about it, that there are a lot of people who are not so much interested in libel and slander as

MR. RICHARDSON

Well,

MR. STENSON

If you're honest about the constitution, then that's it.

MR. RICHARDSON

What I don't understand is that, if you put in the constitution "No law shall be enacted and no law shall be made that we can pass. Well, everybody's got the police power." I mean, I'm willing to agree with Mr. Stenson about particular matters.

MR. ROY

Well, for instance, freedom of speech, you know, getting back to your first thing, historically speaking, when the freedom of speech article was adopted by the citizens of the United States. We've had libel and slander suits ever since and we've had laws on obscenity since that time because it's pointed out by the newspapers as got in the state. During the time of 1789 that the constitution of the United States was ratified and adopted these were obscenity laws and there were laws on libel and slander and it stemmed from the common law and it just continued right on. And if you were to take literally the freedom of speech article in the constitution of the United States, you would have to suppose that you could have never any law on obscenity and no law on libel and slander, that is, no laws allowed in those things. That's the only thing I'm interested in. He may be literally reading things into this--into what we've done where we don't need to. I appreciate your remarks and comments; I'm just wondering how in the world we've had obscenity laws since 1789 and how we've had--how we've allowed libel and slander suits, I... Admittedly the supreme court has modified them now where public officials and what have you, you know, public figures can't sue for it. But the fact of the matter is that freedom of speech would imply as broad as it was, you can have no laws on these things.

MR. RICHARDSON

Well, I understand that you're saying, Mr. Roy, and there may be one or two things in the federal constitution that are different from what we would want to have. For example, if you take--there was one article even Justice Harlan said that you really can't take literally, that is everybody should have a party train in cars over twenty dollars. Well, you can't take that literally, and you can't take it literally, so I would think you would want to have some things that are different from what everyone's trying to propose to write a new constitution for. You know, and why take out of the few constitution things that we've lived with and worked with for fifty-odd years, like the ones about being responsible for the abuse of that liberty. You see?

MR. ROY

I think that just for the reason that most people are going to interpret it as you have said even though you can't agree with, you know, with their interpretation. I think it's too dangerous not to add that into it, and personally, I would be for adding what you said about the abuse of it.

MR. RICHARDSON

Is that goes in the constitution, then, my trip will have been

MR. RICHARDSON

very problematic because I think it ought to be there. Yes, sir.

MR. ROY

I agree without just so we don't have any doubt about it whatsoever.

MR. RICHARDSON

That's right. That's the way I feel about that civil case and about things like that.

MR. JENKINS

Well, while we're on the subject I want to mention something on that. I hate to interrupt you before you get in your presentation.

MR. RICHARDSON

It's perfectly all right. Perfectly all right.

MR. JENKINS

And I know that as far as is being responsible for the abuse of that liberty in our current constitution and in some others, but what in the world does that mean? What sort of protection do we have when we say that everyone has freedom of speech, but he has the responsibility for the abuse of that liberty? What does the abuse of that liberty mean?

MR. RICHARDSON

Well, the abuse of that liberty means, it means committing libel and slander against people to whom you have no basis for doing that.

MR. JENKINS

Well, then we could spell out that... something about libel and slander.

MR. RICHARDSON

You could do that, that would be all right. You could say sure,

MR. RICHARDSON

under this constitution that's more than twice just absolutely no more responsibility, so I feel that that should be placed back in the constitution as it is in 1789.

Section 11 seems very reasonable, but I suggested that on the question of freedom of movement that supply the words "detention, arrest, presentment, and the like" shall prohibit the right of each person to travel freely within the state and to enter and leave the state." There are meritorious cases of probation and parole where the person or the authority granting probation or parole might want as one of its conditions the possibility of a person not leaving the state without permission. And we just feel like that would be a good thing.

Yes, sir.

MR. LANDRY

Now, Mr. Richardson, I'd like to call your attention to Section 18...

MR. RICHARDSON

Alright.

MR. LANDRY

...of the proposed Bill of Rights where we say that "full rights shall be restored by termination of state or federal supervision for any offense". The concept, I believe, is that the person who is under parole does not have all of his civil rights and he is not free to leave the state if he's subject to parole, and the implication of Section 18 is that that person could not leave the state because he has not been restored his full rights. You see, he's still under the jurisdiction of the state under Section 18--the last part of it.

MR. RICHARDSON

Well, if Section 18 could be considered as a modification of Section 11, I don't believe the point, although I'm going to speak about Section 18 in a minute. But, if it's the feeling of the committee that Section 11 and 18 could be read together in such a way that that would be permissible to have conditions on probation and parole, then I would have no objection to it.

MR. ROY

Mr. Richardson, we really fell in line with what Mr. Landry said, that when a person under Section 11 would plead guilty and be granted the benefit of a probationary parole sentence, or what have you, that he would either explicitly or tacitly agree to the conditions that the judge had imposed on him and therefore he... there would be no violation of any of his rights, and we felt that convicted felons and convicted people don't have the same standing as others, but it's just--it may be a point and just like you say... we don't intend to say that "no court may impose restrictive movement or conduct on convicted persons."

MR. RICHARDSON

I understand, Mr. Roy. You see, the thing about it is that the court does, really, they can only do what the legislators give them to do in the criminal probation and parole act. I appreciate the law, and so if it says "no law shall be passed that will limit that, their right to citizens to freely come and go in the state". That was my only point.

MR. ROY

I see.

MR. RICHARDSON

And I don't say it's a great big monumental thing, but I just point that out to you because I think it has some merit. But if you feel that it can be worked out in connection with the others...

Yes, Ford.

MR. STENSON

I raised this point before, Mr. Richardson, now I'll ask you your thought of it. I raised the point of in our public health laws--we don't have any epidemic now, thank goodness, but we may have, if--the way that's written there wouldn't be any quarantine laws, would there?

MR. RICHARDSON

This could affect quarantine laws to a certain extent, of coming into the state, coming into the state.

MR. ROY

I just don't see that. Under the general police power of the state and just for instance, the rights of certain religious groups who try to say that their children could not be inoculated or vaccinated in case of quarantine. The supreme court of the United States and our courts have always said that the public health comes first, and I don't see how any law passed with respect to quarantine and would--could be a reasonable law restricting movements because of this could not be passed. I may be wrong but I don't see that.

you could say "reserving the rights of all citizens for--in cases of defamation, and libel and slander."

MR. JENKINS

Well, that doesn't deal with obscenity.

MR. RICHARDSON

No, but if you want to give up the law of obscenity, that's what you're doing.

MR. JENKINS

Well, when we just use that term "abuse of that liberty", that, doesn't that just really give carte blanche to the courts to decide whatever they want to as an abuse of that liberty?

MR. RICHARDSON

Well, we almost have carte blanche anyway with the courts in some of these interpretations. All that we can do is try to spell it out so that the courts in the future that they will follow what we think it should be.

MR. JENKINS

In other words, what I mean is I want our freedom of speech provision to be meaningful. I want it to protect freedom of speech, and certainly that doesn't mean that we shouldn't have libel and slander laws. But what bothers me is when we leave it in the discretion of public officials, or judges, or whoever else to decide what speech is going to be protected and what is not.

MR. RICHARDSON

Well, it's like every other liberty. My freedom ends where yours begins. You see?

MR. JENKINS

There is no question about that.

MR. RICHARDSON

And so there has to be some limitation and there has to be in the American system the limitation where the judge and jury decides what that limitation is.

MR. JENKINS

Oh, but we have restrictions on that. What they--that's why we say certain things in certain ways sometimes, you know, to make sure that judge and jury will interpret it a certain way, and if they don't, that, hopefully, the higher courts will....

MR. RICHARDSON

That's right.

MR. JENKINS

...give it the proper interpretation.

MR. RICHARDSON

Well, I would have no objection to you rephrasing so long as there is some responsibility clause. If it was restricted to obscenity, libel, slander, defamation, that would be all right. I'm just saying the way it is now, it's complete, unbridled, unrestricted, unrestrained freedom of speech. Now I said initially this is a very delicate thing to speak about because there are very conflicting ideas about freedom of speech. Justice Douglas, for instance, feels like that a person should be able to say anything, express himself in any way without any sanction whatsoever. Well, there are other people that feel a little bit differently from that, and a constitution that is being hammered out, I think should try to encompass as many viewpoints as possible, both the extreme liberal and the extreme conservative side.

MR. JENKINS

If we mentioned only libel and slander and not any attempt to mention obscenity or anything else, how would you feel about that?

MR. RICHARDSON

Well, I would say that you are simply just giving complete freedom in the field of obscenity and pornography, if you do that. We may be very close to that stage right now because of various decisions of the United States Supreme Court.

MR. JENKINS

Would that be bad? Would that be evil?

MR. RICHARDSON

I think it'd be bad, yes. I think it would be bad.

MR. JENKINS

Why?

MR. RICHARDSON

Because I just don't believe in pornography and obscenity.

MR. JENKINS

Well, what do you mean by pornography and obscenity?

MR. RICHARDSON

I mean what everybody understands pornography to mean, hard-core pornography, the kind of thing that is usually found in the gutter magazines, the kind of thing that is usually found in the gutter magazines, the kind of thing that is usually found in the gutter magazines.

MR. JENKINS

Well, I mean everything you've said has been a general word.

MR. RICHARDSON

Oh, I understand that.

MR. JENKINS

I can look at--under what you just said I can look at a book or a picture or a painting. How do I know whether it fits that definition or not?

6

MR. RICHARDSON

Well, that would belong to the legislature to make definitions. You don't make every definition in the constitution. You put a broad framework. You make a broad framework of regulations.

MR. JENKINS

Well, but if we allow the courts to look at speech and see whether or not it's protected, aren't we really going contrary to the whole idea of freedom of speech? Isn't freedom of speech, isn't that word--that wording, doesn't it mean that you don't look at the substance of the speech to see whether you like it or not because the fact that it is speech gives it a protection?

MR. RICHARDSON

Well, like I said initially, some people believe in complete, unbridled, unrestricted freedom of speech. Others feel there ought to be some regulations. It's up to this committee to decide which way they want to go.

MR. JENKINS

Of course, my view is, and I agree with you that, you know, my freedom ends where your nose begins, but I don't see how there's any question of your rights involved if I want to read something, say, that you consider offensive. I mean you're not reading it if I read it. I don't see how your rights are involved.

MR. RICHARDSON

I understand that's the present trend. I understand that. I don't have any way of commenting upon that because some people just feel a different way.

MR. BOY

Mr. Richardson, did you--Woody feels very strongly about that and I know that a lot of district attorneys feel the other way and I can understand why, and I'm not going to put you on the spot but...

MR. RICHARDSON

That's all right. I'm on the spot. It doesn't make any difference.

MR. BOY

Let me ask you this?

?

If as Woody suggested, we only went to the extent of saying that in libel and... that the rights to sue for libel and slander will not be abridged by this provision, leaving out any reference to pornography so that it could be argued that Woody's view on pornography would be that you'd have freedom of reading what you wanted. You understand? What's the District Attorneys Association's position on that point? You said that--it appeared to me that there are two points that the D.A. Association is involved in. One is pornography...

MR. RICHARDSON

Wait. I'm speaking for myself. I don't know about the D. A. Association.

MR. BOY

Oh, okay.

MR. RICHARDSON

No, no, I'm speaking for my own office. I am speaking for my own office.

MR. BOY

Alright. Okay.

MR. RICHARDSON

That's all right. Go ahead.

MR. BOY

What I was going to ask you is how the District Attorney's Association feels on this article if we just omitted mentioning anything about abuse of it other than for libel and slander.

MR. RICHARDSON

I don't know because we have not discussed it at any meeting in that regard.

7

MR. ROY
Have you been getting--Have you gotten any flack on this thing at all from constituents one way or the other?

MR. RICHARDSON
In what respect?

MR. ROY
Well, I mean saying, "We want you to go down and do something. We think that..."

MR. RICHARDSON
No, I couldn't honestly say that. All I can say is that some people--I won't even say there are a great many people, when they saw the little write-up in the paper about my having presented a memorandum to the committee chairman, they just simply said they were glad to see that somebody was speaking out about these things, but I can't say there were hundreds of people. I wouldn't say that by any means, but just....

MR. ROY
Well, I haven't gotten any. I was just wondering, you know if....

MR. RICHARDSON
Yes. Just different people.

MR. ROY
Have you talked to other public officials against it?

MR. RICHARDSON
Of course....

MR. WEISS
Mr. Richardson.

MR. RICHARDSON
Yes.

MR. WEISS
I feel compelled to comment on this obscenity thing in that how would you handle a situation. I think Mr. Jenkins is not being complete in his questioning and that is if he can pick up anything he wants to read, certainly I agree to that, but how would you as a moderate defender handle a situation where there was obscenity on television, for example, media where people are not inviting themselves into a situation, but rather are in a public media? How would you feel about that?

MR. RICHARDSON
Well, of course, I feel very strongly about pornography. I'm very much against it. I'm very much against obscenity. I also know that we are living in a society where that is getting to be old-fashioned and very conservative and maybe I'm living fifty years later than I ought to be living, but I just feel that something could and should be done. Our officers or any other....

8

MR. WEISS
For instance, 20 years ago, envision another Sodom and Gomorrah if this were to pass as a result of Mr. Jenkins....

MR. RICHARDSON
No, I think that it really would amount to is that people that are opposed to it's just have to turn off their television sets and quit going to the movies and quit reading some of the books that are on the newsstand and they'd just go their own way, that's all, and that's what people are entitled to do.

?
Isn't this freedom?

MR. RICHARDSON
Well, ask Mr. --the gentleman over here. I mean that's the conflict; that's the collision. I'm sure that you've seen instances in which there's some television program that you just can't really say that are really sexually indecent, but you just feel like that you wish something else were on the television, and I've seen it and so I just turn to another station. It's sort of like with old man Henderson, lived in Shreveport. He used to, years ago when I was a boy, he'd say, "Don't touch that dial. Wait and hear what I'm going to say." But that was the radio. People would complain about him. Maybe he'd use a little strong language those days, and he'd say, "Well, go listen to another station." That's just--that's life, I guess. I don't know the solution to it, but I do say that I'm opposed to any form of obscenity and pornography and I realize that we can't have censorship; I realize that there has to be some standard. The Supreme Court of the United States itself is still feeling and fumbling and grasping for a standard and has not reached it yet, and, hopefully, they will reach it, and if they do, then a restriction here would be meaningful. If they don't, it wouldn't make any difference anyway.

MR. JENKINS
Mr. Richardson.

MR. RICHARDSON
Yes, sir.

MR. JENKINS
I'd like to ask another question. By the way, I'd like for you to know, I'm not exactly considered a liberal.

MR. RICHARDSON
I don't mean that, when I say that. I don't mean that. I don't mean that at all.

MR. JENKINS
Well, but but I'm very concerned that this is one of our most basic liberties and that if we water it down, we're really endangering the existence of a free society because if the government once has the authority to go in and look at the content of speech and decide whether the government likes it or not, then it can be extended to all sacred and other things that we hold dear. So, I'm concerned to know whether it is the government's business to go in and look at your office. What standard do you use to determine whether or not you're going to go in and seize a film or to seize magazines and books or arrest someone?

MR. RICHARDSON
We try to get enough people of different walks of life to see whether or not, in their judgment, that that offends the standard of the community of Louisiana. Our office, of course, seized the film called "The Stewardesses". Maybe two or three years from now that won't be

9

MR. RICHARDSON (cont'd)
considered obscene, but at the time that it was seized, it was considered obscene, and we had five or six people from different walks of life--a lawyer, a school principal, some Baptists, some Catholics, just different people, and the court ruled on it.

MR. JENKINS
Well, here's the thing, some people consider, for example, war movies, particularly some war movies, to be very obscene, the idea of death and destruction, people being killed, maybe mutilated bodies being thrown here, there and yonder. They feel that these things are offensive to their sensibilities. People would feel, maybe in some cases, that books advocating certain Communist ideology, certainly which I would object to strongly, but which they.... it would offend their sensibilities. You take a poll? Is that the idea? And, if enough people are offended by the particular thing, then....

MR. RICHARDSON
No. You see everything that we do, whether it's in the legislature, whether it's in our courts, whether it's in a frame in this constitution is still governed by the Supreme Court of the United States. We have to yield to that. Someone has to have the last say and in this country it's the Supreme Court of the United States. Frankly, I'd rather it'd be somebody else, but that's the system that we have and the present definition they have for obscenity is one of which compels us to go and find out those things regardless of what I think, or regardless of what a purveyor of pornography will think.

MR. JENKINS
That's if you want to prosecute.

MR. RICHARDSON
That's right. That's right, if we're going to prosecute.

MR. JENKINS
But aren't we really talking about a matter here of taste? Some people have good taste; some people....

MR. RICHARDSON
I don't think so....

MR. JENKINS
...have bad taste.

MR. RICHARDSON
No, sir. I don't mean to be argumentative. I think we have to go by what is the definition of obscenity that the Supreme Court of the United States will allow public officials to enforce. Now, years ago it was different than now and we have to live in the now, and we have to go by whatever that court rules is the test. The test right now is very restrictive as far as prosecuting cases are concerned and we have to live with it and come within it the best we can. It's a long involved--it's the Roth test; it's a long involved test and grafted onto a little bit by community standards and they have not very really finally said whether there's a total community standard or a community of a proper state, or whether it's a community of a proper state. Individual justices that have expressed themselves, the Court as a whole, have not crystallized that.

MR. JENKINS
Well, I'm concerned too--just one more question I want to ask you.

MR. RICHARDSON
Okay.

MR. JENKINS
You know we have so many problems of crime, and I know in our

Q. I'm sure the same is true in cases of murder, rape, armed robberies, kidnappings, rapes against persons and property that we have no doubt intrude on people's privacy. I don't think there's a lot of time on the part of the courts to deal with these things. I think that deal, with things that

for example, had a blue ribbon panel to update all of their laws, and one of their things was to get away from the idea of having to have a bill of indictment on hard labor cases and they just were amazed that Louisiana has had this provision for fifty years. We've lived with it. I don't know of anybody had any extreme hardship with it and we just feel like to require grand jury--to make it mandatory to have grand jury indictments on things other than capital is a step backwards.

MR. ROY

Mr. Richardson, does Houston have...Texas have the provision that allows waiver by the accused?

MR. RICHARDS:

Q. No. Not to my knowledge.

MR. ROY:

Q. You see, that I think, would have a lot to do with getting away from the necessity for a continuous grand jury. What we feel, that is, what I feel, and I don't know if I speak for the whole conference, I assisted my brother when he was district attorney for six years in all cases, gratis. Not getting paid for it. I was not an assistant D. A., but I know how D. A. offices operate. Now, we feel--that I feel that the grand jury has become the extension of the arm of the district attorney and it is no longer what it was historically and it is not a bulwark against people being prosecuted by the crown as they once were for no reason at all, and I'm not faulting any D. A.'s office.

MR. RICHARDS:

Oh. I know what you mean.

MR ROY

8 "I'm just saying in a lot of cases, in my opinion it is. And we
9 just felt—I feel—keep saying "we—I feel that there are a lot of
10 times where district attorneys—some district attorneys overcharge in a
11 case to get a plea bargain. They get a man and they charge him with
12 something like a robbery charge, but they know he didn't do it. It's not
13 a robbery case or it's a case of burglary. Hanging over the man's head if
14 he's convicted is a thirty year mandatory penitentiary sentence without
15 benefit of parole or probation. The accused then cops out a plea of
16 guilty and the district attorney gets a conviction. And, I think, it's
17 really important in this case and the district attorney, on your
18 faith thinks he's guilty and he's going after him, and the rest of our
19 articles on grand juries seem to be "we're trying to get the grand jury to
20 indict on a case, but if the grand jury doesn't indict, we can't go on
21 and overcharge, maybe a grand jury wouldn't go along with it. Say, "No,
22 we're not going to indict this guy for armed robbery, he's guilty at
23 best of simple robbery or, you know, of burglary and that's—we are
24 not going to indict at some point. And if the grand jury doesn't
25 indict, although it doesn't exist in every case. I'm sure it doesn't exist in
26 your case and I know a lot of D. A.'s whose cases it doesn't follow. But,
27 I had a friend tell me—we were talking about it with Judge Humphries
28 and he said that he had a case where the grand jury didn't indict and
29 this attorney who was there said in some Louisiana parish, some
30 little parish, apparently he had a case going on a civil case on a
31 husband and wife custody matter and what have happened is that the
32 husband had a wife and she had a child. So the husband had the
33 wife and the child and she had the child. So he had the child
34 up there charging the case, but although he had the child, he had the

MR JENKINS

Well, could you well use your time and your office and your personnel just on the murders and rapes and armed robberies and other things?

MR. RICHARDSON

[illegible]

Want me to go ahead?

Yeah.

MR. RICHARDSON

On-forget exactly where I was. I believe I'm going to Section 12, Rights of the Accused. The first sentence, our office feels that that is somewhat over-broad. Perhaps, it could be reworded. We have two objections. One of them is "When a person's been detained, he shall be advised of his rights." We think that's a little bit of a word-a-better word for "detained" should, "you can't delete it, we hope you'll delete it, but, if not, we feel that the word "detained" should be "arrested" rather than "detained" because there's a great deal of difference between detention and arresting a person. Also, we feel that "detained" is a little bit over-broad. We think we should feel that that's over-broad because a lot of people-it takes a very experienced lawyer to tell everybody all of his legal rights. We feel that that's a matter that really could be left to the legislature. The last sentence-the paragraph we don't have any strong objection to.

The 13, Initiation of Prosecution. We feel very strongly about requiring grand jury indictments in felonies necessarily punishable by hard labor. Those felonies are all forms of burglaries, armed robbery, certain drug cases and other things, and we feel like that it'd be quite expensive to require--I know expense is not an item--but I

MR. ROY (cont'd)

charge because the local attorney could have some influence. Now and that's not a prevalent thing, I don't believe, but the whole case in my being concerned about the Bill of Rights is that it's to protect innocent people from being charged with a crime and then going to court and getting away with things, but...and they're going to get away with it. I'm not sure what kind of constitution you waste. A constitution is not written to get guilty people; it's written to protect innocent people and that's the whole idea. I'm not sure that's the whole idea. I'm not sure that's what would show, that as a practical matter, this thing wouldn't work, where the defendant, the accused, says, "Look, I'll waive a grand jury indictment. I know you can get an indictment against me because I'm innocent. I'm not going to go to court about eighty percent of you people whom you're charging are pleading."

MR. RICHARDS:

Sure.

MR. ROY:

So I think that for the real innocent person who's faced with a felony necessarily punishable at hard labor, if he's had a deal, he's been protected because you say you can't get him unless you agree that grand jury to get me and this Bill of Rights Committee is seeking to have me allowed compulsory process to get my witnesses before it and they're not going to return a true bill, notwithstanding this district attorney is in good faith. That's all I'm saying and I'm just wondering if you've got anything, that that say it can't work with this waiver we have.

MR. RICHARDSON

Well, Mr. Rosen, I think what you're saying is that you're going to put in this constitution a great many things to take care of one particular hard fact situation. I was talking with a gentleman when we got here at 9:00 o'clock or 8:30 because our plane came in at 7:00, 7:30, and I don't think this gentleman is even a lawyer, but we were not talking about this but he said, "I hope that they don't put in this constitution a great many things to take care of every little hard fact situation." Now, let me finish because I think I've said enough. I think I've said what you feel strongly the other side. There are various ways that that can be eliminated. I mean you can ask for preliminary hearing and any judge that is worth his salt will immediately cause the charge to either

be dismissed or changed, if it's an overcharge. Now, a lot of these things, I know lawyers, I know police officials say and other people say it's because of where I live, but we just don't overcharge. We don't allow our police to overcharge and I know there are a lot of places that I've talked with and I've asked them because I've heard this argument made that they charge too high so they can get the man to accept a lesser plea or "pop-out" as they call it. Well, maybe that's done in some places away from places that I've been, but it's not done in my part of the country. And I don't mean just my office, I mean in my part of the country, so it's foreign to us and I just feel like what you're doing, if you do this, and I'm very strongly against it, you're simply causing another stumbling block, another great deal of expense, the taking up the time of citizens to come to a grand jury because you want it to be a realistic grand jury. You don't want just a man to come in and say, "Yeah, he said this," indict "he said this," indict. If you're going to have a real grand jury and you put all these cases in there, then you're going to have grand juries in session a lot more often taking business people away from their work on things that really the court could take care of. Now, I recognize once more we've got a difference of opinion, a difference of approach, and I guess if I lived in a jurisdiction where there was an unscrupulous district attorney and he just habitually overcharged everybody--charged everybody with armed robbery when he knew that it was simple robbery or knew it was something else, maybe I would feel like that, but our policemen have had so many instructions, we're just not going to overcharge for anybody, and so I guess that's the reason I feel that way.

MR. ROY
Alright.

MR. RICHARDSON
You see? And I feel very strongly about it.

13

MR. WEISS
Doesn't the U. S. Constitution in the Fifth Amendment provide for indictment that's required by a grand jury?

MR. RICHARDSON
Yes, uh huh, but in certain respects; that's right.

MR. WEISS
Would this be countering the law of the land?

MR. RICHARDSON
I don't think that it would. I don't think that it would. Mr. Roy says he doesn't.

MR. ROY
No, I'm agreeing with him in that the state can--the U. S. Constitution does provide that for anybody to be charged, even for misdemeanors, they've got to be indicted by a federal grand jury.

MR. RICHARDSON
No, it says infamous punishment, I believe, which is the same as a felony but not the same as a misdemeanor. Federal, I think they indict for everything except bird violations and things like that. And, another objection I would have is--maybe it's a small objection--is that the more waivers that you put in there--the more things that can be waived in this area is that that more requirement in connection with the Borkin procedure and if you'd see the number of habeas corpus applications we get back, that's one more thing that a grand jury, you're waiving the right to have the grand jury consider all the things and hear all the witnesses, and so on. Well, a grand jury proceeding--well, I hope that the witness stays in there as far as, if you think it's a good thing, but a grand jury proceeding, as I appreciate it, is an investigation of a particular case and it's not--well, I sound like I'm defending myself and I certainly don't want to do that. I don't consider it an arm of the district attorney's office because what we try to do is present the events. We don't even call them state witness or defense witness. We just present the witnesses that know something about the case.

MR. ROY
How do you provide for--if a defendant wants his witnesses?

MR. RICHARDSON
If he turns in the names of the witnesses, we summons them. Yes, sir.

Well, taking--do you know if that's done in every parish?

MR. RICHARDSON
No, I do not. I do not. I don't know of any parish where they're being refused. Now, in our parish what we do, in our jurisdiction, each accused person through his attorney is given the opportunity to appear before the grand jury if he wishes to and if he wants any witnesses summoned, give us the list and we'll summon them.

MR. JENKINS
Mr. Richardson, I believe you'll be more comfortable sitting down.

MR. RICHARDSON
It doesn't make any difference. Thank you. Thank you though very much. I don't want--I don't like to be so long, but these are very important things. They're important to you; if they're important to me, they're important to me and it's really a collision in some areas and I think it's good to discuss them.

The three were talking about returning immediately at that time. It would have your permission, I would have to come back to the court. I can't think of any other way to handle the last because I want to talk a little bit more about it, perhaps, and I know you're probably going to be in the court with me tomorrow. I want to talk a little bit more about it, perhaps, and I know you're probably going to be in the court with me tomorrow. I want to talk a little bit more about it, perhaps, and I know you're probably going to be in the court with me tomorrow.

MR. RICHARDSON
The three were talking about returning immediately at that time. It would have your permission, I would have to come back to the court. I can't think of any other way to handle the last because I want to talk a little bit more about it, perhaps, and I know you're probably going to be in the court with me tomorrow. I want to talk a little bit more about it, perhaps, and I know you're probably going to be in the court with me tomorrow.

...by independent means (transmission complete)

MR. LANDRY
Mr. Richardson, the Duncan case specifically stated that six months or more, that was the way the Duncan case read. I'm wondering if our legislature didn't make it one day less in order to follow the Duncan, if that was the intent of the legislature. Why did they make it six months?

MR. RICHARDSON
I can't answer that question but if that stands five then...

MR. LANDRY
But this is the problem.

MR. RICHARDSON
Alright. If this stands five then, then the legislature would have to change all their laws. They'd say "six months less one day," I guess, or 359 days.

MR. LANDRY
Well, the problem is that under the Duncan case, the Duncan case said "six months or more" and if that ruling stands, then all of these cases have a right to trial by jury by virtue of the federal constitution regardless of what you put in the state constitution.

MR. RICHARDSON
Well, what if it were changed as we suggested, "any person charged with an offense punishable by imprisonment of more than six months."

MR. LANDRY
Well, the Duncan case specifically provided that you are entitled to a trial by jury under the federal constitution if you are subject to a potential imprisonment of six months or more. That was the language of the Duncan case. That's the problem, you see?

MR. RICHARDSON
Yes, well, that was my suggestion in that regard. I don't have any other comment to make about that.

The next one in the same Section 16. I believe I discussed this briefly with one of the gentlemen on the committee this morning about requiring a unanimous verdict in cases where no parole or probation is permitted. I believe it might have been Mr. Roy; I am not sure. The idea being that the legislature would be less inclined to inflict those penalties, or provide for the infliction of those penalties, if it required a unanimous jury. We feel pretty strongly, I do and I think that the rest of my men do, that only in capital cases should a unanimous verdict be required. We have a provision now and I think it is answered here that in capital cases, where the punishment is death, only nine out of twelve jurors need agree on a unanimous verdict, except in capital cases, so we feel that this is one more exception and we don't feel very strongly that we should make it a unanimous verdict just as easily be deleted. There may be members in the committee that feel otherwise and that's perfectly all right. We just feel like that armed robbery which is the one that it's really armed at, that's the only one that I can think of right now which carries a minimum of five years, I believe, and goes up to ninety-nine years...

MR. ROY
Thirty is the minimum.

MR. RICHARDSON
Is it changed to thirty?

MR. ROY
Thirty. That's the whole--I'd rather be convicted of murder than armed robbery.

MR. JENKINS
The minimum for armed robbery is five years.

MR. RICHARDSON
Five years. I don't think it's thirty. No, no, Chris.

MR. ROY
I thought--I'm sorry. I thought it was thirty years.

MR. RICHARDSON

Now, say, thirty used to be the maximum. It was fifteen maximum, based on thirty maximum, then raised to thirty maximum, then it was a maximum of five years, and I'm not aware of any changes. But, anyway, I just don't see any need of just carving out an exception here and there. I think what we're doing, Mr. Roy, really, if we do that, is that we're creating a set of specific, individual situations piece by piece.

Now, on the matter of the next sentence, "it takes not necessarily punishable by hard labor, the jury may consist of a smaller number of persons", and it's the next word that I would like to see changed. Instead of "all of whom must concur to render a verdict", I would like to see some other fraction used and I'll tell you why. Of course, I'm sure it's the difference between prosecuting attorneys and defense attorneys. I wouldn't make sense to us that if try a man for a twelve man jury, necessarily hard labor, it takes nine out of twelve to reach a verdict without either way, but if you have a five man jury, you got to have nine out of five. To me they're inconsistent. What we would like to see in our statute, we would like to see a provision placed in here that specifically tells the legislature that we want them to have a jury of a smaller number, that it should take only, say, two-thirds or three-fourths to reach a verdict, rather than unanimous. If you have a jury of six, even three-fourths would be five out of six; if you had a jury of eight, three-fourths would be six out of eight. There were some provisions at one time or other. The Law Institute put in some provisions seeking for something along this line, but it required a constitutional amendment and it got caught in the landslide against all constitutional amendments, and so they never would renew it because of that situation. But, I tell you I don't think the people in Louisiana realize how progressive the Code of Criminal Procedure has been in recent years and when we go to these meetings—I just came back from one in Denver the other day and they're just amazed at how they are struggling with some archaic laws, and I think that this is a good time to make a change.

MR. JENKINS

May I ask you a question?

MR. RICHARDSON

Yes, yes.

MR. JENKINS

I must say that I certainly agree with you on most of your remarks on grand juries. I think that particularly with requiring an indictment in felonies necessarily punishable by hard labor and things of this nature. I'd like to ask a question with regard to grand juries. I remember seeing some words, "or, by indictment", or "by indictment or by indictment". Any person charged with an offense or set of offenses is punishable by imprisonment of six months", or as you provided, "more than six months". Do you do that for a specific reason or...?

MR. RICHARDSON

Well, I think what that's saying is that if a person is guilty of three or four or five misdemeanors all at one time and if we have jointer offenses, then they should be joined in together. Now, we don't have a strict jointer of offenses now; that's a drawback that we have and we tried to get it once or twice in the legislature, but it didn't get out of the committee. And I feel like that if there are several misdemeanors and two are under six months, why should they be joined together in order to compel a jury trial? I deliberately left it out. I think it should be deleted.

MR. JENKINS

In that case, would this bill, if passed, remove these offenses

10

MR. RICHARDSON

Now, I think that what this would do is if we ever have a jointer statute, this will make it mandatory to join these things together and give a man a jury trial when, maybe, you only want to prosecute him on one, as a misdemeanor.

MR. JENKINS

Or you could drop the others though, couldn't you?

MR. RICHARDSON

Well, not unless the legislature gave us authority in the statute at the time they passed jointer. We're not sure what they'll do because they've turned us down on jointer already. We had one statute in on jointer that Dale Bennett and I worked on for a long time and finally reached the conclusion that it would never have the responsive verdict be at the highest grade, even though it would be a unanimous grade, that maybe that would satisfy the legislature, but it did not and finally we just dropped it. We just abandoned the jointer for the time being.

MR. JENKINS

Well, would you support in general the rule that if in a given criminal proceeding a person has the potential to receive an imprisonment of more than six months that he ought to be entitled to a jury trial?

MR. RICHARDSON

Oh, yes.

MR. JENKINS

I mean even if it involved more than one offense, is what I'm saying.

MR. RICHARDSON

If they were related offenses, like a series of thefts or something like that, or if we had a jointer statute even, that would be all right. That'd be all right.

On Section 19 which was mentioned a moment ago I don't fully understand but it may be that the committee will explain it in a way that I would not have any objection, but the last sentence on Section 18, "And full rights shall be restored by termination of state or federal supervision for any offense." We presently have a law, if I'm not mistaken, that a person who has been convicted of a felony, if he's a first offender, he may apply for a pardon direct from the governor without going through the pardon board. That's a brand-new statute, if I'm not mistaken, which would accomplish a great deal of the same thing that this would accomplish in that regard as far as restoring citizenship and right to vote, and things like that. But, as I read this provision here, to me this means that after a person has served his time, after use of probation and parole, that then he will automatically get back his citizenship without any further action, without any consideration of anybody that this offense could not be used as a multiple offender, as an habitual offender, or as a subsequent offender because it would be taken off, if it's full restoration, if full rights are restored automatically by termination at that time, then you couldn't have a second offense drunk driver, if he gets just a fine and walks out of the courtroom, for instance, can you not make him an habitual offense drunk driver. You could not have an habitual offender statute. You could not have life imprisonment for people who have committed no more felonies than they are subject to life imprisonment, under this article as written. Now, if that's not what you mean, then I think that Mr. Henry and the rest of them can straighten it out. But to me this means that when a person has paid his debt to society, and I'm perfectly agreeable to that, but when a person has a debt to society that he's paid by imprisonment, there are some disabilities that he has received. He's lost his right to vote, if it's a felony. He ought to have to have some legislation to tell him what to do. It should not be automatic, in my opinion. The legislature should not be hamstringing as it would be by this article. Another provision, as I mentioned just a moment ago, on drunk driving, for instance, it's the common thing that on a first offense drunk driver it's very rare that a man gets a jail sentence. He gets—he has a fine and usually the fine is in keeping with what he can pay. He pays his fine in court, walks out of the courtroom, under this provision he's through; he's paid his debt to society. Then, when he's a drunk driver again, this provision in the constitution, in my opinion,

17

MR. RICHARDSON (cont'd)

would prevent him being charged as a second offense drunk driver, and a third offense drunk driver, and a fourth offense drunk driver.

MR. ROY

I don't see that.

MR. RICHARDSON

Alright. Okay.

MR. ROY

I see that when it says, "And full rights shall be restored", we're talking about rights as a citizen and it has nothing to do with prior— with a prior record. If he's a...

MR. RICHARDSON

But you see you're leaving it to a court to decide one way or the other on that because, you see, we've got a difference of opinion right here.

MR. ROY

Well, we could comment on it, I know but we could comment on it but—we could, in our comments, put that "this will in no way affect multiple offender law".

MR. RICHARDSON

Fine. Add it in. Add it in.

MR. ROY

As a comment.

MR. RICHARDSON

Add it in. No, not in the comment, not in the comment. Add it in.

MR. GUARISCO

We do intend though to restore his franchise.

MR. RICHARDSON

That's okay. That's okay.

MR. GUARISCO

Without any legislative action. Let him vote.

MR. RICHARDSON

That's okay. That's okay, but I'm talking about multiple offenders.

MR. ROY

To me a right is something that you have inherent in you and once you're a convicted felon you don't have a right to say you've got a convicted felon. You were a convicted felon. That's not a right to say...

MR. RICHARDSON
But this isn't... I mean, yes, but this isn't... I mean, yes, but this isn't...

MR. ROY
No, but what--I'm talking about what I'm talking about--about the nature of our discussion. When we say that "full rights are restored", it means the rights that one has as a human being and it does not imply at all that one's past conduct is changed, that it's erased, that the fact that he was convicted is, all of a sudden, not there anymore. He was convicted; he just has his rights again to vote and to be thought that he once had before.

MR. RICHARDSON
But don't you realize that there are even some laws of the legislature right now about expunging records? And that--then?

MR. ROY
That still wouldn't, in my opinion, Mr. Richardson, do know.

MR. RICHARDSON
Okay. Okay.

MR. LANDRY
Mr. Richardson, just a point of clarification.

MR. ROY
But I agree with you. I'm not for not allowing multiple offender laws by it, but I didn't read it the way you read it.

MR. RICHARDSON
Well, then, since we have a difference of opinion, why not put it in there?

MR. ROY
Okay.

MR. RICHARDSON
You see? Why not put it in there?

MR. LANDRY
Mr. Richardson, just a point of clarification.

MR. RICHARDSON
Alright.

MR. LANDRY
When the governor restores a person's citizen... rights, is that interpreted to mean that the multiple offender statute would not apply to him for a second offense...

MR. RICHARDSON
No.

MR. LANDRY
...after restoration?

MR. RICHARDSON
No, I didn't say that, but I said...

MR. LANDRY
No, I'm saying under the present practice of restoration of rights but by the governor.

MR. RICHARDSON
Yes, if he gives him a pardon. If he gives him a pardon, in my opinion that obliterates that. For instance, I don't think you--I know, for example, you can't ask a man, when he takes the witness stand in his behalf, has he ever been convicted, if he has been pardoned. You see? 'Cause that's one of the effects... That's one of the effects.

MR. ROY
Well, that doesn't answer the question about the multiple offender law provision.

MR. RICHARDSON
No, No. I understand that. I understand that.

MR. ROY
But what is the...

MR. RICHARDSON
I said I don't know the answer. I don't know the answer.

MR. ROY
Okay.

MR. RICHARDSON
I just know the answer--that one facet that it does. You see? Just like I said about expunging records or about, you know, there is a new wrinkle now in the narcotic law that you can defer sentence, and defer and defer, and then after a while if everything's lived up to, then that person's record is obliterated, so there's no objection to that. Do you understand what I'm talking about? So all I'm saying is that if you'll just say, "This shall not apply to multiple offenders",

MR. RICHARDSON
But this isn't... I mean, yes, but this isn't... I mean, yes, but this isn't...

MR. ROY
No, but what--I'm talking about what I'm talking about--about the nature of our discussion. When we say that "full rights are restored", it means the rights that one has as a human being and it does not imply at all that one's past conduct is changed, that it's erased, that the fact that he was convicted is, all of a sudden, not there anymore. He was convicted; he just has his rights again to vote and to be thought that he once had before.

MR. RICHARDSON
But don't you realize that there are even some laws of the legislature right now about expunging records? And that--then?

MR. ROY
That still wouldn't, in my opinion, Mr. Richardson, do know.

MR. RICHARDSON
Okay. Okay.

MR. LANDRY
Mr. Richardson, just a point of clarification.

MR. ROY
But I agree with you. I'm not for not allowing multiple offender laws by it, but I didn't read it the way you read it.

MR. RICHARDSON
Well, then, since we have a difference of opinion, why not put it in there?

MR. ROY
Okay.

MR. RICHARDSON
You see? Why not put it in there?

MR. LANDRY
Mr. Richardson, just a point of clarification.

MR. RICHARDSON
Alright.

MR. LANDRY
When the governor restores a person's citizen... rights, is that interpreted to mean that the multiple offender statute would not apply to him for a second offense...

MR. RICHARDSON
No.

MR. LANDRY
...after restoration?

MR. RICHARDSON
No, I didn't say that, but I said...

MR. LANDRY
No, I'm saying under the present practice of restoration of rights but by the governor.

MR. RICHARDSON
Yes, if he gives him a pardon. If he gives him a pardon, in my opinion that obliterates that. For instance, I don't think you--I know, for example, you can't ask a man, when he takes the witness stand in his behalf, has he ever been convicted, if he has been pardoned. You see? 'Cause that's one of the effects... That's one of the effects.

MR. ROY
Well, that doesn't answer the question about the multiple offender law provision.

MR. RICHARDSON
No, No. I understand that. I understand that.

MR. ROY
But what is the...

MR. RICHARDSON
I said I don't know the answer. I don't know the answer.

MR. ROY
Okay.

MR. RICHARDSON
I just know the answer--that one facet that it does. You see? Just like I said about expunging records or about, you know, there is a new wrinkle now in the narcotic law that you can defer sentence, and defer and defer, and then after a while if everything's lived up to, then that person's record is obliterated, so there's no objection to that. Do you understand what I'm talking about? So all I'm saying is that if you'll just say, "This shall not apply to multiple offenders",

MR. WEISS

Mr. Richardson, would you be satisfied if we just added on the phrase "in accordance with law" to that last sentence?

MR. RICHARDSON
Whereat?

MR. WEISS
Sentence is.

MR. RICHARDSON

Well, I don't know what "in accordance with the law" would mean.

MR. ROY

If that is the law allowing cruel and torturous conduct, you would do it.

MR. RICHARDSON

I don't believe that would get it, sir, because "in accordance with law" just means whatever the legislature says is the law.

MR. WEISS

Well, isn't that--isn't that what you are saying?

MR. RICHARDSON

No, No, not really.

MR. ROY

He's only saying with respect to this...

MR. RICHARDSON

I'm just--I'm talking about...

MR. WEISS

You said the legislature already had these laws that you'd like to see kept in effect.

MR. RICHARDSON

Well, I say I had no objection to those laws that are there. What I'm saying is that if we say that this does not apply to multiple offenders, I think that'll take care of the whole situation.

MR. WEISS

In other words, just change it to "multiple offenders" clause.

MR. RICHARDSON

I think--I think, Mr. Roy, I think Mr. Landry and the rest of them... Yes, sir.

MR. JENKINS

One other question. From your standpoint as a prosecutor, Mr. Richardson, would it be of any assistance if we put in a clause in this thing dealing with the restoration of rights that says that "all rights shall be restored upon termination and supervision by any state

21

MR. JENKINS (continued)

or federal government; and upon the payment of restitution." In other words, you should allow someone to have all his rights restored to him simply because he's been to jail even though he hasn't made any restitution to the particular individuals involved? If we had such a provision, would this assist you in any way, do you think?

MR. RICHARDSON

Well, of course, that would be real nice, sir, but some people just can't make restitution. It'd be an impossibility.

MR. JENKINS

Well, I understand that, but if they can't, should they be allowed to have all their rights back again?

MR. RICHARDSON

Well, sir, if they've gone to the penitentiary or they have served time in jail or they've been on probation and parole, if they have done the punishment that the courts says, then I don't believe that that would be a proper thing. Now, the court, for instance, in conditions of probation, for example, might make that condition, if the court found that it was within his power to do so. But I can conceive of a situation where some teenage kid that's seventeen or eighteen years old wrecks an automobile or runs into a store or commits some terrible burglary and spent all the money, I mean, that's what they get it for. If they rob and steal is to spend it, and they just would be impossible to make restitution.

MR. JENKINS

So, really the only change you think we need is just mention multiple offender?

MR. RICHARDSON

As far as I'm personally concerned. That's the only one that occurs to me.

Section 22, as I pointed out in the memorandum and I'll not dwell on it to any great length, if it's the feeling of the committee that the state of Louisiana has no immunity, all from any source whatsoever, then, of course, that sentence would be all right, as far as the state of Louisiana is concerned. I realize that the immunity of the

state of Louisiana in the field of damages has been gradually eroded; I don't think completely, but it has been eroded somewhat. If that is so, then, of course, that's the decision that the committee is making. I think what it does do, it simply enlarges the immunity of the state to everything, in my opinion. Now, maybe if we can't think of anything else but damage suits, maybe that is a needless statement, but what it simply does, it gives the state supreme court carte blanche to say that the state of Louisiana, since it no longer has any immunity for anything, is responsible for everything. Now, if that--that's a decision the committee is going to have to make. Now, there are some areas of immunity; they are elusive; they are vague; I don't rely on them strongly, but I do know that judges of courts of record, when they are acting in their official capacity, do have immunity. I know that in certain jurisdictions judges, prosecutors, cutting officers and others have a certain form of immunity. I know that members of the legislature and the governor and lieutenant governor, which it's independent, have some certain kind of immunity of kind, perhaps, of immunity. I would like to suggest that that be so written. If you decide that you don't want the state to have any immunity, I would just simply rewrite it to say "The state shall not be immune from suit," but I would like to suggest that that be the other part about "no any person" should be deleted and leave that up to the court. I don't think it's right that the judges should be able to maintain immunity for themselves and for judges, and not for other people acting in their official capacity, if they have any immunity. And I have not thoroughly researched it to know whether they have very much or not, but I know that there is some area of immunity left. And I think it should be left up to the courts in that regard.

Now, on the one that probably is--where we really would kind of lock horns would be on No. 14 which reads in the draft that I have, "At all

22

MR. RICHARDSON (continued)

stages of the grand jury proceedings after arrest, the accused shall have the right to the assistance of counsel while testifying to compulsory process for presenting witnesses to the grand jury for interrogation and to any transcribed testimony of any witnesses appearing before the grand jury in his case." Now, I submit in all candor to you that if you do that, then you just might as well do away with the grand jury proceedings. What you're really doing, you're setting up, not a trial of the charge, but you're setting up the trial of whether or not there's any charge there, whether or not anyone should be prosecuted or whether or not anything should be investigated. You're having a pre-trial proceeding; you're allowing the grand jury to be divided into two between a prosecuting officer or district attorney or assistant district attorney or attorney general or assistant attorney general on the one hand, and the defense counsel sitting there with a person telling him what to say, when to say, or giving him advice, stopping the proceedings to advise him or having the assistance of counsel, and what you're doing is that you are imposing one more adversary proceeding in the stage when the decision is made whether to charge or not to charge. I don't know whether or not a crime has been committed. And I just honestly--if you have that, I just don't see any point in having a grand jury. All you're doing is--I know what you're doing. You're just breaking open the grand jury proceeding. There are real, substantial and valid reasons for the secrecy of the grand jury and the proceedings of the grand jury. You're destroying the effectiveness of it; you're destroying the purpose of it and the function of it if you do this. A grand jury proceeding, contrary to popular belief, is not a star chamber proceeding; it's not it--it's composed of citizens. I wish people would understand how grand juries came about and have time to go into the history of it. You take right now in our jurisdiction outside of Orleans Parish, the grand jury panel is composed--is drawn by a set of four citizens plus the clerk of court. The four citizens are named by the judges of the court. They, and the clerk of court, compose the jury commission. The jury commission from all over the parish and put them into the general venire or the wheel or the box or whatever it is. Has to have three hundred names and upwards and then those names are then drawn by lot anywhere from twenty to a hundred names. When they come to the courtroom, the judge has the authority to appoint one person and that's the foreman; he appoints the foreman. The foreman has very limited authority but he appoints one person to act as, sort of, the spokesman to get them together and speak for them when they come back. The other eleven names are drawn by lot out of the envelope by the sheriff from the sealed envelope in open court. Nobody knows who is going to be on that grand jury. I've had grand juries that are fifty-fifty in the composition of color. I've had grand juries that are back and forth of all kinds; they come from all walks of life. They come up there to make decisions; they are not judges; they are not lawyers. Cases are presented to them and they can only speak for my office, of course, we present cases as events. If the witnesses--if the accused wants to come in and he asks to come in and the grand jury wants to hear him--it's a mutual thing; neither one can compel the other; he comes in and tells all about it. It's come in there and tells it without his counsel and the grand jury asks him whatever questions they think are pertinent and proper. To me, it's a fair proceeding; it's not a contest; it's not a game; it's not a skill of wits; it's not a battle. And I just feel like to put-make it an adversary proceeding is--all in the world it is to make it another trial. That's all. You're having a trial before the trial. We've got so many trials before trials now that we have witnesses that have to come to court a half a dozen times before we ever get to the merits of the case. Now, we're going to have to do it again all over again before we ever decide whether or not there's a charge or whether a crime has been committed. Now, maybe I'm inconsistent; I hope not, but I just feel like that the grand jury is a place where the citizens come and they are not--they're not hidebound by technicalities. If they make a mistake in the indictment, it can be thrown out. If the judge is in the struggle where the research goes on, where the argument of counsel is presented. The grand jury, in my opinion, is not a place for contest between lawyers; it's not a place for contest and things of that nature, and I think if

you do this and you have assistance of counsel of a person while he's testifying--I know you make it after arrest, but, even so, and to have compulsory process, I don't know that I have any particular objection to that, but now when you do that, when you do have compulsory process, presenting witnesses, it's entirely possible that someone would just load down the grand jury with extraneous witnesses, incompetent witnesses,

21

MR. RICHARDSON (cont'd)

character witnesses, and all those things which, in my opinion, ought to go to the courtroom, Mr. Roy, not at the grand jury. Okay. So we just simply have a different philosophy.

Now then, "and to have any transcribed testimony of any witness appearing before the grand jury in his case". Well, maybe you come from an area where they take down all the testimony. I guess you do. Ed Ward's here; he can speak about that. We don't take down the testimony of witnesses. The only time we take down the testimony of witnesses is if an accused person comes in and wants to give his testimony, we take down his testimony to show that he received a proper notification as to his rights and things like that and he takes a copy of it, but he doesn't get the copy of other witnesses' testimony. They still got to come back and testify again at the trial.

MRS. DUNLAP

Does anybody get copies?

MR. RICHARDSON

Pardon?

The D. A. does.

MRS. DUNLAP

Does anybody get a copy of the other witnesses?

MR. RICHARDSON

The co-1 reporter, if it's transcribed, has a copy. That's all.

MRS. DUNLAP

And that's all?

MR. RICHARDSON

That's all. We don't even transcribe it. We don't even take it down.

MR. WEISS

Well, you mentioned mistakes. Suppose--can you hold a witness for perjury?

MR. RICHARDSON

Oh, yes, but you've got to be able to prove it. Yes. That's right.

MR. WEISS

But the document, the transcript is proof of perjury?

MR. RICHARDSON

Oh, yes, sir, if you can prove it, it is.

MR. WEISS

Well, that's what they point out.

MR. RICHARDSON

Yes.

MR. ROY

Mr. Richardson, I just don't--I haven't seen this adversary proceeding that is alluded to by district attorneys who talked to me about this provision. First of all, it doesn't say that the accused has the right to testify at all. It only says that he has a right to assistance of counsel while testifying. Now, the grand jury has the right not to hear his testimony. If it hears it, what's wrong with the accused having in the grand jury room, his attorney?

MR. RICHARDSON

I just don't think that's the place for an adversary, sir--what you're going to have...

22

MR. ROY

I'm an adversary.

MR. RICHARDSON

Oh, you were, Mr. Roy. How are you going to keep from having adversaries, sir? You've got a district attorney on one side and you've got a defense attorney on the other and the defendant there, and his attorney is going to be trying to get him to say things that are in his favor and it will be up to the grand--to the district attorney to cross-examine him. I just don't think that's the place for it.

MR. ROY

Well, first of all, there are very few people who--defendants or accused people who appear before the grand jury--people who have been arrested rather--have got to sign a waiver, don't they? Don't you make them sign a waiver?

MR. RICHARDSON

We make them sign a waiver or they don't come. That's right, sir.

MR. ROY

Okay now, what percentage of people represented by attorneys, people of whom you're trying to get an adversary hearing?

MR. RICHARDSON

All of them. All of them.

MR. ROY

--appear to testify?

MR. RICHARDSON

No, no. You said "represented by attorneys". They're all represented by attorneys.

MR. ROY

Well, you never said how many of them appear and testify.

MR. RICHARDSON

I'm sorry. What percentage appear to testify?

MR. ROY

About, maybe, fifteen percent?

MR. RICHARDSON

No, I'd say--this would be a rare guess, but I'd say twenty, twenty-five percent ask to testify.

MR. ROY

Alright. And the grand jury still has the option of hearing them or not.

MR. RICHARDSON

That's right.

MR. ROY

Now, would you want to have to hear them, or would you want to have to hear them?

MR. RICHARDSON

That's right.

MR. ROY

Okay. But if they hear them, they choose to hear them, that person has a right to his attorney in the grand jury room. It doesn't say the attorney can cross-examine or anything; he can't say a word, but if he...

MR. RICHARDSON

It doesn't say that.

MR. ROY

It doesn't say that he can, it says...

MR. RICHARDSON

It says he has the right to assistance of counsel.

MR. ROY

Of counsel.

MR. RICHARDSON

Assistance of counsel means the right to cross-examine.

MR. ROY

No. No.

MR. RICHARDSON

Well, it does.

MR. ROY

The grand jury does the questioning, doesn't it?

MR. RICHARDSON

Well, it does to a lot of people.

MR. ROY

But, but...

MR. RICHARDSON

Well, the courts have said that assistance to counsel is a right to confront witnesses and to cross-examine and to make pleas and a lot of things.

?

I don't agree.

MR. ROY

I just think that--it says that "after arrest the accused shall have the right to the assistance of counsel while testifying." That's all it says.

MR. RICHARDSON

Alright.

MR. RICHARDSON
That's right. I would call them.

MR. ROY
And I appreciate that. I think that's a fair deal. Alright. Mr. Lander comes up there as my witnesses before the grand jury to testify. He testifies, he's allegedly my witness; I gave him to you. You can transcribe his testimony and keep it and not give it to me.

MR. RICHARDSON
Well, I guess the reason...

MR. ROY
Now, aren't you getting this two-way street, you're getting....

MR. RICHARDSON
No. I guess the reason I don't understand it is because I don't ever transcribe any testimony except the defendant's.

MR. ROY
Okay, well, I'm not--I keep saying "you", but a district attorney under the present system can take allegedly (quote) my witnesses (end quote), transcribe their testimony and keep it and not give it to me.

MR. RICHARDSON
Well, I'd have no objection--I'd not be opposed to giving you the testimony of any witness that you sent up there.

MR. ROY
What about any witness that you....

MR. RICHARDSON
If it's transcribed.

MR. ROY
...get the transcribed testimony?

MR. RICHARDSON
Pardon?

MR. ROY
Well, would you be--just give it to me and you not have a copy of it?

MR. RICHARDSON
Certainly. That would be all right with me.

MR. ROY
But you'd want to keep your witnesses that you've got up there and you can....

MR. RICHARDSON
If they're my witnesses--I don't have any witnesses there.

MR. ROY
Well...

MR. RICHARDSON
I have witnesses that know something about the case, presumably. Now, if you want to give me some names of witnesses, I'll be glad to summons them and if that testimony is transcribed, I'll give it to you. Your witnesses.

29

MR. JENKINS
Could I interrupt just a second because I need to make a farewell speech? I've got to go home.

MR. RICHARDSON
I think we're about through now except--that's all I have to say.

MR. JENKINS
Well, I have to leave. I have an out-of-town engagement that I have to meet. It's long-standing. I'm sorry. First, I want to thank Mr. Richardson for coming and even though I have to scoot before you are through.

MR. RICHARDSON
That's all right.

MR. JENKINS
I think that this has been very valuable. I just wish we had a hundred people in the state who would take the time and interest you've taken to give us your views on this. There's no way that this committee has the knowledge or information or expertise to contemplate the full impact of what we're dealing with and you're helping us to see these things. Mary, I believe--are you recording today? I want to assure all the other witnesses that I'm going to get the benefit of anything you have to say today because I'm going to try to get that tape and listen to it. And, just one comment to the committee, you-all may

work on tomorrow, is that Walter's general plan for the assistance in provincial government, I've never met him and I don't think he's got any too much of a problem with it. It looks pretty good to me. You-all might want to deal with it right now. It just seems pretty good to me. So I just want to say "goodbye" and I appreciate the opportunity to meet you.

MR. RICHARDSON
Could I ask something of you, before you leave?

MR. JENKINS
Yes, sir.

MR. RICHARDSON
I don't want anything to state that what I'm saying is honest. I think I know anything more than anybody else in this room. It's just that I've been in the district attorney's office for thirty years and I've seen the changes that have come about and I've seen certain things that I hope will not come about as I think you've seen some conflict in ideologies, prosecution and defense because of the adversary system that we have. If we didn't have the adversary system, it'd be different, but it's a duty of the prosecution, as I appreciate it, to present all the available, believable information, both to the grand jury and to the trial jury. It's the obligation of the defense attorney to do everything he can to create a reasonable doubt or a fair doubt--whatever you call it--in the jury's mind. That's all. They're just opposites. Thank you, sir.

MR. JENKINS
Mr. Richardson, thank you very much.

MR. RICHARDSON
Yes, sir.

MR. STINSON
I have the distinction of being his proxy.

MRS. DUNLAP
Who're you going to leave it with?

MR. RICHARDSON
Leave it with me?
He was asking a question.

MR. VICK
I have a question, your honor, Mr. District Attorney. This is what has bothered me since we began to hear the grand jury--the acceptance or rejection simply this. Do you consider the grand jury an effective trial body?

MR. RICHARDSON
Yes, sir, and several different reasons. Some of them are basic. Some of them are historical, somewhat old--I'll tell you the way I feel about it. I think there are some ancient reasons why we hate to discontinue them, but if you think in the field of justice, or whatever along those lines where the community is present in fact, more than an individual victim of a crime, for instance, like a shooting or killing or something like that, I feel like that to have the justice passed upon by a group of citizens drawn at random from the rolls of all walks of life and all neighborhoods in the county, to have the grand jury, that they can bring in that matter through that prosecuting officers don't always have. They can bring some experiences, they can bring other matters to bear in the consideration of someone not a person should be indicted on that particular type of crime. Now, that's not true of all crimes, but is very valuable in some cases. I think that the grand jury system should be preserved. I realize, I think, for instance, that it's a sound rule that no one should be prosecuted on a bill of information for murder or even for something that requires life imprisonment because that's a very severe penalty, and I think to have that passed upon by the grand jury is a very valuable thing and a meaningful thing to society. I think Mr. Roy will probably agree with that.

MR. VICK
Now you just touched on something, Mr. District Attorney, that I think is terribly important and that is the area of public corruption. Now, you see the grand jury is perhaps a very effective tool in ferreting out or at least presenting questions of public corruption to a panel, as opposed to, say, a preliminary hearing or some other procedure like they use in California, a preliminary hearing, for example, that you couldn't--you wouldn't conceive then that that would do an effective job in perhaps prosecuting or investigating public corruption other than by a grand jury forum.

MR. RICHARDSON
Well, it's a sort of a bilateral thing. I think they complement and supplement each other. I think that the district attorney's office has to get all the information they can and present it to the grand jury, and sometimes what's said by one witness will bring a matter that he didn't know about in the investigative stage and one thing will lead to another. Sometimes witnesses will say things in a grand jury they're not going to tell a district attorney or an investigating officer, or sometimes they'll see people coming and going in the grand jury and they get worried or they get frightened or they get scared, and they think, "Well, I'd better tell the truth." And whereas in the district attorney's office they may not do that, or at the police office, they may not do that, or they better back something. I just feel the grand jury still has a prominent place in our society in more ways than one. Now, Michigan for many years did without a grand jury and I know one district attorney up there

32

of the

STATE OF LOUISIANA

COMMITTEE ON BILL OF RIGHTS AND ELECTIONS

Saturday, May 19, 1973
Baton Rouge, Louisiana

Our next witness is Professor Benjamin M. Shieber of the L.S.U. Law School who is speaking on certain aspects of the Bill of Rights part itself. Professor Shieber.

by former FBI Director J. Edgar Hoover, who was a strong proponent of wiretapping by ... after judicial order. The problem, the major problem, now is that I say as part of my investigation that although I am not a member of the American Civil Liberties Union, I am the president of the local chapter of the American Civil Liberties Union. I am on the board of the American Civil Liberties Union, state board of directors. I am a member of the American Civil Liberties Union. I am a Civil Libertarian. I don't speak for the American Civil Liberties Union, in fact my position is in opposition to theirs. But I think they are right. I think they are right about the question of wiretapping. I felt that I must come forward and give you the benefit of whatever expertise I have in talking about this very crucial issue for American society. I think that the problem that we are talking about today arises primarily because of the problem of organized crime in our society. Organized crime is an organization engaged in the pursuit of profit. Organized crime is a criminal organization. Organized crime is pushing down, whether it's gambling, whether it's extortion of

legitimate businessmen, anything that will bring in money, they will capitalize and go into. The structure of organized crime is such that the top level is the result of the accumulation of criminal acts. They don't do the criminal acts, they just make sure they order to order other people around who would still other people who actually go out and commit the murder or commit the heroin pushing. You also do have a lot of people who are in the organized resources. Estimates have run that the income of organized crime is up to the billions of dollars each year. You are dealing with an organization that has enormous resources in money but with enormous resources in personnel. And the structure of the organized crime have run between five and ten thousand people in this country who engage in interstate and foreign travel, in order to carry out the activities. And the people who are at the top of the hierarchy. Now these people are not the ones who are doing the crime, they are the ones who can do and intimidate and buy witnesses and they are the ones who can personnel, intimidate and buy some political people, and this makes ordinary citizens afraid to come forward to testify. This makes the government very hesitant to go forward and gathering information themselves, without needing to wait for an ordinary citizen to come forward and make a complaint or give evidence, enormously important and the age of electronic surveillance becomes particularly significant in the age of organized crime.

Just 1 point : clarification, Professor Shreeber, is it your position then, that you are suggesting in effect that after, say "person", in

searches and seizures, we should put "communication" and then delete the last sentence? Is that what you are suggesting? I would like to clarify your statement ...

DR. SHIEBER
In there?

MR. LANDRY
After "person", you are suggesting putting "communication"?

DR. SHIEBER
No, I am saying you should leave it alone.

MR. LANDRY
No, I am saying in the first sentence, add "communication"?

DR. SHIEBER
No, sir, because communication is something that belongs to a person that is protected against search and seizure as it is in the federal constitution which doesn't specify communications. It just speaks about protecting persons and if you say "every person shall be secure in his person, houses, papers and other possessions", you could put in and add "communications and other possessions". Oh, I see ... "shall be secure in his person, houses, papers" ... I see, I thought you meant every person ... I see, I thought you were speaking about the first "person". I wouldn't put anything in, I would stick with the language of the federal constitution on this and because the federal constitution has been interpreted as protecting against illegal searches and seizures of communication without any specification of the word "communication", and I think if this committee and the convention adopt language which is similar to that of the federal constitution, the courts would say that they were going along knowing the federal interpretation, they were going along with the federal interpretation.

MR. STINSON
Why should we put it in ...

MR. GUARISCO
Why make a mistake about it? It won't hurt to put it.

DR. SHIEBER
All right, sir, I agree, but the last sentence should be eliminated. Yes, sir. Yes, Mr. Stinson.

MR. STINSON
Leave it like it is for the present time ... if this is left in, they couldn't put the mail ...

DR. SHIEBER
I hadn't thought of that, sir, but that seems to be correct.

UNINTELLIGIBLE

DR. SHIEBER
I would put in, sir, and I suggest that it should be "papers" ... Because, you've got "person, houses, papers" and "communication" sort of fits in with "papers". Communication ...

MR. LANDRY
... if you put it after "person", then you'd have "houses, papers and other possessions". They fit together. It doesn't make any difference where you put it.

UNINTELLIGIBLE

DR. SHIEBER
Yes, sir ... and delete the last sentence.

MR. GUARISCO
Suppose the federal court says that communications are ... you don't have to make a probable cause for ...

1

DR. SHIEBER
I think that I am still, by referring in our state constitution protecting against unreasonable searches and seizures and I agree entirely with that. It's just that the outright ban on ... in the last sentence is a threat, to, I think to our state and to the people of our state.

MR. ROY
Professor Shieber, what do you think of the rest of the search and seizure article? We've had a little flack from a district attorney and we were wondering what you thought about it.

DR. SHIEBER
The rest of it tracks the federal constitution. The only thing that I can see that is different is the statement about "any person adversely affected" and there I go along with the district attorneys in saying that is too broad a statement ... that ... I can see situations where information would be brought up in a search that was well, I haven't thought about it, let me put it that way, the district attorneys have and I would ...

MR. ROY
If they make a strong point this way, Ben ... What I'm attempting to do is to give standing in court to a co ... to a criminal, let's say, whose house has not been searched, the door has not been kicked

down, but his partner's door has been kicked and then since evidence on that can't convict a person he holds out and then they can subject the other fellow who participated ... probably because you got those things. However, my feeling is strongly about a strong door that, even if you that you should even give the benefit of this other door getting away with it. It eliminates the possibility of doors being kicked down but I am concerned if we are alliving a criminal, well, let's say the police picked up some evidence and there was technical violation in the ... no kicking down of doors but they get some evidence somewhere and there's a technical violation of some rule that somebody has obtained it and then allowing that person to exclude it. I don't like that.

DR. SHIEBER
I think this is the problem, I thank you for pointing out the problem to me. I hadn't thought about that problem. So when you state the problem, that the district attorneys require, I see what the problem is. You have many borderline cases in the search and seizure area. A lot of them come up, for example, in the search of an automobile, as you all know, and what this provision would do would be to say that in this borderline case, in these borderline cases, that, the evidence could not be used against a third person and for that reason I think it would be an unwise provision to have in the constitution.

May I say just one word about the grand jury ...

MR. VICE
Why don't we substitute if nobody has any objection to this statement: "No public or private enterprise that maintains records on behalf of an individual shall permit inspection, seizure or copying of such records without the written consent of such individuals except upon proper warrant."

MR. ROY
We're worried about district attorneys and what they're doing and the like going to a bank officer and saying, "I want to see this guy's account" and then take the position that their property, or if a hospital takes the position that an X-ray is the property of the hospital, they can show it if they want.

DR. SHIEBER
I believe that should not be constitutionalized. I think that should be a question for the legislature to determine on balancing out the need for securing such information against the interference with the individual's privacy that it entails. You're talking about ... I think for example of telephone company records. Suppose the sheriff calls up and asks "who has this person been calling long distance in Chicago or New York?" What is a record of his long distance calls? I don't think that a bar against law enforcement getting this information which is held by organizations of this kind should be put in the constitution.

4

DR. SHIEBER (Continued)
It might be a wise legislative provision but to constitutionalize it, I think would be getting too specific. ...

DR. WEISS
Doesn't this border on the Watergate situation?

DR. SHIEBER
Dr. Weiss, it does ... it doesn't border on Watergate, which was an outright violation of the law and outright burglary and criminal act involved. It does open the door to that, but we have a democratic society, and our people are elected by the people, and I think that the power to elect our representatives, the power to elect our chief law enforcement officers and our executives gives us enough control over the kind of invasion of political privacy that you are speaking about.

MRS. DUNLAP
I believe Tony has a question. Is this the point you are interested in, Tony?

MR. GUARISCO
Yes.

DR. SHIEBER
Dr. Weiss, my feeling on that is that police, law enforcement work cannot proceed on all warrant. In order to get a warrant you have probable cause. You need a lot of preliminary work before you can have probable cause for a warrant. Sometimes getting information of this kind may be just the kind of probable cause that is needed, say for a search warrant, under certain circumstances. I am not saying that I favor law enforcement people doing this and I am not saying that perhaps legislation of this kind would not be legislation that I would support. But, to constitutionalize the ban, I think is making it too rigid a situation.

MR. WEISS
If you constitutionalize houses and papers and other possessions ... now we're talking about communication, why can't we give it the same sanctity in the constitution as these others?

MR. GUARISCO
We are not talking about communications, we're talking about things that are handled by fiduciaries.

MR. WEISS
I'm talking about documents.

DR. SHIEBER

I think that if "A" is innocent ...

MR. ROY

He should go through a trial and have to pay an attorney and risk several years in the pen and all have this whole trial to have a petit jury acquit him.

10

DR. SHIEBER

This is part of the process of ... the criminal process. If there is reasonable cause to believe that someone has committed a crime and if the grand jury indicts that person on the basis of that reasonable cause, that is part of what we pay for being in society. Yes, that the man has to subject himself to a trial by his peers where he has a chance to be acquitted and people are acquitted. Angela Davis was acquitted, Ellsberg's case was thrown out, people with the most ... people, who in the eyes of many of the public media are guilty, still go there and they get a fair trial and they are acquitted. So, I don't think our system of criminal justice is so bad that we've got to make it this much more difficult for it to operate, this much more expensive for it to operate, this much more dangerous for common citizens to participate in it, by putting it in the constitution.

MR. STINSON

But, Doctor, the district attorneys ... most of them, they can say what they think but I still know district attorneys; they only present one side to that grand jury and on one side if the evidence is not ... and besides in most cases the district attorneys ... they don't have to go to the grand jury if this wouldn't apply.

DR. SHIEBER

Well, ...

MR. STINSON

And when you have your own witnesses there you are still at the mercy of the district attorney because they are only going to answer what questions he asks and he is not going to ask the questions, most of them, that would free the man.

DR. SHIEBER

I think it's dangerous because of the right, particularly because of the right for the accused to get the testimony of any witness, who ...

MR. ROY

Only if the D.A. chooses to transcribe it.

DR. SHIEBER

... but my understanding is that when a witness is brought before the grand jury, that testimony not only is transcribed, but has to be transcribed. You can't have ...

MR. ROY

Transcribed means to record and type up and you're wrong. It may be recorded, but it is typed up only if the D.A. asks for it to be typed up.

DR. SHIEBER

I didn't understand that by the word "transcribed" and if this is what ... I didn't understand that. I thought it meant just recorded, when I read "transcribed".

MR. ROY

Oh, no, to go, perhaps, used "transcribed".

MR. STINSON

Do you think then if we have all this problem over it, and it would cast a suspicion at least on the man that is indicted that we should do away with the grand jury in most cases?

DR. SHIEBER

Mr. Stinson, I believe that I agree with the provision in Section 13, to expand the right to grand jury proceedings. I think that in serious crimes the grand jury does act as a safeguard against a district attorney bringing charges against a person because he wants to for his own reasons. However, I don't think that the procedure in the grand jury should be expanded beyond what it is under the federal system, and so far that reason I disagree with Section 14.

11

MR. STINSON

For one, I think you agreed to pass ... only in capital crimes ...

DR. SHIEBER

Yes, sir

MR. STINSON

Grand juries, for example, where a man could go to jail no telling how many years ... no parole, no consideration, and we feel that under the present court decisions as to the capital crime, that is worse because if a man is sentenced for life, he can get out in

a short while if he can get the pardon board to reassess the penalty, but under this armed robbery he can't, he's there, so in most cases that's more of a punishment ...

DR. SHIEBER

I agree with you, Mr. Stinson. I agree with the expansion of grand jury rights in Section 13, however, I think that the procedural changes made in Section 14, in going beyond the procedure that is granted under the federal constitution and beyond the procedure that to my knowledge is granted in any state in the union is placing too great a burden on the criminal justice system and making too much of the accusatory stage. I think that we already have in the federal system a good accusatory stage and we shouldn't go beyond that.

MR. WEISS

Yesterday Mr. Roy said that in protecting all these that you also protect the bad element in society. Aren't you saying now that there is more protection of the criminal element than there is defending the innocent?

DR. SHIEBER

In the ... in Section 14, I am saying ... in Section 14 I am saying that would be the case. I think the balance has gone too far the other way in Section 14.

MR. STINSON

Along that line the people agree, because I read in the paper yesterday 66% of the people ... Doctor, do you teach at L.S.U.?

DR. SHIEBER

Yes, sir. I teach constitutional law at LSU. I have for many years now, seven or eight years and I teach Labor law at L.S.U.

MR. STINSON

Do you have difficulty ...

DR. SHIEBER

Sometimes.

MR. STINSON

Who is going ...? Is Dr. Bennett ...?

DR. SHIEBER

No, sir. Dr. Dana. Dr. Bennett? Not that I've heard yet. Perhaps in several ...

MRS. DUNLAP

Are there any more questions?

MR. ROY

What are they, medical doctors?

DR. SHIEBER

They are doctors, juris doctors ... Thank you very much, ladies and gentlemen.

TEN MINUTE RECESS

12

MINUTES

Minutes of the meeting of the Bill of Rights and Elections Committee of the Constitutional Convention of 1973

Held pursuant to notice mailed by the Secretary of the Convention on May 29, 1973

Natural Resources Building, Conservation Auditorium, Baton Rouge, Louisiana

Friday, June 8, 1973 (10:00 a.m. - 12:30 p.m.)

Saturday, June 9, 1973 (9:00 a.m. - 1:30 p.m.)

* * *

prisoners. He also expressed opposition to the death penalty.

The third speaker was MR. ROBERT GRIFFITH, an inmate from Orleans Parish Prison. He also spoke on grievances of prison life that should be corrected in the new constitution.

The fourth witness was MRS. DAVID BROWN, a member of the League of Women Voters of Louisiana from Baton Rouge. She said that the right to vote belongs in the Bill of Rights. She also said that there should be a separate article in the constitution on suffrage and elections or election procedures.

The meeting adjourned at 12:30 p.m. for the day.

THE MEETING RECONVENED

Saturday, June 9, 1973, 9:00 a.m.

Presiding: Mrs. Judy Dunlap, vice chairman

Present

Mrs. Judy Dunlap
Anthony J. Guarisco, Jr.
Rep. Alphonse Jackson, Jr.
Rep. Louis "Woody" Jenkins
Chris J. Roy
Mrs. Novyee E. Soniat
Ford E. Stinson
Kendall Vick
Rep. Shady Wall

Absent

Dr. Gerald N. Weiss

Roll call was taken by the committee secretary. A quorum was present. The committee proceeded to consider sections for Article II: General Government Provision.

Mr. Roy proposed adoption of Section I. Three Departments with staff-suggested changes. His proposal was adopted without objection. See TP No. 121.

Mr. Roy then proposed adoption of Section II. Limitations

3

of Each Department with staff-suggested changes, but with the exception clause at the end. Mr. Roy's proposal was accepted. See TP No. 122.

Mr. Roy proposed adoption of Section III. Civilian-Military Relations. The proposal was accepted. See TP No. 123.

Mr. Roy proposed adoption of a section entitled, "Oath of Office" and the section was accepted. See TP No. 124.

Mrs. Dunlap proposed adoption of a section entitled "State Capital" and the proposal was accepted. See TP No. 125.

Mrs. Dunlap proposed a section entitled "State Symbols" which would designate the native wild iris of Louisiana as the state flower under the name Louisiana Native Iris (Iris Giganteaerulea, Blue Form). The proposal was initially adopted by the roll call vote by 3-2 with one abstention and 4 absent. On reconsideration, the proposal failed 3-3 with one abstention and 3 absent. See TP No. 126.

On motion of Mr. Roy it was agreed that the new constitution would be silent with respect to bribes contained in Article XIX, Sections 12 and 13. See TP No. 127.

On motion of Mr. Roy it was agreed that the new constitution would delete the prohibition from certain aliens owning land contained in Article 19, Section 21 of the 1921 Constitution.

On motion of Mr. Guarisco, it was agreed to delete from the new constitution reference to Huey Long's birthday contained in Article 19, Section 22. See TP No. 129.

4

On motion of Mr. Vick it was agreed to delete from the new constitution the naming of certain bridges "Huey Long and O. K. Allen" contained in Article 19, Sections 23 and 24. See TP No. 130.

At this point, Mr. Jenkins returned to the meeting and the committee began consideration of his proposal on direct legislation (initiative and referendum).

MR. M. G. (MARC) ANSEMAN, representing Citizens Initiative Committee said a few words in favor of direct legislation in the constitution.

Delegate GARY O'NEILL also spoke in favor of this proposal as the committee discussed the Jenkins' proposal. The committee members requested that the staff include in the proposal a time limit for the circulation of a petition and a prohibition against continuous resubmission of defeated direct legislation.

Mr. Vick suggested that the staff obtain the views of CABL, PAR, League of Women Voters, and the Model State Constitution on the question of direct legislation.

Mr. Jenkins then introduced his proposal on Freedom of Contract for discussion, but agreed to defer action on it.

After a brief discussion action was also deferred on Mr. Jenkins proposal on price-fixing. Mr. Jenkins then introduced his proposal on Property Tax Elections with minor amendments. The proposal was adopted 3-2. See TP No. 131.


The committee then considered constitutional revision and began discussion of the proposal by Mr. Roy and Mr. Jenkins. After considerable discussion Mr. Vick suggested that the staff prepare additional proposals and also that the subject matter be referred to CABL, PAR, and the League of Women Voters for their comment and that the proposal in the Model State Constitution be obtained.

The committee resumed discussion of the Declaration of Rights and heard a brief statement from MR. ROGER BATZ, representing Common Cause, NOW, NAACP, and ACLU. He generally praised the Declaration of Rights, said his organization would support the work of the committee, urged the reinsertion of a clause prohibiting wire tapping, expressed support for the staff-suggested changes to the section on Freedom of Expression, and urged further consideration on a section on Right to Direct Participation which would discourage secret meetings of public bodies.

The committee then adopted Section I. Origin and Purpose of Government with staff-suggested changes, made no changes on Section II. Due Process of Law and revised Section III. Right to Individual Dignity with an amendment regarding freedom

of association and quotas and staff-suggested technical amendment. The committee began consideration of Section IV, Rights of the Family but failed to take definitive action because a motion to adjourn carried.

There being no further business, the meeting adjourned at 1:30 p.m.


Rep. Alphonse Jackson, Jr., Chairman

June 14, 1973

CBRE Tentative Proposal No. 147 by Mr. Jenkins

Background: An amendment to the section on freedom of expression.

After the word "information" insert the following phrase
", being responsible for the abuse of that liberty".

Disposition: Adopted.

MINUTES

Minutes of the meeting of the Bill of Rights
and Elections Committee of the Constitutional
Convention of 1973

Held pursuant to notice mailed by the Secretary
of the Convention of June 8, 1973

State Capitol Building, Committee Room No. 9
Baton Rouge, Louisiana

Thursday, June 14, 1973 (10:00 a.m. - 6:00 p.m.)

Presiding: Rep. Alphonse Jackson, Jr., chairman

Present

Anthony J. Guarisco, Jr.
Rep. Louis "Woody" Jenkins
Rep. Alphonse Jackson, Jr.
Chris J. Roy
Mrs. Novyse E. Soniat
Ford E. Stinson
Kendall Vick
Rep. Shady Wall
Dr. Gerald N. Weiss

Absent

Mrs. Judy Dunlap

Roll call was taken by the committee secretary. A quorum was present.

Chairman Jackson expressed his personal satisfaction with the work the committee and the fact that the committee had passed the amendment to the section on "freedom of expression". Delegate Jenkins also said that he was in support of the work of the committee and that he was willing to sign the proposal and support it on the floor. He said that if other delegates to the convention do not give due consideration to the committee

proposals, it could jeopardize the effectiveness of the Convention. Delegate Weiss also felt that the committee had done extremely well in its long deliberations. Delegate Vick said his main purpose was to create a bill of rights for our citizens that will protect them from the "intrusion of government". He said he would like to think that this document that was almost complete represents the "little people". He believed that if there was a movement afoot to undercut what the committee had done it would be "a travesty and a sad thing".

Delegate Roy moved to adopt the minutes. Delegate Stinson moved to correct the minutes regarding the deletion of Huey Long's birthday from the constitution because it was not unanimous; there was some objection. Other minor corrections were made (See attached pages). Chairman Jackson asked for the adoption of the minutes with the necessary corrections by the committee.

Chairman Jackson asked for and obtained adoption of the agenda with the understanding that Delegates Jenkins and Weiss would introduce proposals.

The committee started work on the Preamble. Delegate Roy moved to amend the Preamble to add the word "education" after the word "safety". He pointed out that the Supreme Court with Nixon appointees had rejected recognition of a "right to education" under the federal constitution and hence it was important to include it as a state objective. The Roy position was adopted 6-3 (See TP No. 134). After a move by Dr. Weiss to delete "health" and "safety" from the Preamble was defeated

2

3-6 (See TP No. 135).

Delegate Vick asked the research staff to include authority in the comment for the proposition that the Preamble is not binding as a matter of law.

Delegate Jenkins moved to insert the word "economic" after the word "political" in the Preamble and this was accepted (See TP No. 136). The committee then accepted the Preamble as amended (See TP No. 137).

The committee adopted the section on the origin and purpose of government with only technical changes (See TP No. 137a).

A new version of the right to life by Dr. Weiss was rejected 2-7 (See TP No. 138).

The committee agreed to a proposal by Mr. Jenkins to delete the reference to quotas in the right to individual dignity and to include it in the comment but it rejected a proposal by Mr. Stinson to substitute "beliefs" for "ideas" in the section (See TP Nos. 139 and 140).

Mr. Jenkins wanted to change the title of the section on rights of the family but this became moot when Mr. Vick successfully moved to delete the section (See TP Nos. 141 and 142).

The committee considered and adopted a revised section on the right to property by Delegate Jenkins (See TP No. 143).

With reference to the right to privacy, "property" and "communications" were added to the list of rights protected by the section, so revised, was adopted (See TP No. 144).

With reference to the section on freedom from military intrusion, Delegate Jenkins proposed to delete the phrase "in time of war" because this was the only time one had to worry about unfriendly forces being quartered in one's home. Mr.

3

Jenkins accepted a suggestion by Mr. Stinson to take "military" out of the title. The proposal was adopted with a 4-2 vote with one abstention (See TP No. 145).

The committee accepted a proposal by Mr. Jenkins to change "prohibit" to "impair" in the section on freedom from discrimination (See TP No. 146).

The section of freedom of expression evoked considerable comment. Mr. Jenkins, while preferring to leave the section as it was, moved to insert after "information" the words ", being responsible for the abuse of that liberty" with the understanding that the proposed minority report on the section would be dropped. It was so agreed (See TP No. 147).

The committee voted 6-3 to accept Mr. Vick's proposal to shorten the section on freedom of religion along the lines of the federal bill of rights, (TP No. 148) after defeating a substitute proposal by Mr. Jenkins (See TP No. 149).

Mr. Jenkins' proposal to add an interpretive sentence to the section on freedom of assembly and movement was approved (See TP No. 150).

The committee approved slight revisions in the sections on rights of the accused and initiation of prosecution proposed by Mr. Jenkins (See TP Nos. 151 and 152).

The section on grand jury proceedings was adopted without change (See TP No. 153).

Mr. Roy's proposal to revise the section on fair trial was adopted (See TP No. 154). The committee also agreed, despite an objection, to adopt his revision of the section on criminal jury trials (See TP No. 155).

4

Technical amendments to the section on bail were adopted (See TP No. 156).

The section on humane treatment was adopted without change (See TP No. 157).

Regarding the section on the right to vote, Mr. Roy obtained a change of "interdicted" to "judicially committed" and Mr. Wall had the words "and institutionalized," added after "judicially committed" (See TP Nos. 158, 159, and 160).

Mr. Jenkins proposed that arms not be subject to confiscation or special taxation and obtained adoption of the proposal

with an amendment by Mr. Vick that the right to arms be subject to the police power. A substitute proposal by Mr. Roy was defeated 4-4 (See TP Nos. 161, 162, and 163). Mr. Roy and others insisted on a minority report.

Mr. Vick was successful in proposing to delete the section on cultural rights (See TP No. 164).

The section on habeas corpus was adopted without change (See TP No. 165).

The committee agreed to technical amendments to the section on access to courts (See TP No. 166).

The section on prohibited laws was adopted without change (See TP No. 167).

A proposal by Dr. Weiss to include a section on the right to direct participation in the government of the people was defeated 3-5 (See TP No. 168).

The section on civil jury trials, previously deferred, was adopted in a new version proposed by Delegates Roy and Guarisco (See TP No. 169).

5

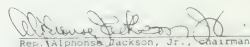
The section on unenumerated rights was adopted without change (See TP No. 170).

The committee accepted a revised section on freedom of commerce which had been rejected previously when its author, Mr. Jenkins, was not present (See TP No. 171).

The committee then voted to accept the section on right to direct participation for inclusion in general governmental provisions (See TP No. 172).

The final action involved acceptance in principle of a series of sections on the initiative for inclusion in general governmental provisions as proposed by Mr. Jenkins. It was understood that the sections would be reviewed by the Secretary of State and reworked by the staff for final adoption at the next meeting on June 22, 1973 (See TP No. 173). *

There being no further business, the meeting adjourned at 6:00 p.m.


Rep. Alphonse Jackson, Jr., Chairman

* The following was corrected in accordance with the Minutes of the meeting of June 14, 1973.

* The following was corrected in accordance with the Minutes of the meeting of June 14, 1973. The secretary of state be obtained on the inclusion of initiative provisions in the new constitution and that Mr. Jenkins go over the initiative provisions with the secretary of state.

6

June 14, 1973

CBRE Tentative Proposal No. 143 by Dr. Heide

Background: A new section on the Right to Life.

Section . Right to Life

No human being shall be deprived of life intentionally, except in execution of a judicial sentence for a capital crime established by law.

Disposition: Rejected 2-7.

June 14, 1973

CBRE Tentative Proposal No. 144 by Mr. Jenkins

Background: An amendment to the section on the right to privacy.

Delete "person, communications, houses, papers, and other possessions" and insert in lieu thereof "person, property, communications, houses, papers, and effects".

June 14, 1973

CBRE Tentative Proposal No. 145 by Mr. Jenkins

Background: A revision of the section of freedom from military intrusion.

Section 6. Freedom from Intrusion

No person shall be quartered in any house without the consent of the owner or lawful occupant.

Disposition: Adopted 4-2 with 1 abstention.

June 14, 1973

CBRE Tentative Proposal No. 146 by Mr. Jenkins

Background: An amendment to the section on freedom from discrimination.

Delete "prohibit" and insert in lieu thereof "impair".

Disposition: Adopted.

June 14, 1973

CBRE Tentative Proposal No. 150 by Mr. Jenkins

Background: A revision of the section on freedom of assembly and movement.

Section 11. Freedom of Assembly and Movement

No law shall impair the right of every person to assemble peaceably, to petition government for a redress of grievances, to travel freely within the state, and to enter and leave the state. Nothing herein shall prohibit quarantines or restrict the authority of the state to supervise persons subject to parole or probation.

Disposition: Adopted.

June 14, 1973

CBRE Tentative Proposal No. 151 by Mr. Jenkins

Background: A slight revision of the section on rights of the accused.

Section 12. Rights of the Accused

When a person has been detained, he shall immediately be advised of his legal rights and the reason for his detention. In all criminal prosecutions, the accused shall be precisely informed of the nature and cause of the accusation against him. At all stages of the proceedings, every person shall be entitled to assistance of counsel of his choice, or appointed by the court in indigent cases if charged with a serious offense.

Disposition: Adopted.

June 14, 1973

CBRE Tentative Proposal No. 152 by Mr. Jenkins

Background: A revision of the section on initiation of prosecution.

Section 13. Initiation of Prosecution

Prosecution of felonies shall be initiated by indictment or information, provided that no person shall be held to answer for a capital crime or a felony necessarily punishable by hard labor, except on indictment by a grand jury. No person shall be twice placed in jeopardy for the same offense, except on his own application for a new trial or where there is a mistrial or a motion in arrest of judgment is sustained.

Disposition: Adopted.

June 14, 1973

CBRE Tentative Proposal No. 154 by Mr. Roy

Background: A revision of the section on fair trial.

Section 15. Fair Trial

Every person charged with a crime shall be presumed innocent until proven guilty, and shall be entitled to a speedy, public, and impartial trial in the parish where the offense or an element of the offense occurred, unless venue be changed in accordance with law. No person shall be compelled to give evidence against himself. An accused shall be entitled to confront and cross-examine the witnesses against him, to compel the attendance of witnesses, to present a defense, and to take the stand in his own behalf.

June 14, 1973

CBRE Tentative Proposal No. 155 by Mr. Roy

Background: A revision of the section on trial by jury in criminal cases.

Section 16. Trial by Jury in Criminal Cases

Any person charged with an offense or set of offenses punishable by imprisonment of more than six months may demand a trial by jury. In cases involving a crime necessarily punishable by hard labor, the jury shall consist of twelve persons, all of whom must concur to render a verdict in capital cases or cases in which no parole or probation is permitted, and ten of whom must agree in others. In cases not necessarily punishable by hard labor, the jury may consist of a smaller number of persons, all of whom must concur to render a verdict. The accused shall have the right to voir dire and to challenge jurors peremptorily.

Disposition: Adopted with objection.

June 14, 1973

CBRE Tentative Proposal No. 156 by Mr. Jenkins

Background: A revision of the section on right to bail.

Section 17. Right to Bail

Excessive bail shall not be required. Before and during trial, a person shall be bailable by sufficient sureties, unless charged with a capital offense and the proof is evident and the presumption great. After conviction and before sentencing, a person shall be bailable if the maximum sentence

which may be imposed is less than five years and, the judge may grant bail if the maximum sentence which may be imposed is greater. After sentencing and until final judgment, persons shall be bailable if the sentence actually imposed is less than five years, and the judge may grant bail if the sentence actually imposed is greater.

Disposition: Adopted.

June 14, 1973

CBRE Tentative Proposal No. 157 by Mr. Jenkins

Background: Adoption of the section on right to humane treatment without change but as Section 18 instead of Section 19.

Disposition: Adopted.

June 14, 1973

CBRE Tentative Proposal No. 161 by Mr. Jenkins

Background: A revision of the section on the right to keep and bear arms.

Section 20. Right to Keep and Bear Arms

The right to keep and bear arms and ammunition shall not be abridged. This provision shall not prevent the passage of laws to prohibit the carrying of concealed weapons, but in other cases, personal arms shall not be subject to confiscation or special taxation.

Disposition: Adopted 6-3 after an amendment, TP No. 162 was added to it.

June 14, 1973

CBRE Tentative Proposal No. 162 by Mr. Vick

Background: An amendment to TP No. 161 on bearing arms.

Delete the word "The" at the beginning of the section on bearing arms and add, in lieu thereof, the words, "Subject to the police power, the".

Disposition: Adopted 5-4 after a substitute proposal by Mr. Roy (See TP No. 163) was defeated.

June 14, 1973

CBRE Tentative Proposal No. 161 by Mr. Roy

Background: A substitute proposal to TP No. 161 to keep the section on habeas corpus as originally drafted.

Section 10. Right to Keep and Bear Arms

A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be abridged. This provision shall not prevent the passage of laws to prohibit the carrying of concealed weapons.

Disposition: Defeated 4-4. The section is to be made the subject of a minority report.

June 14, 1973

CBRE Tentative Proposal No. 165 by Mr. Jenkins

Background: A proposal to adopt the section on habeas corpus.

Section 21. Writ of Habeas Corpus

The writ of habeas corpus shall not be suspended.

June 14, 1973

CBRE Tentative Proposal No. 166 by Mr. Jenkins

Background: A proposal to adopt the section on access to courts with certain technical amendments.

Section 22. Access to Courts

All courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay for actual or threatened injury to him in his person, property, reputation, or other rights. Neither the state, its political subdivisions, nor any private person shall be immune from suit or liability.

Disposition: Adopted.

[Addenda, June 14, 1973, continued, p. 1203 this volume]

[914]

OF THE
CONSTITUTIONAL CONVENTION
STATE OF LOUISIANA
1973

COMMITTEE ON BILL OF RIGHTS AND ELECTIONS
MEETING OF JUNE 14, 1973

Thursday, June 14, 1973
Baton Rouge, Louisiana

MR. A. JACKSON
Section 5, Right to Privacy. Walt.

MR. LANDRY
This section, the staff is merely suggesting some technical changes that the words "papers and other possessions", if we use the word "property" might be a broader term to include both. I think, there is a feeling that we need "communications", since you have already put it in, particularly. It might mean something a little bit different from property and the word "houses" might be useful to indicate a person's dwelling as a distinct type of property you want to emphasize, the papers and other possessions we thought that maybe the word "property" might be broader and more inclusive and maybe more in line with the committee's intent. That was the only change that was suggested from the ...

MR. STINSON
"Other property" would cover someone's office and such as that?

MR. ROY
There is no ... I don't know, I don't like ... this is more of a substantive change in my book.

MR. VICK
That's right. Absolutely.

MR. GUARISCO
I think that "possessions" is more broad because you may have something in your possession that is not your property. Understand that?

MR. ROY
That's right, Woody may have given me something of his that ...

MR. VICK
I feel strongly about that too. In that legal, clerical, and health records are papers that are highly significant, that many patients are not ... not many people are not aware of being in the hands of other people. I think this is an infringement on their right to privacy. So I think that some clause, or some amendment should be made, whether it be "papers" is the right word or to include the statement "including legal, clerical and health records" or whether ... Mrs. Soniat had an amendment to make. I don't know what the answer would be.

MR. ROY
Why don't we leave it just like it is -- "and other possessions". We had it good.

MR. LANDRY
... "possessions" would cover that.

MR. VICK
Whatever covers it ... "papers".

MR. STINSON
On the next page where it says "searched by oath or affirmation particularly describing the place to be searched." Don't you think we should say the "place or places to be searched"?

DR. NELSS
Where it says that after "the place to be searched" and "the person or things to be seized"?

MR. STINSON
The person to be seized, not to search I think we should put persons down and guarantee them against ...

MR. LANDRY
Or persons ...

MR. JENKINS
When do you get a warrant to search somebody?

MR. STINSON
To search a person?

MR. JENKINS
You just search them if there is probable cause.

MR. ROY
In a valid arrest you can search them.

MR. LANDRY: ... and that new federal court case.

MR. STINSON: ... about that it is left up to the party in issue ...

MR. A. JACKSON: ... has some changes but could we deal with the first changes here now? Because the consensus is that we want to leave the wording as it was originally drafted. Is that correct?

MR. MAKIN: That's what I was going to talk about. I think we ought to ... I like saying "property" in there. I think it makes it broader. Why couldn't we substitute "property" for the words "papers, ..."

MR. A. JACKSON: That's what they have done.

MR. VICK: Well "papers" has always been in the federal. Then we could add "property".

MR. STINSON: Well, you would think "papers" is sort of restricting it too much, isn't it? Tape recorder or something you've got ...

MR. JENKINS: Why not just say "person, communications, property and possessions"?

MR. WEISS: Can we insert, Woody, at the same time "property, including clerical, legal and health records?"

MR. VICK: No.

MR. JENKINS: If you say "property and possessions" it seems like that would include it ...

MR. WEISS: ... but is it the person's property? Whose property is it when you go to the hospital and those records are kept? The hospital's.

MR. A. JACKSON: We said "possessions" would take care of that.

MR. JENKINS: That will be the hospital's possessions ...

MR. WEISS: It doesn't guarantee a private. This definitely ...

MR. LANDRY: ...

MR. VICK: That's like when you let the cat out of the barn.

MR. ROY: Well, ...

MR. STINSON: ... the horse out of the barn ...

MR. ROY: What about if we would substitute "houses and papers" with "property" and say in the U.S. Constitution also, it has "effects" which would be broader than either "possessions" or anything else and so it would ...

MR. MAKIN: "person, communications, property and effects?"

MR. ROY: Right.

MR. WEISS: What does that mean?

MR. GUARISCO: What does the federal have?

MR. ROY: ... effects ...

MR. GUARISCO: A copy of the federal and then you can stand on it.

MR. LANDRY: "Property and effects".

MR. ROY: Property would cover your automobiles and ...

MR. LANDRY: The right of the people to be secure in their "persons, houses, papers and effects" is the federal ...

MR. JENKINS: You see there is nothing in there that you could reasonably conclude that pertained to an automobile.

MR. LANDRY: That's right, according to this. Of course I think it has been interpreted, but it's not there.

MR. JENKINS: You would really have to read it in ...

MR. GUARISCO: We ought to put it in there ...

MR. ROY: "Property and effects" ...

MR. JENKINS: If we just said "persons, communications, property and effects" seems like we would include it all.

MR. ROY: "A person's property, communications and effects."

MR. GUARISCO: "Persons ... you have a little alteration anyway, so ...

MR. A. JACKSON: Are we in agreement on that word?

MR. JENKINS: Sounds more like it ...

MR. A. JACKSON: Woody, are you in agreement?

MR. JENKINS: The "persons, property, communications and effects."

MR. A. JACKSON: Okay, now read it Walter, the way it will be.

6

MR. LANDRY: "Every person shall be secure in his person, property, communications and effects."

MR. VICK: Wait a minute, I think "houses" ought to remain it's in the federal. We can't leave out "house". That's the big deal. We can't leave out "house".

MR. JENKINS: Isn't that in property?

MR. STINSON: You might be renting it.

... You may be an occupant, ...

MR. STINSON: You might be renting it.

MR. GUARISCO: ... just like we did in quartering of troops ...

MR. ROY: We have "property, houses" ...

MR. GUARISCO: Let's copy at least the enumerations in the federal ...

MR. LANDRY: Alright, if we will add that in we will keep "houses" and it will read as follows: "Every person shall be secure in his person, property, communications, houses, papers and effects."

MR. GUARISCO: No "papers".

MR. LANDRY: Leave the "papers" out.

MR. JENKINS: It covers, "Persons, property, houses, communications and effects."

MR. VICK: That's right.

MR. WEISS: Alright, why not ...

MR. GUARISCO: The federal has "papers" also ...

MR. WEISS
Why not "papers", yes.

MR. JENKINS
They have four things, "persons, houses, papers and effects". I think the only thing we want to add is "communications" and let everything else ...

MR. JENKINS
Well, we want to include "property" ...

MR. VICK
Okay, and "property". Now Walter ...

MR. LANDRY
Maybe we could read it like this ...

MR. STINSON
May I ask you a question on it? If we word it like that we are not limiting it to those; the legislature could extend it to other things, couldn't it, since don't we ...

MR. GUARISCO
We are protected in the constitution now ...

MR. LANDRY
Already, it's got something like that, doesn't it? "Every person shall be secure in his person, property, communications and effects including his houses and papers." ...

MR. VICK
Alright, to make it agree to have to put "persons" you have got to put an "s" for one thing, a technical amendment.

MR. ROY
No, no ...

MR. JENKINS
Let me suggest that this ...

MR. ROY
No, no person ...

MR. STINSON
Well, now in view of the women's liberation, don't you fellows think we had better put in "his or her person"?

MR. JENKINS
Let me suggest this, I think we could track the federal language and then put in two things. How about this: "in his person, property, communications, houses, papers and effects."

MR. WEISS
That's good ... that's good.

MR. JENKINS
That just puts "property and communications" into the federal act.

MR. A. JACKSON
Okay, read it now.

MR. LANDRY
Alright. "Every person shall be secure in his person, property, communications, houses, papers and effects against unreasonable searches, seizures or invasions of privacy."

MR. JENKINS
I was going to suggest that we reinstitute that last sentence, on wiretapping. But you know, I don't think we are going to pass it and you know when we put in this word ... this language on communications and invasions of privacy, I think this is going to give us a lot of protection against this sort of thing.

MR. A. JACKSON
Why don't we just leave it like this? They are going to kill us Woody ... I mean I'm not trying to ... Please understand me. We've got to cover ...

MR. JENKINS
I understand ...

MR. GUARISCO
... it says CC committee wiretapping. That's the kind of ...

MR. ROY
... the professor made a pretty good argument when he said if you can get a federal, I mean if you can get a ... court order to allow someone to enter your house to try to obtain evidence, ... probable cause, everything being right, to get something that convicts you, how in the world are you-all going to say that you can't -- you shouldn't be allowed to intercept a message from this person to someone on the outside. You can't rationalize it.

MR. JENKINS
Well realistically too, when we put in this language, "invasions of privacy", given our new supreme court in this state, I think the courts are going to take care of things real well. I really do.

MR. A. JACKSON
I think we should have a word in there about the fact that we are not to include race, religion, and family relationships. In connection with that would that be that good?

MR. ROY
That would be that good.

MR. WEISS
It's a communication to someone else. They're not his papers when they're in a hospital, when I'm operating at a time or being to find from reaching those records, that are confidential.

MR. JENKINS
Well, I think that is where our last sentence needs to reinforce the stand to raise the legality.

MR. A. JACKSON
You have a comment.

MR. VICK
I just have a point of information. The way you have worded it, it would allow under certain circumstances, and with a court order, wiretapping.

MR. GUARISCO
Yes, it would.

MR. WEISS
Yes, communications ...

MR. A. JACKSON
You have all agreed that ...

MR. JENKINS
Now the reason ... we don't approve of that at all, but we know that if we include that last sentence, we don't have a chance to pass it. Whereas with the language we have we think we can give almost as much protection and we can have a pretty good shot at it passing.

MR. A. JACKSON
We would like to outlaw it but we've got ...

MR. VICK
I will accede to your political judgment since you seem to be in harmony with the goals of our cause.

MR. A. JACKSON
Their argument is that ...

MR. VICK
It is the politics involved in it, please don't interrupt the rest of the discussion to indicate that we approve of a discussion of politics or not.

MR. WEISS
But your sound political judgment is that, Mr. Jenkins, you included that last sentence which we like, that it would raise the issue without any question ...

MR. JENKINS
That was my sentence, I wrote it, by the way.

MR. WEISS
I know it and your perception is that there would be no hope ...

MR. A. JACKSON
Mine too, ...

MR. JENKINS
Thank you.

MR. A. JACKSON
I think we should do so much good stuff in there, I ...

MR. JENKINS
It's just loaded with goodies the way it stands ...

... You can't believe it ...

MR. STINSON
Do you think ...

MR. A. JACKSON
No, sir.

... I concur with the committee and speaking for all of us who endorse it, which is ...

MR. GUARISCO
Let me make this comment, that before we adopted "communications" you could do it without a warrant. Now we are at least requiring a warrant to do it. So we have improved upon it.

MR. VICK
Right. A pardon is a full grant of restoration of rights. A full pardon is complete restoration of rights. I don't know if there is such a thing as a limited pardon, quite frankly I really don't, but I have never heard of such an animal. Now probation, parole, you are still in custody of the state. You don't have your full freedom, and you have to report, as you said, to the probationer parole officer, whenever designated by the court. As a matter of fact that is a condition to your probation, accepting probation or parole...

MR. WALL
Sure ...

MR. VICK
... that you have to do these things, that you do not carry firearms, you do not consort with undesirable people, you do not frequent bars and so on and so forth ...

MR. WALL
I can see where it would create a lot of problems in the area of pardons ...

MR. VICK
You know the sheriff in effect, you know it goes back to ancient, ancient times, where the sheriff is in effect outlawing someone.

MR. WEISS
That's what the sheriff is doing ...

MR. VICK
Of course, as a practical matter, you know if that man said get foot that sheriff's jurisdiction, he can run him in, and keep running him in and keep running him in until he gets the idea, but as a technical, legal matter or under a constitutional matter, you could never outlaw anybody.

MR. WALL
Well, the man didn't get his pardon and ...

MR. ROY
You should have said, you would agree to that, the man should have said that ...

MR. WALL
Now, the point is that I don't think I did it wrong, but ...

13

MR. A. JACKSON
We are in agreement ...

MR. JENKINS
So we can start that part ... with the comment then ...

MR. LANDRY
Twelve, Section 12, we are suggesting here that instead of "his legal rights," which is a vague term, we will just say, "the reason for his detention" and then "in criminal prosecutions and all stages of prosecutions a person is entitled," those are technical changes, from "shall be" to "is," make it a present tense, and then we abbreviate the thing for indigent, "and an indigent charged with a serious offense has a right to counsel without cost." Just a means of shortening it ...

MR. ROY
The first change is entirely substantive, because all you have to do is to say, "you're being detained because we think you are guilty of murder" and not tell him anything else. Where are his rights told to him?

MR. LANDRY
The second sentence gives him the nature and cause ...

MR. ROY
No, no that's when you have been formally billed by either the D.A. or by grand jury indictment, it says "When the accused shall be ..."

MR. JENKINS
Let me make a ... I'd like to offer an amendment. I'd like to amend the original version so that on line 17, after the word "rights" and before the "..." we insert "and the reason for his detention" so it will say "when a person has been detained, he shall immediately be advised of his legal rights and the reason for his detention" I think the reason for his detention ought to be in there, but not in lieu of ...

MR. GUARISCO
Not in lieu of no ...

MR. LANDRY
And the reasons for his detention.

MR. A. JACKSON
Any objections? Discussion? O.K. ...

MR. ROY
Do we have to say "his legal rights"? Isn't that, isn't "legal" redundant there?

MR. JENKINS
No, because I think we have used "rights" in numerous ...

MR. GUARISCO
I understand ...

MR. JENKINS
... your rights, your natural rights, you are not talking here about legal rights and no more difference. We are talking here about criminal rights.

... You might tell him about rights of the family or something, some know.

MR. VICK
Is that the committee's intent to modify Miranda's ...

... Yes.

... You don't mean to ...

... His Miranda rights ...

MR. JENKINS
His pertinent rights, feeling ...

... You mentioned his right to remain silent, the right to counsel, the right not to be ... I just don't want the D.A.'s to start to scream and holler, ... that's what you are primarily concerned with?

MR. JENKINS
Yes.

MR. GUARISCO
Put that in the comments too.

MR. LANDRY
Pertinent rights is what you mean, then. We've put that in the comments.

... His Miranda rights?

MR. JENKINS
Right. I move the adoption of ...

MR. ROY
Let me think about that, let me think about that just a second, Woody. I'd like -- I just don't want the D.A.'s to start to scream and holler, I don't mind then doing it but I don't want this coddling up the water and misleading the people on that.

MR. WALL
Boy, I am going to tell you that. The D.A.'s are one particular rank ... They can sure get your attention, can't they?

... Yes.

MR. GUARISCO
I tell you, I've had people that the sheriff's department told them their rights, but they don't know what they are charged with ...

MR. ROY
Well, I know, but at that particular time, and that's what I'm getting at as a fact of the matter, they stop a person on suspicion of let's say robbery. They give him his rights. "You are under arrest and you don't have to make any statements" and all that ...

... I'm looking at it now from the law -- strictly law enforcement, at that moment they say "Okay," he says "Alright, now you've got to tell me for what reason you are stopping me." They say "On suspicion of robbing Woody Jenkins." Then of course he is entitled to his one phone call. So he doesn't call an attorney, he calls maybe an accomplice, and says, "They have picked me up for robbery of Woody, something they know something," and all that you know, assuming the guy is guilty. I just don't see the necessity of immediately informing a person, after all it's immaterial really, why he's picked up for the purposes of picking him up, I'm not talking about later on, it may be this damn material to ... but for the state, for the investigating attorney, the attorney at that moment have to disclose to him what they are thinking of, when he was picked up and up against them, that they are thinking of ...

MR. GUARISCO

This is what it does, it adds no more right ...

... appointed by the court if he is an indigent and is charged with a serious offense." This says "he is entitled to assistance of counsel of his choice and if he is an indigent, he has a right to counsel in serious cases." That is not what I am saying. It kind of -- in fact in the new language, it kind of indicates he has more of a right to choose anybody he wants even if that person he chooses doesn't want to be chosen. Whereas where we had it, we weren't intending that at all. We are going to say "choose" or if he's indigent he can't choose and he is going to have one assigned.

MR. A. JACKSON
Okay, Chris.

MR. ROY
Okay.

MR. LANDRY
Leave it like it is?

MR. ROY
Okay.

MR. LANDRY
Wait, the operative law is changed ...

MR. ROY
No we leave it like it was ...

MR. JENKINS
Originally was ...

MR. WEISS
or appointed by the court."

MR. LANDRY
The only change then is "and the reason for his detention" is added
"..." right?

MR. JENKINS
Right.

... We're going to ...

19

... things like ... court order ...

MR. JENKINS
And then on line 31, in the comment, you've got to make that appropriate change, too.

... Yes.

MR. LANDRY
Thirteen. In Section 13, we are suggesting that although the first sentence, is in the -- or something similar to it, is in the original constitution. It really doesn't give you any rights. If merely, is just merely a statement of how something operates and the second sentence really starts with where we are talking about a right. "A person cannot be held except on indictment" and the -- unless he specifically waives the necessity of indictment", is really not necessary because it -- he always has that right and then in the last one, we have "no person shall be placed twice in jeopardy for the same offense". Now we are just suggesting language, if you want to protect against double jeopardy in federal state cases. There was some indication that the staff wanted some suggested language, so this is some suggested language to protect against double jeopardy by federal and state where if you are charged with an offense by the federal government then you can't be charged again by the state under this language. Whereas under the present constitution if you are charged by the federal government, you can be charged again by the state. This would protect against this and then where there is a mistrial or motion and arrest of judgment, is really we don't think necessary, because he could do that without having to have that in there. I think it's implied in there and so that the language is really to shorten to make it more concise and to provide additional protection for double jeopardy and this is the staff's ...

MR. A. JACKSON
Are there any comments or discussion?

MR. ROY
I think I like the staff's work. Knocking out the first sentence altogether. I think that that is a bunch of language that is not necessary. I like it all down -- I am worried about if you really want to get into this -- this -- into this -- I like the part about double jeopardy. I am not so sure you all are right though in saying that a defendant, an accused, would not be able to raise issue of double jeopardy it after -- if he were granted a new trial ...

MR. JENKINS
I think that last phrase ought to be left like it was ...

MR. ROY
... I do too, I just don't want to take any chance on it. It may be implied in it and you are probably right, but because you might say that double jeopardy means only that you have not done anything to cause yourself to be tried again, or something, but we it's an abuse to take that chance. We will get enough flack from it as it is.

That's in the existing constitution.

MR. ROY
Right. ...

MR. JENKINS
... doesn't it generate language including jeopardy has a word of any jurisdiction after "indictment" ...

MR. ROY
I don't know if I like that. I think maybe we ought to let the legislature get into that. You know, let's say -- let's take the last case because that's all in subsections and since it's almost one year time -- should we don't say right. Alright, the federal government could charge a person with being a member of a band if the court of appeals in Mississippi says it is a federal crime and the federal government is not bound by the Mississippi court's decision.

19

MR. ROY
I think the court should wait and wait until the matter. The state case should be decided, at least in Mississippi, and then we can have a reduction in the charge or anything else. I don't like the idea of a man having to face two sovereigns on the same set of facts, and one gets a crack at him and another him and the other gets him. I don't like the idea if one gets him and the other one gets him and one gets him for as much, but I don't know that we can -- I can be really address ourselves to it in this constitution without really making some changes in the constitution and working a hardship against law-abiding citizens. I just think maybe the legislature ought to take that up when they can devote some real energies to it and have maybe different criteria for letting a person off with one charge. That would not be in favor of that. I would be -- the staff changes and then as you are up to line 25, and then on line 12 I'd want it to read "no person shall be twice placed in jeopardy for the same offense except on his own application for a new trial or where there is a mistrial or a motion in arrest of judgment is sustained."

MR. LANDRY
You're not going to have "the court of another sovereign in these."

MR. ROY
No, that's what I just said, I am not for all this sovereignty stuff. I don't think we can handle it in our committee that deeper. I mean, I think there needs to be a lot more -- a lot more input on that particular point and I am not so sure that we are right in -- that we would be right on it.

MR. JENKINS
You know what I have in mind there, I think we've got a real analytical problem with that phrase. But you know like in a case of auto theft going across the state lines, it's two separate acts that are being -- are the crimes. The transporting a car in Mississippi, say is an act there, that's an offense there, doing it in Louisiana is an offense here, you know, because not what happened in Mississippi but what happened in Louisiana makes it an offense here. The thing that I am more concerned about is not that, but where the federal government and the state government prohibit what is essentially the same offense, and for one act this person can be punished by both sovereigns. Like the offense in Louisiana of a certain nature. That's what disturbs me. I don't know how we can do it ...

MR. ROY
I agree, but that is why I say we have a problem, is that how in the world are we in this committee going to solve that. That's a real complicated problem and I just think it is easy to say. We in a given set of examples I can answer each one. I believe but a general law applying, like theft. Let's say you steal from me -- you rob a national bank here. Isn't that a federal crime, if you rob a federal savings and loan?

MR. JENKINS
Yes.
MR. ROY
You rob -- you get them ... so I think we ought to leave that issue out. That's -- that doesn't apply to that many people in a sense. I hate to think ...

MR. A. JACKSON
Are we in agreement on this? Ready?

MR. JENKINS
I have one other thing I want to raise on that first sentence. The value of that first sentence to me, it seems to me that it prohibits the prosecution of felonies being initiated by affidavits which I think is an important sector. That in effect says that felonies have to be initiated by indictment or information, but misdemeanors can be initiated by affidavits. But it is a safeguard from allowing someone to go down there and fill out an affidavit on the basis solely of that he charged with some offense.

MR. ROY
No, no, that wouldn't be a bad thing to have it, it doesn't ...

MR. JENKINS: ... that, were subject to that effect.

MR. ROY: ... that the bill was going to change you with was a felony, he wouldn't do it himself, an indictment of a grand jury.

MR. JENKINS: ... that some felonies necessary to be punishable by hard labor not a relative felony.

MR. ROY: ... that, relative felonies like A, who can charge you on a deal.

MR. JENKINS: ... but it can't be initiated by an affidavit and that's what that first sentence protects, it seems to me.

MR. ROY: ... I see what you are saying. I see what you're saying now.

MR. JENKINS: I know that was my ...

MR. ROY: By indictment or information, that is a problem.

MR. JENKINS: ... I wouldn't want the legislature to come up with a law saying relative felonies could be initiated by affidavit. That's too serious.

MR. ROY: Yes, for negligent homicide, Woody has got a point there, the legislature could come up with ...

MR. JENKINS: So I wanted to suggest we just keep that like it is.

MR. LANDRY: Why don't you leave the "but" phrase out?

MR. ROY: The legislature could change a relative felony by affidavit, because a lot of ...

MR. WALL: Take the "but" phrase out.

MR. ROY: Is that in other states is that done?

MR. JENKINS: Well, I wouldn't want to force misdemeanors to be initiated by information ...

MR. LANDRY: Let's just say, that just prosecution -- oh, I see, yes, that's right. Well why don't you say "felonies shall be -- no felonies shall be initiated except by indictment or information? Why don't we say that?"

MR. ROY: But then I want felonies punishable at hard labor to be by indictment.

MR. LANDRY: That's the second sentence. In other words the first sentence would be "no felony shall be initiated except by indictment or information" and then "no person shall be held to answer for a capital crime or this kind of a felony necessary by indictment, you see? The first sentence would be "no felonies shall be initiated except by indictment or information".

MR. ROY: ... the prosecution shall be initiated by indictment or information ... person shall be held to answer" ... or go that way maybe.

MR. JENKINS: Here's what it says, it says, down in it, this is in the constitution "the prosecution shall be by indictment or information provided that the legislature may provide for the prosecution of misdemeanors on affidavits, providing however that no person shall be held to answer for a capital crime ... indictment by a grand jury" so on, so on ...

MR. ROY: Okay, what about a "provided" then, Woody? "The prosecution shall be initiated by indictment or information provided that no person shall be held to answer for a capital crime or a felony necessarily punishable by hard labor" and go on like that. With the changes of the staff after that.

MR. JENKINS: Yes, but you haven't left the door open for misdemeanors then to be initiated by affidavits.

MR. ROY: Well that's implied ..., the legislature can do what it wants with misdemeanors.

MR. JENKINS: Well, read it to me again.

MR. ROY: Alright. You understand that if we don't prohibit the legislature from doing it, they can do anything they want.

MR. JENKINS: Didn't you just say "prosecution shall be ...

MR. ROY: "Prosecution shall be initiated by indictment or information".

MR. LANDRY: It has to be felonies ...

MR. ROY: Initiation for felony. Felony prosecution ...

MR. JENKINS: Prosecution of felonies ...

MR. ROY: Alright, "prosecution of felonies shall be initiated by indictment or information, provided that no person shall be held to answer for capital crime or a felony necessarily" ... and then go on with it.

MR. LANDRY: I think that would do it.

MR. JENKINS: Should we include the word "a" after the word "for" on line 9? "For a capital crime for a felony".

MR. LANDRY: Each having a part here but we can put that in that ... that would be better because you say "a capital crime or a felony", that would be better.

MR. JENKINS: And then on line 12, we need to -- I think that staff amendment saying "in place" instead of ... and striking out those lines by legislature ...

MR. LANDRY: Okay, and then the rest goes, huh.

MR. A. JACKSON: Okay do you want to read it now?

MR. LANDRY: Alright, it would read as follows: "Section 14. Initiation of Prosecution: Prosecution of felonies shall be initiated by indictment or information provided that indictment or information; provided that no person shall be held to answer for a capital crime or a felony necessarily punishable at hard labor except on indictment by a grand jury. No person shall be twice placed in jeopardy for the same offense, except on his own application for a new trial or where there is a mistrial or a motion and arrest of judgment is suspended."

MR. A. JACKSON: Okay. Are you ready? We have a motion to adopt, as amended. Any objection? Section 13 stands adopted.

MR. LANDRY: Okay.

MR. A. JACKSON: Fourteen.

MR. LANDRY: Section 14. Now we -- I think we had a problem, I misinterpreted Chris Roy's intentions a little bit here, because he discussed this with me. We were trying to distinguish in some respects the definition of an accused. We were tying the word "accused" to "accused by the grand jury." I think Chris Roy has a different meaning, so I think maybe our staff recommendation is an attempt to clarify ... are not helpful and I think I will defer to Chris Roy since ... but our idea here was to distinguish a witness at the first place from a person under investigation and third from an accused, the meaning "accused by the grand jury" and we thought it would help clarify the phrase, but I am afraid it does not carry out the intention of Mr. Roy, so Chris ...

MR. ROY: Well, I said a long time ago, we can't do away with all the evils that may exist but we were trying to obviate as many as possible. Now a grand jury has got to be a secret if it chooses to be. I agree that a grand jury proceedings are entirely secret and a grand jury can be checked out right now for my right-wing tendencies and what have you and that's their business. But what we tried to say was that if you get arrested for something and at the time now we've got it especially where they detain you and they tell you what you arrested for I'm picked up

and arrested for armed robbery. That is a crime necessarily punishable at hard labor, therefore I am entitled to be indicted by the grand jury before I can be prosecuted. Then when my case is presented to the grand jury we want it, since I would know about it and I had now the right under Section 14 to, of course, advice of counsel if I appear and testify before the grand jury. Now let me at the same time that I am telling you what we are doing with the federal government, under the federal rules, even a witness appearing before a federal grand jury has the right to the advice of counsel. Now the only disadvantage I have is that I don't know how many more witnesses and the amount I should have more right to my counsel being there than any witness but in any event, what happens if he asks a question to a witness in a federal grand jury proceeding, his attorney sitting outside the door and he says, "Hold everything, let me get up and go ask my attorney at I can answer it." So you have a delay there as he goes outside and his attorney says, "Don't answer it, or answer it, he goes back in and he answers it or he doesn't answer it. What we seek to provide here is that me, I, as an accused will have my attorney sitting by me. If I choose to testify and the grand jury wants to listen to me. When they ask a question, instead of having to go through the fictitious idea of going through a door and coming back, I just lean over to Guarisco and say should I answer or not. That's number one. That's one big basic difference. Our present law doesn't provide anything like that.

MR. WEISS
Point of procedure, then, that is the value of the attorney sitting by the accused during the trial.

MR. ROY
Well, you are entitled to have your attorney present and the advice of counsel.

MR. WEISS
I know, in legal terms, but what would we use before the court, but why -- what's the value of ...

MR. ROY
Well, the value is that he knows the law and knows whether you should take the Fifth Amendment or something or not. Now it's a heck of a note if you go before the grand jury and take the Fifth Amendment when they ask you something about the crime -- when they ask you about the armed robbery charges, and say I take the Fifth, well I can get ready, I am sure they will indict me. So in any event it may be that they are questioning me and they may have a charge against me that is not in any way related to the questions that they are asking me that my attorney will tell me I didn't have to answer or shouldn't.

MR. WEISS
You don't have to appear before a grand jury?

MR. ROY
That's right.

MR. WEISS
So your attorney could advise you in that respect, before you go into the room.

MR. ROY
Right. You ...

MR. WEISS
So in a sense you are really already advised by an attorney, if you care to.

MR. ROY
Right.

MR. WEISS
You're talking about the attorney being in the room though.

MR. ROY
At the time that you are being questioned. The other thing that it does ...

MR. WEISS
But I say what is the value of that? Just that he ...

MR. ROY
I just explained it.

... Suppose you believe ...

MR. GUARISCO
I move the question.

MR. JENKINS
What is the question? Whether to keep the staff's ...

MR. GUARISCO
Yes, leave it like it is ...

MR. ROY
That's what I wanted to know ...

MR. GUARISCO
Well the question is, I move that we adopt it like it is. Section 14.

MR. ROY
I mean that's an original ...

MR. JENKINS
As originally drafted.

MR. WEISS
Yes.

MR. WEISS
As originally drawn the ...

MR. WEISS
As proposed.

MR. A. JACKSON
Opposition stands adopted. Fifteen ... fifteen. We got any serious objections to ...

MR. JENKINS
I object to a whole lot of things.

MR. A. JACKSON
Which ones?

MR. JENKINS
Well again, I think it ought to say "every person" instead of "a person".

MR. A. JACKSON
Okay.

MR. JENKINS
And "shall be" ... we're fighting the same battles here. And then on -- most important though, on nineteen and twenty, do you want that -- I think that it's important to say that. Now, candidly it doesn't incur existing constitution but I think it ought to. It probably will always be interpreted as part of due process, but you know it say not. And we have no other explicit safeguard saying that evidence has to be competent, relevant and material. And really you can really burn someone if you're -- if you can be allowed to introduce other things. So that's why I would like to see it built in.

MR. LANDRY
Now, how about "an accused," since this is the first time we mentioned it?

MR. A. JACKSON
You want those sentences to have "an accused" in it?

MR. ROY
Woody, I am just going to raise a question. It makes me no difference, but, it could be that if we don't -- if this stuff stays in on the "competent, relevant and material evidence", that if a defendant did not object to "incompetent, irrelevant and immaterial evidence" coming in and were convicted, and then may be able to on appeal raise the issue that he could not, he could not waive that since it is a constitutional right accorded to him and his silence in no way waives it and the first thing you know you would have -- and I think I am pretty surefooted ... on that am I not?

MR. JENKINS
I don't really think so ...

MR. ROY
Reasonably surefooted ... see that's what is happening when the courts were not instructing an accused before he pled guilty, when they didn't tell him that he had a right to a jury trial and to have all twelve agree to convict him and he waived it. When a court didn't say when a person pled guilty, "Do you understand that you are waiving the right unless you specifically waive", under the present jurisprudence, a constitutional right. Then it is not waived by your silence. And I just -- I'm just worried about it. I -- it could very well mean what exactly what I've said and if I were defending somebody, I promise you I would let them get in some immaterial evidence on him and if I felt he was sure to go and be convicted and once I get up in the Supreme Court, I would argue -- I couldn't ... let him fire me and he says, "That jerk couldn't waive that right, it was a constitutional right."

MR. WEISS
The constitution says only that anyway, who add the others? I ...

MR. VICK
Why don't you elucidate once again on ...

MR. A. JACKSON
Ready, Mr. Weis.

MR. JENKINS
What if I'd said it, change the language a little bit, ... I really don't think that would hold water in court, I don't think one court could conclude that, but there's just a lot of due -- aspects of due process can be waived, but what if we said, on lines 18, 19 and 20 "no person shall be compelled to give evidence against himself" -- I was going to say ...

MR. ROY
I don't think -- I don't know why -- why -- let me ask you something.

Why do you feel so strongly about putting something in there that doesn't need to be in there and is going to give us a heck of a lot of trouble

MR. WEISS
The federal constitution limits it to just that phrase and I see no reason to add to it, Woody, I think.

MR. ROY
You are gonna -- I'm telling you, any attorney that is worth his salt is going to raise that the first time he gets it and he may win on it.

MR. JENKINS
Okay

MR. A. JACKSON
Okay?

MR. LANDRY
Take it out . . .

MR. A. JACKSON
Take it out?

MR. LANDRY
But the rest of it you leave in. After "public" on line 15 you put
a " ". Okay?

MR. ROY
Look, Woody,

MR. LANDRY
Leave the "every" and "shall be" ...

MR. ROY
Wait, why not also this? Why not just and "and" on line 20, "and the accused" instead of a new sentence. I don't like a bunch of sentences. "No person shall be compelled to give evidence against himself and the accused" or "and an accused shall be entitled to..." Do you want to do that or do you want a sentence? It don't make much difference.

MR. LANDRY
Let's make it a long sentence.

MR. A. JACKSON
Alright. Okay? Are you ready to go?

... Let's go.

MR. A. JACKSON
Are we in agreement on this? Any objection? Fifteen is adopted
Sixteen.

MR. LANDRY

Now in Section 16 on "Right of trial by jury" in criminal cases, we went back to Woody's original recommendation of "more than six months" I checked with some of the district attorneys and they are not applying the technical language of the Duncan case, "of six months or more" and we throw out all the misdemeanor statutes in Louisiana, so it's suggested

26

THAT WOULD BE CONTINUED BY
 THAT WOULD BE TO "MORE THAN SIX MONTHS" AND THEN AT THE END IT'S
 "SUGGESTED THAT WE TAKE OUT THE WORDS "THE NUMBER OF CHALLENGES TO BE
 "FIXED BY LAW" BECAUSE THEY COULD FIX IT AT ZERO. AND I THINK IT'S BETTER
 AND IT DOESN'T -- FIX, GIVE ANY ADDITIONAL RIGHTS TO SAY THE NUMBER OF
 CHALLENGES CAN BE FIXED BY LAW. IT'S JUST SAYING HE HAS THE RIGHT TO
 YOU KNOW, THAT THE JURORS BEHAVE PERSONALLY. AND PROBABLY YOU AT LEAST
 HAVE SOME -- YOU'LL AT LEAST HAVE ONE THAT WAY, WHERE IF YOU SAY "FIXED
 BY LAW" HE MAY THROW OUT ALL OF THEM. THAT'S THE IDEA OF THE CHANGES.

MR. A. JACKSON

MR. ROY: I agree with what the staff has said. I'll tell you what I am concerned with and I don't know if we can do anything about it, and that's certain misdemeanors, DWI for instance, which on the first offense can cause you to lose your driver's license and can cause you to lose your job and a bunch of other things. And I am just wondering if on cases like that if where a person, and where a great economic harm can come to a person as a result of not being jailed, necessarily, if they put out a man in jail that is one thing, but if they take his license away and don't put him in jail they are just going to be putting him in jail. I am just wondering if we shouldn't have...

MR. A. JACKSON
What are you suggesting, Chris?

MR. ROY: It was an out loud suggestion, I guess maybe we won't even go into it, but I would just like to maybe have a jury trial for those misdemeanors wherein a person's livelihood could be adversely affected without his being jailed.

to the law of the land. They said. (TAPE ENDED).

[924]

MINUTES

Minutes of the meeting of the Bill of Rights
and Elections Committee of the Constitutional
Convention of 1973

Held pursuant to notice mailed by the Secretary
of the Convention on June 12, 1973

State Capitol Building, Committee Room No. 1

Friday, June 22, 1973 (10:00 a.m. - 1:00 p.m.)

Presiding: Rep. Alphonse Jackson, Jr., chairman

Present

Anthony J. Guarisco, Jr.
Rep. Louis "Woody" Jenkins
Rep. Alphonse Jackson, Jr.
Chris J. Roy
Mrs. Novyse E. Soniat
Ford E. Stinson
Kendall Vick
Dr. Gerald N. Weiss
Mrs. Judy Dunlap

Absent

Rep. Shady Wall

Roll call was taken by Mr. Landry. A quorum was present.
Chairman Jackson welcomed Research Director Norma Duncan
to her first visit to the committee.

The chairman asked for a motion to adopt the agenda. The
agenda was adopted as written. The first item to be discussed
was General Governmental Provisions.

Chairman Jackson called on staff member Walter Landry to
review the action on general governmental provisions and particu-
larly the initiative. Mr. Landry explained that Sections 1, 2,
3, 11, 12, and 13 of "Article II. General Governmental Provisions"
had been adopted previously by the committee. Sections 4 through
10 had been redrafted after consultation with the Secretary of
State and Delegate Jenkins. Mr. Jenkins then explained the
sections on the initiative pointing out that they were care-
fully drawn to avoid excessive and frivolous use of the initi-
ative. Its use was made more difficult than it is in the average
state that uses the initiative. After a brief discussion, the
seven initiative sections were adopted without change (See TP
No. 174).

The committee then adopted the entire "Article II. General
Governmental Provisions" without change (See TP No. 175).

Following this action, the committee began reconsideration
of the proposed "Declaration of Rights". Mr. Jenkins moved and
obtained adoption of technical amendments to the sections on
freedom of expression and freedom of commerce (See TP No. 176).

Dr. Weiss asked for support for a minority report on cultural
rights and Delegates Stinson and Dunlap agreed to join him in
such a report (TP No. 177).

Mr. Roy obtained reconsideration of the section on bearing
arms and then moved a substitute proposal, TP No. 178. Mr.
Jenkins sought various amendments to the Roy proposal some
of which were accepted (See TP Nos. 179, 180, 181, 182, and 183).
Mr. Vick's attempt to amend Mr. Roy's proposal to provide that
arms would be subject to the police power was rejected 2-7 and the

Roy proposal, with amendments by Delegate Jenkins, was adopted
6-1.

The committee then voted to adopt the entire proposal of
the "Preamble" and "Declaration of Rights". The initial vote
was 8-1 with one absent. Mr. Stinson in opposition agreed to

2

change his vote if he could have a minority report deleting
the word "sex" from "Section 3. Right to Individual Dignity".
The committee voted to suspend its rules requiring three votes
for a minority report so Mr. Stinson could submit a minority
report of one. Mr. Wall, who was chairing a Legislative Budget
Committee at the time, sent word of his support for the proposal
so that the vote was then unanimous.

All ten members then signed a covering letter submitting
the proposals on the "Preamble", "Article I. Declaration of
Rights", and "Article II. General Governmental Provisions" to the
delegates to the Constitutional Convention. The committee is to
continue its work on elections and constitutional revision
after the convention reconvenes on July 5, 1973.

There being no further business, the meeting adjourned at
1:00 p.m.


Rep. Alphonse Jackson, Jr., Chairman

3

June 22, 1973

CBRE Tentative Proposal No. 176 by Mr. Jenkins

Background: A proposal to adopt the section on freedom of
expression and freedom of commerce with technical
amendments as follows:

Section 9. Freedom of Expression

No law shall abridge the freedom of every person to
speak, write, publish, photograph, illustrate, or broadcast
on any subject or to gather, receive, or transmit knowledge or
information, but each person shall be responsible for the abuse
of that liberty; nor shall such activities ever be subject to
censorship, licensure, registration, control, or special taxation.

Section 24. Freedom of Commerce

No law shall impair the right of every person to engage in
commerce by arbitrarily limiting the practice of any occupation
to a certain class of persons, by controlling the production or

distribution of goods, by dictating the quality or price of products, or by requiring any business to open or close at a given time, except that the legislature may enact reasonable laws regulating commerce when necessary to protect the public health and

Disposition: Adopted.

June 22, 1973

CBRE Tentative Proposal No. 178 by Mr. Roy

Background: After a motion to reconsider the section on the right to keep arms was adopted, Mr. Roy proposed the following as a substitute section.

Section 20. Right to Keep and Bear Arms

A well-regulated militia is necessary to the security of a free state. The right of the people to keep and bear arms shall not be abridged but this provision shall not prevent the passage of laws to prohibit the carrying of concealed weapons.

Disposition: Adopted with amendments. See TP No. 185.

June 22, 1973

CBRE Tentative Proposal No. 179 by Mr. Jenkins

Background: An amendment to TP No. 178.

Delete the first sentence in TP No. 178.

Disposition: Rejected 4-4.

June 22, 1973

CBRE Tentative Proposal No. 180 by Mr. Jenkins

Background: An amendment to TP No. 178.

Delete the words "of the people" in the second sentence of TP No. 178.

Disposition: Rejected 4-4.

June 22, 1973

CBRE Tentative Proposal No. 181 by Mr. Jenkins

Background: Amendments to TP No. 178.

Delete "the people" in the second sentence of TP No. 178 and insert in lieu thereof "each person".

After the word "arms" in the second sentence of TP No. 178, add the words "and ammunition".

Disposition: Accepted by Mr. Roy.

June 22, 1973

CBRE Tentative Proposal No. 182 by Mr. Jenkins

Background: An amendment to TP No. 178.

Delete the period at the end of the second sentence of TP No. 178 and insert in lieu thereof ", but in other cases, personal arms and ammunition shall not be subject to confiscation or special taxation."

Disposition: Rejected 4-4.

June 22, 1973

CBRE Tentative Proposal No. 183 by Mr. Jenkins

Background: An amendment to TP No. 178.

Delete the period at the end of the second sentence of TP No. 178 and insert in lieu thereof ", but in other cases, handguns and rifles shall not be subject to confiscation or special taxation."

Disposition: Rejected 2-7 by a roll call vote.

THE ROLL CALL

Dunlap	No
Guarisco	Yes
Jackson	No
Jenkins	Yes
Roy	No
Sonnat	No
Stinson	No
Vick	No
Wall	Absent
Weiss	No

June 22, 1973

CBRE Tentative Proposal No. 184 by Mr. Vick

Background: An amendment to TP No. 178.

Delete the word "The" from the second sentence of TP No. 178 and insert the words "Subject to the police power, the

Disposition: Rejected 2-7 by a roll call vote.

THE ROLL CALL

Dunlap	No
Guarisco	No
Jackson	No
Jenkins	No
Roy	No
Soniati	Yes
Stinson	No
Vick	Yes
Wall	Absent
Weiss	No

June 22, 1973

CBRE Tentative Proposal No. 185 by Mr. Roy

Background: The original TP No. 178 as amended.

Section 20. Right to Keep and Bear Arms

A well-regulated militia is necessary to the security of a free state. The right of each person to keep and bear arms and ammunition shall not be abridged, but this provision shall not prevent the passage of laws to prohibit the carrying of concealed weapons.

Disposition: Adopted 6-1.

June 22, 1973

CBRE Tentative Proposal No. 186 by Mr. Jenkins

Background: A proposal to adopt the "Preamble" and "Article I. Declaration of Rights" identified as CC-1011 with Sources and Comments.

Disposition: Originally adopted 8-1 with one absent. After a motion to suspend the rules to permit Mr. Stinson to submit a minority report of one urging deletion of the word "sex," from "Section 3. Right to Individual Dignity" was adopted, and an absent member approved the proposal, the proposal was adopted unanimously 10-0 and every member of the committee signed a letter transmitting the "Preamble", "Article I. Declaration of Rights" and "Article II. General Governmental Provisions" to all delegates to CC-73.

MINUTES

Minutes of the meeting of the Bill of Rights and Elections Committee of the Constitutional Convention of 1973

Held pursuant to notice by the Secretary in accordance with convention rules

State Capitol Building, Committee Room No. 1

Tuesday, August 21, 1973 (10:00 a.m. - 9:00 p.m.)

State Capitol Building, Committee Room No. 9

Wednesday, August 22, 1973 (8:30 a.m. - 9:30 a.m.)

Presiding: Rep. Alphons Jackson, Jr., Chairman

Present

Anthony J. Guarisco, Jr.
Rep. Louis "Woody" Jenkins
Rep. Alphons Jackson, Jr.
Chris J. Roy
Mrs. Novyse E. Soniat
Kendall Vick
Dr. Gerald N. Weiss
Mrs. Judy Dunlap

Absent

David E. Stinson
Rep. Buddy Weiss

Roll call was taken by the committee secretary. A quorum was present.

The chairman welcomed a capacity crowd of witnesses wishing to testify before the Bill of Rights Committee and spectators.

The following witnesses testifying before the committee were

REV. PHIL KAPELA of the Christ the King Chapel, L.S.U., MR. HARVEY BRITTAN, Field Director of the NAACP of New Orleans, MR. JOHN MARTELL, representing himself, REV. WILLIAM FINNIN of the United Catholic Ministry, REV. H. S. APPLE of the University Presbyterian Church, MS. KARLINE TIERNEY representing Women in Politics, MS. ELEANOR SHIRLEY representing the League of Women Voters, MR. MARK WHEELER representing Senior Citizens Coalition of New Orleans Council on Aging, MRS. PRISCILLA ENGOLIA representing the New Orleans Council on Aging, MRS. REBECCA PETERS a member of the League of Women Voters, MRS. BABS MINIHNETTE representing Females Opposed to Equality, MR. THOMAS I. EVANSTON, MRS. CAROLYN GROVES representing the Concerned Parents of Baton Rouge, DR. RALPH DREGER of the Louisiana Council on Human Relations, MR. ROGER BATZ a member of Common Cause, Baton Rouge, MRS. NELSON BROWN a member of the Women's Protective League, MR. ED WARE representing the District Attorneys Association, DELEGATE JOHN THISELTHWAITE of CC/73, DR. ASHTON THOMAS representing the Louisiana State Medical Society, MR. PAUL PERRETT representing the Louisiana State Medical Society, MR. JACK COUSIN representing CLECO, MR. JIM HUGHES of the State Times, DOUG MANSHIP representing the Louisiana Association of Broadcasters, MR. SMILEY ANDERS representing Sigma Delta Chi Journalism Society, MRS. PAUL MCILHENNY representing herself, MRS. LILLIAN WALKER, MR. GIDEON STANTON representing the Council for a New State Constitution, MR. DENNIS DRISCOLL representing himself, MR. BUD MAPES of Bud Mapes Association, MR. BRENER representing the Inter-Faith Committee, MR. VERN EWING representing the Retailers Bureau - Chamber of Commerce, MR. CHARLES SMITH of the Chamber of Commerce, MR. JAMES CAMERON Council, MR. TERENCE LEACH representing the Physically Limited Advancement Coalition for Equality, MR. BRYANT MOORE a member of the New Orleans Chapter of Handicapped, MR. BERT PARSHAN a member of the New Orleans Chapter of Handicapped, MISS ROSE CAMERON from L.S.U., Congressman JAMES D'OHENGEAUX President

of CODOFIL, MR. J. T. HAYES executive secretary of the Police Jury Association, MR. RON MOORE and MR. DAVID MADDEN representing themselves, MR. STANLEY BABIN and MR. JOHN F. WARD representing the Louisiana School Boards Association, MS. JEAN SMITANA, MISS MIRIAM ATTAYA, and MR. TERENCE BEVEN representing the Louisiana State Medical Society.

After the witnesses concluded their testimony the committee reviewed the proposed "Preamble" and "Declaration of Rights" and made changes in selected sections.

Mr. Jenkins proposed that the words "provide for" in connection with the phrase "provide for health, safety, and welfare of the people" be changed to "promote." The change was made without objection (See TP No. 264).

Mr. Roy proposed that the word and punctuation "age," be included after the word and punctuation "race," in Section 3. Right to Individual Dignity. The proposal was adopted 4-2 (See TP No. 265).

Mr. Roy then proposed that the words "or condition" in Section 3 be changed to "physical condition". The proposal was adopted 5-2 (See TP No. 266).

Mr. Jenkins proposed that the word "previously" in Section 4 be deleted and this was adopted without objection (See TP No. 267).

Mr. Jenkins then proposed that the following be deleted from Section 4, "nor shall the intangible assets of any business enterprise be taken. Unattached movable property shall not be expropriated except when necessary in emergencies to save lives or property." The proposal was adopted 6-1 (See TP No. 268).

3

Dr. Weiss proposed adding the words and punctuation "physically handicapped," after "ancestry," in Section 7. Freedom from Discrimination. The committee rejected the proposal 1-6 (See TP No. 269).

There was objection to retaining Section 9 as proposed by the committee. Mr. Jenkins nevertheless moved its adoption as is and it was readopted 6-1 (See TP No. 270).

Mr. Jenkins proposed a technical change in Section 13 deleting the words "where there is a mistrial or" and inserting in lieu thereof "when a mistrial is declared or a". The change was adopted unanimously (See TP No. 271).

In Section 14, Mr. Roy proposed adding the words and punctuation "if permitted to testify," after the word "accused" and to change the words "any transcribed" to "transcribed" these changes were adopted 6-1. (See TP No. 272).

Mr. Vick suggested that the words "resident or domiciliary" in Section 19 be changed to "citizen and resident" and without objection the proposal was adopted (See TP No. 273).

Mr. Vick proposed that in Section 20, the sentence "a well-regulated militia is necessary to the security of the state"

be deleted, that the word "person" be changed to "citizen", and that the word "ammunition" be deleted. These changes were adopted without objection (See TP No. 274).

Mr. Roy proposed that the words "and liability" be included at the end of Section 22 after the word "suit" and before the period. The proposal was adopted without objection (See TP No. 275).

4

Mr. Jenkins proposed that Section 24 be revised to read as follows "no law shall impair the right of each person to engage in commerce by controlling the production, distribution, or price of goods, except when necessary to protect public health and safety." The change was adopted without objection (See TP No. 276).

Mr. Vick proposed that the words "each person" in Section 25 be changed to "the individual citizens of the state." The section was adopted without objection (See TP No. 277).

Dr. Weiss then proposed that Section 18 be reconsidered to include a prohibition against euthanasia. His proposal was adopted 6-0 with one abstention (See TP No. 278).

The committee then recessed until August 22, 1973, to hear additional witnesses on Section 19. Right to Vote.

August 22, 1973

Presiding: Rep. Alphonse Jackson, Jr., Chairman

Present

Mrs. Judy Dunlap
Rep. Alphonse Jackson, Jr.
Rep. Louis "Woody" Jenkins
Mrs. Novyse E. Soniat
Dr. Gerald N. Weiss

Absent

Anthony J. Guarisco, Jr.
Chris J. Roy
Ford E. Stinson
Rep. Shady Wall

The committee secretary called the roll. A quorum was present.

The following witnesses testified on Section 19. Right to Vote, MS. MABLE PALMER representing the Louisiana Association for Mental Health, MS. FRAN BUSSIE representing the Louisiana Association for Mental Health, and MR. JOHN P. NELSON representing Louisiana Association for Mental Health.

Following their testimony, the committee on motion of

5

Mrs. Soniat voted to change the words "judicially committed and institutionalized" in Section 19 to "interdicted and judicially declared mentally incompetent". The proposal was adopted 6-1 (See TP No. 279).

There being no further business, the meeting adjourned at 9:30 a.m.

Rep. Alphonse Jackson, Jr., Chairman

August 22, 1973

August 22, 1973

CBRE Tentative Proposal No. 266 by Mr. Rogers

CBRE Tentative Proposal No. 264 by Mr. Waller

Background: An amendment to Section 3. Right to Individual Dignity in CP2.

Background: An amendment to Section 26. Right to Bear Arms in CP2.

after "race," add "age,"

delete the sentence "A well-regulated militia is necessary to the security of a free state"; change the word "person" to "citizen" and delete the words "and ammunition"

Disposition: Adopted 4-2.

Disposition: Adopted without objection.

August 22, 1973

August 22, 1973

CBRE Tentative Proposal No. 266 by Mr. Rogers

CBRE Tentative Proposal No. 278 by Dr. Weiss

Background: An amendment to Section 3. Right to Individual Dignity in CP2.

Background: An amendment to Section 18. Right to Humane Treatment.

change "social origin or condition" to "social origin, physical condition"

after the words "subjected to" add "euthanasia,"

Disposition: Adopted 5-2.

Disposition: Adopted 6-0 with one abstention.

August 22, 1973

CBRE Tentative Proposal No. 269 by Dr. Weiss

Background: An amendment to Section 7. Freedom from Discrimination in CP2.

after "ancestry," add "physically handicapped"

Disposition: Rejected 1-6.

MINUTES

Minutes of the meeting of the Bill of Rights and Elections Committee of the Constitutional Convention of 1973

Held pursuant to notice in accordance with the rules of the Convention

State Capitol Building, Committee Room No. 9

Monday, August 27, 1973 (8:30 a.m. - 9:30 a.m.)

Presiding: Rep. Alphonse Jackson, Jr., Chairman

Present

Absent

Mrs. Judy Dunlap
Anthony J. Guarisco, Jr.
Rep. Alphonse Jackson, Jr.
Rep. Louis "Woody" Jenkins
Chris J. Roy
Mrs. Novyse E. Soniat
Kendall Vick
Dr. Gerald N. Weiss

Ford E. Stinson
Rep. Shady Wall

August 22, 1973

CBRE Tentative Proposal No. 270 by Mr. Jenkins

Background: A motion to readopt Section 9. Freedom of Expression in CP2.

Disposition: Adopted 6-1.

August 22, 1973

CBRE Tentative Proposal No. 271 by Mr. Jenkins

Background: An amendment to Section 9. Initiation of Prosecution in CP2.

delete "where there is a mistrial or" and insert in lieu thereof "when a mistrial is declared or a"

Disposition: Adopted unanimously.

Mr. Jackson called the meeting to order and stated that the purpose of the meeting was to discuss individual assignment of particular sections of the declaration of rights with regard to floor managing and speaking for these sections on the floor of the convention.

The staff had prepared a suggested list of assignments based on interest shown by committee members during committee

debates. After discussion the list was revised and the following assignments were made:

Preamble - - - - - Delegates Jackson and Vick
Origin and Purpose of Government - - Delegates Dunlap and Jackson
Right to Individual Dignity - - - - - Delegate Roy
Right to Property - - - - - Delegate Jenkins
Right to Privacy - - - - - Delegate Vick
Freedom of Intrusion - - - - - Delegate Dunlap
Freedom from Discrimination - - - Delegates Roy and Soniat
Trial by Jury in Civil Cases - - - - - Delegate Guarisco
Freedom of Expression - - - - - Delegate Jenkins
Freedom of Religion - - - - - Delegate Weiss
Freedom of Assembly and Movement - - - - Delegate Jenkins
Rights of the Accused - - - - - Delegate Stinson
Initiation of Prosecution - - - - - Delegate Guarisco
Grand Jury Proceedings - - - - - Delegate Roy
Fair Trial - - - - - Delegate Stinson
Trial by Jury in Criminal Cases - - - - Delegate Roy
Right to Bail - - - - - Delegate Stinson
Right to Humane Treatment - - - - - Delegate Weiss
Right to Vote - - - - - Delegates Wall and Jackson
Right to Keep and Bear Arms - - - - - Delegate Stinson
Writ of Habeas Corpus - - - - - Delegate Vick
Access to Courts - - - - - Delegate Guarisco
Prohibited Laws - - - - - Delegate Vick
Freedom of Commerce - - - - - Delegate Jenkins
Unenumerated Rights - - - - - Delegate Roy

The chairman and various members of the committee expressed gratitude that the committee in general was united behind the declaration of rights proposal. The maintenance of this unity was stressed for adoption of the various sections without substantial changes.

There being no further business, the committee adjourned to appear at the convention for the beginning of debate on "Declaration of Rights".

Rep. Alphonse Jackson, Jr., Chairman

2

MINUTES

Minutes of the meeting of the Bill of Rights
and Elections Committee of the Constitutional
Convention of 1973

Held pursuant to notice in accordance with the
rules of the Convention

White House Inn, Independence Hall

on

Convention Floor

Friday, August 31, 1973 (2:30 p.m. - 2:40 p.m.)

Presiding: Rep. Alphonse Jackson, Jr., Chairman

Present

Mrs. Judy Dunlap
Anthony J. Guarisco, Jr.
Rep. Alphonse Jackson, Jr.
Chris J. Roy
Mrs. Novyas E. Soniat
Ford E. Stinson
Kendall Vick
Dr. Gerald N. Weiss

Absent

Rep. Shady Wall

The meeting was called to order by Chairman Jackson.

There was discussion of Section 7. Freedom from Discrimination.

Chairman Jackson and others expressed concern that amendments were being added to it which tended to make the section unworkable and that the committee was beginning to lose

purpose in proposing the section. Consideration was given with regard to withdrawing the section altogether or revising it to make it generally acceptable. The staff was instructed to prepare alternatives and the committee withheld a final decision on its strategy with regard to Section 7. It was agreed that the meeting would stand in recess until 10:00 a.m. on September 5, 1973 at which time the committee would meet on the convention floor.

There being no further business, the meeting adjourned at 2:40 p.m.

Rep. Alphonse Jackson, Jr., Chairman

2

MINUTES

Minutes of the meeting of the Bill of Rights
and Elections Committee of the Constitutional
Convention of 1973

Held pursuant to notice in accordance with the
rules of the Convention

State Capitol Building, Committee Room No. 1

Thursday, September 13, 1973 (9:00 a.m. - 12:00 noon)

Presiding: Rep. Alphonse Jackson, Jr., Chairman

Present

Mrs. Judy Dunlap
Anthony J. Guarisco, Jr.
Rep. Alphonse Jackson, Jr.
Rep. Louis "Woody" Jenkins
Chris J. Roy
Mrs. Novyas E. Soniat
Kendall Vick
Rep. Shady Wall
Dr. Gerald N. Weiss

Absent

Ford E. Stinson

NAME:

	Yes	No	Ref.	Blank	Total
Poole	Y				
Quinn	Y				
Jackson	Y				
Jenkins	-				
Roy	Y				
Soniat	Y				
Stinson	-				
Vick	Y				
Wall	Y				
Weiss	Y				

ABS = ABSTENTION

Background: A proposal for a revised version of the section on "Freedom from Discrimination" which had been withdrawn temporarily from the discussion page.

Disposition: Adopted 7-0 with one abstention.

MINUTES

Mr. Philip O. Bergeron, Secretary, called the roll:

[931]

Bel
Bergeron
Burns
Dennis
Deshotels
Drew
Gauthier
Kelly
Kilbourne
Landry
Martin
Ours
Sandoz
Tate
Tobias
Willis

OFFICIAL TRANSCRIPT
OF THE
CONSTITUTIONAL CONVENTION
STATE OF LOUISIANA
1973

COMMITTEE ON JUDICIARY
MEETING OF MARCH 9, 1973

Mr. Deshotels moved to dispense with the reading of last meeting's minutes, with approval, after the following correction to roll call: Mr. Landry "absent," instead of "present." There were no objections.

Chairman Dennis introduced the following speakers, who gave their personal opinions and recommendations concerning the powers,

-2-

structure, and financing of the present constitution's Judicial System:

JUDGE MIMOS D. MILLER, JR.
Third Circuit Court of Appeal

FORMER CHIEF JUSTICE JOHN FOURNET
Louisiana Supreme Court

JUDGE LUTHER F. COLE
District 19, Division G

JUSTICE MACK E. BARRHAM
Louisiana Supreme Court

JUDGE PAUL B. LANDRY, JR.
First Circuit Court of Appeal

JUDGE J. BURTON FORET
City Judge, City of Ville Platte

Mr. Edgar Coltharp, reporter for The Shreveport Times Newspaper, made brief comments about establishing an advisor or legal counsel to jurors.

Chairman Dennis appointed Delegates Bel, Bergeron, Gauthier, Tate, and Tobias to a subcommittee to consider polling.

Material on the Illinois Court System, a tentative discussion draft on the scope of the committee's charge, and other items were submitted to the committee members by Chairman Dennis for review and discussion at next meeting.

MEETING ADJOURNED AT 5:30 p.m.

JUDGE MILLER

At the outset let me say that the points of view that I will express today are my own and have neither been accepted nor rejected by anybody. This includes the Constitutional Revision Committee that was appointed by the law institute and it was actually part of the Law Institute's work and I had not presented these views to them, so they have not been, as I say, accepted or rejected.

The first point that your chairman mentioned is appeals in criminal cases and I'd like to talk to you about that subject first. On criminal appeals at this time all of them go directly from the State District Court, the trial court to the supreme court of the state. There's no intermediate courts of appeal. This is the most desirable situation that you can have because from the point of view of good judicial administration, you want to have a limited number of appeals; you'd like to have one review; you'd like to have that one review by the same group for all appeals from throughout the state of Louisiana and that what we have today. The revision, as proposed by the Law Institute which had the duty assigned to them by the legislature, the provision proposes that it stay that way, that the Supreme Court of the state of Louisiana continues to get all appeals in criminal cases and I am one hundred percent for them. The only reason I've asked for time to appear before you today is because the revision that this Law Institute has proposed has an alternative provision and it proposes that at some date in the future, the supreme court will become bogged down and they will no longer be able to give prompt hearings in the appeals in criminal cases. That is not the situation today and no one can say what the future will bring. It may very well come to the point where the supreme court will not be able to promptly hear all criminal cases, and when that happens, the proposal of the Law Institute, and I guess I gather that might have been presented to you at the last meeting because Chairman Dennis is the chairman of that revision today. This had to do with revision: Article VII of the old 1845 constitution. And, as I say, they proposed (one) that it stay with the supreme court, but (two) they proposed that the appeal when the supreme court certified that they could no longer promptly hear criminal appeals, then the legislature of the state of Louisiana could, by act of the legislature, set up intermediate courts of appeal. So, if that is the case, then the supreme court would be presently existing intermediate court of appeal.

Now, I have appeared today to object to that provision. I want to say to you that that would be a backward step for good judicial administration for the state of Louisiana. If this is adopted and if the appeals go to the intermediate court which is now limited to civil cases only, and will have as a result: No. 1, additional delay. You'll have additional delay in the final disposition of appeals in criminal cases and this is inherently bad. What the public needs, what the person charged needs is a prompt and final disposition of his appeal. The second problem that results from giving the appeals in criminal cases to the presently existing intermediate courts of appeal is that it will result in confusion. I say this because, although we have only four intermediate courts of appeal,

JUDGE MILLER (cont'd)

the First, Second, Third and Fourth Courts of Appeal. Each of these courts sits in panels of three. Now, the First Circuit here in Baton Rouge has two panels of three. The Second Circuit in Shreveport has two panels, although if they have five judges it would end up being two panels. The Third Circuit in Lake Charles has two panels and the Fourth Circuit in New Orleans has three panels. As a result, you would have nine different groups of judges hearing appeals in criminal cases and this would bring about confusion. By way of illustration, let's say that you represent, or you are being tried--let's put it that way, that you are a defendant in one--in a criminal case in Orleans Parish and you are convicted and therefore you want to take a remedy if you want to know whether you should appeal or not. If you get one panel of judges, you think you might have an excellent chance of reversing it, but you know if you got either of the other two panels of judges, you have much chance of getting it reversed. This will make for additional appeals and in the trial levels. Take also the situation that many of the decisions of the supreme court at this time on criminal cases, as well as civil, are close cases; they are four to three decisions. This means--this means that if you present this same problem to, say, nine different panels of judges, then you're going to have different results in the different districts in the different panels and this creates confusion which, in turn, is not good practice for judicial administration. So I say to you that you should not provide as the Law Institute recommended as an alternative provision, you should not provide that the legislature can change appeals in criminal cases to the courts of appeal as they presently exist.

Now, I have an alternative suggestion which I would offer to you as preferable to that suggested by the Law Institute. If the supreme court when the supreme court can no longer handle its appeals in criminal cases, and that may come; as of now I understand from the supreme court that they are able to handle it and they are not asking for relief, and therefore, it should stay as it presently is. All appeals in criminal cases go from the district court to the supreme court, but if they should later find

James L. Dennis
Chairman
Charles H. Martin
Vice-Chairman
John Fournet
Secretary

[933]

JUDGE DENNIS

Mr. Willis.

MR. WILLIS

Well, I have a series of questions. Perhaps it's because I missed early on your talk in which I've seen saying I was thinking about ten a week court. It would not show the proposal of the Louisiana Law Institute. Just to the extent that assuming its recommendation is that the criminal appeals go through the court of appeals that it would follow in parallel the civil appeals. Notable, that you will only get to the supreme court by virtue of a writ.

JUDGE MILLER

That's correct. But let me say that, I do not want to be misunderstood. The law institute recommended the criminal appeals stay as they are, and I thoroughly agree with that. I only differ with the Law Institute in that when they propose that the only court can no longer promptly handle criminal appeals; at that point I suggest that their alternative recommendation should be considered.

MR. WILLIS

...to the legislature.

JUDGE MILLER

To the legislature and then it would be up to the legislature. Of course, all this in accordance with what the constitutional provision would say and I would hope that you would respect their recommendation.

MR. AVANT

Well, let me ask you some more questions in fortification of your proposal.

JUDGE MILLER

Yes, sir.

MR. WILLIS

We understand that the efficient... we have to start from a common basis, that is that the efficient administration of justice requires that the suit, from the time that it is filed or commenced by the filing of a petition to the time that it is disposed of finally, is the time that should be shortened.

5

MR. WILLIS

...to the legislature.

MR. WILLIS

Alright. Then if we take the first proposal notably that when the suit is filed, the district judge grabs hold of it and assigns one of the cases at trial without going into mathematics. Then if you would accept a proposal that criminal appeals would go through these circuit and court of appeals, then you could only go to the supreme court for postulating on writs. Is that correct? Alright.

JUDGE MILLER

Or, I think that they provided that all capital cases had to go to the supreme court.

MR. WILLIS

Well, let's assume one of those and then let's condition the pre-judgment of a prisoner, a person in prison, who was faced with the issue in our law that was decided recently, notably, whether he is to be tried by a twelve man jury or whether he is to be bonded in a capital case which was very recently decided. Now, if he would have to run the gamut of going from the district court as the present situation where the district attorney is ready while he is in jail, then he would have to go through the court of appeals and then hope for a writ to the supreme court, which I think in that case he would have gotten, but then, would we not enlarge the time from the commencement of the action with the civil offenders to the final disposition of that phase of it in the other.

JUDGE MILLER

You would have a built-in delay of at least six months at the very... (INTELLIGIBLE)

MR. WILLIS

This is my point. He should not. I know what I'm saying... caused this trouble. You understand that I'm saying a fortification of your efforts?

JUDGE MILLER

Absolutely. I appreciate it. This is exactly the point.

JUDGE DENNIS

Any further questions on this segment of Judge Miller's talk?

7

Just one question, and I don't mean this to be personal. I propose at this time, do you have, or could we have it made available to us the full workload of the circuit courts today compared with what I'm driving at is this proposition. Set up until about 1945, take the Second Circuit Court of Appeal, you have three judges and one law clerk, so to what the workload that was handled by three judges and one law clerk and then compare it with five judges and two law clerks at this time. My recollection is that there were many more cases handled about three times as many per judge and one law clerk than are being handled by five and five law clerks.

JUDGE TATE

I have a little statistics on that. When the First Circuit was created, it probably had some kind of built-in... and eighty-three judges which is about sixty per judge. Now you have to realize that because of the limitations on appellate jurisdiction, eighty percent of the work were paria of workmen's compensation and the more you handle a certain type of case, the easier it is, you know? Now, you can see that against that—that sixty per judge it's true, the Third Circuit in which Judge Miller is sitting right now, last year rendered three hundred and seventy-two opinions for six judges, who is about sixty per judge. Your production right now per judge is about the same. You do have more staff, and there's a greater complexity and, incidentally, that's above the nationally recommended average for a considered opinion. I think it's supposed to be forty-five, but I don't think they want anyone judges.

JUDGE MILLER

There's no judge that I know of that wants more judges on the court. That is on the appellate level. But that is fairly easy to develop. Jean Murat, our judicial administrator, has kept some statistics for—think he can develop that for you... for the last twelve years. Before that, it would be some effort for him, but he has a report on a year-by-year basis.

6

JUDGE MILLER (Cont'd)

on total number of cases handed down, and on a per judge basis as well.

7

I think it'd be interesting to have that....

JUDGE DENNIS

Mr. Burns.

MR. BURNS

Judge, in view of the extreme importance that we present a criminal appeal especially, when criminologists say where a man's life is at stake, more so, where his... freedom is at stake, I think—or do you think that if we have to go to an alternative method, if the supreme court ever gets filled up....

JUDGE MILLER

Yes.

MR. BURNS

...that the convention rather than the legislature should be the one that would name the alternate method of criminal appeal, rather than just give to the legislature....

JUDGE MILLER

I failed to agree with you completely. I failed to make clear the point that the projection of the project by the Law Institute was that the constitution set up precisely how that alternative would be; exactly what would be the motive or the way in which this would happen. And, you too would help provide in the constitution exactly how this new court would be selected and how it would operate. The only thing that would come to the legislature is "will the legislature approve the setting up of that other court?" or will the legislature under the Law Institute's projection, will the legislature give criminal jurisdiction to courts of appeal? If they do, it will be in accordance with what the constitutional convention says and, of course, under Article VII what the Law Institute projected as a constitutional amendment of the 1921 Constitution. But I suggest to you that the best thing to do is to leave it exactly as it is now and let it come up as a constitutional amendment later on, but if you feel that you must cross this bridge now, then I suggest that the alternate in my proposal is better for judicial administration than that proposed by the Law Institute.

7

That last suggestion you made I think impresses me as being the best course; just leave it like it is and let the future events take care of themselves.

JUDGE DENNIS

Mr. Avant.

MR. AVANT

This is, I guess this is the biggest problem, but getting to the question that Mr. Willis has raised about this fellow who's been convicted and he's on appeal and he's sitting in jail. As I understand it, even in the present law, whenever there is a conviction, the appeal depends entirely upon the length of his sentence. I think if his sentence is more than five years, he's got to stay in jail while his appeal is being heard, and I just went through that on a case that I was appointed on where the judge sentenced the man to seven years; will he sentenced three of them to seven years. I was only appointed to represent one of them and they were tried by a five-man jury which we took a bill of exception under them—and the supreme court reversed the conviction because they said they should have been tried by a twelve man jury, but to make a long story short, in the meantime this fellow had been in the penitentiary for something like eighteen months. By the time his conviction was reversed, he was already out on parole. Now, the reason the judge gave him seven years was he didn't want him to get immediate parole. Say if he had gotten, I think he gave him seven years—it's some magic formula that I can't recall, but seven years and a day, or something, because he wanted him to serve so much time, irrespective. But it seems to me like this is a bad situation. Here's a man who's been confined in the penitentiary for eighteen months on a

7

MR. JAWA

I say, of course, in that case they would handle them directly, whereas this one-related to criminal cases for say ten years and then suddenly we throw out the criminal court, look at age, like they would have some problems.

JUDGE MILLER

I see the point. I see your point.

MR. JAWA

Gentlemen, they say that the definition of an expert is someone with a better use than a hundred others. I think that's true. I think that most of you are experts and I thought by bringing my briefcase, I'd be something of a quasi expert anyway. I can't fully qualify since I live here. I might say this to start with, that my views on court reforms and on the organization and structure of the courts are not likely to be progressive. My views with regard to judicial philosophy may well be termed conservative or, as they say on the national level, perhaps I'm a strict constructionist. So, a little odd that I find myself advocating certain reforms and certain changes that might be considered a little liberal, while at the same time when it comes to deciding law, I swear I see I have nothing to do with my views otherwise. Now, it is true that at this time I'm president of the Louisiana District Judges' Association but what I have to say here today to you is not necessarily the views of the District Judges' Association. Unless I tell you to the contrary, I'm speaking only for myself. I think on the local level here Mr. Avant can tell you, he was instrumental in numerous reforms in the last couple of years which we think has improved our system and partly as a result of this experience I feel that I'm on safe ground in advocating some of these changes statewide. As recently as three or four years ago, it took approximately a year and a half or two years to have a case heard and decided in the 19th Judicial District court. We're now in a position from the time that the lawyers are ready to move to get rid of that case in sixty to ninety days which we think has been a tremendous improvement in our district situation here.

I'm going to pattern my remarks somewhat after the recommendations, along the lines of the recommendations as contained in the court study by the Institute of Judicial Administration. They made certain recommendations in Chapter 2 which I will comment on and give my views and I think this will pretty well cover the whole court system.

One recommendation was that the district court should be constituted as one court for the whole state and that all its judges should be judges of the whole court rather than the local, separate courts. They know that the courts of appeal would similarly benefit from consolidation.

My views are as follows: A unified court system is desirable provided: (1) It does not result in reduction of salary for any judge. It's taken many decades to achieve a reasonable salary level for judges in Louisiana and such progress should not be jeopardized. The judge is, after all, the single most important cog in the judicial system. Salaries should remain at a level to attract the best qualified men to the bench.

(2) Assignment of judges within the system should be restricted to a reasonable geographic basis. It must be borne in mind that the general principle that one, and because of the facts in the record against him, should be tried by or before his own judge. This should, so far as possible, be preserved and maintained. Gentlemen, we're talking about a unified court system which I recommend but with these provisions (1) that there's no reduction in salaries; (2) as that assignment of judges be on a reasonable geographic basis; (3) in my opinion it is absolutely mandatory that provisions be made for specialist judges who sit on a particular division of court. This would obviate specialized courts as such, but, more importantly, it will allow for the best utilization of individual talent. To be more specific while there would no longer be criminal, civil, juvenile, family, probate, misdemeanor, small claims, whatever such courts now, these judicial jurisdictions would still be based on a more or less permanent basis by a particular judge who is assigned for that field. I know you've heard speakers come here, the Chief Justice a few months ago and others who have said that you should have judges either criminal or civil. I know judges who are of that type. Professor Pugh the other day said that this should not be done. Well, I would suggest to you that it is as sensible for judges to be a jack-of-all-trades as it is for a law professor to teach all courses in a

seventy hours a week and have others in some parts of the state working twenty hours a week. If you're going to have a unified court system and you're going to have administrative changes, you're going to be some way to utilize the fair allotment system. (5) The method of election of judges remains unchanged. Now, gentlemen, in this particular regard I can tell you that the Louisiana District Judges' Association has gone on record as favoring the present elective system for judges. I think the sentiment is overwhelming in our organization to keep judges on an elective basis by the people. (6) There should be not more than four jurisdictions, as well as serious thought being given to limiting the system to only three such levels. I suppose in a hard question basis I would have to tell you that I favor a four level system. A few minutes ago, sir, you were talking about parish courts.

I think it's an excellent idea and I believe that you should certainly might as well put it on the table--city courts, municipal courts, mayors' courts, justices of the peace, and all of these courts, but you do need a jurisdictional level where small claims, traffic, misdemeanors and things of this can be expeditiously handled and preferably on a less-cost basis and things of this nature. This would relieve the district judges. Perhaps it could be done where, as you suggest, the legislature could create the parish courts as needed, but certainly, I don't think I would recommend not to go below the four level integrated, uniform state court system. Now, gentlemen, a unified court system, in my opinion, cannot be achieved with all financing being done at a state level. I realize that such financing may possibly jeopardize salaries that are presently being paid to the judges in this state. I might say this. There is a real justification today in this state for some judges being paid more than other judges. In the metropolitan areas where the caseloads are such, where the pressure is such, the responsibility is such, these judges are not being overpaid. Without casting any reflection on some of our other judges, there are some judges in this state who do not have that responsibility and that workload. Here in East Baton Rouge Parish, for example, the 19th Judicial District Court gets the brunt of all the cases. I don't want to get into the details of the statistics of the cases affecting the collection of taxes, the divorce and succession, the probate, the agencies which, really and truly, is a tremendous area that requires a great deal of work and effort. For this reason we feel fully justified in making more money. I think that a judge in central or north Louisiana. Now, the local government unit, be it police jurors or be it City-Parish Council, they know their judges; they know whether or not they're working really better than the judges in other parts of the state legislature. I have no objection to having a uniform salary scale for judges, but I think that if you equalize the workload with administrative control and you pay everybody a fair salary, certainly, this would be fine. But please be careful in making these changes, because you're going to do more than state salaries. You have to realize that in this day and time in most metropolitan areas it takes thirty, forty or fifty thousand dollars to campaign.

13

JUDGE COLE (cont'd)

Gentlemen, don't get political contributions as other candidates get. That can we promise? I can only promise them a decision based on the law and the evidence. A lot of people who are interested in contributing money certainly are not particularly interested in that residual from their investment, so if you are going to price us out of the market, you are going to get the kind of judges, perhaps, that you should get. You're going to get people who are not attuned to the responsibility of the job but who are to treat it solely, politically. I might as well say this with regard to politics and judges. You're faced with decisions about tenure, length of term; you're faced with decisions about retirement. Bear in mind that all the time that this country was founded on the basis that the judiciary should be and remain independent of the other branches. Don't equate the judge and the courts with the political structure on one side or the other of a controversy in court. If we're going to be put in a position either by a combination of retirement, tenure or other constitutional provisions so that we would be in a position to be out of the law suit, then you've destroyed what this country was founded for in the first place. We are not like other branches of government in that regard. The judicial branch is the only one that is separate and independent branch of government and unless it remains so, then you will have a completely politically controlled and dominated branch of government which you may as well abolish anyway.

Gentlemen, the second recommendation in my material, the creation of an administrative mechanism that can handle judicial policies for the court system as a whole and of a responsible management system that can implement these policies. I think that this is a very important step in integrated administratively. This can be accomplished, perhaps, without unification or consolidation of the courts and it's up to you to decide whether or not this should be done in the form of overall unification of the courts. Again, it would appear that financing on a state level is as desirable as it is not absolutely essential even if you fall short of complete unification and deal only with an administratively integrated court. Also, the safeguards I've talked about should be studiously considered and preserved. Unification of the courts to achieve a form or structure utilizes a dubious premise when, perhaps, we need only adhere to the quoted advice of the Honorable Justice Pugh, "The form of government that follows the law is best administered in best. This is some food for serious thought, in my opinion. If you're not going to have a unified court system, the very least that we should do in this state is have an administratively integrated court, and this is something you might consider.

Next, recommendation is that the entire supporting apparatus necessary for successful court operations be placed under judicial authority and that provisions be made for the judges to assume some of the duties of the judges in handling these additional administrative responsibilities. I strongly endorse the concept of the judiciary being given administrative authority over its supporting apparatus with qualified court managers being provided to assist the judges. Without regards to other aspects

day when people traveled by horse and buggy and when fifteen or twenty miles in the countryside was a day's journey, but today with the telephone and automobiles and good roads there's really no need for that and most of these people are not qualified to perform any sort of a judicial or even a quasi-judicial function, and no "common sense" means they're not qualified for the standpoint of experience or the keeping or learning of the law.

21

JUDGE LANDRY (cont'd)

Now there's one area that's been mentioned here and that is about the jurisdiction of the appellate court as to the matter of criminal appeals. At the present time the criminal appeals go to the supreme court. My personal feeling is that that should be continued for this reason, that if you give appellate jurisdiction in criminal matters to the intermediate courts of appeal, you are merely adding one step in the appellate process which means additional delay, additional time and additional expense to the accused. In other words, the case is tried in the district court, it is appealed to our court and then he's got the right to a review by the supreme court. Well, that conviction does not become final until the supreme court passes upon his application for review. If he's not satisfied with the application, there's no other court to go to, whereas it goes directly from the trial court to the supreme court. It eliminates that middle stuff and the man gets a definitive opinion, stating it with less expense and certainly with less time. Now, I have, personally have no objection to criminal jurisdiction being awarded to the courts of appeal. The only thing that I would ask you is this, that if you do that, to give us some additional help to start with. Our hands are full now and we would need—I dare say that each appellate court would need one additional judge to handle that additional case load—the number of cases that are coming out day to day in committee hearing and in the court convictions, remedy cases which are coming up on Mondays, and will for some time. If we're going to be given that jurisdiction, giving that extra load, fine, provided that we have the help to handle it. Otherwise you're going to have a delay in the democratic process. Insofar as a separate court of criminal appeals is concerned, I don't advocate it, and I think that...my information is from reading on the subject matter is that in those areas where that has been tried, it has not worked out too well. The reason appears to be that handling—the constant handling of nothing but criminal cases is a very boring, a very tedious matter and as judges get into a rut when they handle nothing but that. It is a type of work that is distasteful; it's disagreeable and when you get that as a steady diet, it does have a tendency to be aggravating and to make a person irritable. Not only that but the nature of the work is such that many judges will not—I don't mean to criticize the caliber of the judges' decision...but many of the people that are potential judicial material are not attracted to that type of thing because of the nature of the work. I'm sure that men who do that do a conscientious job and do the best they can, but it does have a tendency to push on a judge who handles nothing exclusively but criminal cases. So I personally do not advocate a separate court of criminal appeals and I agree with Judge Barham when he says that a judge who sits on both civil and criminal cases has a much broader perspective and has a tendency to be a whole lot more tolerant because he is dealing with different situations.

One thing that I would strongly urge this committee, one area that I would like to see, and this has nothing to do with court structure, and to me, is one of the most important things that will come up before the committee. That is, in the case of appeal that we would retain appellate jurisdiction of both...of review of both facts and law in civil cases. I was a trial judge for seven years and August last this year I will have been on the court of appeals for twelve years, and the reason I'm so adamant about this is because I have seen the...this particular provision in our constitution. We have numerous instances where I have written opinions. I've been the author of many opinions and I've concurred in numerous other opinions where we would retain our findings and both decisions of judges of district court and certainly backed the judge's decision unless he absolutely went off the track. I personally feel very strongly about this and I hope that this committee will see fit to retain that in the judiciary article. Now, I know that there is going to be considerable effort by some groups in this area and that, you know, they are probably going to ask that you hear them...I hope that for the sake of my assistants. We are one of the few states

21

JUDGE LANDRY (cont'd)

In the nation, I believe, that still have it and I'm very thankful and I hope that it will be retained.

?

Let me say that your remarks in that regard are perfectly in order because actually we're discussing the powers, organization and structure of the court system so this is where it should come.

JUDGE LANDRY

First, I wanted to be sure I made that point because the more I see it is justified, the more thankful I am. Now, frankly, when I said that it's given our courts more work because if we didn't have so go into fact, or if we were bound by the finding of fact by a jury, it would make our work much, much lighter because if we got fact situations, we couldn't say that the trial court was wrong in the records support this finding even though we might think that the jury was completely

wrong on the facts, we would be bound by that and we would have to agree to...which we actually believed to be completely erroneous. It has to be as I suggested. One other thing which may make me rather unpopular with some of the judges is—Pack is getting unpopular with the city judges, the L. B. and a few people like that. I'll promise me in hot water with my own colleagues, but nevertheless I'm here to state my facts and that's what I propose to do.

MINUTES

Minutes of the Judiciary Committee of the Constitutional Convention of 1973

Held, pursuant to notice mailed by the
Secretary of the Convention on March 2,
1973.

State Capitol, Baton Rouge, Louisiana
Friday, March 16, 1973, 9:30 a.m.

Presiding: Mr. Ambrose H. Landry, Vice-Chairman of the
Judiciary Committee (Judge James L. Dennis,
Chairman, took the chair at 10:25 a.m.)

Mr. Philip O. Bergeron, Secretary of the committee called
the roll:

<u>PRESENT</u>	<u>ABSENT</u>
Avant	Tate
Bel	
Bergeron	
Burns	
Dennis	
Deshotel	
Drew	
Gauthier	
Kelly	
Kilbourne	
Landry	
Martin	
Ours	
Sandoz	
Tobias	
Veatch	
Willis	

Mr. Tobias objected to dispensing with the reading of
last meeting's minutes. Mr. Bergeron read the minutes.

-2-

It was moved by Mr. Tobias and seconded by Mr. Bergeron
that the word "Appeals" on Page 2 of the March 9, 1973,
minutes be amended by correcting the word to read "Appeal;"
and to include the appointment by Judge Dennis of Dele-
gates Bel, Bergeron, Gauthier, Tate, and Tobias to a sub-
committee to consider polling. The minutes were adopted
as corrected without objection.

The committee heard testimony from the following speakers
on the powers, organization and administration of courts:

MR. BOB WILKES, President of Louisiana
Justices of the Peace and Constables
Association

MR. LEYCHESTER L. TPAUTH, Justice of the
Peace for the Town of Gretna

MR. PHILIP N. PECQUET, Justice of the
Peace, City of Port Allen

MR. WELDON L. LeBOEUF, Justice of the
Peace, LaFourche Parish

MR. RONALD MARTIN, District Attorney
Seventh Judicial District, representing
District Attorneys Association

[939]

MR. ED WARE, District Attorney, Ninth Judicial District; President, District Attorneys Association

JUDGE DOMINIC C. GRIESHABER, New Orleans First City Court, Section B

JUDGE EDWARD N. ESTELLE, Eighteenth Judicial District

JUSTICE WENDELL CHRISTIAN, Director of the National Center for Juvenile Courts, Washington, D. C.

MR. STEPHEN L. SIMMONS, President of Orleans Parish Criminal Courts Bar

MR. MURPHY BELL, Director of the Baton Rouge Public Defender's Office

MR. JOHN SIMMONS, Director of the New Orleans Indigent Defender Program

-3-

Reverend James L. Stovall asked and received permission to appear before the committee on behalf of the Committee on the Executive. He asked the committee questions concerning jurisdiction of the committee with respect to certain officials included in Article VII.

Judge Dennis announced that Chief Justice Joe W. Sanders and Judge Bernard J. Bagert were tentatively scheduled for the next meeting, Friday, March 23, 1973, 9:30 a.m.; and that he was late because of attending a Composite Committee meeting which started at 9:30 a.m., therefore could not be at the beginning of Judiciary meeting.

James L. Stovall
Chairman
Emilio H. Landry
Vice-Chairman
William B. Bagert
Secretary

OFFICIAL TRANSCRIPT
OF THE
CONSTITUTIONAL CONVENTION
STATE OF LOUISIANA
1973
COMMITTEE ON JUDICIARY
MEETING OF MARCH 16, 1973

Friday, March 16, 1973
Baton Rouge, Louisiana

MR. MARTIN

I cannot find the firm belief that the grand jury system as we operate it in Louisiana, provides a very vital need, it provides a very vital check on the prosecutor himself. That it affords the best use of the people close to the institution of prosecutions; if you could envision the kind of system that is operated in lots of other states, where they must take each ... each prosecution to a grand jury for indictment. This is not workable. That in some states you must have a preliminary examination, that's automatic. In California you must have a preliminary examination. This makes it almost mandatory that you have three trials of every criminal prosecution. So in Louisiana, it seems to me like, have been blessed with some extremely capable legal scholars. And that they strike the balance with our grand jury system, being required only in "capital cases", which no longer exist by the way. But allowing the

grand jury to be used for all other prosecutions. At the same time, I've been trying to say, that a D.A. is obliged to prosecute the guilty and free the innocent. He has the responsibility for the conducting of his office. He has to decide who to prosecute, when to prosecute and how to prosecute. That's an obligation the people have imposed upon him. The same as it imposes upon you gentlemen this responsibility on a judge to decide a case fairly and so on. Have I answered your question?

MR. AVANT

To a degree. Now, do you have any statistics or on the jurisdiction and then beyond jurisdiction of a state-wide grand jury for investigation in which there are no charges resulting therefrom as opposed to those cases where there are indictments by it?

MR. MARTIN

Well, there are balances and facts for and against but I think, generally, I have no statistics statewide. My policy, I think results from about one out of every eight cases of being a no true bill and possibly another one out of eight where there is ... the case is precommitted. Which means to say the grand jury is unable to decide. Either because they cannot reach a nine out of twelve vote or they ... or they just decide that nine out of twelve of them that they should not take it and do anything with it. Most of those times they simply tell me, "Well, ... we're not going to ... we're not going to ... we're not going to ... all homicide, every homicide to the grand jury in my jurisdiction. This means that, what I'm saying is, that the death of a person is a very serious matter, one which I fortunately am able to pass ... have twelve men pass on rather than one.

MR. AVANT

Let me ask you this question. Do you feel that the administration of justice in the public interest would be served or would it be hindered if the proceeding of a grand jury as to the subject matter of their investigation and identity of witnesses who appear before that grand jury are in law required to be sealed until an indictment has been returned. I'm thinking of those cases in which there's great publicity given to the fact that the grand jury is investigating so and so and so and so has been called down there and so forth and so on and then nothing, there's never an indictment.

MR. MARTIN

Well sir, Mr. Avant, I'm a lawyer, in the freedom of the press, that they have to say about ... go by what goes on, and so, really I don't ... I don't say at the outset that I'm in favor of secrecy to any great extent. As you know the law does impose a great amount of secrecy already on the proceedings of a grand jury. The list of witnesses is not necessarily available except from the sheriff's records and the clerk's records where a subpoena has been requested and it is made a part of an open, part of the clerk's records or the district records. If a district attorney can, of course, go into a grand jury and not have any of these subpoenas issued in writing previous to the meetings he can afford a great more secrecy to the proceedings than he maybe does. I believe within our system, we have the ability now to protect the public from misconception with reference to a particularly hot or overly publicized case.

MR. AVANT

In other words, under the present system it is largely within the discretion of the district attorney ...

(End of tapes)

2

MR. AVANT

... Louisiana law ...

MR. MARTIN

Yes, sir.

MR. AVANT

... a witness is not permitted to go out and start spreading on the street what he told a grand jury or what a grand jury may have told him or the questions that were asked of him. Now, my question and I still do not have an answer, I don't think, is your opinion as to whether the public interest is served or hampered whether the administration of justice is served or would be hampered ... or simply extended in that cloak of secrecy to the entire proceedings of the grand jury as to subject matter and identity of the people who appear before the grand jury unless and until one or more indictments have been returned as a result of a particular investigation.

MR. MARTIN

I don't know that ... I don't know that I could express an opinion advocating a change in our present system without more study. As far as my own personal department, I ... I use the system now, I have not observed a great miscarriage of justice in the state of Louisiana as it relates to that kind of problem. Now, perhaps you have a specific case in which you ... your recollection is directed, but I don't have any personal experience or personal knowledge of a situation which did reduce, I mean did result in a gross miscarriage of justice at this time. Maybe you do and maybe there is a problem which can't be solved in this fashion. But I'm not prepared to advocate that and say, "Yes, I believe it would ... should be done."

MR. MARTIN

My question, Mr. Martin, is this: I was told that the district attorneys should continue ... the district attorneys or assistant district attorneys, should they continue to be part-time practitioners should they be made full-time under the new constitution?

MR. MARTIN

Mr. Lands, I think that each of you received a letter from me wherein I expressed my personal views that assistant attorneys should be a full-time practitioner. Now I ... let me know if you ...

MR. ?

You'd better.

MR. MARTIN

... that not all district attorneys share my enthusiasm in this regard.

MR. ?

And not the majority you might add.

MR. MARTIN

And probably not the majority.

MR. ?

In fact, I think you are in a minority of one.

MR. MARTIN

The assistant district attorney, gentlemen, may I say this with reference to assistant district attorneys, if we ... if we make an assistant district attorney ... require him to be full-time in much of the state, we simply will not have assistant district attorneys. We would have assistants in the large metropolitan areas where the parish government or the city government can afford to pay the salary which would employ them. But out in the rural areas, and I think a large part of the state, assistant district attorneys would have to retain their ability to practice.

MR. AVANT

I have one more question about qualifications. I believe that the constitution now says that the district attorneys shall practice law three years, I think five ...

MR. ?

It says three. Judges five.

MR. AVANT

Now, my question is, would you be in favor of changing that in any respect ...

MR. MARTIN

Yes sir, I would. I would ... I would suggest that the ... the district attorneys in Louisiana provide a ... such a serious function that their qualifications should be at least the same as the district judge.

MR. AVANT

How about assistants?

MR. MARTIN

The assistant district attorney is not a policy making position. He is ... he is not required under his ... he acts strictly with and through the authority of the district attorney. My suggestion here, and indeed we've talked about this before. Some of the district attorneys may disagree with me, but I believe that many of our problems as relates to employment of men as assistant district attorneys would be alleviated if we did not require them to have anything except admission to practice law. No limit of for 2 or 3 or 4 or 1 or anything like that years' practice.

MR. DENNIS

Mr. Kelly.

MR. KELLY

Ronald, I realize you haven't ... you haven't spoken on this this morning but it is something that's gonna come up before this particular committee and with reference to a public defenders system, do you have any ideas, any recommendations for making this an office say, equivalent to yours or as I understand your office ... presents all the facts regarding criminal justice especially in the criminal section and then possibly on the other hand have this public defender, of course all of which use the judge and the attorneys for the defense being supposedly interested in reaching justice, do you have any thoughts on this?

MR. AVANT

I want to ask you just one final question you do recognize or do you not recognize that under the present grand jury system that we operate in this state that it can be ... be a person, other than yourself who happens to occupy the office of district attorney for purely political purposes.

MR. MARTIN

Yes, sir, I think that I have to acknowledge that ... I think that I also think that I'd have to point out that any public office ... any ... I mean, gentlemen, up until we are running money, gentlemen are ... to be ... that got together ... I think that ... I think the law really prohibits what you have talked about. I really do think that the law prohibits the dissemination before trial in a criminal matter. I think that is ... I don't know what ... I don't know what it is, Mr. Lands.

MR. AVANT

Maybe we need to strengthen the law. Make it a little bit more effective.

MR. MARTIN

It could be that it should be a matter which the legislature should address itself to. Very frankly, I just would not like to see the constitution eliminate the grand jury.

MR. DENNIS

Mr. Martin, we certainly appreciate you coming before the committee. We don't want you to leave, but I think he here wanted to speak also and at this time I would like to call and thank him.

MR. ?

Thank you, Mr. Martin.

MR. MARTIN

Thank you, gentlemen.

6

MR. ?

Judge, are you familiar with the custom of selecting a grand jury from the county of Los Angeles?

MR. CHRISTIAN

Well, they are now having two ... two grand juries. One would have the function of returning criminal indictments and the other would have the function of investigating and reporting on the condition of public business in the county government. I don't know if your grand juries have those or not.

MR. ?

How ... how are they selected, the members of the grand jury in the county of Los Angeles? Do you remember or do you know?

MR. CHRISTIAN

The criminal court grand jury was being selected, until a recent appellate decision, by each of the judges putting up two or three, candidate and then there was some committee of the court that would select the ... I forget the exact procedure. Four twenty-five names go in the box and then out of that you draw nineteen.

MR. ?

Wasn't ... wasn't ...

MR. CHRISTIAN

That got kicked over by an appellate decision.

MR. ?

As I recall it, Judge, I believe it was this way, I think you had about thirty or forty judges, as I recall this would have made it, say, twenty names, and then once the list was prepared then the list was re-circulated to all the district judges or the judges, and then they struck out whichever ones they didn't think that should serve.

MR. CHRISTIAN

That may be right.

MR. ?

As I recall, that was the system that was used. As I say, of course, I think the appellate court would throw that out.

MR. CHRISTIAN

It has been ... It has been changed. The procedure being followed now in Los Angeles County is for the jury commissioner to produce off of the same list that's used to produce trial jurors, a list of persons that goes into the grand jury selection process. Now the difficulty with that is that this ... these people will not be well qualified to handle the business of investigating the affairs of county government and the auditing and all that. So that they've gone to having two grand juries, one selected the other way. Yes, sir.

MR. ?

You mentioned that the judiciary should be independent. If that's true ... that the federal judiciary is supposed to be, when you talk about the independence of the judiciary? I understood you to say that it should be independent, the judiciary.

MR. CHRISTIAN

Yes, it should be a separate and equal branch of government.

MR. AVANT

What would be the purpose of that?

MR. CHRISTIAN
I said I understood the set of values behind it, but I don't understand just what the ...

MR. WILLIS
Let me rephrase it more tersely.

MR. CHRISTIAN
You say, the judiciary can't pass a statute.

MR. WILLIS
I understand that.

MR. CHRISTIAN
They can't appropriate money.

MR. WILLIS
Well, it ...

MR. CHRISTIAN
They've done it here undoubtedly from all I hear.

MR. ?
They've passed statutes and then appropriated money.

MR. DENNIS
Let's proceed orderly now.

MR. WILLIS
Well, a rose by any other name smells just as sweet. You say that the judiciary can't pass a statute but yet you advocate its rule-making power. A rule is a rule, and if the judiciary can make rules from the top down the echelon to that echelon to that echelon, of course which is just now. Then, how is that ... how is the other branch, for instance the Legislature can't reduce salaries, we put that in the constitution. Where is the check on the judiciary? From ... dual citizens a citizen of the United States and a citizen of Louisiana ...

MR. CHRISTIAN
Well ...

MR. WILLIS
... where does he stand?

MR. CHRISTIAN
Because the judiciary deals only with the ... can only deal with the business of courts. The legislature and the executive can create an agency of government, create a public agency, create a public institution, as a matter of fact, deal on an extensive or limited program. Those are matters the court doesn't get into. The court has a function of dealing with issues between citizens or between the government and the citizens that are brought to it. So it sits in a passive situation. The check is that the legislature can change the statute cutting out certain passages that endanger.

MR. DENNIS
Justice Christian, don't some states also give the legislature the power to veto or overrule rules made by the Supreme Court?

MR. CHRISTIAN
Yes.

MR. DENNIS
And this would resemble ...

MR. CHRISTIAN
That is a possibility that the court can ... can rule ... the court or judicial council ... can adopt rules which are then suspended in effect until adjournment of that session. That's one possibility. The whole difficulty with this rule business is that the court needs, the court system needs to deal with establishment of standards and procedures that are at a level of importance in terms of the public at large is so low that you can't get the legislature to pay attention to it. So if you have to go to the legislature to get a statute changing the rules of paper that you use in pleadings, you'll never make it. You need to be able to deal with that kind of question, to answer questions about how many copies of the paper we file, what kind of a notice you give for a discovery hearing. It's just ... it's not worthy of legislative attention, whereas it's very important to the management of the court system.

MR. WILLIS
Well, I understand that checks out that, Mr. Chairman brought out that, I'm frank to say that I didn't think about it. But you know that throughout our history, one of our branches of government has been stronger than the others; that to some extent now, and ever since Wilburcy vs. Madison the Supreme Court of the United States has exerted itself over the legislature.

MR. DUNSO
And McKeithen vs. Duns.

MR. DENNIS
Mr. Justice, along that same line, and I'm sure you've been here long enough to hear the opposition that the district attorneys have to any rule making power in the courts in our state. I, as a sitting

Judge, feel that I'm being criticized along with the other judges for not managing this superior sense of expediency and yet I don't have any authority to do so. I'm sure you are. I'm sure it is at that light, and so the ... MR. DUNSO: I don't have the authority, I don't have the authority about the question toward making power in the ... echelons of the judiciary in other states? What's behind it? Why are the people in those states going in that direction or do we have any of those problems in Louisiana?

MR. CHRISTIAN

Several factors. First you can't get legislative attention to the mechanical things about running an operation that the court needs to settle by rule. And second, people are getting more impatient about slovenly practices in the management of the courts and they're insisting that the courts improve their operations and if they are to do that they have to take control of their operations. I see nothing in the constitution to bear any objection to this question of who controls the trial courts' calendar, which I think expressed quite a different issue from the rule-making question. I think it's a question of the calendar issue at all. But I will say that the practice of the trial courts' calendar is extremely rare in this country, extremely rare. It's shocking to me to think of a court held accountable by the public for the way it runs its operations, but having the flow of work ...

... to be able to decide what case is going to be called and it seems to me equally absurd to have the other side in a criminal case using your calendar, or in a position to use your calendar, for tactical advantage. You ought to be running that calendar to get the best mileage out of it, seems to me, but I wasn't asked that question.

MR. DENNIS

That's sort of what I wanted to hear you get into though. What ... what the ... does the ... does the proposed rule make in the ... anything to do with ... with that movement toward making rule making power?

MR. CHRISTIAN

Well, I suppose it does. Our people are properly very much concerned with increases in revenue and they want their ... they want their courts to function properly as well as ... as well as ...

MR. DENNIS

Mr. AVANT then Mr. Deshotels.

MR. AVANT

Justice Christian, I may have misunderstood you, but did I understand you to make a statement that you were not aware of any ... a great deal of interest in the controversy into the divinity of the institution of the grand jury as such?

MR. CHRISTIAN

No, sir, I did not say that.

MR. AVANT

Well, actually the situation is just the other way around. There's been considerable legal writing and discussion going on as to whether the grand jury has not now become, instead of an instrument of protection of its citizens, an instrument by which the citizen can be oppressed.

MR. CHRISTIAN

That's ... that's a view which I am inclined to share myself. I don't regard it as one of the burning issues of our jurisprudence right now, because in my own experience it's used so rarely. You know, the thing that I'd really like to get my hands on is the money bail system.

MR. AVANT

The what, Sir?

MR. CHRISTIAN

Money bail system. If we could do something with that we could really do something. The grand jury, to me, is a kind of a nuisance at times.

MR. AVANT

I wanted to make sure I understood you.

MR. DENNIS

Mr. Deshotels.

MR. DESHOTELS

The question has been answered, Mr. Chairman. Thank you.

MR. DENNIS

Mr. Drew.

MR. DREW

Mr. Christian, on your going before the committee yesterday with a probable cause showing, is that a requirement before a bill of information can be filed?

MR. CHRISTIAN

Yes, sir.

MR. DENNIS

And ... the ... with the prospect of a hearing ... the magistrate?

MR. MURRAY

The previous work against it, the situation works against it. Does at the other place, we've got the district attorney's office. And a lot of our judges come out of that office. In fact I think most of them who come out have come out of that office. Some say D.A.s and the district attorney get along well and as a result we had an opening it came about there, and we've gotten some good judges out of there. But I remember a source told me many of our sitting judges are provocateurs who in the New Orleans police don't think we've got the justice system on there on the merit, that we need and it's the results of this segregated system. Now, when you talk about changing a system, you have to think a little bit about what's gonna happen when you do it. And, gentlemen, I guess tremendous problems in trying to combine these two courts. And there's almost insurmountable when you think about it. First of all, it is just a -- a logistical problem. The two courts are twenty blocks apart. The prisoners are in proximity to the criminal courts. We've got two different service systems. We've got a criminal sheriff, and a civil sheriff and a constable. I think there's a tremendous amount of duplication of effort that if we combine these things we'd get along a lot better. But, I am -- as I say, I can envisage tremendous problems in trying to do this thing. And I think if you poll the judges there may be one or two on the civil district court who would be in favor of it. I don't know that these are any that there may be one or two, and there's just a handful on the criminal court who would approve it. I think four, four that I've spoken to, who are in favor of it. So you're gonna have opposition from the judges. The judges could say, "Look, I don't run to be a criminal court judge, I don't want to sit on criminal court cases." And the criminal court judges are gonna say the same thing, "What do I know about probate?" Now that brings us to the point about the ... the lack of expertise. And we hear "Well, you, the criminal judges are so expert, they hear this stuff day in and day out and they get real good at it." But, gentlemen, if you think back to your law school days, those of you who are lawyers, you recall that you had three hours of criminal law. In three years of law school, you had three hours of it. If you look at the crimes which you defend, there are probably fifteen that constitute ninety percent of the cases that are processed by the criminal district court, maybe fifteen statutes that you run across often. That's not hard to learn. The procedure is a little bit different, but the rules of evidence are basically the same. Justice Christian was talking about the ... that you ought to think in terms of function. And I think that what he said is good, that those people who try cases can try all kinds of cases. The ... if you're gonna ... if you're gonna categorize or if you're gonna specialize, you ought to specialize by talent and not by field of endeavor. I mean, not by criminal as opposed to civil or probate as opposed to incorporation, but you ought to say that trial lawyers and trial judges are gonna ... and it doesn't matter a hell of a lot whether he's trying a criminal case or a civil case or a probate case. It's a good trial lawyer, he can do either. And we see it every day in the country parishes and in the federal court. There's a lot more interrelation of the practice of law. I think it's good and I think that what he said is good. If I don't do it in New Orleans then we are going to end up with a handful of lawyers within that two block radius of Tulane and Broad, on the one end and an indigent defender program on the other hand, and the judges are going to be expanding this indigent defender program till it gets out -- off the course, just simply because it's easy for them. They can't find any other lawyers to participate in the system so they start appointing legal aid.

19

MR. AVANT

Manquement is, as the grand jury system exists in Louisiana today, and as it is set up under the law, the constitution as it actually operates, does it serve any legitimate public interest of which you are aware?

MR. MURRAY

Yes, sir, I think it does. I think it ... I think it serves the function of ... the investigatory function is valuable in the court. I think that the function that it serves insofar as returning indictments is concerned is ... is unnecessary and should be abrogated. But I think that you ... that you need an investigatory body, whether you call it a grand jury or something else, that can conduct investigations in the criminal field. But I don't think that you should carry it out to the extent that you can turn this thing into a star chamber and I think in some instances that's exactly what it's been. I think that the ... that some of the safeguards that we put into it to protect the people who are investigated have actually turned around and been used against them. I think that we've now had the experience that shows that it's subject to tremendous abuse and has in fact been abused.

MR. AVANT

Do you feel that the public interest would be served if a provision were put in the law that the grand jury's investigation, the subject matter of this investigation and as to the identity of people who've appeared before the grand jury in connection with that investigation, would be secret unless and until an indictment has been returned by the grand jury?

MR. MURRAY

Well, I don't know that it would work, number one. But I think it would certainly be a goal to strive for. I'm not sure that you could in fact keep it secret. You know, I was in the D.A.'s office and things ... things that you wanted leaked out; leaked, and it's a problem. I think that a better safeguard would be to have representation for witnesses whether that witness is a potential indictee or simply a witness that's called to testify as to facts, that he should be represented by counsel within the body. And to the extent that that violates the

secrecy of the grand jury, I'm sorry, I just think it's ... that it's that important that a man be represented by counsel. Now I watched how the grand jury works and I've seen ... I've seen the D.A. over a period of six months down in Orleans Parish and I'm confident that it can be acquiesced anywhere simply because if the D.A. is a good trial lawyer, and most of them are, they are persuasive individuals. And over a period of six months they've built up a rapport with their grand jury that's absolutely a miracle. You've got twelve individuals who supposedly or supposedly are designed to insulate the public from the district attorney and they end up being a tool of the district attorney. I've seen it work that way, and I know it works that way.

MR. AVANT

Do you feel that the administration of criminal justice is hampered by widespread publicity being given to it at a grand jury investigation as to who is being called, what's going on and so forth?

MR. MURRAY

Absolutely I do. I think that ... that the stigma attached to being the subject of a grand jury investigation is oftentimes as bad as even ... as bad as being indicted. And the ... the public reaction to that is so bad that, for instance, if you take a public official and bring him before the grand jury, that very act can cost him an election, whether he did anything wrong or not.

MR. AVANT

You say the stigma attached to a grand jury investigation is not there also a stigma attached to an individual appearing before a grand jury and testifying and he may not be the subject of the investigation at all?

20

MR. MURRAY

Absolutely, and I brought to you ... the ... of course, the ... again in New Orleans, we've got a terrible, terribly bad physical plan, talking about razing the building, but we've got a grand jury who is up on the third floor in the attic of the building and then all of the witnesses stand outside in the hall. And there is no way to get them into that ... into that room without coming through that hall and the reporters stand there and watch you coming in and they report it and they've got their cameras up and as you go in they turn on the lights and take your picture. And ... because it's secret, you can't come out and say, "Look, they're just called me because I had lunch with so and so and they wanted to know why." They tell you as a witness that you can't reveal what was said in there, but then on the other hand they've got your picture going in.

MR. AVANT

Do you think that the abuses in the system as it now operates are of a sufficient nature that it is something that does address itself to the attention of these committees in an effort to maybe ...

MR. MURRAY

No, I really think that it's a legislative problem. I really do. I don't know that there is anything in the constitution right now that provides for the grand jury, but if it is in there it shouldn't be. I think it's a legislative problem.

MR. AVANT

It is in the constitution.

MR. MURRAY

I would suggest that it shouldn't be. I would think that it's something that more properly addresses itself to the legislature or possibly to the supreme court to put it under the rules or in rule making procedure.

MR. DENNIS

Mr. Bergeron.

MR. BERGERON

Yes, Mr. Murphy, ...

MR. ?

Murray. Murray, don't get him wrong. Remember that name.

MR. BERGERON

Murray, excuse me.

MR. ?

It's Murray.

MR. BERGERON

Mr. Murphy ... Mr. Murray, how many ... how many criminal lawyers are part of your association?

MR. MURRAY

In the association about twenty percent.

MR. BERGERON

Okay, how many criminal lawyers ... now this is in Orleans, how many criminal lawyers approximately, do you have any idea?

MR. MURRAY

I would guess ... I would guess that there aren't two or three hundred lawyers in the whole city who practice any criminal law at all.

of the number who practice same, I would say, that fifty ... fifty lawyers practice over fifty percent of the volume in the criminal district court. And then the ... indigent defender board probably handled another thirty percent and then the other twenty percent is handled by the other hundred and fifty lawyers who practice. I am just guessing at figures, but I think that it would be somewhere in that neighborhood.

MINUTES

Minutes of the Judiciary Committee of
the Constitutional Convention of 1973

Held, pursuant to notice mailed by the
Secretary of the Convention on March 14,
1973.

State Capitol, Baton Rouge, Louisiana
Friday, March 23, 1973, 9:30 a.m.

Presiding: Judge James L. Dennis, Chairman

Mr. Philip O. Bergeron, Secretary, called the roll:

PRESENT

Avant
Bel
Bergeron
Burns
Dennis
Deshotels
Drew
Gauthier
Kelly
Kilbourne
Landry
Martin
Ourso
Sandoz
Tate
Tobias
Voisch
Willis

The committee heard testimony from the following speakers
on the organization, administration and powers of courts:

-2-

CHIEF JUSTICE JOE W. SANDERS
Louisiana Supreme Court

ASSOCIATE JUSTICE JOHN A. DIXON, JR.
Louisiana Supreme Court

Judges of the Parish Courts of Jefferson Parish:
JUDGE CYRIL J. GRACIANETTE (1st Parish Court)
JUDGE JOHN JACKSON MALOISON (2nd Parish Court)
JUDGE DOUGLAS A. ALLEN (1st Parish Court)

JUDGE BERNARD J. BAGERT
Criminal District Court, Orleans Parish

JUDGE EDWARD G. GILLAN
Orleans Parish Juvenile Court, Section D

JUDGE EDWARD N. ENGOLIO, Eighteenth Judicial District

Mr. Bel moved to invite one judge from each court in city
of New Orleans to appear for one day to present their
side. Seconded by Mr. Bergeron; no objections.

Chairman Dennis placed the problem of meeting schedules
before the committee for discussion. Mr. E. L. Henry,
Chairman of the Constitutional Convention, asked that

all future meetings be cancelled because of conflicting
schedules with other committees. After deliberation, the
committee asked Chairman Dennis to meet with Mr. Henry
and request retention of meeting schedules for Friday
because of previous plans and availability of committee
members. Chairman Dennis will report results at next
meeting.

Mr. Bergeron read resolution presented to the committee
by Mr. Drew to amend Louisiana Constitution of 1973.

1973, regarding plan of committee meetings (hereto attached
and made part of these minutes). After making noted
changes to resolution, it was unanimously adopted.

OFFICIAL RECORDING

OF THE
CONSTITUTIONAL CONVENTION
STATE OF LOUISIANA

1973

COMMITTEE ON JUDICIARY

MEETING OF MARCH 23, 1973

MR. SANDERS

The court of general jurisdiction, and this is an area in which
there are many problems. The court of general jurisdiction should be
the district court, merging into it the separate juvenile and family
courts now existing in various parts of the state. I might add at this
point that where you merge the family and juvenile services into the
district court, it does not mean that these services will become
impaired. The service to the juvenile and the family with a competent
court staff will continue. The unified court would have a flexibility
of divisions created by court rule according to need. For example, you
might have a criminal division, a family division to take care of all
justiciable family problems; that would include juvenile delinquency,
divorce, separation, neglect of children and adoptions, small claims,
civil division, probate division. In other words, there you would have
a full flexibility of division to render better service to the people of
our state. Such a unified court, in my opinion, would be an improvement
over our present system where you have considerable fragmentation of
jurisdiction. For example, you have district courts, you have separate
juvenile courts in some places, you have separate family courts in some
places.

City court and parish court trials. Your committee, I think,
should give consideration to merging the city courts into parish courts
with one important provision, with authority for the court to sit in any
locality within the parish as a public need for judicial service would
require. In other words, here you would have a court with parishwide
jurisdiction with one or more judges, or if some new men or cities in the
parish would feel the need of local court services, limited jurisdiction
services, all the judges would have to do would simply be to start
conducting hearings in that locality. So you would bring the service
close to the people of our state.

Jurisdiction of supreme court, a very real problem for your com-
mittee. For some time careful observers have known that the caseload
and work of the supreme court has increased many times. I am judged
among those careful observers your chairman, Judge Jim Dennis, who is a
close student of our court. The volume is so large, I think, it presents
as no detract from the quality of the court's work. I have said before
- I think I have said it before - that the increase in volume does not
detract from the quality of court work. It places it.

MR. TATE

It doesn't detract from yours either, Jim.

MR. SANDERS

It places an unreasonable burden on the members of the court with
the exception of Judge Tate, Judge Burn and Judge Gagliardi who mentally
work... A revision of the court's appellate jurisdiction is required and,
incidentally, I must say that this is an absolute requirement in my
opinion to revise appellate jurisdiction. Jack Avant knows all about
it; Harmon Drew knows all about it; Willis knows all about it because
he's been watching it over there from St. Martinville. A revision of
appellate jurisdiction is absolutely required in my opinion. Max Tobias
doesn't know anything about it because he never has worked in the supreme
court. In civil matters the supreme court would have jurisdiction and
direct appeal with some state statutes as they would be unconstitutional

The author also argues that, just as it is difficult to appeal to the fact that an appeal to the fact is an appeal to the fact, so it is difficult to appeal to the fact that an appeal to the fact is an appeal to the fact.

47. 115.

I mean, it's not a client who has a bad idea...

1. *Journal of the American Medical Association*, 1997; 278: 1039-1044.

the practice of law be a more interesting job than the one I was doing. I said six years apparently works in the same manner, but the one called jury twice years apparently was. I really don't know the reason for the difference and I think you have to take it as it is. In my opinion, you'd have to decide the yourself based on these two. I mentioned awhile ago, constable, it's not the same as the independent.

MR. BAGERT

This morning when I came in, Chief Justice Warren was speaking, I came in late and I heard some questions addressed to him on a matter of the grand jury and I don't know if he took any... His observation is the observation of the affirmative. He said that he thought that the grand jury was vigorously oppose the grand jury system. It came about, an all of you know, about eight hundred years ago, 1215, at the signing of the Magna Carta it was a free agent and it was working for them from their system. By the time that the British came to America, the grand jury was in Canada and quite a few states in the United States have abolished the grand jury system. I heard some observation this morning that, "Well, it's not a good idea to have a grand jury, it's a waste of time and it's only bringing in a capital case, capital indictment against anyone. There's no such thing anymore. Certain versus Doherty and those other opinions or other decisions. The United States Supreme Court took care of that. The grand jury is not a part of the judicial system, it's a prosecutive function. Maybe it does that and maybe it does not. I believe it's not too much of a protection for anybody and without referring or allowing to any grand jury that's ever been in existence or anybody who's ever been indicted, that the grand jury is not a part of the judicial system, it's a matter of fact and all of you will agree with me that the district attorney controls the grand jury or when he doesn't control the grand jury it's that turn to run away, a juror is a juror, it's not a grand jury. The grand jury is not a part of the judicial system, the original court of procedure has taken active controlling view on that. I believe that in 1966 it came effective January 1st, 1967, it gave the district attorney the right to select the grand jury, it gave the district attorney the right for an investigation. Their duties are principally legal, of a legal nature, and if they have any experience in that category, they're excluded, they're exempt; not exempt, they're disqualified, so why do we have grand jury? It's not a part of the judicial system, it's a waste that's been going on in the United States District Court for the Eastern District of Louisiana and New Orleans which has already consumed about six weeks. About seven or eight or nine people were jointly indicted for the same thing, they were indicted for the same thing, the grand jury of federal judge, not judge, jury indicted all these people and too, some say because of their names.... I don't believe that, but obviously it was arbitrary and capricious. It was a waste of time and money. The grand jury indictment because after six weeks of testimony, most of these men were cut loose by the judge and a bare cent or fraction, an infinitesimal fraction of evidence. He would never cut these two men out, he would not cut them out, he would not cut them out, he would let the district attorney to hide behind. As far as there's no need for a grand jury; it consumes time. Frequently, it inflates some ordinary citizens. You know it's a big day when the grand jury was expanded to twelve members. It's a waste of time and money. It's a waste of time and money. The grand jury are taken jointly with the district attorney and then with the judge and then individually. The next time there some they will get laminated cards and they've given him an immense place and they take

you've never seen these fourteen dollar checks. He thinks he's won the term
and he's not. He's just a fool. He's just a fool. He's just a fool.

MR. WILBOURNE

Judge, I know this wouldn't happen in New Orleans but I'm thinking about other areas. You're talking about the grand jury serving no useful purpose, but I've seen this happen. A situation exists and it's public knowledge; I mean it's law violation and the district attorney won't take any action on it. The judge can charge the grand jury to investigate it and I've seen them do that and I've seen good come out of it. Don't you think there might be some value in it?

MR. ENGOLIO

Well, the recent--in one of the recent sessions of the legislature had given the attorney general that power. The legislature has recently given the attorney general that power.

MR. KILBOURNE

Yes, but he may not see fit to exercise it. I'm thinking about this And another thing, Judge, in I'm thinking along these lines and I was a district attorney for eighteen years or more.

MR. ENGOLIO

I know. East and West Feliciana.

MR. KILBOURNE

I always felt like that having these grand jurors cases coming in every six months they didn't give court very much....but it gives the average citizen a chance to take some part in the court procedures which I always thought was a very valuable thing. I may be wrong, but I mean that's the way it worked in East and West Feliciana Parish.

MR. ENGOLIO

Well, that's true. Of course, the same thing applies to the petit juries, doesn't it?

MR. KILBOURNE

Yes, it would, but not in the same sense because the petit jury can only sit there and listen to the evidence that the lawyers and the judge allows to come in, but a grand jury has very much more leeway.

MR. ENGOLIO

Well, there is some merit to that, but most grand jurors, quite a few would rather not serve anyway

MR. KILBOURNE

I've talked to a lot of district attorneys and, really, Judge, I hadn't I never thought that they actually controlled the grand jury. I never did, I don't know what the others did.

9

MINUTES

Minutes of the Judiciary Committee of
the Constitutional Convention of 1973

Held pursuant to notice mailed by the
Secretary of the Convention on March 26,
1973.

State Capitol, Baton Rouge, Louisiana
Friday, March 30, 1973, 9:30 a.m.

Presiding: Judge James L. Dennis, Chairman

Mr. Philip O. Bergeron, Secretary, called the roll:

<u>PRESENT</u>	<u>ABSENT</u>
Avant	Bell
Bergeron	Drew
Burns	Tate
Dennis	Vesich
Deshotels	
Gauthier	
Kelly	
Kilbourne	
Landry	
Martin	
Ourso	
Roberts	
Tobias	
Willis	

Mr. Avant moved to dispense with the reading of March 23, 1973

MR. WILLIS

Judge Bagert, you pleasantly surprise me in some of your positions and in others you make me furious. So in search of, the purpose of this committee information I talk about the grand jury.

Did I understand you to say that there's no need for such an institution?

MR. BAGERT

Correct.

MR. WILLIS

Don't you think that the grand jury is--protects the public against the district attorney?

MR. BAGERT

I'd say no. Violently and emphatically, no. I said the grand jury is a pawn in the hand of the district attorney nine hundred and ninety-nine and nine tenths of the time.

MR. WILLIS

Have you ever been a prosecutor?

MR. BAGERT

No, I am a defense lawyer. I've practiced defense law for twenty-one years.

MR. WILLIS

So am I, but that has been how long ago, your service as a lawyer?

MR. BAGERT

Sixteen and a half years ago.

MR. WILLIS

Don't you think that the distance from the practice, don't you think you're incompetent to voice as to procedure now if some other district attorney had said otherwise?

MR. BAGERT

I empaneled quite a few grand juries, saw them empaneled, saw them in operation, come closer to the grand jury system now than I have ever been.

MR. WILLIS

But their meetings are secret, sir.

MR. BAGERT

You think so. If you get a subpoena to the grand jury...

MR. WILLIS

I hope we read the same law books. It says that it's supposed to be.

MR. BAGERT

I've never seen a secret deal yet; I go home in the evening and I go to see a neighbor or something and he says, "You know so and so is before the grand jury for this," and I say, "No kidding?" I say, "Try a grand jury sometime." Well, I don't think it's secret at all.

MR. WILLIS

Your official family would tell you that like a district attorney, but you'd think that the public....

MR. BAGERT

Let me tell me, I know how the news media interrogate these persons standing on the outside waiting to go in. They put this and that together, they are not stupid people. They put their chain together so quickly, it'd make your hair stand on your head.

8

MR. WILLIS

That's it: having to carry water with a sieve. Let's go to the exclusionary rule. Wasn't it once upon a time the law that even--that in state courts illegally obtained evidence was admissible as evidence in state courts, notwithstanding the federal was not, and is it your view that we are coming back to that rule?

MR. BAGERT

Right.

MR. WILLIS

Well, I don't disagree with that.

minutes and to adopt them as written; motion carried without objection.

Judge Dennis reported on a meeting with the Coordinating Committee of the Constitutional Convention with respect to re-scheduling meeting dates. A tentative schedule of meetings was given to the Committee members.

-2-

The Committee heard testimony from the following speakers on the organization, administration and powers of the courts:

MR. HARVEY SOLOMAN, Director of Studies
Institute for Court Management

MR. BEN R. MILLER, SR., Attorney at Law

MR. ALLAN ASHMAN, Director of Research
American Judicature Society

JUDGE RICHARD J. GARVEY
Civil District Court, Orleans Parish

JUDGE S. SANFORD LEVY
Civil District Court, Orleans Parish

JUDGE EDWARD G. GILLIN
Juvenile Court, Orleans Parish

JUDGE SOL GOTHARD
Juvenile Court, Jefferson Parish

JUDGE LOUIS P. TRENT
Traffic Court, Orleans Parish

JUDGE MATTHEW S. BRANIFF
Criminal District Court, Section B, Orleans Parish

JUDGE OLIVER P. SCHULINKAMP
Criminal District Court, Section F, Orleans Parish

Judge Dennis announced receipt of a letter from Mr. Vesich stating that he was hospitalized with pneumonia and unable to attend meeting; and that Justice Tate's father died, therefore he was unable to attend meeting.

The Coordinating Committee authorized Mrs. Norma Duncan, Research Director, to make the following request from the Judiciary Committee: Submit a written commitment as to what provisions will definitely be considered and not considered in the present constitution by the Judiciary Committee, and to state in what areas there might be some conflict between the Judiciary Committee and other committees. The research staff needs to know this information by April 6. Judge Dennis read discussion draft, and opened discussion from Committee.

-3-

The Judiciary Committee will definitely consider everything in Article VII in present constitution as within Judiciary jurisdiction, with the exception of that portion of Section 69 dealing with vacancies in offices not found in Article VII; Article IX, Section 4: Judiciary Commission--removal of Judges; Article IX, Sections 1-3, insofar as those sections apply to officials covered by Article IX: Impeachment and Removal of

Officials. Judge Dennis questioned whether the Committee would consider removal of all officials or just judges. Mr. Deshotels moved that the Committee should include all officers in Judiciary Article, including sheriffs, as provided by the convention rules of procedure for establishing jurisdiction. Mr. Gueso seconded; motion carried without objection.

Judge Dennis questioned whether the Judiciary Committee should allow retirement of all public officials to be treated by some committee other than Judiciary, or should they be considered as presently provided. Mr. Tobias stated that as a matter of continuity, follow it all the way through; if we take jurisdiction over judges, follow it all the way through as to what pertains to judges, unless really collateral. Judge Dennis agreed. Mr. Bergeron questioned retirement of other officers. The Committee will consider District Attorneys--Judge Dennis will determine if retirement provisions are included in Article VII. After deliberation, the Committee decided definitely not to consider other parts of the discussion draft, and to approve the draft as amended.

Judge Dennis asked the Committee about meeting on Good Friday, April 20, stressing that if the meeting were cancelled it might not be possible to reschedule. The Committee agreed to meet on Good Friday.


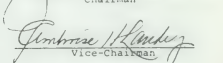
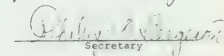
For the next meeting, Judge Dennis requested the research staff to develop as much financial information possible pertaining to what is realistic and not realistic in structure of courts. Judge Reggie will be invited to appear and give the views as to what the city court judges want.

-4-

After deliberation on whether to hear additional testimony from judges other than the New Orleans area, Mr. Kelly moved to invite four district judges to appear on the 13th of April: Two from metropolitan areas, outside of Orleans and East Baton Rouge Parishes, and two rural judges from cities in judicial districts of about 35-40,000 people, one each from north and south Louisiana. Motion carried without objection.

On the 14th of April, the Committee will conduct a business meeting and take some preliminary votes on organization, administration and powers of the courts.

MEETING ADJOURNED AT 6:15 P.M.


Chairman

Vice-Chairman

Secretary

Friday, March 30, 1973
Baton Rouge, Louisiana

MR. MILLER

I had a meeting here in March '08, when I heard the parish ... spoke, I heard Mr. Asant ask Justice Dixon to explain the rationale ... the facts in criminal cases, but being permitted to review them in civil cases. As I understood Judge Dixon he said that our criminal law was ... finding the facts; whereas in civil cases, Louisiana observes the civil law provisions. I think there are other significant distinctions which make the retention of our long tradition of court review and finality of the facts in criminal cases, and the different treatment of the facts in the criminal case and the civil case. In the criminal case the jury doesn't fix the sentence, doesn't give the award. In civil cases, without review of the facts, the jury awards the damages. There are significant differences and discrepancies all over the state, just depending on the happenstance of a particular jury or the ... or rather a particular venue had become the law of the land. I think it is a very important question, whether a section of the state, worth X dollars and the exact broken area in another section of the state worth twice as much or half as much ... the merits of retaining your retention of -- review of facts in civil cases and one more distinction between a criminal case and a civil case. Also I think ... and I am sure you probably already know, one reason our courts although they many -- in some jurisdictions they are behind in their docket. ... to their civil docket than the courts of almost any other state in the union and one of the reasons is that we really don't have jury trials in civil cases, except in rare cases where the parties have agreed to have jury trials. I know that the appellate court is going to review its facts. And if it's these jury cases and civil cases with trials and back cases in these other states that have brought about the trials and back cases in these states, I think the appellate court should review the only topics that I plan to discuss with you today. I do expect -- hope to come back next -- in April when you discuss the selection of judges because I have a mandate

(Continued)

IUD use = 2, 15.8%

... I'd like to mention to you various psychological programs, how many of you would know what I am talking about or how many judges other than myself would know what I am talking about? I think that very few would know. You know such concepts as transactional analysis, guiding a group interaction, reality therapy, encounter therapy, group work, case work, community organization, etc. How many of an average judge would know what these terms mean? I think very few. I think that the average judge knows first and foremost of the law. The law which is a separate and distinct area unto itself. We are both civil and criminal according to the kind of cases before us. We have got to be experts in both. But I think that the average judge would have been experienced in the juvenile court proceedings. For instance no jury calls in juvenile courts; just one for instance, we're dealing with different professional people, the people who are called in to give testimony, the expert witness, the judge, you have one of each, we're dealing with them. We're dealing with social workers, psychiatrists, psychologists and people from disciplines such as those. We are dealing with different ideologies and different people, different disciplines, different professional institutions. Those different programs that I told you about, are they valid? Do they really accomplish something for rehabilitation? And are they really valid programs with correction of juvenile delinquency or are they just a waste of money? I think that the average judge is asking each other, because I am convinced one of them are. So therefore when a probation officer would come to you and say, "I want to go to school and I want to learn and to learn this certain discipline." Do you send him to school or not? I would think that the average probation officer, certain agency says we want you to help us to get formulated. Are they a valid agency or not? I think that to maintain an adequate knowledge of the law, the social sciences, the psychology, the sociology, for ten years. To really to expert in the social sciences and in the juvenile court law, the particular expertise in juvenile court law, and this is the thing that Judge Gillin and I have in common, as he was a terrific expert in the law, the social sciences, the psychology, the sociology. The chief probation officer - assistant chief probation officer in New Orleans for about this five years. And as we had the incident envision my education backed by experience. We had the inside track to acquiring the knowledge of the law, the social sciences, the psychology, the sociology, the treatment of Judge Trent and Judge Goodenough right here, they would not know the meaning of those words as many other judges other than a juvenile court judge. I think that the average judge would not know the meaning of that, that has not dealt with this and they were deciding on the future

of a kid, we can put him in a mental institution, or foster home or an institution for emotionally disturbed children or a state school and various institutions throughout the United States. If you were to make -- let them make this decision because you rotated them tomorrow, they would be completely and totally dependent on what the probation officer tells them. So the probation officers are excellent, and highly competent. So far, I'm concerned about the fact that the famous law case which shows what happened in 1967 with an incompetent judge and incompetent staff around him, who were neither expert in the law nor were they expert in facilities to handle kids in trouble. They ... and in small ways will not be possible to do all the treatment and

[illegible]JUDITH GOETZMANS, *et al.*[illegible]

In Illinois?

JUDGE GOTHARD

In Illinois ...

MR. DENNIS

He said they had a unified court system ...

JUDGE GOTHARD

[illegible]

[953]

law, which has resulted in its being considered the stepchild of the law, and the neglect to which criminal law has endured for all too long. To illustrate the point, often I've heard civil lawyers, and we've got many big firms in New Orleans and so-called big shot criminal lawyers, say publicly, gentlemen, and in a condescending way, "Well I don't practice criminal law," as equivalent to say "Shake off the bugs from me, I don't want to go out to Tulane and broad, it's too unclear, you're dealing with the drags of humanity." I submit on the other hand that this is a very important aspect of the law, I submit that it is vital to our society and I also submit while I have the forum that if the United States Supreme Court, or at least a majority of those members, don't seem to see a little more realism in their decisions, and so much, and a little less theory, and a little more regard for the rights of the victims and a little less regard and solicitude for the criminal, blood is going to run red in the streets of this country.

Now, in a similar vein, I've often heard it said that in -- I've seen this, and where I appear at any kind of public or bar function when judges are introduced, the criminal judges invariably come behind the city judges. Now, let me make this statement, that doesn't make a hell of a lot of difference, per se, but it is very significant and it reflects the attitude which supports the contention that I urge, that the criminal law and the criminal judges have been the stepchild of the law. If you mean consolidation to bring about an end to that stuff, yes, I am a hundred percent for that. If you mean to dilute and attenuate the expertise that comes with the law, to develop over a sustained period of time and throw that out of the window and waste it, I think that that answers itself. I submit that common sense tells you that that is a needless waste of talent and expertise and I certainly don't mean to imply, gentlemen, that I know everything about criminal law, but I can tell you that, that I've got enough to do in Section F of the criminal court in that big city down there with the volume that we have, with the promise of no letup, I've got enough to do in keeping up with all of the advance sheets and decisions of both our state supreme court, the federal law judiciary, the Fifth Circuit, in whose decisions I don't have too much respect for, and the United States Supreme Court. If I were to then be thrust suddenly into the civil branch, I haven't cracked a lawbook with respect to civil law in over twelve years. I will confess to you that when I was practicing law as a young man, supporting my three children, I took any kind of case that came down the pike, civil or criminal and I gave it my dead level best. But there is something within me that has gravitated toward the criminal law from the time that I say with some pride, that I was comment editor of the Louisiana Law Review here in this city. Criminal law in my judgment has a kind of a fascination for me and it's elementary I think that when something is -- consumes a person with that kind of interest, he is going to be a much better practitioner or judge or what have you. I heard it expressed, and I will tell you who told me, Professor Robert Force, of Tulane said, when I was young, and I was then in the law school, that a judge, that a lawyer, that a man involves nothing but criminal law and he sees the sordid side of life everyday, day in and day out, drags of humanity and some sorry tales of woe and believe me there are some, that that's going to make his walk, that's going to make him in some kind of way inhuman, that's going to transfer, transform him into some kind of a beast who doesn't have the necessary suit. My answer for that word is one simple word, "baloney". It's nebulous, it's unrealistic, it simply doesn't occur. If I need a breath of fresh air, I go home to my wife and three children, or I pick up a book and I read some of the old masters if I can ever find the time to do it. What I am saying is that that's a highly theoretical concept, and I am a guy who believes in dealing with practical realities.

12

JUDGE SCHENKMAN (Continued)

I submit to you, gentlemen, that there is a difference. I have no antipathy between the city and the state, as unfortunately in this city they exist. When I came back from L.S.U. Law School and began practice, I noticed that some of the boys who went to Tulane and Loyola said to me, in essence, "you went to L.S.U., a country boy." That's a lot of bull. And that attitude should change and I think you gentlemen who have been in the legislature will recognize that there has been certainly in the past, this cleavage. I respectfully submit that I think that it is time that that end for our mutual benefit, gentlemen.

I'll be glad to answer any of your questions that

13

MINUTES

Minutes of the Judiciary Committee of the Constitutional Convention of 1973

Held pursuant to notice mailed by the Secretary of the Convention on April 4, 1973.

State Capitol, Baton Rouge, Louisiana
Friday, April 13, 1973, 9:30 a.m.

Mr. Philip O. Bergeron, Secretary, called the meeting to order at 9:37 a.m. (Judge James L. Dennis, Chairman, delayed because of plane trouble.)

Mr. Bergeron called the roll:

PRESENT

Avant
Bel
Bergeron
Burns
Dennis
Deshotel
Drew
Gauthier
Kelly
Kilbourne
Martin
Orso
Sandoz
Tate
Tobias
Vassich
Willis

ABSENT

Landry

-2-

Mr. Bergeron read two announcements to the committee:

(1) letter from Clerks of Court Convention in Lafayette, inviting members to attend; (2) letter from Judge Levy, complimenting the committee on his appearance before them.

Testimony on the organization, structure and powers of the courts was heard from the following speakers:

MR. GLENN R. WINTERS, Executive Director
American Judicature Society

JUDGE PATRICK M. SHOT
Fourth Circuit Court of Appeal

JUDGE EARL E. VERON
Fourteenth Judicial District Court
Calcasieu and Cameron Parishes

Chairman Dennis recessed the meeting at 12:15 p.m. for lunch; resumed at 2:05 p.m. Testimony continued:

JUDGE EDWARD A. de la HOUSSEY, III
JUDGE E. "BUBBER" GUIDRY, JR.
JUDGE S. O. LANDRY
Sixteenth Judicial District
Iberia, St. Martin and St. Mary Parishes

JUDGE DAVID T. CALDWELL
Second Judicial District Court
Bienville, Claiborne and Jackson Parishes

JUDGE C. J. BOLIN, JR.
First Judicial District Court, Caddo Parish

Chairman Dennis recessed the meeting at 3:55 p.m.; resumed at 4:05 p.m. Testimony continued:

JUDGE C. J. BOLIN, JR.
First Judicial District Court, Caddo Parish

Mr. M. W. Denney, Secretary of the Convention, forwarded a letter to Judge Dennis asking the committee's thoughts on

a proposed draft dealing with Department of Civil Service being included in the Judiciary Article. After committee discussion, it was decided by the committee not to include in Judiciary Article, and authorized Chairman Dennis to notify Mr. Denney of their feelings.

Mr. Edwin O. Ware, District Attorney, wrote Judge Dennis a letter stating that at the annual convention of the Louisiana District Attorney's Association held in New Orleans in March, the district attorneys and assistants voted unanimously in favor of the Judiciary Committee writing the articles dealing with district attorneys.

Mr. Tobias moved to adjourn the meeting until Saturday,

April 14, at 9:30 a.m. No objections; meeting adjourned
at 4:35 p.m.

James L. Oliver
Chairman

Amberle H. Hunt
Vice-Chairman

William C. Baggett
Secretary

OFFICIAL TRANSCRIPT
OF THE
CONSTITUTIONAL CONVENTION

STATE OF LOUISIANA

1971

COMMITTEE ON JUDICIARY
MEETING OF APRIL 13, 1973

JUDGE VERNON

Thank you. First of all, gentlemen, I'll tell you how brief I'm going to be. I don't even have any notes with me, but to give you a little background so that you can weigh what I have to say and give it whatever weight you want to give it. I sit in the Fourteenth Judicial District Court in which we do both civil and criminal work. I have sat in the Thirty-First Judicial District Court and done civil and criminal work. I have sat in the Thirty-third under civil and criminal. I sat in the Fifteenth Judicial District Court and did some criminal work and I sat in Section F--Section D on the Orleans Parish Criminal Court last year and I'm going to preface my remarks about the business of civil and criminal. I hate criminal work with a passion; I don't like it. If I had my choice, I would do strictly civil work. Now, what are the advantages of a judge doing strictly civil work as opposed to doing strictly criminal work? Certainly, if a judge is doing strictly criminal work, hon., gentlemen, his task would be small. All he has to do is to be sure and read every court appeal on criminal law that comes out, and, of course, our supreme court in Louisiana is going through a transition period right now. I think the last, what, three years we've had four new members so you know the old thinking and the new thinking is changing. In fact, I pulled out an opinion just that I got in the mail just the other day and they changed how we're going to rule in state courts, and need I say, gentlemen, that you're all aware of what the U. S. Supreme Court has done in the field of criminal law, so it would be remiss on my part if I told you that doing both civil and criminal work, the criminal judge--I mean the man doing this criminal work, would not be in a better position in handling his court, but that's the only advantage I would see in doing civil and criminal work. Now, to me the disadvantages of it are this: that you take--let's take a country parish; you've got one judge. You're going to have to act up some substitute in this state so that you'll have a judge who hears a civil case there; you'll have to have a judge who hears a criminal case. We have, in our district, for example, we have five judges. We judges decided among ourselves how we were going to divide the criminal work. None of us wants it; in fact, everybody tells the other fellow, "Look, if you want to take all of the criminal work, we'll let you; the criminal judge and we'll leave him the civil." But, we have decided among ourselves and we alternate by months in other words so that--and we worked out a schedule where over a period of five years every judge will have had it every month in the year so that we can't complain about one judge catching a heavy load and one judge catching a light load. Now, I believe that that's a good system, but, gentlemen, before coming down here, I went by my office this morning about six-thirty and I looked at the United States Constitution on the Judiciary and it said that "Congress shall create a supreme court and such inferior courts as it deems necessary." I like our system the way we have it here, for example, if a particular judicial district is short-handed, overloaded, or the Court of Appeals is overloaded, our supreme court will call up the judge and say, "Now, Judge, will you come and serve in this other district?" It takes care of your overloads and it keeps the caseloads moving. Now I would... I might add that too, gentlemen, that I was a businessman fourteen years before I ever got into law. And in operating a business, and I've operated some

JUDGE VERNON (cont'd)

pretty big ones. I never did have an area where I said all of my employees were going to specialize in this, this and this. I always took the position that I wanted all of my employees to know a little bit

about everything, so that when an emergency arose, he could fill in. This is the system that you have in Louisiana. I am assuming, of course, that you have the spirit of the law and the common sense as well as time (Chief Justice Justice called a moment, he struck a gavel and bang went down and they disposed of everything they could to handle those cases. I think right here in Baton Rouge now you have an extra panel serving. Judge Tate right now, but if it's wrong, but it's the situation that most judges when the Supreme Court calls on them from time to time, willing to do it. Now what we do, for example, in the Orleans Parish, if one of the judges was requested,..... (END OF SIDE 1) (P. 229)

MR. DENNIS

Judge, you're talking about when you first started talking, you are talking about your five judges getting together about your rules, establishing your procedure for rotation, in other words, control of your court. It brought to mind a lot of the testimony we've been hearing from experts from Chicago and New York and California and New Jersey, and some of the other places telling us that it would be a good idea to have would allow the supreme court of Louisiana to do this for us through a judicial administrator. In other words, and they call this court integration. Now, keeping in mind the situation that you have there and where it has been proposed that you even heard about it. What would you think of a section in our constitution, for example, that would read similar to this: "The supreme court shall have control and general supervisory jurisdiction over all other courts." What do you think about that?"

JUDGE VERNON

I think that's an excellent suggestion. I think it should be. I think the supreme court should control them, the rest of these courts. Now, let me say this, if we have a problem that if we can't agree on among the five of us as to what to do, certainly, we're going to go to the judicial administrators for the supreme court and ask for their advice and we will abide by whatever they tell us, so I think it's an excellent suggestion.

MR. NOW

Now, as a district judge, No. 1, I want to ask you, do you feel the courts should--I understand that this may not be a problem by the time this convention is over with, but do you feel that there is a need for a Directed Verdict of Acquittal, a motion against criminal procedure in this state?

JUDGE VERNON

You've got control of criminal procedure now, but the supreme court....

MR. AVANT

Well, and I understand that the matter is now again in the bosom of the supreme court, so we can't discuss it too much and I say it may not be a problem, but we may have one before we get through. We don't know, but assuming--I just want to know, do you feel as a judge who tries criminal cases that there is a need for such a device?

JUDGE VERNON

They think in certain instances, yes, because--I'll tell you why I think so. For an example, we proceed to provide these federal procedures to practice law and order all over the parish. You know that you can file a motion for a new trial, enter a criminal case on grounds that the verdict was contrary to law of evidence and I'll have you know that I granted one on a jury case in Calcasieu Parish. I think that I am the only one that has done it, in fact, but I did it because I was satisfied that the verdict was contrary to the law of evidence, and you're going to give us the right to say that the judge can grant a new trial when the verdict is contrary to the law of evidence, I think by the same token we should have the right to the law of directed verdict. Now, it's my personal views but I follow what the Louisiana Supreme Court held....

MR. AVANT

Of course, we all do, but we have the prerogative at this time of recommending to the people that we change the law, the interest of the administration of justice, but I mean if we feel it's that way, we'll so recommend it, if not....

JUDGE VERNON

I agree with you. I think there are instances in which you can save 100--court time, cost, and so forth. Where, if the state has presented its case on the evidence, which in the court's opinion, which doesn't justify....

MR. DENNIS

Now, let me ask you this and I realize there is some difference in the courts, if we will just move or less forget personalities and judge good and judge quality and I'm sure it works for juvenile judges, but how do you justify personalizing in juvenile matters and not in criminal matters? I mean, don't you think that maybe that same chance of becoming a little warped might appear there by a judge doing nothing but....

JUDGE VERON

I have reservations about it. I'll be honest with you. The question came up because Judge Reed just took the bench and he took the bench December 2nd of last year and this question came up, but then we looked it around and I personally was in favor of dividing the juvenile work five ways just like anything else, but the other judges and it was voted and it was voted the other way. The other judges felt that because the juvenile judge would be (we have a detention home there), he would be in touch with the detention home and he would be in touch with the juvenile officers, that he would be in a better position to know what was going on and keep up with and, for an example, if he had a repeater, see? A young child, a boy or girl, at age fifteen we've had problems with, then came up before the next judge at sixteen. You'd run into the problem, "Well, he doesn't know as much about this particular case as the previous judge who had it," whereas, you might get some injustices in how this could be done, I don't see it, I didn't see it then and I still don't see it.

Well, that judge does have access to the child's past record, doesn't he?

JUDGE VERON

That's right. That's my argument. He has access to the past records so that he would be in a position to evaluate the case as well as the next one.

MR. BURNS

Judge, looks like sooner or later we're going to have to come face to face with this specialized courts or unified courts or rotations. Did I understand you correctly that regardless of each district to set up their own system between the judges, whether it's two or three or four or five, whereby a certain judge would handle criminal cases, a certain judge would handle juvenile cases, did you prefer that system, if you want to call it specialization because one judge wants to try criminal cases and another one wants to try civil, that that is the best system that you know of at of now?

JUDGE VERON

Now, I'm going to be honest with you. I think the system where a judge tries anything as a specialist that I'm simply saying and that I told you that I don't like to try criminal cases, but I think that I'm a better judge by trying all types of cases. Now, if I had my choice--it's just like anything you do, whatever job you have, there's certain things you like to do and certain things you don't like to do, but you do them all. But I think that by trying all types of cases a judge is better rounded.

Would you transfer greater administrative authority in the supreme court than it already has?

Get down to it, that's our problem.

Don't be afraid of Judge Tate.

JUDGE VERON

I'm going to give you what I think...

He's not listening anyway.

JUDGE VERON

...What I would say might be best even though I--it might affect me. I would say "Yes" I think that you should give the supreme court more judicial-administrative authority over the courts because we're human and unless you've got somebody pushing you may not get exactly what you want. I think to that extent, I think the supreme court should have more control over...

Exactly how much control would you say?

JUDGE VERON

Well, you're going to have problems that are purely--which are purely of local administrative problems. Now I think that should come out of the decisions of the courts as a whole, I think it should come out of the supreme court.

MR. BURNS

Judge, you and Mr. Willis were in agreement that one building, one court building, courthouse in New Orleans would be more conducive to Well, you didn't go quite far enough, as far as I was concerned. Now, in that building--in that they have two separate and distinct courts down there, the civil court and the criminal court. In that one

building what is your opinion as to whether they should have just one court handling civil and criminal or whether the court should remain separate as they are today only be in one building?

JUDGE VERON

If I understand your question, you're saying even though you have one building and you have judges handling strictly criminal work and other judges handling strictly civil work.

MR. BURNS

The civil district court and the criminal district court, just like it is today. Would you do away with that when you put them in one building or would you keep a separate identity with the two courts like there are today?

JUDGE VERON

I have already stated that I think in my opinion, that I think that a judge should try all types of cases and I think he should be a better rounded judge. For example, the supreme court decides civil and criminal. But it is not for me to say that I think Orleans Parish system ought to be changed. I think that's what you are driving at.

Judge, let me ask you one clarifying question about Mr. Kelly's question. He asked you about the court being in control of criminal docket. I think you took that to mean complete control of criminal cases and you said, "No. I don't agree with that. I don't think anyone has really advocated that yet. What some have advocated though is power and make general rules governing the criminal cases through the system with power also to

JUDGE VERON

I think its, I think that the court should understand it. I think the court should have some control because for example, you can have a case

JUDGE DELAHOUSAYE

I was fortunate enough, before I became a judge, to serve several years as assistant district attorney and was much more conversant and familiar with the criminal jurisprudence in criminal statutes. Several of my colleagues on my bench had not had very much experience in handling of criminal matters. They had been, primarily, had primarily civil practices in their practice of law. I tell you now with no reservation that these judges who had primarily civil practices have made excellent judges in the handling of criminal matters. I have been on the district bench now for just a little over seven years and for two and a half to three years earlier than that I was first assistant district attorney. We have not had a criminal case in the Sixteenth Judicial District Court during that entire tenure for some nine and a half to ten years. I may be jinxing myself because next week I may get a reversal. I can only tell you what's happened in the past. We have not had a criminal reversal in the Sixteenth Judicial District in almost ten years. I think that speaks well and the point I make, I think that speaks well for the ability of our judges who have not had criminal experience to acclimate themselves, to adapt themselves, to prepare themselves and to discharge their duties in criminal cases admirably well, and I, for one, as very, very proud of my colleagues who have adapted themselves to criminal workload as well as they have. I don't believe that because a judge specializes in a particular field of law that that fact necessarily makes him a better judge. It may make him a little bit more familiar or it may make him some more familiar with the entirety of the jurisprudence; it may allow him in the exercise of appropriating his time to concentrate on criminal jurisprudence, but we do the work that's necessary to keep abreast of the criminal cases that are reported in the advance sheets by the supreme court of the state of Louisiana and follow the decisions of the United States Supreme Court carefully and are prepared to meet those issues when they're presented to us and we do meet them, and it has worked well in our district. We have--it has been necessary to us that by rule of court we assign one judge--one or more as might be needed to the handling of criminal matters either for a interim period of time or on a permanent basis. We've discussed it amongst ourselves; we rejected the idea, because we don't want--we feel that the people that elected us elected us to be a judge not necessarily a criminal judge or a civil judge and we feel that we want to serve the people in these respective areas and we feel that we are able to keep abreast of the developments in both the criminal and civil law and by specializing it may cause us to neglect one or the other.

Additionally, as you know in country parishes we handle a great deal of matters in chambers. Those of you who are members of the bar know that there is a world of things that you have to do outside of court such as handling composition settlements, probation of wills, and handling a myriad of other succession proceedings, and minorities, tutelage and things like that. We attempt to spend more and assign one of our judges to be a criminal judge, it could be that he would not be available for the handling of chamber matters and this is very necessary because it does take up a great deal of time. As I said, I'm not raising the question of which one of the judges should handle the criminal cases. There may be very good reasons which you will have to consider which would prompt your decision as to maintaining or joining the district court in Orleans and I would not presume to be an expert in that area. I simply say to you, gentlemen, that don't make the decision on the basis that because you have a division in the areas of law you're getting better judges. I don't believe it. I don't care, if you want it.

May I comment, Mr. Chairman, on several other matters which I'm concerned with although maybe not necessarily related to this particular issue?

MR. DENNIS
Yes, Sir.

JUDGE DELAHOUSSE

With regard to the election and tenure of these other gentlemen I understand that the 1975 term expires on 12, with selection of district judges when the 1975 term expires. The Association has recently addressed a resolution with the understanding that they would not have any other method of election in a future year than the election of the people. I don't want anything to be done to change that.

JUDGE DELAHOUSSE (cont'd)

plan, or modified Missouri plan, or merit selection or anything like that. We believe that the people of the state of Louisiana elect their judges and they should have the right to say who their judges shall be, and with corollary who their judges shall not be.... The district judges did adopt this resolution and I share that view. If I have to run for office, I'm perfectly willing to face my people; I've been fortunate enough as has Judge Guidry to be reelected without opposition and I believe that any judge who does a good job can look forward to being probably returned to office without opposition. Be that as it may, I believe I speak for the judges on our court, in the Statewide Judicial District and I think, as I say as a result of that resolution, the feeling of all district judges in this state, we believe that the people of this state deserve the right to choose their judges; we're opposed to the selection of judges on any other basis other than by election.

With regard to tenure, I must tell you that in all honesty I see no reason, logical reason for there being a discrepancy between the tenure of district judges throughout the state. I cannot in my own mind justify any rational basis for a judge in Orleans Parish or to be a district judge in Orleans Parish to be elected for a twelve year term when I have to run for office every six years. I know that's in the constitution; I know they have twelve year terms; I know they don't want to part with their twelve year terms. I don't mind facing the people; my colleagues don't mind facing the people, but we don't see why a judge in Orleans Parish, for instance, should have a twelve year term and we have a six year term. Our feeling is that all district judges should have a similar term be that whatever it may be, be it six years, be it eight, ten, twelve or whatever the people--leave it to you gentlemen decide what it ought to be.

JUDGE NEHRBASS

Alright. Well, I'm Judge Nehrbass from Lafayette and let me say that I agree with a great deal with what Judge Delahousse says; some things I don't agree with. I heard Judge Veron this morning; I agree with most of what he said, not some other things. Like you all know, if you get two lawyers or two people, anybody, you're going to get a difference of opinion. As to the specialization of judges, I think that each district ought to handle it in the best serves that district. In Orleans if that works best, let them have it; in our area it wouldn't work. In certain other areas where you have one judge or two judges for several parishes, in our area we have five judges for over two hundred thousand people in three parishes. Now, what would happen if we divided. You might have a criminal judge sitting. Somebody would have a compensation settlement; he'd have to probate a will, he couldn't do it, I assume. Now, on the other hand, suppose you have a civil judge in this particular parish because we go in the three parishes; suppose somebody's in jail; he couldn't set bail, so for us it doesn't work; we don't want it.

MINUTES

Minutes of the Judiciary Committee of
the Constitutional Convention of 1973

Held pursuant to notice mailed by the
Secretary of the Convention on April 4,
1973.

State Capitol, Baton Rouge, Louisiana
Saturday, April 14, 1973, 9:30 a.m.

Presiding: Judge James L. Dennis, Chairman. The meeting
was called to order at 9:37 a.m.

Mr. Philip O. Bergeron, Secretary, called the roll: All
members were present.

PRESENT

Avant
Bel
Bergeron
Burns
Dennis
Deshotels
Drew
Gauthier
Kelly
Kilbourne
Landry
Martin
Corno
Guidry
Tate
Tobias
Vesich
Willis

-2-

Mr. C. B. Forgotston, Jr., Senior Research Assistant, reported to the committee on facts and figures on the financing of city courts in the State of Louisiana. This information was not fully developed because of incomplete statistics from various courts. Chairman Dennis asked the committee if they wanted Mr. Forgotston to continue developing the statistical information. After discussion, the committee decided they wanted research staff to continue through aid of the legislative auditor, to secure as accurate information as possible. A member of the research staff will report further at next meeting, Friday, April 20.

Chairman Dennis introduced Judge Hillary J. "Buddy" Crain, Twenty-Second Judicial District Court, St. Tammany and Washington Parishes, who gave his views on the organization, structure and powers of the courts.

Chairman Dennis recessed the meeting at 11:15 a.m.; resumed at 11:25 a.m.

Preliminary, non-binding proposals were placed before the committee. Chairman Dennis stated that anything decided today is merely a guide to the research staff in drafting first part of Judiciary Article relating to structure of the court system. He suggested that the Judiciary Committee first decide whether to include all of the courts thought ought to be existing in the state at this time in the constitution, or whether to simply state that the "judicial power is vested in the Supreme Court and such other courts as the legislature wants to establish, or in the Supreme Court, Courts of Appeal, District Courts, and such other courts as the legislature would establish."

After deliberation Mr. Landry moved that judicial power shall be vested in Supreme Court, Courts of Appeal and

-3-

District Courts. The legislature may by two-thirds vote, subject to approval of the electors of the area affected, establish, abolish or otherwise affect other courts of trial jurisdiction.

Mr. Burns made a substitute motion amending to "majority of legislature." Mr. Vesich objected. Mr. Bergeron called

the roll for voting on the proposed amendment: Defeated by twelve to four vote, with one abstention.

No	Yes	Abstains
Avant	Burns	Willis
Bel	Drew	
Bergeron	Gauthier	
Deshotels	Sandoz	
Kelly		
Kilbourne		
Landry		
Martin		
Ourso		
Tate		
Tobias		
Vesich		

Mr. Deshotels offered substitute motion to include "...and such other courts as this constitution may authorize...." Without objection, amendment was approved.

Amended Motion:

Judicial power shall be vested in the Supreme Court, Courts of Appeal, District Courts, and such other courts as the constitution may authorize. The legislature may by two-thirds vote, with approval of the electors of area affected, establish, abolish or otherwise affect other courts of trial jurisdiction.

Motion as amended adopted without objection.

After discussing continuation of courts and change by the legislature, Mr. Vesich moved that in parish of Orleans

-4-

Criminal and Civil District Courts remain as they presently are, subject to provision as established in constitution.

Mr. Avant made substitute motion that all presently existing courts are continued. The legislature may by a two-thirds vote and with approval of electors of the jurisdictions involved, merge, consolidate, realign, or separate any courts provided for in this constitution, subject to provisions of Section ____ of this article (salary and jurisdiction of no judge shall be changed or terminated during his term of office).

Mr. Justice Tate offered an amendment to substitute motion: "...except that this provision shall not apply to Civil and Criminal Districts in New Orleans." Because of disagreement among committee, Mr. Bergeron called the roll and took vote: Proposed amendment defeated by twelve to four vote, with one abstention.

No	Yes	Abstains
Avant	Gauthier	Sandoz
Bel	Tate	
Bergeron	Tobias	
Burns	Willis	
Deshotels		
Drew		
Kelly		
Kilbourne		
Landry		
Martin		
Ourso		
Vesich		

Substitute motion adopted without objection.

Mr. Justice Tate moved that the present system of review of facts in civil cases be continued. Without objection, motion carried.

Mr. Justice Tate moved that the Supreme Court retain present criminal jurisdiction with some minor modifications... and that there will be no criminal appellate jurisdiction in Courts of Appeal. Motion carried without objection.

Chairman Dennis asked committee should the Supreme Court be given more rule-making power, or should rule-making power be clarified in the constitution. Mr. Justice Tate moved that in first draft, maintain same language as to rule-making authority--supervisory control. Without objection, the motion carried.

The committee was asked by Chairman Dennis should the constitution provide for there being a chief judge in each district of the district courts. After discussion, Mr. Justice Tate moved that the committee should not try to put this in first draft. Motion carried without objection.

Whether to provide for a provision in regard to judicial districts was placed before the committee by Chairman Dennis. Because of previously limited discussion by the committee, a determination concerning disposition of this provision was not reached; will be discussed in more detail at later meeting.

Chairman Dennis reminded the committee of meeting on Good Friday, April 20, 1973. There had been some consideration of dismissing this meeting. However, because of important matters pending before the committee, retention was strongly favored, after discussing in detail.

Mr. Drew moved that the meeting be adjourned until Friday, April 20, 1973, at 9:30 a.m., with a two-day business session. Motion carried without objection.

* * *

OFFICIAL TRANSCRIPT
OF THE
CONSTITUTIONAL CONVENTION
STATE OF LOUISIANA
1973

COMMITTEE ON JUDICIARY
MEETING OF APRIL 14, 1973

MR. DENNIS
Gentlemen, we're now at the point where we're, I hope, ready to take some preliminary, non-binding votes.

MR. ?
Preliminary non ... non-binding votes?

MR. DENNIS
In other words, anything we decide today is merely a guide to the research staff in drafting the first part of the judiciary article relating to the structure of the court system. And we would not be bound by this; we could later on change our minds if we want to go a different direction, and of course, change the draft. I suggest to the committee, and this is just a suggestion, the committee can do what it wants to, but I suggest we try to avoid getting bogged down in too much detail on these votes, and that we try to make a decision. Such as, for example, I think, instead of trying to word the structure of your court system or anything about it at this point, I think it would ... we would be better off to take a vote on a broad question such as ... I've written out two or three here just as examples of what I'm trying to say. Should the constitution provide for the judiciary in broad basic structural terms with the legislature being given the power to change the court system, create new courts, etc., or should the constitution spell out in specifics what court ... what courts shall be created and all the details of their administration? Whichever way we go on that question, we could ask the research staff to draft in accordance with our decisions.

MR. ?
In discussing it too, you might also say should the constitution

it all together in '64 ... and for eight years and I presume it's still continuing in that way right now, we've gotten away from that concept of self-government, but I don't think it's dead, and I would like to have protection for my people. That's the way I feel about it, and I think if you poll your members from the Orleans delegation on this particular committee, that is the way we feel about it. We wanna be protected, basic, we'll go along with that. But we still want to be protected. You never can tell what this bunch in the legislature from New Orleans is going to develop in two or three, next few years. And to leave the courts completely up to their whim, to abolish or set up, is very dangerous ... and it's a very dangerous situation with us. And we hope you recognize that; if you don't some people ought to tell the truth around here. We faced that problem, Mr. Burns, you know that. And Clyde, you know that, when we fought each other in the legislature; you know about what we had in the C. C. and R. D. O. And I think that as far as our judiciary is concerned in New Orleans, we will go along with the concept that it should be basic, but we do want the protection and it should be spelled out.

MR. DENNIS
Mr. Tobias.

MR. TOBIAS
Then why are we here? If you don't ... if we don't examine change and don't accept change, why are we here? Why was the constitutional convention convened by the legislature? Do not the people say, "Want reform"? If we don't then we are wasting our time being here.

MR. VESICH
Well, that is true. But, you know, I've made this speech on the campaign trail, Max. Because I went before civic groups and I said, "I hope you all know what you're saying. You're saying you want constitutional reform, but let me tell you what you're doing, you're putting this in the hands of the legislature, and God help you if this city-country deal ever erupts again." And it could at any time. I was very frank with them. I said, "Beauford, I'll do what you want, but I'm telling you now, be careful." You're gonna be ...

MR. TOBIAS
... for another question. Now, I don't see how you could say that that danger lies in the judiciary. I was in the judiciary, whatever ...

MR. VESICH
It lies throughout the constitution. I ... I am not a great advocate, Max, is what I'm telling you, of taking everything that belongs to New Orleans out of the constitution and leaving it completely unprotected. Because, like I said, I've been through it. I sat on the constitutional revision commission and almost had to repeal the Dock Board. If they ever do that, I see that they're having troubles with the other committees, with the Board of Liquidation and their Sewerage and Water Board, and those things, that's alright. But if they ever take that Dock Board out of the Constitution and put it back in politics, as it was thirty or forty years ago, do you realize what happens to the port of New Orleans? I agree with that. But if they ever take that belongs to us out of the constitution, and if we do have a real little protections in there, I would like to see them remain and still be basic. I'll say this, that our major task is to take

MR. VESICH (cont'd):
GUTHRIER
everything that's statutory out of the constitution and leave what is basic there.

MR. DENNIS
Mr. Avant.

MR. AVANT
Under ...

MR. DENNIS
I meant, I've got a list.

MR. VESICH
I think this, if you were to come ten years from now, Max Tobias or somebody else would say, "Well gee, I remember the day Vesich said that before the constitutional convention committee and it's coming alive." And you're gonna see it happen.

MR. DENNIS
Mr. Avant.

MR. AVANT
Tony, I agree with you that you need protection and you should ... any ... any area, any local governing area which is directly and immediately affected by the judiciary in that particular locality, be it Baton Rouge or New Orleans or Webster Parish, you need to be protected from the legislature just arbitrarily as they did in St. Landry Parish during the very long regime coming along and retyranderling a judge out of office or changing the whole setup. And what I'm wondering, seems to me is that there should be room for change but that that change must be accompanied by the concurrence of the people directly affected, that is local level. The state at large through it's elected representatives without having to go to the constitutional amendment process whereby the general public in, say East Carroll Parish is gonna be voting on some local judicial situation or some ... whether you're gonna have a traffic court or a recorder's court in New Orleans, most of whom don't care and, when they go and they're faced with these long number of amendments that they

don't care about just got a general case of the bots and vote against everything.

MR. VESICH
We are not arguing that.

MR. AVANT
And we ... we ... we had that in East Baton Rouge Parish on the Family court, and that's what I'm trying to get away from. We needed a judge on the family court unfortunately when they ... the thing was put in the constitution it said, "That the judges ... there shall be a family court and there shall be one judge." Well Baton Rouge grew from a city of maybe 75,000 people to a city of almost 200,000 people, and they liked to have killed that poor judge down there because it was caught up in this general revision of the public will over the state on having to vote on things that they didn't care about.

MR. VESICH
I agree with that. If you tell me you're gonna leave my court system alone, it can only be changed by two-thirds of the legislature and a vote of the people of New Orleans, well then we have no further argument.

MR. AVANT
What about a simple majority of the legislature and the vote of the people of New Orleans?

MR. VESICH
I think you'd better get into ... you're getting into the area of ...

MR. AVANT
Well, we have been talking about ...

5

MR. VESICH
Now one final question. How do we get around it? Suppose the eleven criminal judges, after we pass this constitution, call an en banc meeting with the civil district court judges and the eleven of them say, "We can come out of there. That's what Jas. Avant was trying to say. What happens? Naturally you have a little interest from the criminal court building toward this proposition. They see a way out, but nobody wants those people run for that office. As I said then, one or two that appeared before this committee that I appointed when I say I appointed I mean I passed the law to create their judgeship and they were appointed by the governor. And nobody ... nobody made these people do this; they know what they were getting into, if you want to call it the lodge-podge or the stigma or whatever it is, in the criminal district court. And as far as your saying that the people do not have any interest, that is not true. We have a court watcher, Max, in every court in the city and New Orleans. We have one or two ladies, every day, that takes minutes of everything that happens in the court and they write it up in the newspapers. They do that now, every day it's written in the newspaper. Court Watchers' Report, "Judge so and so sentenced somebody for something or other. Judgment was given in this case." In every court we have a court watcher. Wendell, okay? Don't say the people don't have any interest.

MR. GUTHRIER
Well, I never said that.

MR. VESICH
Okay, alright. This is a group of local ladies who got together and said, "What is wrong, we want to try to find out." And they are sitting there now, and they are watching now. So, I say that there is plenty interest in it. Now, Burton, I ... maybe if we could understand the language of what Ambrose is saying, then we may be talking about the same thing. And if he is ... if you say ... okay, for the time being let's let it about like it is. Five years from now they may be ready for a change. I think that oughta be left to the legislature, I'll go along with their proposition, two-thirds or so. Don't come with no majorities, fellows, two-thirds, okay. And I'll let it go to a referendum of the people in that parish first, okay. But, for the time being, leave us alone and if we decide that we need a change, we will do so. Now, this is a very complex problem. These judges are paid from all kinds of sources. You heard one judge come before you and say, "Gee, I don't know how much I'm making." Now ...

MR. ?
Yeah, he sure did.

MR. ?
Yes.

MR. VESICH
They're being paid from so many judicial expense funds, from the state and the city of New Orleans, from this fund, from that fund that we do have a tremendously complex problem.

MR. ?
Paid by the lawyers, too.

MR. VESICH
If we had forty million dollars to apply we'd just tell them I believe ... what is the bonded indebtedness left in the city, nineteen million or something like that? Alright, look, eighteen million. He

[965]

MR. DENNIS
Mr. BELLEFON

MR. : we might change our minds.

MR. VILLIS: That's my case. That's my position. You've won your case.

[illegible][illegible]

MR. ? I hope you're accurate.

MR. BERGERON
That's fifty-five thousand people that paper circulates to.

MR. ?
Hope he's accurate.

MR. BIRNBAUM: You know, I don't know if you completely understand what I'm trying to say. I don't know if I completely understand what I'm trying to say. But I'm saying, and that's what I'm here for, the people asked me to represent them and, you know, though I'm trying to do the best job I can, that's the only reason I'm getting up here and talking, because I feel if I don't I won't be doing my job. Now, I... as I said, I think, you know, I personally agree with that idea Mr. Ambrose Landry came up with. Five with you. You know, just don't... Mr. Avant said... revolutionize and force somebody to do what they don't want to. Your honor, I think they had a question.

MR. T. Well, first of all, I didn't know that fifty-five thousand people were reading your articles, so I retract that statement

[illegible]

MR. A. Give us the true figure...

... circulates to fifty-five thousand people and my phone number and my address is in that paper.

Yes, but . . . but . . .

... well, I grew about eight years -- were organizations in my district including, and I was a youth now, for the first time in my life I found myself speaking to an auditorium of 1800 students -- must have been a couple of hundred in there -- they were older than me, but they were taking notes. They were taking notes because I was telling them what we've been doing. So, ...

Q Okay, you've mentioned the fact that you all are willing to compromise, and I think we all are, I think that my original position was compromised quite a bit. But what exactly, I don't completely understand Mr. Landry's plan and how are you reaching a compromise? All I see now is that it's ... you incorporate the present system.

MR. BERGERON
Well, I ... Wendell, I ... let me ... let me put it like this, you know I'm for home rule ...

MR. GAUTHIER
I agree with you.

MR. BERGERON

Q But how do we know that the committee which handles home rule would go along with home rule? You know, they might not want to enforce the strict home rule, I don't know. I feel that we should have our system of home rule, but I don't have any vision of what to do about it. I don't want to change it, why not change it. If the people want it, and we get the legislature to go along, fine. But I just don't think we should force us to do without it. I think... I don't think we should be frozen in that constitution, I do think, you know, that it's well done and it would be a good idea to have change if and when we need it. You know, I think we're doing a good job. You know, and Judge Tate, you know, I know why I just chance for the sake of changing?

MR. TATE
Please. You asked me a question?

MR. BERGERON
No. I just remarked.

MR. TATE

I would say we're not changing for the sake of change, but I ... we won't go into detail right at the present.

MR. ?

Is it ... is it that revolutionary to say your own district judges can sit down and decide. If you want to sit on just criminal cases ... I don't see where it's that revolutionary; I think it is evolutionary. It's ... in other words we're not telling 'em they have to rotate. We're saying to the court if you wish to sit in divisions, sit in divisions. Now I could ... I ...

MR. BERGERON
That's what we have now, why change it if they are gonna sit in divisions anyway.

MR. ? Just frozen, that what it is.

MR. DENNIS
Excuse me gentlemen, you're out of order. Will you yield to a question of Mr. Burns?

MR. BERGERON:
Sure will, yes sir, Mr. Burns.

MR. DENNIS
Mr. Burns, do you have a question?

MR. ?
He's busy right now.

MR. DENNIS
Who else has a question, Mr. Willis. Do you yield to a question from Mr. Willis?

16

"R. BERTS"
Kellie ...

2000. 7

"MR. WILLIS
I want to give you this accolade and you can take that back home with me ... on the record. And that is that you well represent your district, with sincerity and all of the good traits that belong to an official. But now may I fence a little bit with you in frivolity? I thought that there was no problem, I was hoping that somebody would bring up ... bring this up but it never came up. As I drive to New Orleans on the monolithic highway, I look to the left and I see a big section, it has a dome.

MR. VISICH: [redacted] church where my aunt was baptized.

MR. WILLIS: Yes, but I don't see the cross.

MR. VESICH
It's up there. It's up there.

MR. WILLIS
No steeple ...

MR. DENNIS
Mr. Burns.

MR. BURNS
Mr. Chairman, I think this question has been ...

Mr. Burns, you're recognized for a question to Mr. Bergeron.

MR. BURNS
Oh, no, I didn't want to ask a question. I wanted to say something.

MR. DENNIS
Would you yield to a question from Mr. Justice Tate, Mr. Bergeron?

MR. TATE
No, I was going to ask to ... for the ... to rise and say something
to the merits of the motion.

MR. DENNIS
There is no motion before the committee.

MR. TATE
Alright.

MR. DENNIS
Would you yield to a question from Mr. Bel?

Yes I will, Mr. Bel?

MR. BEL
I'm going to ask him a very pertinent question. Would you sit down a minute? Declare yourself because I'd like to make a motion.

MR. DENNIS
Wait a minute, I have Mr. Ourso and Mr. Landry have asked for the floor next.

Well, I mean it. I would yield to my question. My question was, I think we've heard etc., about it today, I'd like to have the resolution read by Mr. Lasker and have ... vote on it. That's really what I wanted.

MR. DENNIS
Gentlemen, there has not been a notion made.

MR. BEL
I make it, Ambrose.

MR. DENNIS
Mr. Ambrose Landry is not next in order, to gain the floor, Mr. Kelly had asked for the floor next.

MR. BERGERON
Do I have any more questions?

MR. DENNIS
No, Mr. Bel was the last questioner. Mr. Kelly, you have the floor.

MR. KELLY
I will I won't take up much of the committee's time because I am inclined to agree with these gentlemen that we have about as hashed this thing as it can be. I don't think it is pleasant to me really that I was elected to come down here and write a constitution for the city of New Orleans. Now I say that in jest. I would like the people of New Orleans to understand one thing, that I as a country lawyer and as a country politician will not come down here and impose my theories upon the people of New Orleans. I will not come down here and impose my theories upon the people of your city. I realize that there are practical problems and I think that is where the answer is to be found. In this political situation, Mr. Bel, I don't look at it from a standpoint of whether or not the politicians

of New Orleans are going out and try to defeat it because they don't necessarily feel that it's the right thing to do. I think that if we're trying to do something that we can go along with something which would be acceptable to all the people. I am inclined to basically agree with the proposition put forth by Mr. Landry and I think that we should have a meeting of the board of directors discussing here for weeks regarding Orleans and appear to be strictly local problems. I want everything from the physical makeup of a building. Quite frankly, I just don't want to see you conduct your prisoners from one corridor to another. I don't think that that is the business of this committee. I came here to try and come up with a solution to the problem of Orleans Parish and I don't think that's the way it is, if that's what the people of Orleans Parish want. At the same time I want to leave some flexibility within the constitution where if the people of Orleans Parish want to change the way they want to change, I want them to be able to change it and I don't want the people of Natchitoches Parish to have to vote on whether or not you get your hands off Orleans Parish. I think that's the way to go.

MR. AVANT
I really should have been sent here from New Orleans for that reason.

MR. O'ROUSE: We have ... I have, like I said, when ... when you're looking at me, you're looking at the people that I'm representing. I don't expect to bring a bunch of people up here and let them tell you this or tell you that. I didn't ask Judge Engdino to come up here, Judge Engdino came on his own. I didn't even know he was coming. I was surprised when I saw him. And anyone else from down there wants to come up here, they're welcome to come. But the majority of the people elected me to come up here.

[968]

MR. DENNIS
Just a minute. you accept the amendment.

MR. LANDRY
I would accept it.

MR. ?
Could I do this, ...

MR. DENNIS
But just a minute now. His motion is a two-thirds vote. I will also offer an amendment ...

MR. LANDRY
... to the vote of the legislature.

MR. DENNIS
... along with the ...

MR. AVANT
The vote of the people.

MR. DENNIS
Hold it just a minute. Mr. Drew.

MR. DREW
Rather than offer an amendment ... I was of the opinion at this time that Mr. Burns' motion rather offer an amendment to an oral motion, could we have copies of that?

MR. LANDRY
Well, I would like to have the staff ...

MR. DREW
And then take our vote and discuss it

MR. LANDRY
I would like to have the staff to rewrite this properly.

MR. DENNIS
Gentlemen, you're all out of order. Now, Mr. Drew, what purpose do you rise for?

MR. DREW
I am asking that we be furnished a copy of the motion before there is any further discussion of amendments to vote on.

MR. TATE
The point here, I think, wasn't it parliamentary entry?

MR. DENNIS
I ... I believe you're out of order.

MR. DREW
I believe the rules provide, your Honor, Judge, I believe the rules provide that a motion shall be in writing. Now, I ...

MR. DENNIS
Before committees?

MR. DREW
I think so.

MR. DENNIS
Alright, you want to plunge us into a parliamentary war, ...

MR. TATE
What point of parliamentary ...

MR. DENNIS
Gentlemen, I ... let me just say this, do we really need to reduce these types of ... this is a guideline to the staff to prepare an original draft. Do we really need to write this out before and take more time?

MR. ?
That's all I have ...

MR. ?
Well, that was my point of parliamentary inquiry, I thought we were just gonna vote on principle, on a general principle and ask them to draft it. That ... that was my only principle.

MR. DENNIS
That was my suggestion to the committee and as I understand Mr. Landry's proposal is not really in the form of a draft, it's a statement of principle.

MR. VESICH
Now, could I ask a question, Judge?

MR. LANDRY
All I wanted to get, Mr. Chairman, was to be able to ... for the members that have a question as to whether they felt that the tentative draft should be two-thirds or one-third, that's all I know I ...

MR. DENNIS
He has ... he has stated it as a motion. If someone wants to amend it, I think we can handle that.

MR. BURNS
I have a constructive motion, I move that it's a motion to the legislature.

MR. DENNIS
Mr. Burns offers amendments that only a majority of the legislature be required. The majority ...

MR. BURNS
That's all.

MR. DENNIS
Mr. Justice Tate.

MR. TATE
Mr. Chairman, now we're just taking, as I understand, provisional votes. Later on as when we get back ...

MR. DENNIS
Yes, sir.

MR. TATE
Because, no matter how we vote on this I would suppose somewhere along the line we'll consult whether we want a two-thirds plus governing authorities of the parish or parishes, concerned or majority of two-thirds, we're not fixing ourselves permanently, is that ...

MR. LANDRY
I already told them that ...

MR. ?
Yes.

MR. TATE
We're just ... really the principle we're looking at is not whether it's two-thirds or one-half when we get to the draft, we will word it but whether we should adopt that approach, the approach that Mr. Burns said rather than the mechanics of it. Is that my understanding of what you mean?

MR. DENNIS
Perhaps, I might suggest this, you might want to offer an amendment to the first motion by Mr. Landry to preface all of these votes with the stipulation that they are non-binding provisional statements of general philosophy to guide the staff in its first draft.

MR. LANDRY
Supposing that I do this, suppose that I ... I move that my proposal be turned over to the drafting committee where they can prepare their draft to be presented at our next regular meeting.

MR. DENNIS
We have only one ... one motion and one proposed amendment before us at this time.

MR. AVANT
I have a question, Mr. Chairman, I want the motion explained because this ... is something that has been discussed.

MR. DENNIS
Yes, sir.

MR. AVANT
Does this motion contemplate that this procedure of the two-thirds vote of the legislature and the approval of the people in the particular jurisdiction affected shall include the ... by that process the reorganizing of judicial districts? Now ... I mean the realigning of such as Judge Engolio's situation?

MR. LANDRY
Not ... not at all.

MR. VESICH
This would be ... that would be taken care of in another article.

MR. DENNIS
This ... this article, as I understand it, if I may presume that it does ... really just say how many tiers we want to establish in the constitution. And others ... where ... where the statutory courts are going to start.

MR. AVANT
Alright.

MR. DENNIS
Now later on, Mr. Avant, since you expressed it I hope you will propose a motion as to how the districts should be divided in the constitution if they should be.

MR. AVANT
Well I would like to make a suggestion at this time since we want to keep this thing as short as possible that this motion also permits the legislature by the same and it should go to the people affected by the same process, the same, the geographical alignment of judicial districts in the future.

[971]

MR. VESICH
Oh, oh, well.

MR. WILLIS
I don't want history, I want the specifics of what you want protection in that constitution. I know Louisiana history. You tell me what you want in that constitution, then we can go step by step. Maybe I'm with you.

MR. VESICH
I was right ...

MR. WILLIS
I am not going to go generally with you.

MR. VESICH
Okay.

MR. WILLIS
I'm not gonna blindfold myself like that.

MR. VESICH
I would like to see our present court system maintained. There's no objection ...

MR. WILLIS
Without exception?

MR. V
One exception, we don't give up so easy ...

MR. WILLIS
Multi now ...

MR. VESICH
Wait a minute, what exception ...

MR. V
Consolidation of the first city court and the second city court, if there are no objections.

MR. VESICH
Well, those judges have agreed upon that and that would be something like a parish court like you have in Jefferson ... A majority. But, of our judges and I would say that a majority of our lawyers and I would say that a majority of our people would like to see the present system in New Orleans maintained. Nobody that forces a judge on the judicial bench to run for the criminal bench. When I first took office in 1976, there were five judges, I wanted four judges over the

11

MR. VESICH (cont'd)
Last sixteen years. The whole four judgeships was an appointment and nobody tussled about it and made them come up here and take their appointment. If they feel, as a few of them do, it's not all of them, a couple of them have expressed their opinion here, they're ready to retire, they've reached the retirement age and they feel like giggling their brothers here and there and just like we gig each other sometimes. But, to be practical we are a huge metropolitan area and we find no fault, three out of four of us on this committee, with the present system that we have in New Orleans, and we ask you to let it alone, subject to be changed.

MR. WILLIS
You've answered my question, in fact you've over answered. I'm satisfied now that I know what your desires are. You haven't been specific, you've been general but you do cover it, like the tree of ... Now ... now we get back to what would be the language that you would want that would allow New Orleans to do what it wants and be in balance with the rest of the state of Louisiana. How would you do that?

MR. VESICH
First of all I've gotta ... I've gotta ask you a question, do you recognize or not that we are a special animal down there? If you don't recognize that you can not recognize our problems.

MR. WILLIS
Well, I recognize, I wouldn't call it an animal, I recognize that within a small parish ...

MR. VESICH
Well, I'm just trying to get back to the zoo with Jassal Oursou here.

MR. WILLIS
Your levity doesn't get me off target. I recognize that Orleans is more populated than ... New Orleans is more populated than St. Martinville. But, for the life of me I have never been able to reconcile the seeming contradiction that there is a difference between the people of Orleans and me. I think that we should all strive not to make a constitution for 1976 and 1977, that our constitution should be a paragon, that it should be one that would endure hopefully, forever. That is the ideal, but that is what we must strive for and I'm sure that we're all as sincere as the other in striving for that. Do you think that forever and a day that Orleans should have a separate criminal court here and a civil court where the testimony has been by all of the other judges, I'd like to call them red, white and blue, all of the other judges and some of your own judges testified that ... that one is the sordid type

of court, nobody wants to go there; the other one is the one that most of the advocates advance to, and that all agree that if you put them together, you converge them, then you would have what is known as a courthouse, a hall of justice, where you get justice from all the laws. So, I'm at a loss, Tony, I would like to be able to follow you because I know you are sincere, and I know you are begging it should be there, and I don't blame you, I applaud you, the only thing is you'd better do some more convincing for me. That's all I have to say.

MR. DENNIS
Mr. Drew.

MR. DREW
I want to get back to the route of generalization. I agree with Tony on part of what he says, on part of what he says I very definitely disagree with him. I think that Judge Dixon probably made a statement which I remember all the way through, which is the fact that in writing this constitution he said that the brevity, the shorter, the briefer the constitution is the more power you're giving up even from the court. And for that reason nobody takes heed to the fact that we need a flexible constitution. It seemed at the time and if you will ride with the times but I am a member of the legislature, I think that one thing that is going to be is probably the most serious base of opposition to this constitution we're gonna present to the people is, what is the legislature going to do with all these things that are taken out of the constitution. That's gonna be a serious problem. Now, Tony says that so far the city and in the country again have erupted. I know, Tony, it erupted.

32

MR. VESICH
It started again?

MR. DREW
It started again.

MR. VESICH
Well, you see, I didn't realize that. Now you all understand what I'm talking about.

MR. DREW
Only on one issue we started talking about money, dividing funds and then on the other side don't want to go on that, on revenue sharing. But it can erupt at any time, I grant you that; it came out pretty rough in that particular session. But the point I'm trying to make is, let's don't go so free, let's leave the legislature ... and I'm willing to accept that responsibility, I think the majority of the legislature are ... but let's don't be so brief as to give them too much power. Let's spell it out to where there are flexible limitations, if there's such a thing as that.

33

MR. DENNIS
Mr. Bergeron

MR. BERGERON
Yes, well, gentlemen, for the last couple days I've just been sitting down ... I only asked one question, that's because I wanted to listen to all your arguments about what was going on. Well, I'm really not kidding myself, but the main question right now on most of our minds is that people are ... the main question is that should we merge courts in Orleans, civil and criminal courts into one court. I think that's what a lot of the problems are about. You know Tony mentioned before, that most of the people in Orleans wants the court ... the court ... the way they are and the right away I see people shaking their heads, I write a column in a newspaper which covers fifty thousand people. I've had inquiries to them. I have my name, my address and my phone number and all ... I get mail and phone calls all the time. I stand this in the procedure of the committee, what we have been doing. And they have expressed to me, and these are just people who do not know nothing of the court system, that they like our system the way it is. Now you know, fine, I'll agree that we should not have to have a constitutional amendment to change it if we don't. Okay, if you want to put in some kind of a provision that would allow us to change, like Tony say, if it's necessary, fine. But you know if I said, for instance Mr. Drew, would you like us to come to your parish and ... I'm just giving an example, "And put your courts, one practicing civil law, one practicing criminal law in your district court?" You'd probably answer, I know you'd answer, "No". That's because you like the system you have, you use it, it's working fine. We are ... that's the problem we have, we've employed this system for over a hundred years, we like it, it's working, nobody's complaining. So, as one judge, and it was a country judge, mentioned yesterday, I'm not in favor for change just for the sake of change. So, you know, like I said, I think that the basic problem right here is that we're thinking about the merger of the civil and criminal courts of New Orleans. And I'm not in favor for change just for the sake of change out in the open and speak about it specifically and see what we have to say about it. Thank you, gentlemen.

MR. DENNIS
Mr. Landry.

MR. LANDRY
All I wanted to say was this, that I believe that we are going to be called upon to write a constitution for the future and not for the present. And it seems to me that this could be taken care of instead of

to a merger of the criminal and civil district courts. He also said
who we've heard here have been judges, presently are criminal court
judges I understand are a factor of a merger. Now, civil district
court judge has expressed to me in private that he is in favor
of a merger. But he doesn't want to be among some of the staff
of the remaining members of that court. Now, what is the

1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 2680, 26

[illegible]

MR. DENNIS
Mr. Bel.

MR. BEL
Gentlemen, I arise in behalf of what Tony has said in most part. Secondly, I disagree with Mr. Tobias in reference to the people don't give a damn, because they do.

MR. VESICH
They wouldn't have courtwatchers if they didn't.

[illegible]

36

MR. BEL

If I had a case in court and I hired me a damn good criminal lawyer, If I were a criminal really in trouble, criminally, and I would face up before a civil judge, a man who had practiced civil law for fifteen or twenty years, I sure wouldn't feel comfortable in front of that judge, or vice versa. If I had a twenty-five or a thirty thousand

VR BEI

Q If I had a case in court and I hired me a damn good criminal lawyer, if I were a criminal really in trouble, criminally, and I would face up before a civil judge, a man who had practiced civil law for fifteen or twenty years, I sure wouldn't feel comfortable in front of that judge, or vice versa, if I had a twenty-five or a thirty thousand

[973]

criminal court, and I was not a good civil lawyer and I found myself a criminal lawyer was going to hear this case, I wouldn't feel comfortable yet. I'd want to feel that he doesn't know enough about civil law. He said, they should not, were lawyer should know all law, but where they've been practicing a particular law so long, I just don't think we're going to change it that fast. And I made a prediction if this committee were to change the system we have in New Orleans you can kiss this convention good-bye. I mean the

MR. DENNIS
Would you yield to a question from Mr. Tobias?

MR. BEL
Yes, I'll yield.

MR. TOBIAS
Clyde ...

MR. BEL
Yes.

MR. TOBIAS
What I had said, what I prefaced my remarks with was that the people have not heard the arguments that we heard in this committee. They ... for example, there was a poll taken by the bar

MR. DENNIS
Is this a question, Mr. Tobias?

MR. TOBIAS
This is a question. There was a poll taken by the ... well, at the instigation of the civil district court I believe, of the attorneys in the city of New Orleans. The question was presented, "Do you want to merge or not?" They didn't hear what ... all the arguments that we've heard. How do you justify, when you don't hear the arguments, saying that this is what the people want? I don't understand this.

MR. BEL
I'm going to answer you by saying that the attorneys in your own voice, the attorneys do not represent the people of New Orleans, that's number one. Out of the twenty-five hundred attorneys you have an election and you get what, an answer of four or five hundred, period. So they don't even voice their own opinions. But I'll bet you one thing there's more people in the city of New Orleans know what's going on about this system than the attorneys themselves know. And you think we don't talk to people who go to court? Only when they're in trouble, that's very true. But I guarantee you, you take and look at the amount of people hit the traffic court, the municipal court, and the city court in a day's time; those people know as much about the courts as we know.

MR. TOBIAS
That's those courts, not the civil and criminal district courts.

MR. BEL
Now, when it gets to that they'll know too, and I'm sure before this thing is over they will know, because I'll tell you right now, I as a member of this committee, I intend to devote a lot of my time ... I have some invitations to various organizations, I welcome anybody to come and talk to these groups at any time they want, we can make the arrangement at nights and have you speak before the group. This is the way we're going to get it to the people anyway. You read in the newspaper, I just read this morning in the press, I don't think they've got fifteen words of what was actually said in this meeting yesterday. You think the public is getting a substance out of what is happening in these committee meetings? Just look around here in the rooms at the meetings we're having, how many people are attending.

37

MR. DENNIS
Would you yield to a question from Mr. Tobias?
MR. BEL
Yes, sir.

MR. DENNIS
Would you yield to a question from Mr. Drew?

MR. BEL
Yes, sir.

MR. DREW
Well, I don't have any fixed opinion at this stage on the perplexity you're presenting, but one thing that I have been concerned about and is one of the questions I've been asking about I was driving at, the people that created the interest as I understand it some of the judges there in Orleans, which you have ten criminal judges on serving on banc ... granted, the criminal docket is crowded. They have an attorney who they appointed to the district civil docket. For that reason I'm wondering if there is not some change that he could have made to preserve the court system down there.

MR. BEL
Can I answer you one reason if you take the petty cases away from the civil district court, they don't be so bad off. But when you undertake a rent case, a simple rent case and send them up to the civil district court and involve their time in that and take today a thousand dollar plantation, and send it upstairs, it takes more time longer, the cost is greater to the people and anything else, I believe that their docket wouldn't be so crowded if they were relieved from the city court.

MR. DREW
But doesn't the municipal court have jurisdiction regarding the rent cases on the docket?

MR. BEL
That's only done, no sir, that's only done in our city court, in our city court.

MR. DREW
I say

MR. BEL
We only have a jurisdiction of one hundred dollars. And I'll tell you today, you rent a house in New Orleans for a hundred dollars and wouldn't even sleep it for one night for free rent.

MR. DREW
But your city courts only have a hundred dollar jurisdiction?

MR. BEL
A hundred dollars jurisdiction on rent.

MR. DENNIS
Mr. Burns has asked for a question.

MR. BURNS
I had asked all my questions.

MR. DENNIS
Oh, you want to ask a question? Would you yield to a question from Mr. Willis?

MR. BEL
Yes, sir.

MR. WILLIS
Mr. Bel, as I delineate and I trust accurately your aversion to the merger of your courts ... your pragmatic courts.

MR. BEL
Talk my language and I'll understand you.

38

MR. WILLIS
I'm talking the English language, sir.

MR. BEL
Sometime I don't understand those words.

MR. WILLIS
Well, as I understand your argument you say that, number one, you ascertained from those to whom you spoke that they were in favor of maintaining this status quo?

MR. BEL
Yes, sir.

MR. WILLIS
Number two, that the aversion that you have personally and from observation is that finances ... the problem is financial?

MR. BEL
Yes.

MR. WILLIS
Number three, that seven out of your thirty-nine judges want it, therefore you want it.

MR. BEL
No, sir.

MR. WILLIS
That was seven out of your thirty-nine want it?

MR. BEL
That's right, sir.

MR. WILLIS
Well, don't you want it?

MR. BEL
Certainly I want it.

MR. WILLIS
Well then I'm ...

MR. BEL
From experience I want it. I've had twenty years experience in courts.

MR. WILLIS
Well that ... then I could have said "your" ... then that for the third reason that's because seven ... because only seven out of thirty-nine are opposed to it, you are for it.

MR. BEL
No, sir. I haven't opposed many of my judges that are sitting on the bench politically. I'd say I appointed at least half of them.

MR. WILLIS
Well let me make it JA then.

MR. BEL
Alright, sir.

MR. WILLIS
Seven of your thirty-nine judges want it and 34 you want it. At least that's as a ...

MR. BEL
I'm in favor of it.

MR. WILLIS
Well, that's ... that's the same thing, desire Next, that ... next that you were appointed and that was the representation of people. Now, with and finally, what if we ... we ... we have great way the threat is that ... that ... that will not be ...

19

MR. BEL
I'm in favor of it.

MR. WILLIS
Well, let me ... were mildly then, your pragmatization issue, what you prefer ...

MR. BEL
I prefer ...

MR. WILLIS
Alright, now let's analyze that; that my first question is the ones to when you spoke, was there someone on the other side to speak for them in that sense?

MR. BEL
I don't know. I was invited to speak; I don't know who else was invited to speak.

MR. WILLIS
You don't know if they heard the opposite side of the coin?

MR. BEL
No sir, I don't know.

MR. WILLIS
That's number one.

MR. BEL
Well I'm sure they've heard from some of the attorneys that are in favor of. I'm sure of that.

MR. WILLIS
But you don't know when you took your poll whether they had heard the others?

MR. BEL
Not in this committee.

MR. WILLIS
The other side.

MR. BEL
No, sir.

MR. WILLIS
Number two, insofar as finances is concerned, which do you put primary, justice or finance?

MR. BEL
I put justice first.

MR. WILLIS
Thank you.

MR. BEL
But it takes some finances to run the justice.

MR. WILLIS
Well, but you answered my question you had it, addendum which you ... alright, now, thirdly insofar as statistics are concerned with respect to judges, and taking that cumulatively with the fact that you were appointed for the public at large, not for Orleans.

MR. BEL
That's right.

MR. WILLIS
Alright, now that's ... you're representing me also, you're helping me represent my district over there.

MR. BEL
That's correct.

MR. WILLIS
You're appointed for the public at large.

MR. BEL
Trying to my job.

40

MR. WILLIS
The public at large comes from that same shaped tract of land bounded on the east by the national Mississippi, south by ...

MR. BEL
More or less.

MR. WILLIS
... the Gulf of Mexico, west by Texas and North by Arkansas.

MR. BEL
I know where it is, I know where it is, Mr. Willis.

MR. WILLIS
Alright, now, ...

MR. BEL
I've traveled the state as much as you have.

MR. WILLIS
Well, maybe more, I'm not a traveler. Now, with that office of yours that you have, did you ... did you superimpose the statistics of all of the judges of Louisiana with respect to that problem?

MR. BEL
No, sir.

MR. WILLIS
We heard from many, I'd like to call them red, white and blue judges.

MR. BEL
Alright.

MR. WILLIS
That have said that, all of them said with sincerity and I do believe honesty, that to be a well-rounded judge and to be a more efficacious judge, notably the last one who was to me exemplary, said that that was the ideal that you sit on both type of cases. Do you adhere to that?

MR. BEL
You also heard the judge say that he's one week one place and one week another place. If he's not there he's ... he has his cases postponed or set them aside.

MR. WILLIS
But only Mohamed then was powerful enough to bring the mountains to him, all others have to go to the mountain. Now, so we go to the fifth and last one. Do you think, honestly, representing as you do or should, the public at large, which means Louisiana, that this is a great ... if we were to make all district judges alike, to the adoption of this constitution by the state ... the people of the state of Louisiana?

MR. BEL
Now, I'm not in a position to answer that.

MR. WILLIS
Well, I knew I had to reply. I thank you, Mr. Chairman.

MR. DENNIS
Mr. ... is there ... I have a list here, and I assume you all wanted the floor. Mr. Burns is next.

MR. BURNS
Mr. Chairman, I know I did and I imagine most of us that ran for this office declared themselves in favor of whenever they had a real controversial issue that ... which was being proposed to be included in the new constitution, the voters of the state would be given an alternative, that they could either vote for this or they could vote for that and not be confined to just voting yes or no. And if this ... this is just the real beginning of this issue and we can see what controversy is about and even gotten down to what the people of New Orleans as a whole think about it. And I think perhaps, but I just throw this out as a suggestion that this might very well be one of these sections of the constitution, of the

11

MR. BURNS (cont'd)
new constitution. I'm, first of all, replaced in the formation an alternative and give, not a choice at Louisiana but the people of Orleans Parish, a chance to vote on whether they want the divided courts as they exist today or whether they want the merged court, the other one. As I say, if you ... it just seems like to me it's building up to where it's gonna be highly controversial and actually I didn't know that this was coming up at this little short meeting that we were going to have, to put on generalities, but I do think perhaps that that would be a solution of this particular situation.

MR. DENNIS
Thank you, Mr. Burns. Mr. Gauthier.

MR. GAUTHIER
You know the thing that strikes me is number one, the amount of time we've taken of this committee for the New Orleans issue. And I know that populationwise we deserve a bit more time, and I'm from Jefferson Parish, but it seems to me that we're taking too much time and perhaps when drafting this new constitution we should bear that thought in mind. If we again stick with it as is, it's gonna present problems in the

[975]

[illegible]

MR. DENNIS
Thank you, Mr. Avant.

MR. AVANT
Fellow members, let me tell you this. I'm appointed.

MR. ? We don't hold that against you

MR. AVANT: I'm here to do the best job that we can do. Now I think, the way I view our task it is to, not just this committee but the whole convention, it is to draft a constitution, a proposed constitution, that will be better than what we've got, not perfect, but it will be much better than what we've got, and that will pass. Because if it don't pass we haven't done a thing. I want to address myself to two or three areas. If it doesn't pass the people are going to be asked a lot of money, that's all, and a lot of people's time.

MR. AVANT
Yes, sir.

MR. BURNS

Mr. Avant, thank you for that compliment. You know the only thing I ... the question I want to ask you, you said with reference to the three parish Iberville about getting ... breaking down the districts, that you had absolutely no objection providing it was the people of that district had a chance to vote on it.

MR. AVANT
And I don't think I oughta have to vote on it.

MR. BURNS
That's right.

[illegible]

MR. AVANT
Because it's no concern of mine

MR. BURNS

But I agree with you, fine. But yet on the other hand you said that you were opposed to making this question of the division of the ... keeping the division of the two courts in New Orleans or merging them. You didn't ... you couldn't go along with making it an alternative vote which in effect, would be doing exactly the same thing that you're agreeing with with reference to splitting the district down there in Terrebonne Parish.

MR. AVANT
No, no, Mr. Burns, because you would then --

MR. BURRIS

Is it because you don't want to set a bad precedent in this constitutional convention of making too many alternatives possible or the ...

MR. AVANT
No, it's one ... two such things. One, that, yes, certainly that, I don't want this thing to come out with forty-seven different alternative propositions. Plus another thing, if we make it an alternative then the people all over the state are gonna vote on it.

MR. BURRIS
No. Has to be . . .

MR. AVAIT

It would have to be, it would have to be voted by everybody in the state, most of whom could care less.

MR. BURNS
I wouldn't be as upset at that

MR. DENNIS
Would you yield to a question from Mr. Sandoz?

MR. AVANT
Yes, sir.

My question is this, Jack, but it's not a question. I agree with you and I was just ... we haven't taken a show of hands on anything yet. I would be interested in Mr. Landry reading his proposal and let's just see a show of hands as to how we stand on that. We may be wasting our time.

MR. DENNIS
You're out of order. You were recognized to ask a question.

MR. SANDS
Excuse me.

MR. LANDRY
... the court such as the supreme court and the court of appeals and the district courts and then the fact that the legislature may create with a ... with the approval of the people of the district or area affected to establish, abolish or otherwise affect other courts of trial jurisdiction. We want the staff to write it up and then present it to the membership for their approval.

MR. VESICH
You say that takes care of us?

MR. LANDRY
It sure does.

MR. VESICH
Alright, if you say so.

MR. DENNIS
Have you read your ... your statement?

MR. VESICH
It don't sound like it.

MR. AVANT
I'm gonna just make a statement, I mean because I wanna try to save a little time.

MR. DENNIS
Yes, sir.

MR. AVANT
I think the sense that we've got here already is that the courts as they now exist, stay, until they're changed by this process. And the staff can draw it up in that fashion. So when we look at it, we don't have to draw it up right now.

MR. VESICH
Alright.

MR. ?
..... one, doesn't it?

MR. DENNIS
Judge next, excuse me, gentlemen.

MR. WILLIS
Let me be heard on that. Is that ... is that ... that why I'm staying, I don't understand that to mean that way.

MR. LANDRY
This is just the judicial power. As I understand the constitution there's other areas here where the New Orleans court system is presently existing, right? Now ...

MR. WILLIS
Existing ...

MR. DENNIS
I'm not talking of the New Orleans court system on this or not talking about the justice of the peace courts or any other court.

MR. WILLIS
You're talking about all courts of law.

MR. LANDRY
Talking about this is a provision whereby we could all be entitled in years to come to change our system by a vote of the people and a vote of the legislature if they so desire.

MR. WILLIS
But it does not freeze.

MR. LANDRY
No, it does not freeze, that's what I say, that probably the consensus will come when the New Orleans group will want to keep theirs in the constitution. It would be said in that article that they can be changed according to article so and so of the constitution. We almost all agree we will let them retain, but this does not take care of their objections.

MR. ?
No, I mean, I didn't ...

MR. DENNIS
Just a minute, gentlemen, let me ...

MR. LANDRY
I'm not saying that we voted on it.

MR. DENNIS
Mr. Justice Tate, do you have a question?

MR. TATE
Judge Dennis, as I understand it we just state that voting on general principles and methods of the judicial power and how to handle it. We're not frozen either on that or on any particular part, although I would say that there's a pretty good indication how it will come up when it comes to that court. But we're not frozen, we just ... as a general approach in drafting.

MR. DENNIS
Right. I will attempt to read it as I have it. "The judicial power shall be vested in the supreme court, courts of appeal and district courts. Presently existing courts shall remain as ...

MR. ?
No, no.

MR. LANDRY
Somebody else had said that. I didn't. That's not my motion, I ...

MR. AVANT
That's what I wanted to find out.

MR. LANDRY
No.

MR. DENNIS
Well, let me read it.

MR. LANDRY
.... Mr. Avont said that.

MR. DENNIS
Let me read it and be sure that you understand what I'm reading. "Presently existing courts would remain the same until changed by a two-thirds vote of the legislature and the vote of the people in the affected district ...

16

MR. LANDRY
No, no.

MR. DENNIS
... "other courts may be established in the same manner."

MR. ?
That's all.

MR. LANDRY
Judicial power shall be vested in the supreme court, court of appeals, district courts, and then the legislature may by a two-thirds vote with the ... subject to the -- I might not can get the words out ...

MR. TATE
Approval of the electors.

MR. LANDRY
Approval of the electors of the area affected, establish, abolish or otherwise affect other courts of trial jurisdiction.

MR. ?
Other courts?

MR. AVANT
The key word is "trial jurisdiction."

MR. LANDRY
Establish, abolish or otherwise affect other courts of trial jurisdiction.

MR. BURNS
Well, by using the word "other" you've already confirmed the executive court.

MR. ?
To establish or abolish.

MR. DENNIS
Alright now, we need a little more. Do you all understand the motion?

MR. AVANT
Mr. Chairman, ...

MR. DENNIS
The statement of general principle.

MR. AVANT
The only thing I, when we spent the whole time here talking about the New Orleans situation now we've come up with something and we voted it, as far as I can see it's got nothing to do with it.

MR. ?
May I offer ...

MR. DENNIS

Constitution, it does have something to do with it. This is what we've debated, there was no one else.

47

MR. DENNIS

As I understand, there's no one really who wanted to abolish any courts other than the courts. The fact that there is a statement of general principle which would state that there is a three-tiered court system to be preserved in the constitution and any other courts would have to be established statutorily by a two-thirds vote of the legislature and approval of the people in the district.

MR. TUBIAS

Except those presently existing and shall continue until changed.

MR. LANDRY

We didn't say that.

MR. DENNIS

Mr. Justice Tate ...

MR. TATE

Mr. Chairman, as I have stated this is ... this is one of the problems that we're into, we're just discussing the introductory thing on judicial power. Later today perhaps we're gonna have a vote on general principle on the supreme court, general principle on courts of appeal and general principle on the district courts and so on. In effect, we've already taken a general, a vote on general principle on everything else, in effect I can count the votes, I know how it's gonna come out when district courts come out, but it's not before us yet. Is that about right?

MR. AVANT

I think that's satisfactory as it stands.

MR. TATE

Mr. Chairman, Mr. Chairman, may I ... I'm out of order, but as soon as we get this up, if you want to bring up right away the district courts out of order ... We could ... we could have a vote.

MR. DENNIS

Mr. Deshotels.

MR. DESHOTELS

Mr. Chairman, excuse me, members of the committee, I think I would like to offer an amendment to Mr. Landry's motion, resolution, and this is just to clarify the problem that we're having, and I'm hoping this does. Now in between the words of his resolution, in other words, after he says "district courts" let's leave in for the purposes of principle and direction to our staff, "and such other courts as this constitution may authorize" and then go on with the provision for the addition or alteration of courts by referendum and legislative vote. But let's leave the phrase in "and such other courts as this constitution may authorize," so that later on if we want to confirm and say in the constitution, "the present courts in Orleans, as they are," we can. It is to avert problems arising, for instance, with the court that is in Orleans. And then if we don't authorize any further courts, well time, and in fact we probably will not have this read the same way as we've been reading it now whenever we draft that. But let's leave that in there and then we don't have any more problems.

MR. DENNIS

Alright, I'm going to read the whole provision as I think we have offered to amend it. "Judicial power shall be vested in the supreme court, courts of appeal, district courts and such other courts as the constitution may authorize. The legislature may by a two-thirds vote with the approval of the electorate of the area affected establish, abolish and otherwise affect other courts under the trial jurisdiction."

48

MR. VESICH

Does that take care of it?

MR. DENNIS

Yes, that takes care of you.

MR. TATE

Alright.

MR. VESICH

Does that take care of me? In your opinion your wise judicial powers, does that take care of Orleans?

MR. DENNIS

This does not put your courts in the constitution, but it makes it so that they can change the courts in the future, would have to be both approved by two-thirds of the legislature and the people in the district affected.

MR. TATE

I think the question ...

MR. KELLY

I don't care who answers, but I have the question. Does this mean that if, just because you want to add a district judge in a particular judicial district ...

MR. TATE

No, no, no.

MR. LANDRY

That's the creation of a court.

MR. DENNIS

Mr. Drew.

MR. DREW

Let me get something clear, Ambrose, and I'm still concerned about it, I think we're wording this to where we can eventually take care of Orleans. And I think ...

MR. LANDRY

No, no, no, sir.

MR. DREW

Well, I think in effect, I'm going to finish up here. Well, in effect when we use the word "establish", now when you put "establishing the court", and what I'm leading up to, I am very much at this stage in favor of a parish court. And if we try to submit to a district or a parish, where you've got two city judges that it would be better to kick their salaries up to twenty-five or thirty thousand a year and make them parish courts then you'll never get a parish court in this state on account of if it has to go through the electorate or on the statutes.

MR. LANDRY

But remember this, that we don't have to establish a parish court, and I say, "and such other courts as this constitution may authorize", then it's possible that we would put parish courts when we accept the article of the constitution. The only thing is, we don't know fifty years from now whether this is what we want.

MR. DREW

We don't know if it is now.

MR. LANDRY

And this would provide us a method of making changes.

MR. DENNIS

Gentlemen, there's an amendment before us. Do you all understand it? Is there any objection to the amendment? Without objection, the amendment carries. Now we're back to the motion of Mr. Landry as amended. Does anyone want to amend it again? Is there any objection to the motion of Mr. Landry as a statement of general principle to guide the research staff in the first draft? Without objection, so carries.

49

MR. TATE

Okay.

MR. TATE

Mr. Chairman, I move we adjourn.

MR. TATE

Mr. Chairman, I have ... That takes care of everything ...

MR. TATE

Mr. Bergeron, I don't want to shut anybody off.

MR. TATE

I have a simple suggestion, we've debated the Orleans criminal district court all morning, I am either willing to make a motion for a unified court including Orleans, or I am willing to make a motion for it or have him make the amendment the thing that the criminal district court be continued as they are except that Orleans will have two of them ... including civil and criminal ... someone will move to amend it, get beat and then we'll adopt it and we'll have the drafting problem done. Alright? Is that okay?

MR. AVANT

Yea. You've got a motion to adjourn on the floor.

MR. TATE

Oh, I take ...

MR. TATE

Withdraw it ...

MR. TATE

... we've debated Mr. ...

MR. DENNIS

Do you wish to be recognized for a motion?

MR. TATE

I'm willing to yield to Mr. Vesich to make a motion, if it's alright.

MR. VESICH

I'll try to state it simply that in the parish of Orleans that the civil and district ... the criminal and district court ... civil district

courts remain as they presently are subject to that provision. Alright, now, and that ...

MR. DENNIS
Wait, wait just a minute. Your intention is that you wish then to be established in the constitution?

MR. VESICH
Yes, sir. Because it can be the language can be for the staff to work out.

MR. DENNIS
But what you mean is to give the Legislature and the people the power to change it in accordance with this ...

MR. VESICH
Right. That's correct.

MR. DENNIS
... this provision we just adopted.

50

MR. VESICH
Correct.

MR. LANDRY
Well, I thought we had agreed that what we just voted on took care of that.

MR. TATE
No, that see, that's ... we just had a general vote. Mr. Chairman, since

MR. DENNIS
In effect, what we're gonna do is we're gonna name these courts in the constitution. But they may be changed by less than changing the constitution. They may be changed by a two-thirds vote of the legislature and a vote of the people in the district. Understand that?

MR. VESICH
Correct.

MR. AVANT
Is there a motion on the floor?

MR. DENNIS
Mr. Vesich made a motion.

MR. VESICH
Yes, sir.

MR. TATE
I had risen to make the amendment so we can get beat fair and square. I move to amend the motion that there will be one unified district court at the district court level in all parishes including Orleans. Later, by the way, I think that East Baton Rouge wants a family court to go in, but we'll leave that alone. And I move to amend it and the sole purpose is to have a vote on whether the constitution will provide that there will be one district court ... one district court or a sitting criminal district court in Orleans. That's the sole purpose of the amendment.

MR. DENNIS
Do you have a question, Mr. Bergeron?

MR. BERGERON
Right. Now this is for Judge Tate and Mr. Vesich, let me understand this.

MR. TATE
Yes.

MR. BERGERON
Let me just state it so I'll understand it. We've been talking about it all morning ...

MR. TATE
Right. This is a motion ...

MR. BERGERON
... well, it's his amendment, I mean it was his motion.

MR. TATE
Motion, correct, right.

MR. BERGERON
So in other words, ...

MR. TATE
Vote me down and ...

MR. BERGERON
... if we vote you down, ...

MR. TATE
... and then vote him ... vote me up, fine. Well, I mean that's the issue, you know.

MR. BERGERON
... ..

MR. DENNIS
Mr. TATE is saying, wouldn't the same thing be accomplished by ... voting on Mr. Vesich's motion?

MR. TATE
Yes. Alright, I'll withdraw the amendment, I'll withdraw the amendment, I'll withdraw the amendment, thank you.

MR. ...
Mr. Chairman, as I understand Mr. Vesich's motion there, it pertains to nothing but Orleans?

MR. VESICH
Right, yes. That's right.

MR. DENNIS
Well, Mr. Vesich, it pertains to nothing but ... Should we not ... criminal and civil district courts?

MR. ...
Would you accept an amendment to make that general, to where we are not still talking about Orleans? Thirty-fourth judicial district court. To get out the word "Orleans".

MR. TATE
Well this is a principle, it's ...

MR. DENNIS
Well, I think the principle I'm talking about is let's get some general rules, let's not be saying "Orleans" every time we turn around. And you can do it with a general provision there; protect the courts on a general provision. In other words say that it's ... that we ...

MR. VESICH
Well, you say it; let me hear it.

MR. ...
Well I mean it would ...

MR. DENNIS
Just a minute, gentlemen, let's proceed orderly.

MR. ...
... more or less as you see it except it would say "existing courts". And that the courts then would be recognized, by establishing your own courts, period.

MR. TATE
And the district ... the existing district courts shall be recognized subject to the above ...

MR. ...
... but I don't think you have to limit it to district ... otherwise you would say "courts". You've got your municipal courts, your ward courts.

MR. ...
Okay.

MR. DENNIS
Mr. Avant.

51

MR. AVANT
I just got Mr. Vesich's motion. I would suggest a substitute motion, which would read as follows: to be polished by the staff to get some sense out of it. All presently existing district courts, civil or criminal, family courts and juvenile courts are continued. The legislature may by a two-thirds vote and with the approval of the electorate of the jurisdictions involved merge, consolidate, realign and separate such courts subject to the provisions of Section ... of this Article, which is going to be that provision which I hope we put in there that says that the salary and jurisdiction of no judge shall be changed or terminated during his term of office.

MR. DENNIS
Mr. Bel.

MR. BEL
What he was saying is that if you do word it "general" and take care of all courts, it takes care of all of the courts in New Orleans, it'll take care of all of your courts in East Baton Rouge.

MR. AVANT
It'll take care of all district courts, family courts and juvenile courts; they stay like they are until the legislature by a two-thirds vote and the approval of the electorate in the various jurisdictions involved change them ...

MR. BEL
Alright, now what ...

MR. AVANT
... subject to the provisions of the constitution which I guess we're going to put in there that you can't kick a judge out of office or cut his salary during his term of office.

MR. BEL
How are you going to provide now for our first city court and ...

MR. DENNIS: His avowed is not designed to keep out the name, so it would keep them out of the constitution.

MR. TATE: To keep out ...

MR. BURNS: I mean I, I'm gonna vote, but ...

MR. DENNIS: Mr. Bergeron is recognized for a question.

MR. BERGERON: Okay, in other words this is the whole question we've been talking about all morning, we're voting on it now.

MR. DENNIS: Right. Right.

MR. BERGERON: If we vote for that we go against what we were talking about this morning.

MR. TATE: Would you go against ...

MR. VESICH: New Orleans.

MR. TATE: ... what we're talking about.

MR. BERGERON: That's what ... that's what I'm talking about.

MR. DENNIS: You want to vote against Mr. Tate's amendment, right?

MR. BERGERON: Yes, sir, that's what I'm talking about.

MR. AVANT: I want to make sure that everybody understands my motion. It says, "all presently existing courts ..."

MR. VESICH: Yes.

MR. AVANT: "... are continued." Now that includes city courts, that includes family courts, juvenile courts, civil district courts, justice of the peace courts, all of them.

MR. ? : Kangaroo courts.

MR. TATE: Mayors' courts.

MR. ? : Correct. Correct.

MR. DENNIS: That's your motion. Now Mr. Justice Tate has moved to amend your motion to say that this doesn't apply to the civil ...

MR. TATE: To the civil and criminal district courts which may be combined; in other words, it may be combined.

MR. DENNIS: Does everyone understand the whole amendment ...

36

MR. ? : I thought ... I thought we were ... that a long time ago.

MR. ? : Well, we have ...

MR. DENNIS: Is there any objection to the amendment?

MR. TATE: Well look, we've got to call the nation. Because this ...

MR. DENNIS: Is there any objection to the ...

MR. ? : Yeah. It's the whole question, see?

MR. DENNIS: Who objects, Mr. Kelly objects. The vote will occur on the proposed amendment, which I will not read again; I think everyone understands it.

MR. BURNS: It's Judge Tate's amendment?

MR. ? : Right, yes.

MR. BURNS: Now will you please explain it, it, there has been no need talk.

MR. DENNIS: Justice Tate will explain his amendment.

MR. TATE: This is to get a formal vote isolated from all the other questions which are there. Almost all of us agree that all of the state courts, city courts and all those should be continued subject to the proposition we've talked about. Some of us disagree on the criminal and civil district courts for the reasons that were said at length, others don't. Right, sir, Mr. Bergeron, and this one ...

MR. BERGERON: I'm ...

MR. TATE: ... let me finish the sentence and then go ahead.

MR. BERGERON: Finish then.

MR. TATE: So the point of this question is those who think the criminal and civil district courts of Orleans should be combined, vote "yes". Those that don't, vote "no". And then we'll ...

MR. BERGERON: In other words, if we vote "yes", we merge the civil and criminal courts in Orleans.

MR. TATE: Right. We're opening the ground ...

MR. DENNIS: Does everyone understand the amendment? The vote will occur on the proposed amendment, those in favor will vote "yes" when your name is called, those opposed will vote "no".

SECRETARY:

Mr. Avant	No.
Mr. Bel	No.
Mr. Burns	No.
Mr. Deshotel	No.
Mr. Drew	No.
Mr. Gauthier	Yes.
Mr. Kelly	No.
Mr. ...	No.
Mr. ...	No.
Mr. ...	No.
Mr. ...	No.
Mr. ...	No.

MR. TATE: That's the vote.

MR. DENNIS: The vote reads 12 ayes and 11 noes, and 1 abstention.

MR. DENNIS: Okay, the amendment is rejected. Now that Mr. Avant's motion ... is before us, Mr. Avant, do you wish to explain?

MR. AVANT: In closing I only want to make an observation, and I think that this motion as it is written may give some protection in the constitution to the justice of the peace courts which they do not now have and that was not the intention of the motion. It is only affirming that in the present constitution the legislature can do a complete abolition of the justice of the peace court in any way. And I would like to say that the motion be amended so it ... it's not my intention to give the protection to the peace courts the protection which they do not now have.

MR. ? : So you say except justice of the peace.

MR. DENNIS: Are you going to offer an amendment to your motion, Mr. Avant?

MR. TATE: Since we're only talking about general principles we'll have to work out the details later on, because right now you'll have to have an act of the legislature on ward ... the eighteenth ward in St. Louis Parish, and a vote in the nineteenth ward and the nineteenth ward, we'll have to work out the details later on and I suppose this is just a general principle, is that right?

MR. AVANT: That's right. And I didn't have J.P.s specifically in mind and I just wanted to get on record, Sen, I didn't want to give them any more protection than they presently have.

MR. TATE: But the thing ... like the mayor's court of Miami, just for example, you'd have to go to the legislature and get a two-thirds vote and get that, so those are the details we're gonna have to work out, I guess.

MR. DENNIS
So you don't think an amendment is necessary?

MR. AVANT
Not at this time, I don't guess.

MR. DENNIS
Does everyone understand Mr. Avant's motion?

MR. WILLIS
I have a question.

MR. TATE
Yes, Mr.

MR. WILLIS
I am foreseee, your Honor, where according to Mr. Avant if you freeze them and then you suggest that no judge can be ... and you allow the legislature to change that with the people in the district doing that. But you freeze a judge in his jurisdiction, then I foresee that the judge, criminal district judge in Orleans, appointed for twelve years, the legislature meets every two, I can foresee in four years the legislature says, "Well we're gonna merge Orleans." The people in Orleans Parish say we merge, and here is this judge, this lonely criminal judge who's got eight years to serve, where will his jurisdiction be? He's merged, yet he's not.

MR. TATE
We could merge ... as I said it ...

MR. WILLIS
Still he merges.

55

MR. TATE
The reasoning is that, again, I think could probably be worked out that it wouldn't be provided in the constitution when we get to the language that the judge -- first of all his term won't be and compensation won't be affected or the change although he'll become another judge of the court with which merged for the balance of his term and then ...

MR. WILLIS
Yes, but in that his jurisdiction will not be affected, he only has criminal jurisdiction.

MR. TATE
Oh, wait a minute, this didn't say jurisdiction, did it?

MR. AVANT
I didn't say ...

MR. TATE
It had better not because it would freeze ...

MR. AVANT
We'd have to work out the language of that provision when we get to it, Mr. Willis, and make specifically whatever else we may have done.

MR. WILLIS
Well, we're just doing it on thin ice.

MR. AVANT
I hope that's one of the reasons why we have the staff, that they are going to help us with some of these.

MR. DENNIS
I think it would be well for you to state your motion.

MR. AVANT
Alright. The motion is, that there be a provision prepared by the staff which would accomplish what I hope is the sense of what I've written down here. And that is that all presently existing courts are continued. The legislature may by a two-thirds vote and with the approval of the electorate of the jurisdictions involved, and that's plural, "merge, consolidate, realign, separate such courts subject to the provisions of Article ... of this constitution," which is going to deal with protecting the judge as to his salary during his term of office.

MR. WILLIS
And his jurisdiction.

MR. AVANT
And has jurisdiction during his term of office.

MR. WILLIS
Uh-huh, that's a rat of another color.

MR. AVANT
Well, that may take a little while, Mr. Willis, to figure out how you want to do that.

MR. WILLIS
I can foresee Judge Roy Bean on both sides of the Pecos dealing with that.

MR. DENNIS
Is there any objection to this motion?

SECRETARY
Could we restate it?

MR. DENNIS
Pardon?

SECRETARY
Could we restate it and ...

MR. DENNIS
He just restated it.

59

SECRETARY
I know ...

MR. ?
She didn't catch it.

MR. AVANT
Alright, want me to read it again?

MR. DENNIS
We've got it. Is there any objection? Then this motion is also adopted. Without objection.

60

MR. DENNIS
... I think we ought to make as much use of the day as possible. For example, to the supreme court we ... give them more rule making power. Should the rule making power of the supreme court be clarified in the constitution.

MR. AVANT
Don't you think that's gonna require some ...

MR. TATE
Mr. Chairman, can I suggest on that that the present general supervise and control article, if it's more or less retained will be the vehicle to propose that issue so that we need not necessarily now take a policy of determinations.

MR. DENNIS
Your vote is that the first draft retain the same language as to the rule making authority?

MR. TATE
Yes, supervise and control I think they call it. And then if might be ...

MR. DENNIS
Is there any objection to that? Then that motion carries also

MR. TATE
Well, that means, well frankly, when the time comes some of us may want to make ...

MR. ?
Or take away from it.

MR. TATE
Or take away.

61

MINUTES

Minutes of the Judiciary Committee of
the Constitutional Convention of 1973

Held pursuant to notice mailed by the
Secretary of the Convention on April 16,
1973.

State Capitol, Baton Rouge, Louisiana
Friday, April 20, 1973, 9:30 a.m.

Presiding: Judge James L. Dennis, Chairman. The meeting
was called to order at 9:30 a.m.

Mr. Philip O. Bergeron, Secretary, called the roll. Ten

members were present, representing a quorum. All members attended meeting, except one.

PRESENT	ABSENT
Avant	Burns
Bel	
Bergeron	
Dennis	
Deshotels	
Drew	
Gauthier	
Kelly	
Kilbourne	
Landry	
Martin	
Quiro	
San Jose	
Tate	
Tobias	
Vesich	
Willis	

2

The following speakers gave testimony regarding the tenure, selection, removal, and compensation of judges:

MR. BEN R. MILLER
Attorney at Law
Representing Louisiana State Bar Association

JUDGE LUTHER F. COLE
19th Judicial District Court
East Baton Rouge Parish

Chairman Dennis recessed meeting at 11:15 a.m.; resumed at 11:25 a.m. Testimony continued:

MR. EUGENE MURRET
Judicial Administrator

Minutes of the last two meetings were taken up by the committee. Minutes of April 13, 1973, meeting were approved and adopted without reading. Mr. Bergeron read the minutes for April 14, 1973, meeting. Mr. Tobias moved to adopt the minutes as written. Chairman Dennis made a substitute motion to amend Page 5, Paragraph IV, to show "judicial districts" instead of "district courts." Mr. Willis made a substitute motion to amend minutes on Page 5, Paragraph I, and Page 6, Paragraph I, by striking all seconds to motions. Minutes were adopted as amended without objection.

Chairman Dennis recessed the meeting for lunch at 12:15 p.m. Meeting resumed at 1:55 p.m., and testimony continued:

JUDGE THOMAS WICKER
24th Judicial District Court
Jefferson Parish

Mr. Miller submitted to the Judiciary Committee a written statement on "The Death Penalty," which Chairman Dennis referred to the Bill of Rights Committee since it was not

3

a provision Judiciary is handling. Chairman Dennis read letter received from Mr. M. W. Denberry, Secretary of the Convention, regarding the inclusion of appeals from rulings of the Civil Service Commission in Judicial Article. After discussion, the committee felt this should be handled by the committee covering Civil Service, and authorized Chairman Dennis to reply to Mr. Denberry's letter on this matter.

Preliminary non-binding proposals were opened to the committee by Chairman Dennis.

With regard to selection of judges, Mr. Tobias moved that all judges should be elected. The motion carried without objection.

Judge Tate offered a proposed draft to the committee as a guide in taking preliminary votes. After deliberation, Mr. Sandoz moved to follow outline as offered and to make decisions without being bound on various sections. Mr. Drew offered substitute motion to include "witnesses will be heard in event there is a need to do so." The substitute motion carried without objection.

Mr. Tobias moved to delete §2 of Judge Tate's "Draft A." Mr. Avant offered a substitute motion to use §2 as a guideline. Chairman Dennis suggested that the writ power of the courts be retained, but have the staff find a way to shorten it. Approved without objection.

The committee, after discussion, decided to delete the domicile provision of the Supreme Court and retain the present number of seven justices.

It was proposed and adopted by the committee that §4 shall provide that the Supreme Court shall be composed of a

4

chief justice and six associate justices of which at least four of whom must concur to render a judgment. (Mr. Drew voted against and Judge Tate voted against abolishing the Supreme Court's right to sit in panels.)

Chairman Dennis proposed that one set of qualifications be provided for all judges. Approved without objection.

Chairman Dennis asked should the Supreme Court Districts be spelled out in the constitution? Mr. Drew moved to delete §5(b) of "Draft A" (Supreme Court Districts). Motion failed. Mr. Tobias offered a substitute motion to provide that the state be divided into seven Supreme Court Districts. Motion failed seven to eight. Mr. Avant moved to adopt §5(b) as written. Motion carried.

Mr. Bel moved that Supreme Court justices shall have terms of fourteen years and the word "judge" in "Draft A" be changed to "justices." Motion carried.

Mr. Deshotels offered a substitute motion that the terms of Supreme Court justices be eight years. Motion failed. Mr. Sandoz offered substitute motion for ten-year terms for Supreme Court justices. Motion failed. Mr. Gauthier offered a substitute motion to provide for twelve-year terms for Supreme Court justices. Motion failed six to eight.

After discussion §6(a) of "Draft A" was adopted.

5

§6(b) of "Draft A" was carried without objection.

Mr. Avant moved to adopt §6(c) of "Draft A" and insert

152

This is what you said, generally speaking.

Well no ...

This would give you the power to initiate a rule if the legislature has not acted.

That's a hiatus, right.

Then the legislature could authorize, encourage or do what they wanted to do. They got that. That's about the best and most practical thing we can do.

They may make rules interstitial.

Yes ... inter what?

they are costing it now.

They don't have this power ...

You don't need it, but Justice Sanders asked that it be clarified.

We have it right now but be asked that it be clarified. You're not

what is it?

That Burt's "interstitial". Interstices left by the legislature. Is there any objection to this as a rough first draft?

AVANT

which one are you talking about?

DENNIS

All those in favor ...

We are only voting on Part A right now . . .

Part A, Section 6 which deals with rule making powers of the supreme court, all those in favor of it signify by raising your right hand.

TATE

Judge, on this one, A-1 in other words your appellate jurisdiction of the supreme court is based on a decision of a district judge if he holds it's not constitutional. How do you justify that, Justice

DENDRIS

Wait, wait, Mr. Chairman. Will it help if I explain what's been me? You have here on Section 10, in the draft, the present jurisdiction of the supreme court. This is the same thing except -- alright, on page

1. TATE
Hill is depends on which way you are looking at the one x

Well it depends on which way you are looking at, the one --
 tion 6 -- 3, C & D. Now, if you compare these with the present

MR. DENNIS

Mr. Justice Tate, why does all of this have to be in the constitution?

7

MR. TATE

I am not fighting for it. I am not fighting for it. Just that is!

I am not fighting for it, I am not fighting for it, just that it's

[985]

MR. DENNIS
Is there any sentiment to take some of it out?

MR. TATE
I took a lot out, you notice. I didn't know if you noticed how much was taken out.

...
What did you take out?

MR. DENNIS
I just submitted what I'd take out, I don't know whether anybody agrees with that.

...
I didn't hear that.

MR. DENNIS
I would say B, C would be in and then D would say, "such other cases as shall be appealable as provided by the legislature."

...
Why don't we just spell it out right here?

MR. DENNIS
Doesn't anybody agree with me ...

...
Nobody agrees with me.

MR. DENNIS
Does anybody want to adopt it as it is written by Justice Tate?

...
I do.

...
I do.

MR. VESICH
What section are we talking about, B?

MR. DENNIS
B, C and D.

MR. VESICH
Oh, yes. ...

MR. TATE
He wants to discuss C.

5

MR. AVANT
Yes, Mr. Tate, I've got to talk about C.

MR. DENNIS
Let's come back to what about B? Any objection to B?

...
Okay.

MR. DENNIS
Alright, B is adopted as is. C. What's your objection to that?

MR. AVANT
I want to make an amendment to C, and then I want to discuss a situation that has developed, that I think we have to maybe think about. But, I want to add down here at the end of C, ...

MR. DENNIS
We've already adopted part of C, you know.

...
We've already adopted C.

...
We haven't adopted C.

...
Last week.

MR. AVANT
Well, if I am out of order, I'll just have to be out of order.

MR. DENNIS
You can change it, if you want to.

MR. AVANT
I move that following the word "only," that there be inserted "the legislature may however provide for a directed verdict of acquittal in criminal cases."

MR. TATE
There is nothing in the constitution against that right now.

MR. DENNIS
Except the supreme court's decision.

MR. TATE
Oh, Oh, Oh.

...
It's under the supreme court now, you know.

MR. DENNIS
Did you just sit in that case?

MR. TATE
Yes, I just sat in that case, you see it's a matter of interpretation ...

MR. AVANT
Well, I know but I want to state very frankly what I am trying to accomplish. In the event the supreme court should ultimately hold that under this language which is now in the present constitution that the legislature may not provide for a directed verdict of acquittal in a criminal case, I want to make it clear in the new constitution, if adopted by the people, that the legislature can so provide.

MR. DENNIS
I don't think anybody objects to that. Does anybody object to it?

MR. VESICH
It will provide for what now?

MR. TATE
It may take care of itself before June ...

6

MR. AVANT
Well, I say and it may not.

MR. DENNIS
Then C is adopted plus a directed verdict.

MR. AVANT
Yes, but now ... now there is one other question that I want to bring up, and you may not want to discuss it but we did vote on the question of the appellate jurisdiction of the courts in civil cases relatively last week.

MR. DENNIS
Yes, sir.

MR. AVANT
Thereafter I see that the Bill of Rights Committee has voted that there shall be in jury trials a constitutional right to trial by jury, and that there is no review of fact from a jury's verdict.

MR. DENNIS
Yes, sir, and Mr. Martel, who appeared before that committee was invited to come to this committee a long time ago and it was never explained ...

MR. AVANT
Well, what I am trying to avoid or at least throw out on the table for the time being is that it appears that maybe we are going to be headed with a head on collision with another committee of this convention. Now my own personal views are, although I voted the other day to leave it like it is because I didn't object then.

MR. DENNIS
Okay, let me just tell you one other thing, the coordinating committee met in New Orleans Wednesday and I believe -- there was so many votes taken, I am not sure -- but I believe they decided this jurisdictional dispute in our favor with regard to this appellate judge's decision.

...
It was a five to four decision on the Bill of Rights committee ...

...
On what?

...
On the appellate review of facts on ...

MR. VESICH
Which committee?

MR. AVANT
Well, Mr. Chairman, all that I would want to suggest was simply that we might direct the staff to come up with a proposal which would be some type of a compromise between the two extremes.

MR. VESICH
Why don't we find out what they did vote on and then ... get the research staff to find out what they did vote on. Let's look at it.

...
We know what they voted on, the article itself in the newspaper.

MR. DENNIS
Mr. Avont, why don't you wait and catch this the next time it comes it up?

MR. AVANT
Alright, okay, I'll pass for the time being. I just want everybody to know it looks like we're headed "non" with the other committee.

MR. OUREGO
Nothing wrong with that. Mr. Chairman. Mr. Chairman ...

...
If they've got more than we have, just back off.

MR. AVANT
I ... we adjourn ...

MR. TATE
You want to finish ...

...
No, hard ...

...
Let's finish the article.

...
I withdraw my motion.

MR. TATE
If we haven't finished our discussion on D, I thought we had finished our discussion on D a minute ago, but it we didn't though I ...

MR. DENNIS
We just adopted C plus a direct verdict.

MR. TATE
Right.

MR. DENNIS
Now we are on D. Is there any further discussion with regard to D?

MR. DREW
Mr. Chairman, I still question on that Number one there ... a distinction between what a district judge does in determining appellate jurisdiction.

...
D-1?

...
Yes, sir.

MR. DENNIS
That doesn't say anything about district judges.

MR. VESICH
District judges.

MR. TATE
Well, that's what I mean ...

...
District judge declared unconstitutional.

MR. TATE
A district judge or a city judge either one.

...
Well, I mean the law is there.

MR. TATE
Right. That's right.

MR. DENNIS
The decision of a judge can cause two jurisdictions.

MR. AVANT
That's the way it has always been.

MR. DREW
I say, but I think it's always been bad.

MR. DENNIS
Why is it bad?

MR. DREW
I don't see why you shouldn't have the same right because the district judge rules against you as if he ruled for you. What's the difference?

MR. VESICH
Oh, I see what you are talking about the same constitutionality is attacked or something like that.

...
You want to attack it ever, then you have a case.

MR. DENNIS
Well, it makes a difference in that it would increase your jurisdiction tremendously in my opinion.

...
Sure would. I say but that ... we may need to go whole hog one way or the other.

MR. DENNIS
It means any time someone contends that a statute is unconstitutional and it goes to appeal ...

MR. AVANT
You're off to the supreme court.

MR. DENNIS
... It goes to the supreme court.

...
That's right.

MR. VESICH
Won't you have the same right now with the declaratory judgment in federal court?

MR. DENNIS
I don't think a decision should ...

MR. VESICH
Isn't that appealable to the supreme court?

MR. TATE
No, no unless you are bonded, a single bond issue which is not levied down here.

...
The constitution -- you ought to go one place.

MR. TATE
Well, the single issue is -- I have no strong feelings -- I would just as soon it went to the court of appeal but the reason for it and it may be worth projecting, the reason for it is when a state law is declared unconstitutional it affects the people all over the state rather than just the people of the circuit. That's the reason for the law.

...
We all have a right to vote through, don't you?

MR. TATE
Sure I mean, I don't -- I wouldn't live or die on it. I don't really care.

MR. DENNIS
Does anyone wish to make a motion?

MR. TATE
Yes, Mr. Chairman, I do.

MR. DREW
No, I don't necessarily move to delete it, I don't know, I suppose throwing this out to the committee in case, and I hope they are wiser than I am, but I don't think that as it's written that it's proper. I think that if it would be where the constitutionality of a statute was raised, then they've got something to work with.

MR. TATE
Let's let ... you make a motion.

MR. DREW
I move that.

MR. TATE
Yes, very much. I suppose right now, for instance, that average districts are ... constitutionally no matter ... the state is if ... right to the supreme court ... can raise a constitutional issue in any case ... want to have ...

MR. TATE (cont'd)
direct appeal to the supreme court ... court of appeal.

...
That's appellate, they have to hear it if it's appellate.

MR. TATE
If it's held, I would not be in favor of Mr. Drew's, but I would be in favor with the objections ...

MR. DENNIS
In view of what Judge Tate said I would move to delete Number One.

D-1.

MR. DREW
I don't care which way but I want it all one way; that's all I want.

MR. DENNIS
That means that anytime a state statute is declared unconstitutional it has got to go through the normal writ and procedure to get to the supreme court.

...
That's right.

MR. DENNIS
Any further discussion?

MR. VESICH
You don't like it, Mr. Kilbourne?

MR. KILBOURNE
Half a minute I ...

MR. AVANT
I just want to throw something out on the table to chew on. Would there be any objection to saying that, if state statutes ... the constitutionality of a state statute was at issue in the case and if it has been declared unconstitutional, it would go on to the supreme court? But if it was upheld by the district judge, if he certified that there was a substantial question as to its constitutionality that it would be appealed. Of course, now that's a halfway position. Is there anything wrong with that?

MR. TATE
Well, it leaves it in the power of the district judge to defer. Now as a matter of fact, remember with the Catholic school children case last time, the supervisory jurisdiction, when it's that important, lets the supreme court retract down and pick it up on ...

MR. AVANT
You did that?

MR. TATE
Yes, we did that ...

MR. AVANT
Proposed the writ of appeal?

MR. TATE
Bypassed the trial court even. Well, I mean they just filed a suit, they filed a suit and immediately they applied for a supervisory review saying it was a question of law, all the facts were stipulated and that it was a state of over ... they did that in that case and you may remember the Fred LeBlanc case where there should be a statewide general primary. You remember that? They've done it three or four times. The ... the supervisory will procedure does offer a mechanism and in an extreme case as you are talking about.

After Senator Ellender died.

MR. TATE
Yes, we ... Did it do it then?

MR. AVANT
Well, then if you've got that already then I can see merit with just striking it out altogether because if the district judge declares

10

MR. AVANT
It is unconstitutional and you all think it's a great matter and you've got to get ahead of Supreme if defense right away you've already gotten way ahead.

MR. DENNIS
Alright, that's the motion, strike it out altogether. Is there any further discussion?

MR. WILLIS
Yes, but how does the supreme court get notice of that?

...
They apply, I guess.

MR. TATE
They apply, I guess, and then we turn it down.

MR. DENNIS
Any further discussion?

...
The motion is to strike it out all together?

MR. DENNIS
Yes, sir. Any further discussion? Previous question is ordered. As many of you as are in favor of the motion which is striking out D one altogether will raise their right hand. Opposed by like sign. Nine to five. Motion carried. Good.

MR. TATE
So the only thing left, Mr. Chairman, are criminal cases, appealable as a right to the supreme court, which may be certain other rights.

MR. DENNIS
Is there any discussion; does anyone object to adopting the rest of it as written?

MR. TATE
Now, Section E, Mr. Chairman, ...

MR. DENNIS
Let's take two. Alright. Paragraph two. D-2.

MR. TATE
Criminal cases.

MR. DENNIS
Two paragraphs. Does anyone object to two paragraphs under D-2?

MR. TATE
Incidentally if the case is appealed properly that should be E actually because that means that any twelve ... no that's right, you're right, that's part of it.

MR. DENNIS
Any problem with that death ... reference to the death penalty?

MR. TATE
The legislature may provide death validly in the future and unless this constitution somewhere else says it can't and so for the time being we should probably say provisionally -- don't you think we should say provisionally that that could happen? Forty years from now they might be able to ...

MR. LAMBY
Why not just have, "in all criminal cases exceeding a fine of five hundred dollars or imprisonment exceeding six months", they've got their jurisdiction.

MR. TATE
Let me see -- "in criminal cases in with the penalty of death or imprisonment at hard labor, may be imposed. That means in a felony case, if you lose your citizenship and all that, even if it's a suspended sentence you'd be going a right to appeal, a state case right.

(PAUSE - 12:00)

11

MR. AVANT
... A right to appeal constitutionally doesn't wipe it off the books. It just means it can't be enforced and somebody else can bring a motion on the same statute.

MR. AVANT
But Mr. Willis, I think I am correct, but I believe now that there is a provision that in any suit where the constitutionality of an act of the legislature is an issue ...

MR. TATE
No, where a levy is, a levy or a tax.

MR. AVANT
No, no. I am thinking about what Mr. Willis apparently was concerned about, the elusive lawsuit where somebody attacks the constitutionality ...

MR. WILLIS
Of a criminal statute, you ...

MR. AVANT
I think there is a provision now where the attorney general has to be notified of that fact or at least he has the right to intervene in the proceedings. I don't know whether there's a procedure where you have to tell him about it, but he does have the right to intervene in those proceedings. Anytime an act of the legislature, the constitutionality of it is appraised, he has the right because I intervened in one and lost. The supreme court said it was unconstitutional but -- so that seems

12

MR. AVANT
Somebody's got to get what you are talking about.

MR. TATE
The code of practice says that the party who could have intervened can appeal, too, I believe.

MR. KILBOURNE
Let me ask you something else that I don't believe you've talked about. You know in a criminal case where a statute is declared unconstitutional, the state can appeal it.

...
It can or can't?

MR. KILBOURNE
Yes, can appeal it.

MR. VESICH
It don't say it had to, may.

MR. TATE
We are protected right now because all criminal cases are appealable.

...
Not by the state. How about a prosecution?

MR. TATE
Oh yes, I see what you mean.

...
You see what I mean?

MR. TATE
A criminal case in which the penalty is death or imprisonment at hard labor may be imposed, well, the state can appeal that in every instance.

MR. KILBOURNE
Yes, but suppose you've got a misdemeanor statute and that has happened to me, well you can't appeal it. Where it has been quashed or something else, but if the statute has been declared unconstitutional, you can appeal it. Even the state can appeal it on a misdemeanor, otherwise you would have to ...

MR. DENNIS
You want to give them the right to an appeal in that case or shall we ...

MR. KILBOURNE
Well, they have it now.

...
They have it now, but under this ...

MR. KILBOURNE
You're taking it away from them.

...
... the city court.

MR. KILBOURNE
Some of your city courts try to try a state misdemeanor.

...
I think you are right on that. I think you are right.

MR. TATE
You mean you ought to leave one in, you mean.

MR. KILBOURNE
What?

... question ...

Oh, yes.

MR. KILBOURNE

... think ...

That's right.

MR. KILBOURNE

... where he says that statute is unconstitutional. I am troubled

on Clarendon, the power, you know.

That's right.

MR. TATE

We have an appeal on that ...

MR. KILBOURNE

I really think that that ought to be left in there.

...

Mr. Chairman, I move to read that question on the reconsideration

of Section D-1.

MR. DENNIS

Well, you could add it. I am trying to accommodate both views here.

You could add it to number 2, you could say, "a criminal case in which a

statute has been -- law of this state has been declared unconstitutional."

MR. TATE

Yes, I think you could do that. "A criminal case in which a law of

this state has been declared unconstitutional, in which a penalty of

death or imprisonment at hard labor ..."

MR. WILLIS

Why don't we just leave it like that? What's wrong with it?

MR. TOBIAS

For the first draft leave it in.

MR. KILBOURNE

What's wrong with it like it is?

MR. TATE

Well, I ... we lost in that ...

...

... revoke.

MR. DENNIS

Alright, previous question on the reconsideration.

...

...

MR. DENNIS

I move to the previous question. Any objection to the previous

question?

MR. KILBOURNE

What are we voting on?

MR. DENNIS

We are voting on whether or not to reconsider.

MR. LAUDRY

We changed our mind already.

MR. DENNIS

Anyone object to reconsidering D-1? Alright, it's up for reconsideration.

MR. TOBIAS

I move that we for the tentative first draft, that we leave D-1 as

presently is.

MR. DENNIS

Is there any objection?

MR. DREW

I would like to amend -- offer an amendment to insert "criminal"

after A and before case.

...

After A and before case?

MR. DREW

After A and before "case".

MR. DENNIS

Any objection to the amendment? Any discussion? I believe it has

been discussed. The previous question is ordered. As many of those in

favor of Mr. Drew's amendment will signify by raising their right hand.

Those opposed by like sign. I believe the "noys" have it so the amendment

is defeated. Any further discussion?

MR. TOBIAS

Previous question.

MR. DENNIS

Previous question is ordered. As many of those as are in favor of

the Tobias motion signify it by raising your right hand. The vote was

unanimous. That brings us down to "E".

MR. TATE

May I make a comment on that, Mr. Chairman?

MR. DENNIS

I guess so.

MR. TATE

... This is in deference. I think criminal jurisdiction should

stay in the supreme court. I think we are in a position to handle it

for the next ten years, and anyway, if it doesn't, could keep on resting

we can handle it. The question was raised, should you provide authority

to the legislature at some future time to transfer it to another court

or perhaps it should have a statewide amendment before you don't.

That's the issue and "E" is there just as an alternative and whether you

would require the supreme court to certify that it is necessary is

another thing I don't really think should be in there but somebody said

it. They said, "upon certification of a majority of the supreme court

that such relief is necessary -- I put a question mark there -- the

legislature may by a two-thirds vote transfer a criminal appellate

jurisdiction of the supreme court, the courts of appeal or to such other

intermediate court -- or courts, I should say -- as the legislature may

create." I put that in with a question mark and then worrying about

what would happen if they want to rescind it. Put that in there. No,

this is just ...

MR. DENNIS

Mr. Kilbourne.

MR. KILBOURNE

Too many question marks in there.

MR. TATE

No, it's for discussion whether we should ask the -- I tell you

what the question is on "E". The big question on "E", should we even

consider letting the legislature authorize in principle, consider letting

the legislature authorize the transfer of the criminal jurisdiction to

some other court or courts, and then later we could work on the details.

But that is the principle, or do we need a statewide amendment to do it.

That's the issue.

MR. VESICH

In ten years I hope to be retired and I don't give a damn who has

jurisdiction on it ...

MR. TATE

Well, that's the issue. ...

MR. VESICH

... unless I am a defendant in a case.

...

MR. TATE

Just to get it on the floor we have to -- I'm going to abstain from

voting because I really don't care on the thing. I move that in principle

that the research staff should prepare some sort of a proposal pertaining

discretionary authority of the legislature to transfer the criminal

jurisdiction of the supreme court to some other intermediate court or

courts. See what I mean? The detail you can work out later. And I am

not so sold. Do I have to vote on the motion? I don't care.

MR. DENNIS

Mr. Justice Tate declares a motion.

MR. WILLIS

Question. What do you mean some other intermediate ...

MR. TATE

Well, they might -- I am against the court of criminal appeals but

I wouldn't want to bind the legislature fifty years from now, you see.

Alright, that is why I said "transfer to such other intermediate courts."

You could cross that out ...

MR. DENNIS

It seems to be inconsistent with what we have been doing all along.

MR. WILLIS

May I be heard?

MR. DENNIS

I don't know why we should start giving power to the legislature at

this point.

MR. WILLIS

May I make my position clear?

MR. DENNIS

Mr. Willis.

MR. WILLIS

I would have no aversion to this language "upon certification by a

majority of the supreme court that such relief is necessary, the legislature

may by two-thirds vote, transfer any part of the criminal appellate jurisdiction of the supreme court to the courts of appeal." I would have no objection to that. The rest of it ...

MR. TOBIAS

You wouldn't want to transfer it back and make it mandatory that they shall transfer it?

MR. WILLIS

Any part of it, misdemeanors or any part of it, to relieve your congestion.

MR. AVANT

I just feel that this gives the legislature and the supreme court jointly the right to create another court of appeal, one that's going to have only criminal jurisdiction, or to transfer all of the criminal jurisdiction of the supreme court to any particular court of appeal that

16

is organized at that time. And it would work to me since we are not going to be able to meet with all the problems of this world that may arise ten years from now and that the structure of a court that is going to be handling criminal appellate jurisdiction, it looks to me like it is something that the people themselves ought to have the right to pass on at the time that it is created and comes into being and they won't have that right under this. The legislature and the supreme court can get together and say, "We're going to have a criminal court of appeal, it's going to be domiciled ..."

MR. WILLIS

I ended up with an "appeal" the fourth line "period". They can transfer part of the criminal jurisdiction to the court of appeal. It is too heavy; the supreme court is too congested to do all the work.

MR. AVANT

Transfer what part? All murder cases, all armed robbery cases, all

...

Ninety-nine percent ...

MR. TATE

Did you say "all" or "part", though?

MR. WILLIS

Any part of them involved, any part, yes.

MR. AVANT

But they can, well, they can say, okay, all armed robbery and murder and major felonies would be transferred to some court that they are going to create and it's going to be domiciled you don't know where, you don't know how the judges are going to be elected ...

MR. DENNIS

Gentlemen, I don't believe there is a clear motion on the floor. I have heard a couple of suggestions. One of you, Mr. Willis, would you like to make a motion?

MR. WILLIS

I would like to move that the staff prepare, insofar as E is concerned, language to the effect that E will read in toto as follows: "Upon certification by a majority of the supreme court that such relief is necessary -- that is relief for them -- the legislature may by two-thirds vote transfer any part of the criminal appellate jurisdiction of the supreme court to the courts of appeal."

MR. DENNIS

You need to state your motion, please.

...

He stated it. He just stated it. That's it.

MR. DENNIS

Is there any further discussion?

MR. VESICH

Discussion from 2:00

MR. WILLIS

... courts of appeal period. I strike out the last three sentences except to worry about them.

...

What about asking you attorneys as to this?

MR. WILLIS

They could repeal the law. The legislature has that flexibility here.

MR. TATE

You want to say by like vote, repeal such law.

MR. WILLIS

... repeal the law. The legislature has that flexibility here.

MR. DENNIS

Yes, Mr. Tate if the legislature wants their jurisdiction back and the legislature decides they don't want to give it back.

MR. TATE

I don't think I should have anything to say -- what if we don't want it back? Is it another question?

MR. KILBOURNE

I'd like to make a substitute motion, Mr. Chairman. I move that we don't consider E, Section E at all.

MR. DENNIS

That we don't do what?

MR. KILBOURNE

Don't consider Section E at all. Move to delete Section E.

MR. DENNIS

Any further discussion on Mr. Kilbourne's proposed amendment, substitute ... The question is ordered. As many as are in favor of Mr. Kilbourne's motion, "aye" as many as are against Mr. Kilbourne's motion, "no".

...

Judge Dennis, may I be recognized now?

MR. DENNIS

Yes, go ahead.

...

I move that we adjourn until 9:30 in the morning.

...

I object.

18

MINUTES

Minutes of the Judiciary Committee of the Constitutional Convention of 1973

Held pursuant to notice mailed by the Secretary of the Convention on April 16, 1973.

State Capitol, Baton Rouge, Louisiana
Saturday, April 21, 1973, 9:30 a.m.

Presiding: Judge James L. Dennis, Chairman. The meeting was called to order at 9:30 a.m.

Mr. Philip O. Bergeron, Secretary, called the roll.
All members attended meeting, except two.

PRESENT

Avant
Bel
Bergeron
Dennis
Drew
Gauthier
Kelly
Kilbourne
Landry
Martin
Ourno
Sandoz
Tate
Tobias
Vesich
Willis

ABSENT

Burns
Deshotes

Discussion continued on Judge Tate's "Draft A."

Mr. Tobias moved to delete §7 of "Draft A." Motion carried.

2

Mr. Avant moved to provide that the Supreme Court shall elect a chief justice by majority vote. Motion carried without objection.

Mr. Kelly moved to adopt §9 of "Draft A." Motion carried without objection.

Mr. Sandoz moved to provide in §6 the power for Supreme Court justices to appoint judges to other courts, including all retired judges. Motion carried. Mr. Vesich voted against.

Mr. Drew moved to leave in the first sentence of §11(a) and insert the words either "four or more" or "at least four" and delete the second sentence of §11(a) and delete all of §11(b) and (c). Motion carried without objection.

Mr. Kelly moved to combine §§11 and 12, and in §12(a) leave out the word "rotating" and leave out §12(c). Motion carried without objection.

Mr. Avant moved to insert in §13(b) the words "at least" between the words "into" and "three." Motion carried without objection. Mr. Tobias moved to provide for at least three equally apportioned districts. Motion was withdrawn.

Mr. Bel moved to retain the present twelve-year terms for Courts of Appeal judges and leave out the second sentence in §13(c). Motion carried without objection.

Mr. Tobias moved to add the word "civil" between the words "all" and "cases" in §14(a). Motion was withdrawn.

Mr. Sandoz moved to delete §14(b) and insert the word civil in §14(a) between the words "all" and "cases." Motion carried

3

without objection.

There was much discussion about appeals from decision of administrative agencies. §14(c) was adopted without objection, deleting the words "civil service or."

Mr. Tobias moved to have the staff determine a way to combine §§14(a) and (b). Motion carried without objection.

Mr. Kelly moved to keep appeals of juvenile cases in the Courts of Appeal and use the language of the present §29. Motion carried without objection.

Mr. Gauthier offered a substitute motion to direct the staff to put juvenile appeals in the Supreme Court. Motion failed four to nine.

Mr. Willis moved the adoption of §15 of "Draft A" with an amendment to delete the words "shall have the power to" and insert in lieu thereof the word "may." Motion carried without objection.

Mr. Avant moved to provide in §16 for the election of a chief judge in the Court of Appeal for a five-year term and provide the same term for the chief justice of the Supreme Court. Motion carried without objection.

Mr. Sandoz moved to change the word "appoint" in §17 to "select" and delete the last sentence and make the same change in the Supreme Court provision. Motion carried without objection.

Judge Tate moved to delete §18 of "Draft A." Motion carried without objection.

The committee recessed at 12:30 for lunch. The meeting resumed at 2:30 p.m.

4

Chairman Dennis moved the adoption of §19 of "Draft A." Motion carried without objection.

After discussion by the committee, §§20(b) and (c) were deleted.

Mr. Avant moved to insert the language calling for two-thirds of the legislature and a vote of the people to make changes in the court structure and it shall apply to all courts except Justices of the Peace and Mayors into §20(b).

Mr. Sandoz offered a substitute motion to delete the requirement of a vote of the people in Mr. Avant's motion. Motion failed five to nine.

Mr. Kelly offered a substitute motion to insert "a majority of the legislature," in lieu of two-thirds in Mr. Avant's proposal, and excluding Mayors and Justices of the Peace Courts. Motion carried nine to six.

After some discussion, §20(d) was deleted.

Mr. Tobias moved for twelve-year terms for all District Court judges. Mr. Avant offered a substitute motion to provide six-year terms for all District Court judges. Motion carried eight to seven.

Mr. Gauthier moved that District Court judges shall have six-year terms except in a judicial district having a population in excess of 300,000, wherein they shall be elected for twelve-year terms. Motion failed seven to nine.

Mr. Tobias moved to provide that District Court judges have initial terms of six years and then run for twelve-year terms. Motion failed seven to nine.

5

Judge Tate moved to provide terms for all District Court judges of not less than six, nor more than twelve years, and the legislature shall provide the terms. Provided that the present terms of judges shall not be affected.

Mr. Kilbourne offered a substitute motion to provide twelve-year terms in Orleans and six-year terms in the rest of the state. Mr. Avant called for a roll call vote and the motion carried eight to two with four abstentions.

Mr. Tobias moved to provide twelve-year terms for District Court judges in Jefferson Parish.

Mr. Landry offered a substitute motion to provide twelve-year terms for District Court judges in judicial districts comprised of one parish, having a population in excess of 300,000, based on the latest official U. S. Census. Motion carried eleven to three.

Judge Tate moved to adopt §21 as written. Motion carried without objection.

Mr. Avant offered a proposal for a special three-judge panel. Motion was withdrawn.

Mr. Sandoz moved the staff to determine the present terms of office of judges now sitting and their jurisdiction, benefits, etc.

Mr. Avant asked the staff for a copy of the proposal of Article VII thus far.

6

Chairman Dennis stated that the draft would be prepared and mailed out as soon as possible.

Chairman
Vice-Chairman
Secretary

OF THE
CONSTITUTIONAL CONVENTION

STATE OF LOUISIANA

1973

COMMITTEE ON JUDICIARY

MEETING OF APRIL 21, 1973

Saturday, April 21, 1973
Baton Rouge, Louisiana

MR. DENNIS

The only thing I was trying to do, I think that that power is implied in the first sentence of 6 (a) and if you just add the clause stating that that includes, the right to hire an administrator and such other necessary personnel, I think that would do it and I really don't see any problem with increasing the title, I think that's already implied in supervisory power.

MR. DREW

But isn't that limited as it is written to just inferior court? As it is written.

MR. DENNIS

Well, why do you need a judicial administrator, you need him primarily to help administer the inferior courts, don't you?

MR. DREW

Well, I thought rather than the procedure in administering the lower courts, I thought when speaking of the appointment of the judicial administrator, we should try to make that broad enough to cover his appointment.

MR. DENNIS

Well, my question, maybe I didn't make it clear. My suggestion was the first sentence would say "the supreme court has control and the general supervisory jurisdiction over all inferior courts, including the authority to employ a judicial administrator and such other personnel necessary to carry out this respective to this power."

MR. TATE

You see, there's ... a minor difficulty with that is that supervisory control -- supervisory jurisdiction is one thing and appellate jurisdiction is another ... to start with. You see, so if they're really chosen clerks and although it's a minor thing, I think it wouldn't create problems, but it would be not quite intellectually accurate, because when they choose clerks, it's to administer not only the supervisory powers but -- you know, everything else.

MR. DENNIS

That is exactly right.

MR. TATE

The appellate jurisdiction. You see the appellate jurisdiction, traditionally the appellate jurisdiction is something strictly regulated, there's discipline and forty days here and so on like that.

MR. DENNIS

Why -- let's see, don't you ...

MR. TATE

It's not a big problem, I ...

MR. DENNIS

... presently refer to remarks in the legal administrator's article?

MR. TATE

and in one place, ...

MR. DENNIS

Isn't that ... isn't that just being inconsistent?

Isn't your writing really ... a little bit?

MR. TATE

No, because that's personnel. The general structure is powers, presiding officer, staff. You know that ... as administrators. You see the general structure of all these things in this, roughly following the

'21 is -- see the '21 has a provision like that it is roughly following it. First you say what their jurisdiction is, then you talk about how they get their chief justice, then you talk about how they get the staff ...

MR. DENNIS

In other words we are more or less going to be forced to follow the mold of the '21 convention?

MR. TATE

No, no.

...

I make the motion that we leave Section 9 in the place that it is presently shown in draft A.

MR. DENNIS

This is exactly what I fear ... We are under the dominance of the draft. Yes, sir. Mr. Bergeron.

MR. BERGERON

Mr. Chairman, I don't know -- I don't believe this section should be in the constitution. I would -- like to ask Judge Tate if it does happen to stay in, what -- is this second sentence of Section 9 necessary?

MR. TATE

No, No. I took it from the '21 -- the second sentence is not necessary. The approach here was to simplify the language as much as possible, but not to eliminate any concept, but it is not necessary, the Section 9 sentence.

...

You show administrator already and then you deal with any question that you have with power and --

MR. TATE

Yes, it's the power to hire and power to fire ...

MR. DENNIS

Mr. Bergeron.

MR. BERGERON

... I'd just like to talk about this just for a minute, because I don't feel that this section should be in the constitution. I know Judge Tate's given us a good reason why it should be.

UNINTELLIGIBLE

See why ...

MR. DENNIS

Gentlemen, will you give Mr. Bergeron your attention, please?

MR. BERGERON

I feel that by the time we get to vote on this article, we will have very little tiny detail described out, down to how the supreme court building opens and closes, the janitors and everything else. I don't know, I'd just like some reasons why this particular section should be left in here.

...

Judge, if it is not in here, who would hire?

MR. TATE

The legislature could provide that it would select them, it could provide that civil service hires.

...

Why would they do that?

MR. TATE

I can't answer that ...

...

New question, I am not going to be naive as to say that, you know why, but I just can't see why they would take the power away ...

MR. TATE

There's the merit on your side of it except that the three branches of the government traditionally, you know, we heard all these speakers saying about the power to select their own personnel, of course you can under the ... level ... on that. I know ... yes ... But it isn't even decided. If you trust the legislature in a lot of things why shouldn't you trust them on this. I mean, I am not -- I just know that we've done it this way for a long time which is not a good argument, just because they have done it, but the reason is probably to protect the courts ...

MR. DENNIS

Mr. Willis.

MR. WILLIS

Mr. Chairman, if I may, if I may take a carbon copy out of Webster with respect to the answer that Judge Tate might have given to Mr. Bergeron. I quote from Patrick Henry himself. "The constitution was made to guard the people against dangers of good intentions. Good intentions will always be pleaded for every assumption of power. There are men in all ages who mean to govern well, but they mean to govern. They promise to be good masters but they mean to be masters."

MR. DENNIS

Didn't he vote against the constitution, Mr. Willis? Wasn't he opposed to the U.S. Constitution?

MR. WILLIS

That's Daniel Webster. I haven't concluded Mr. Chairman.

MR. DENNIS
Oh, I am sorry.

MR. MILLIS
In further response to ... a possible suggestion that I -- I take it that we understand each other with respect to my opinion of the legislature. I trust every branch of our government, but I echo what Webster said and what I trust the most about any government is this constitution -- that's the one I trust and I trust that it sets out this Article, Section 9 in it, it will not deviate or vacillate; that's the reason I am for leaving it in. Because it's the constitution I trust the most, if I trust ...

... I move we ...

MR. DENNIS
Did you want to speak?

MR. LANDRY
No, sir. ...

UNINTELLIGIBLE

... as a general guideline ...

MR. TATE
Can I give a word of explanation on this, Mr. Chairman? At the present time the authority to assign judges is found in about one, two, three, four, five, six, seven, eight, nine, ten articles of our constitution. This article does amount to a change and you may or may not wish to follow the change. The one -- you've deleted Section 4 incidentally so there'll need to be some minor changes in 10 (a) which would be to the effect that the supreme court shall have the power to assign -- well, you

MR. TATE (continued)
see this -- one's -- the -- situation. The supreme court has the power to assign a new district judge, or any retired judge of a court of record, any court it wishes. It has the power to call up a district judge to itself, under certain conditions, or a court of appeals judge under certain other conditions. It's just historical they have had the power to call up any judge, if someone is going to be absent more than two weeks, it has the power only to call up a court of appeals judge if there is a vacancy. The vacancy you see, there are historical reasons that do not need to be perpetuated, that's what I was trying to say, so this attempted to provide a uniform scheme. Now what's left out of this -- no, because when we deleted Section 4, it was left out, the power to draw up a district court or a court of appeal judge, to the district court -- is the power to assign people to the supreme court, but the general scheme is here. So to have the power to assign a court of appeal judge to another court of appeal or to a district court, now, that's a change. That's a definite change.

MR. DENNIS
Could you say all of this simply provides that the supreme court shall have the power to assign a judge to another court?

MR. TATE
Yes. You could. Now if you wanted -- you certainly could.

... Oughtn't that be put in Section 6 (a), including assignment of judges?

MR. TATE
Yes.

MR. DENNIS
Mr. Avant and then Mr. Kelly.

MR. AVANT
I just want to point out one thing in brief Judge Tate, that may promote some controversy. We may or even if the constitution doesn't do it there are certain judges entitled to retirement benefits who have been defeated, and my understanding of the situation is although I wasn't directly concerned or connected with it, but the supreme court did on one occasion, assign a judge who had been defeated to serve in another judicial district and it promoted a lot of controversy and ... in the constitution and all of that and I just wondered, I just throw that out on the table and say you know, should we get into it and make a decision one way or the other on that or -- but it could, it could jeopardize, if you leave it like it is, the adoption of the constitution, because all of those people who were greatly incensed because a judge who had been defeated for reelection in his own judicial district was then assigned by the supreme court to be their judge and ...

MR. VESICH
I was concerned too because I was against it ...

MR. AVANT
... so you know about that particular time.

MR. VESICH
Oh, I know that Louise ...

MR. AVANT
O.K. well I want to point that out that that is there and would permit such a thing.

MR. DENNIS
Well, Mr. Avant what about the simple sentence saying that the supreme court shall be able to assign a judge to another court?

... But a judge, no retired judge ...

MR. TATE

MR. DENNIS ... our retired judges, would you ...

MR. TATE

... All right, ... but I wonder ... got his name there and I had to contend with ... I shipped him in New Orleans.

MR. TATE

But they never assigned him again, did they?

MR. VESICH

No, he died. No, the poor fellow died, he died unemployed after awhile.

MR. TATE

But listen, before you take out the present power to assign retired judges, mind you we've got -- that's our pool of judges -- the only pool we have right now that we can use for vacancies, you see.

MR. LANDRY

Alright, a retired judge that hasn't been defeated.

MR. TORIAS

Wait, I don't think we should necessarily prevent you from doing it. It's just a waste of the taxpayer's money.

MR. TATE

You would have to say any judge or retired judge, any active or retired judge, I have ...

...

We doesn't lose his status as a judge ... Does he lose his title when he retires?

MR. TATE

Well he loses his office.

MR. LANDRY

But we are paying him a pension, aren't we?

...

I know but it must be retired judges ...

MR. DENNIS

... particular situations that may or may not occur in the future, isn't it?

MR. TATE

Now, I think you have a good point. Now if you want to limit the power -- how about city judges? See this is an attempt to let you ...

...

All judges.

MR. TATE

To all judges? Alright, I think that's good. I think that's good. Now the court of appeal judges may object to this, but I don't think there is anything to worry with because ...

...

Right.

MR. TATE

... As far as your power ...

MR. TATE

... now what were you suggesting Mr. Chairman?

MR. DENNIS

Would you say the supreme court shall have the power to assign any judge to another court, ...

MR. TATE

Any active or retired judge ...

MR. VESICH

Who hasn't been defeated.

MR. TATE

... Now about if we give ... judge ... will never ... defeated judge? Do you trust ...

MR. VESICH

... With more than fifty-two thousand they were talking about they spent to get elected. I went that to beat him and you-all appointed him the next day ...

MR. DENNIS

That's ... exercised over that part except Mr. Vesich.

MR. VESICH

I am serious ...

MR. KELLY
I don't really object to it, but quite frankly I don't see why the whole thing can't be taken out as to the assignment ...

... I know, but you're at least talking about still putting a sentence in the constitution anyhow ...

... Right ...

... And if you know you to take it out, well go ahead.

MR. KELLY
And I just say take the whole thing out and leave the assignment of judges under the rule making power of the supreme court with the possible ... but I will go along if you will shorten it.

MR. TATE
You could do that by -- in six -- mind you unless you spell it out though, you are going to have this problem. Because if I am elected in Evangeline Parish ... and also when you are trying to get money from the legislature to pay it, then someone could raise the problem -- but I am not sold on it but I think you should have at least one reference to the power to assign judges. It could be ...

MR. DENNIS
My suggestion was not in the form of a motion, so there is no motion on the floor. Mr. Avant.

MR. AVANT
Just want to make one observation. I would be in favor of simply saying, the supreme court should have the power to assign any judge from any court to any other court. Well this ceases his limitation. Now I'll tell you why. We want -- I assume we do, I do, whatever this convention comes up with I want the people to adopt and I don't see any point in here, there and yonder sticking a little barb in a group of people, here taking an old wound which is just going to make a whole bunch of people say, "well you know that's something I am interested in and it grated on me at one time and that's why I am going to vote against the constitution." And I just think that that would take about ten words or less to make it clear that the supreme court, while it can assign any judge to any court does not have the authority to assign a judge who has been defeated for reelection to then go and sit as a judge when his own constituency has rejected him.

MR. DENNIS
I don't think it is as simple as you think it is, Mr. Avant.

MR. AVANT
Why?

MR. DENNIS
How are you going to draw the distinction between one who was defeated and retired? And why should you let a defeated judge not sit and let a retired judge sit?

MR. VESICH
Because he has been beaten.

5

MR. TATE
Well, out of them will retire ...

MR. VESICH
... before Judge Cox?

... I don't know Judge Cox ...

MR. VESICH
Well, then alright, take my word for it ...

MR. DENNIS
Let's don't write this constitution, based on the history of two individuals in the state who are probably now dead, ...

MR. AVANT
Mr. Chairman, I don't mean to be disrespectful but that caused a tremendous amount of controversy and made one hell of a lot of people mad, mad enough to vote against this constitution if you don't take care of that situation. That's my opinion, I may be wrong.

... They made all say, "Oh, well we needn't worry about that."

MR. DENNIS
I just don't know about the situation ...

MR. VESICH
I do.

MR. DENNIS
I don't doubt anything what Jack is saying, but on the other side of the coin, judge, you might remember Judge Barnett who sat here on your court in certain years.

... No, but he is talking about Judge Barnett; he was a defeated city judge, and he served a well purpose. He retired after he was defeated ...

... Judge Barnett ...

MR. VESICH
You might have five good ones that it happened to, but we had one bad one.

MR. TATE
Mr. Chairman.

MR. DENNIS
Yes, sir.

MR. DREW
Well, you are cutting out to say ...

MR. VESICH
I was listening to Bert's definition of a judge yesterday. Arrogance, disrespect, oh, man, I was going down that line and I was thinking about that man, they appointed him about a month after he got defeated ...

MR. DENNIS
Gentlemen, I will have to ask you to speak one at a time.

MR. DREW
Tony, what I am saying is, that you are going to wipe out a resource or a pool that has worked very well except that one exception, I don't know of any other.

MR. VESICH
Well, how do you bring it up, though? Do you go talk to them?

MR. DENNIS
I think that the supreme court probably would not do the same thing.

7

MR. VESICH
Do you think they would have rescinded that decision, even if I was a state representative at that time?

MR. TATE
No, they didn't reappoint him though did they, Tony -- they didn't reappoint him after all of that?

MR. VESICH
They can do it right now.

MR. DENNIS
Alright gentlemen. Mr. Sandoz.

MR. SANDOZ
I wanted to make a motion that we pass that in Section 6 and leave it up to the drafting that we include the power to appoint judges, including retired judges.

MR. DENNIS
Is there any objection to the motion?

MR. VESICH
Yes, I object. Put me down against it just as a member of the crowd.

MR. DENNIS
The motion is adopted.

8

MR. DENNIS
The next motion is Article 21. District Courts original jurisdiction.

MR. TATE
Mr. Chairman, Nick has explained this a little bit and say that this is the present constitutional provision. I have a lot of doubt that this should be that explicit. The Morgan Committee, you'll see in the, has ... but may be a better approach. The Morgan Committee says, "Except as otherwise provided in this statute by, in this constitution by statute, this court shall have original jurisdiction in all legal matters," too, district courts shall have such appellate jurisdiction as may be conferred upon them by general law." That approach leaves -- now the present approach or the present constitution that this incorporates as you notice, says "original jurisdiction, all civil and criminal matters unless otherwise provided by law," and they make sure that it shall have exclusive, original jurisdiction in ... my things are mixed up here -- but in probate and certain things that traditionally that's the way it was done. Title to immovable property, right to office, civic and political rights, probate successions and so on. You may want to look it over. And one thing that's hard to defend being in the constitution says, "and the appointment of receivers or liquidators in corporations of partnerships, or where a political corporation section

is a party defendant. There are very, sound procedural reasons for those rules, but I don't know that they should be in the constitution. They are very sound procedural rules. One is you wouldn't want, for instance, then to be able to sue the state or the town -- and they were thinking about justice of the peace courts. Things like that. They wanted also in succession matters to have just one court to decide ... have jurisdiction over all succession matters.

MR. DENNIS

If we grant jurisdiction to the J.P. and the other courts, do we have to specifically state the things that they can handle?

MR. TATE

Yes, we do unless we leave it to the legislature. Now, if we ... the two approaches are -- this spells out that the things that district courts have to have original jurisdiction of inclusive of original jurisdiction; this is the way we've done it, maybe -- I don't know how many constitutions back we've done it. The Morgan Committee recommended a different approach. And then we also spell out appellate jurisdiction where you get into trials de novo and things like that. The Morgan Committee thought that we should let the original -- the district courts have original jurisdiction on all legal matters unless the legislature by statute set up another court to handle them. It's -- you may well want to think about whether you want to continue the present system which of course, we think has worked pretty well, most of it, it's tended to steer away from fragmented courts, or you want to leave the legislature some elbow room to set up special courts. I mean or at least take some of the jurisdiction away.

MR. DENNIS

Well, when we get to those special courts, as we said, they shall have ...

MR. TATE

Yes, that will take care of itself.

MR. DENNIS

Only in matters of supreme court rules would we need to specifically state that the entire district courts are exclusively, have jurisdiction ...

MR. TATE

The reason why our constitutions have provided for exclusive original jurisdiction is in the absence of that provision the legislature could decide what courts it wanted to decide anything, see that's ...

MR. DENNIS

Well not if we said if we deal with J.P. ...

MR. TATE

If you do in detail; I would just imagine you may not want to go into detail of the thirty-six court and the ... courts and ...

MR. DENNIS

... save the details until later.

9

MR. ...

... that's correct.

MR. TATE

Would you like to make a motion to that?

MR. TATE

I'd like to hear some discussion, say from Mr. Kilbourne ...

MR. KILBOURNE

I haven't thought about it.

MR. AVANT

This is Section 21 you are talking about?

MR. TATE

Yes, sir. This is literally with a ... just exactly ...

MR. KILBOURNE

This works alright, I don't see any reason to change it.

MR. AVANT

I have something I am going to offer and I think this is just as logical a point as any to offer it. For a change it would have to do with the original jurisdiction of district courts, but this as it is, it seems to me to be highly complicated.

MR. TATE

It is just the way it is in the present constitution, I forget, there is a minor change in wording, but it's the same thing as the '54 project which had together a lot of things and it is just like it is now. It would consolidate two, thirty-five, eighty-one and eighty-two, of the present constitution.

MR. VESICH

What section are you all talking about?

MR. AVANT

Section 21, Tony.

MR. TATE

Section 21. Original jurisdiction of the courts of appeal. You may want to look at the comment, which says ... it's the Morgan Revision

Committee's report, Morgan Revision Committee had another approach, which just said they will have original ... in inferior, original and appellate jurisdiction as provided by the legislature. That's the difference. I move that we adopt 21 as it is.

...

May I ask a question? Where does suit for separation and divorce come in?

MR. AVANT

All civil matters unless otherwise provided.

MR. TATE

The reason why they don't should be the domestic matters were partly because of that ... domestic matters should be in domestic court, it's civil ...

...

I must be missing page 17.

MR. TATE

No, no. They loused them up. Sixteen, eighteen and seventeen they go or ... something like that.

MR. DENNIS

In otherwords, under this ... the legislature could give domestic relations jurisdiction to city court.

MR. TATE

They could. Anything that we don't prohibit, they could. This is what the present thought and as I recall -- I'd better look quick enough because this was taken from the 1954 project, and for word

10

MR. KILBOURNE

This is substantially the same as it was in ...

MR. TATE

It is. Right there it is. If you look in Article 7, Section 15. They don't now provide for exclusive appellate jurisdiction, I mean original in divorce and custody.

...

... in Section 17, ...

MR. TATE

There is no way. It is out of order. It goes fifteen, seventeen and sixteen. Sixteen is after seventeen.

MR. DENNIS

Any further discussion? Is there any objection to the adoption of Section 21 as a guideline? Without objection, so adopted.

11

MINUTES

Minutes of the Judiciary Committee of the Constitutional Convention of 1973

Held pursuant to notice mailed by the Secretary of the Convention on May 3, 1973

State Capitol, Baton Rouge, Louisiana
Friday, May 11, 1973

Presiding: Judge James L. Dennis. The meeting was called to order at 9:30 a.m.

Mr. Philip O. Bergeron, Secretary, called the roll. Fourteen members were present, representing a quorum. All members attended meeting.

Present

Absent

Avant
Bel
Bergeron
Burns
Dennis
Deshotels
Drew
Gauthier
Kelly
Kilbourne
Landry
Martin
Ourso
Sandoz
Tate
Tobias
Vesich
Willis

None

Professor Geoffrey C. Hazard, Jr., spoke on the merit selection of judges.

Attorney General William J. Guste, Jr., spoke on placing the attorney general's office in a separate article or retaining it in the judiciary article; also on the secrecy of the grand juries.

Mr. Aaron Boone, managing director of the Metropolitan Crime Commission in New Orleans, discussed consolidation of courts in New Orleans and the screening of judges before they run for office.

After a five-minute recess, Sheriff Bailey Grant of Ouachita Parish requested that the committee not change the constitutional status of sheriffs.

Chairman Dennis recessed the meeting for lunch at 12:45 p.m. to reconvene at 2:00 p.m.

The committee reconvened at 2:00 p.m. with Vice Chairman Landry presiding. Chairman Dennis took the chair at 2:30 p.m.

Dr. Hypolite Landry, Jr., coroner of East Baton Rouge Parish, spoke on the present constitutional provisions concerning coroners, requesting that the same provisions be in the new constitution.

The minutes of April 20, 1973, were read by Secretary Thompson. Mr. Thompson moved to correct the spelling of "judgment" on page four, line two. Motion carried. Judge Tate moved to add his reason for voting against Section 4, page four, line three. Mr. Bergeron moved the minutes be adopted with changes. Motion carried.

Chairman Dennis circulated a letter from the Clerk of First District Court in Caddo Parish, who stated that he thought the clerks of court should not be ex officio clerks in juvenile courts. (presented by Tom Staggs)

Chairman Dennis read a memo from Mr. Gene Murret, judicial administrator to the members of the Judicial Committee. It stated that action be taken on the judicial council recommendations made of judges when it met on April 27, 1973.

A memo presented to the Composite Committee from District Attorney John Richardson of Caddo Parish was filed with the committee.

Mr. Deshotels introduced a copy of a letter from Justices of the Peace Johnson and Leger, Allen Parish, asking that the section of the constitution pertaining to justices of the peace be left as it is. A copy was filed with the committee.

The decision was made to continue taping the meetings.

Discussion continued on Draft "A."

Mr. Kilbourne moved the committee defer action on Section 22. Motion carried without objection.

Mr. Tobias moved to change "presiding" judge to "chief" judge in Section 23(a). Motion carried without objection.

Mr. Kelly moved to delete Section 23(a). Motion failed.

Mr. Gauthier moved that the judges elect a chief judge.

Motion failed.

Mr. Deshotels moved to adopt a plan of appointing judges on merit. Motion failed.

Mr. Willis moved that Section 23(a) and (b) be combined to read "Each multi-judge district court may elect from its

4

members a chief judge who shall exercise such administrative functions as may be prescribed by rule of that court." Motion carried, with Mr. Kelly objecting.

Mr. Sandoz moved to delete Section 24. Motion carried without objection.

Judge Tate moved to delete Section 25. Motion carried without objection.

Mr. Avant moved to have the staff prepare a provision concerning Section 26 that would not conflict with anything the committee has tentatively done concerning courts and how they can be altered, changed, or abolished, but which would give to the legislature the right to define the age of juveniles and what circumstances certain persons within that age could be excluded from the category of juveniles. Motion carried without objection.

It was moved that Section 28 be deleted. Motion carried without objection.

Mr. Bel moved that the committee adopt Section 29(a). Motion carried with Mr. Kilbourne objecting.

Mr. Bel moved to adjourn the meeting at 5:15 p.m. until 9:00 a.m. Saturday. Motion carried.

Gene Murret
Vice Chairman
John Richardson
Secretary
1463

OFFICIAL TRANSCRIPT
OF THE
CONSTITUTIONAL CONVENTION
STATE OF LOUISIANA
1973

COMMITTEE ON JUDICIARY
MEETING OF MAY 11, 1973

Friday, May 11, 1973
Baton Rouge, Louisiana

MR. DENNIS

Gentlemen, we have a problem. Sheriff Bailey Grant, who is appearing in behalf of the sheriff's association must leave at 2:00 o'clock. Now, I believe his remarks are going to be relatively brief and I suggest we go ahead and hear him at this time because if we recess for lunch it

would limit his time too much, I am afraid. Why don't we take -- why don't we take a two or three minute recess and come back and hear from Sheriff Grant?

SHERIFF GRANT
... the capacity that we have now, we are responsive to the voters. People that we serve. I offer you a cover under the first amendment of the United States Constitution is freedom of the press. If they can't get anything else to write about down around the sheriff's office, they can always find something there to write about. That's all I have to say, Mr. Chairman.

MR. LANDRY
In other words you just want to be left alone.

SHERIFF GRANT
Yes, sir, I am very peaceful and love everybody.

MR. DENNIS
Mr. Gauthier.

MR. GAUTHIER
You want the office of the sheriff left in the constitution?

SHERIFF GRANT
Yes, sir.

MR. GAUTHIER
Would you be as amenable to one exception, that exception being Iberville Parish and letting the governor appoint him?

SHERIFF GRANT
Well he boxes in ... yes. At least ...

... invitation is off to you tonight.

SHERIFF GRANT
I'll say this then, they have appointed sheriffs in Iberville Parish and it was not amenable to the people.

... Who ...

... You're welcome to the party tonight

MR. DENNIS
Mr. Landry.

MR. LANDRY
Sheriff, would you like to retain Paragraph 74 that relates to compensation of sheriffs, whereby you are guaranteed under the constitution just like the judges are that you will be paid your salary for the next four years ...

SHERIFF GRANT
Yes, sir.

MR. DENNIS
Mr. Kelly.

MR. KELLY
Sheriff, you say you don't mind -- you'd like to be left alone, but would you be adverse to the idea of possibly removing some of your duties, such as -- you have to furnish your court with a crier, I suppose, is that right? Would you be adverse ...

SHERIFF GRANT
Court bailiffs.

MR. KELLY
Right, bailiffs. Would you be adverse to say that coming under the judge's office? In other words he could hire a crier or a bailiff for his particular court.

SHERIFF GRANT
I know of no conflict and I'd say that our system, the ones that I am experienced with, is working very well.

MR. KELLY
What about service of process?

SHERIFF GRANT
Me ...

MR. KELLY
You'd like to retain that?

SHERIFF GRANT
We are pleasing the attorneys there and they are the ones that we serve in that. Some of them complain under the new statute as to the price you do with this is just to keep that burden off the taxpayers since it is a service between individuals and the public doesn't benefit from the service.

MR. KELLY
I assume you also wanted to continue in your duties as the tax collector. Is that correct?

SHERIFF GRANT
Yes, sir.

MR. DENNIS
Mr. Drew.

MR. DREW
Sheriff, there would be some consideration, I hope, to parish courts which would be established in -- parish courts, of course, in Ouachita that is, I believe -- are there two parishes in that district?

SHERIFF GRANT
Yes, sir. Morehouse and Ouachita.

MR. DREW
Morehouse and Ouachita. On establishing parish courts is it possible the jurisdiction in a civil case of twenty-five hundred to three thousand and the criminal jurisdiction up to anything below a felony, and possibly some consideration would be given to the parish courts also having the exclusive juvenile jurisdiction, though there are rural areas where there are juvenile courts as such. Now there has been quite an uproar among the ward marshalls and constables and so forth that they may be abolished if a parish court was created. Would there be any conflict of having the present ward marshalls, or city marshalls handling the parish court's work or would you think that would -- if you did -- continue to furnish the bailiffs and do the process serving and all that, would you be able to handle it on a ... for additional court without too much additional cost?

SHERIFF GRANT
Well, Mr. Drew, I don't know, not having been experienced. I know that the West Monroe court and the Monroe court is handling pretty good. I understood it was five hundred, is that correct?

MR. DREW
One thousand.

SHERIFF GRANT
One thousand. They are pretty busy in handling those.

MR. DREW
Well that's the principle.

SHERIFF GRANT
... if it went to a parish court and did away with the city courts in handling the civil, then it would create a burden to us until we did it long enough to build up the revenue.

MR. DREW
Would it be better to have each parish court with their own marshal, so to speak, and staff to handle the process serving and bailiff and so forth?

SHERIFF GRANT
If you have a separate clerk then I would say it would be better.

MR. DREW
Make it entirely separate all together.

SHERIFF GRANT
Yes, if they have a separate clerk, and if they don't go through the parish clerk.

MR. DREW
No. I think you would have to have a separate clerk ...

SHERIFF GRANT
The process is going to be issued by a separate court, then I'd say it would be probably more workable.

MR. DREW
An entirely separate system would probably be more workable than this thing.

MR. DENNIS
Any further questions for Sheriff Grant? Sheriff, looks like you came at the right time ...

SHERIFF GRANT
Thank you.

MR. DENNIS
... we do appreciate you coming.

MR. LANDRY
Members of the committee we are honored to have this afternoon with us the coroner of East Baton Rouge. I don't have any resume of all of the things that he has done but he is -- a well-known doctor here in the, you have anything, -- oh, there you go -- he has been in private practice of medicine from 1960 to '72. He was elected coroner in 1972, he is chairman of the Baton Rouge Area Alcoholism and Drug Center, he was former past president and chairman of Baton Rouge Aircraft Pilots' Association, Board of Directors of Baton Rouge Council on Alcoholism and Drug Abuse. It is a pleasure to present to you Dr. Hypolite Landry, Jr.

DR. LANDRY
Thank you.

MR. LANDRY
The coroner of East Baton Rouge.

MR. LANDRY

Are you going to ask me any questions?

MR. LANDRY

No, we want to let you ... but ...

DR. LANDRY

Well, thank you sir, Mr. Chairman, and it's a pleasure to be here. I want to thank you for allowing me to come and I want to congratulate you on doing a good job. I know you are working hard for very little money and I want to congratulate all of you. I hope we come up with a good constitution for our state.

I -- since I didn't have some other things on there, I am the president of the Louisiana Coroner's Association and I have written all the coroners giving them seventy, seventy-one and seventy-two, the parts pertaining to the coroners in our present constitution and I received back about twenty replies and everybody was in favor of everything with very few exceptions. So first we will take the seventy which has establishment of the office, election and term. So all of you have a copy of this? You will all be familiar with it? It says, "unless otherwise provided by law there shall be a coroner elected by the qualified electors of each parish, except in the parish of Orleans, who shall be elected at the general state election and who shall hold office for four years." Everybody agreed to this with the exception of the coroner from Orleans Parish who said that it probably should be for twelve years and I disagreed with him. So, but this was the only one that had any comment, so far as we are concerned, this is -- in reference to the whole thing, I know you want something brief and concise and what I like about what pertains to the coroners is that it is brief and concise and so everybody was pretty much in agreement with the way it is. And number seventy is certainly agreeable like it is if you all have no -- that's to us, it's agreeable.

... I don't have a copy of that, sir, would you mind, is it very long? Would you mind reading it?

DR. LANDRY

Yes, sir. I just read it, that's it.

DR. LANDRY

Okay, I am going to read seventy-one. Seventy states, "unless otherwise provided by law there shall be a coroner elected by the qualified electors of each parish, except in the parish of Orleans, who shall be elected at the general state election and who shall hold office for four years." I don't know why the exception in Orleans. Is it longer than four years?

MR. VESICH

Four years.

DR. LANDRY

Why is the exception, I wonder? There's a lot of exceptions ...

...

It's four years though, definitely.

DR. LANDRY

... and we have no idea to change that. That's acceptable to all the coroners except Dr. Bayburn. He wasn't real upset about it, that was his selection and that was his recommendation. Any questions?

MR. LANDRY

No, Mr. Tobias.

MR. TOBIAS

I have a brief one. Why do you believe that coroners should be elected? It's my understanding that in a number of parishes that they have great difficulty finding individuals to run for coroner. I don't know whether it's true or not. I've heard some people mention it. Why is it necessary that they be an elective officer? I can understand why they should be doctors, you get into the problem that for example Illinois was in at one time, where they had -- where you could dominate that city, the politicians could dominate that type of ...

MR. LANDRY

It is still the same, Max.

MR. TOBIAS

Pardon.

MR. LANDRY

It is still the same in Illinois.

MR. TOBIAS

Is it still the same?

MR. LANDRY

You don't have to be a doctor.

DR. LANDRY

There are several states that you don't have to be -- fact is that I don't see how, having been in a year now, a year tomorrow, I don't see how one would function unless he is a doctor. I know a lot of the things I have to do. I think he would have to hire out so many of the services he would be -- all he would, just be administrative, but as to why he is elected, I don't know. Why is anybody elected? If it's a ...

MR. TOBIAS

Well, there's a big difference, I would think. It seems to me that a coroner is nothing more than -- he is not really a public official, he is just sort of to certify reasons for death for the purposes of public knowledge. I don't know exactly ...

DR. LANDRY

Well, first place if you go further down, that the coroner will act as sheriff into the next thing. And the coroner acts as sheriff and the reason for this being, I would imagine, I want to -- I don't know what happened in 1921 when they drew up the constitutional convention and it evidently went back further than that, but somebody has to serve papers on the sheriff when a sheriff is subpoenaed. Somebody has to serve so it is probably another elected official that has to serve him so that where he is an interested party, I serve the sheriff. I am also an arresting officer. I have the ability, the authority to carry a pistol, which I do at night when I go out and I also can arrest. I can arrest people either just as a police officer or I can arrest them in connection with my coroner's duties. I work -- I can't speak for all the small parishes but in my parish in East Baton Rouge, we have three hundred thousand people here and we are a pretty busy parish. I committed about eight people to mental institutions today and we examine a hundred and fifty a month or so and we have many violent deaths. We work real close with the district attorney's office. I am in court almost every day. I don't know -- I had some opposition to my election. I had two people that wanted it. This -- in some parishes it's not wanted because the pay is small, because there is just a fee for services and where the fee -- where you don't do much this is maybe why it's not as lucrative a job as it is in other parishes, but it is certainly a desired job and I would like to see it stay elected as to -- I can't really answer your question why it should be elected and not appointed. I know that I am -- like I say, I am very close working with the judges and with the sheriff and I am the -- if the sheriff dies, of course I become the sheriff until he's appointed -- until there's an election called by the governor. I can't give you a real clear-cut answer, except that I'd like to see it elected. I think maybe you have something elected you have something

DR. LANDRY (Continued)

I think that if I was appointed to it, I may not have my teeth in it like I've got my teeth into it now. I've been in a year and I -- when I don't like getting up at three o'clock in the morning to go out on a coroner's call, I say, "Well, I asked for it. I opened a lot of money to get elected." So I don't complain, I go with a smile.

... Well, it is not only you ...

MR. LANDRY

Let's have some order.

MR. TOBIAS

What did you spend to be elected? Approximately, a ball park figure.

DR. LANDRY

About -- you mean my money or collected money?

MR. TOBIAS

Collected money, your money, the whole thing.

DR. LANDRY

Probably sixteen thousand dollars.

MR. TOBIAS

Thank you.

DR. LANDRY

Two primaries, a primary and a second election.

MR. LANDRY

Mr. Sandoz.

MR. SANDOZ

Dr. Landry, I am a lawyer and I wouldn't feel that I would be qualified to run a sheriff's office and I was wondering, do you feel that a doctor, a coroner can take over and run a sheriff's office or should that provision in the constitution be changed to maybe his chief deputy, criminal deputy or civil deputy. In other words I am just concerned about the ability of a doctor to step in and run a law enforcement -- the largest law enforcement agency in the parish, as opposed to some ... we assume that the chief deputies are well qualified and are familiar with the inner workings of the sheriff's office. Now what is your opinion concerning that thing?

DR. LANDRY

Well, there is certainly some truth in that. I would answer you in this way, that you need one person in every parish that can unify and that could take over. There is no uniform second in command to my knowledge in a sheriff's situation. They run them pretty much the way they want to run them. They have a chief civil deputy and maybe a chief criminal deputy and so to be uniform in all the parishes, this is another elected official. Ne, like I say, he knows pretty much the duties of it and I would think for a short period of time as in an administrative capacity, not in a law enforcement capacity, but to run the office in an administrative capacity while the chief deputies carry on the law enforcement functions, I would think he probably could. There is ... usually a doctor is knowledgeable enough to take a situation. This is -- I don't know why it originally -- well, why I think it originally came about, there used to be, the coroner and

the sheriff used to be the same thing years ago in England, I believe, and that probably is a hand-down.

MR. SANDOZ

But if we in this constitution would insert a provision, let's say in the succession of sheriffs, such as we have in the attorney general, that his first assistant shall become the sheriff until his successor is elected or appointed. Would not that be a better order of command rather than inserting the coroner in there who has an entirely different function than the sheriff?

DR. LANDRY

I don't really know, then I ... It says that he acts when the sheriff is an interested party and I don't know if the sheriff would be an interested party if the chief deputy wouldn't be an interested party. This may be why the coroner's been completely -- although he is close, he's separated. Like I serve subpoena on the sheriff all the time and if the two of them were involved in some sort of a ... something, and

MR. LANDRY (Continued)

that if, well if you made enough long enough down the list you would finally come on somebody I am sure, but of course, I ... It doesn't make much difference, I don't believe you'd see that very often. We saw it down in Iberville, didn't we, with Sheriff Dorso, I believe when Dr. Currier took over for a short time a few years ago, and that's what happened to my knowledge that if ... I think that I could run the sheriff's office in Baton Rouge without any problem at all; of course, I was a military police officer, but I don't really know.

MR. LANDRY

Mr. Kelly. Mr. Avant.

MR. AVANT

Dr. Landry, do you think it would be -- give the public a better understanding of the duties of the office if we just changed the coroner to the medical examiner?

DR. LANDRY

I don't, Jack, because the medical examiner to me does not mean a doctor. To me it means a person that is an administrator, that runs it as an administrator. You say the medical examiner shows up and I think the word "coroner" denotes a physician and I think that I would like to see it stay as coroner. I think medical examiner has a completely different meaning. I don't really understand what a medical examiner does in other states completely, so I would like to see it stay as coroner. I think everybody understands what it is, particularly in Louisiana. You want to go on seventy-one and then we can get on to sheriffs then?

MR. WILLIS

Let me talk to "Doc" before you go any further.

DR. LANDRY

Well, I was going to go to the same thing. Yes, sir.

MR. LANDRY

Mr. Willis.

MR. WILLIS

Doctor, do you envisage -- well, let me preface that with this question, let's assume this state of facts, that your sheriff should depart this life less than a year before his term is over, then you become sheriff, then of course, it says in the next article -- you just read one -- it says in the next two, in the event of a vacancy then the governor appoints your replacement. If you get to be sheriff then somebody has to replace you, then he is the incumbent, then they have to run against an incumbent.

DR. LANDRY

In the revised statutes though, if you've read them all, it states that when the vacancy occurs the coroner shall be the coroner and the sheriff until the vacancy is filled which is usually ... the governor would call a special election.

MR. WILLIS

But in the constitution it says that, "whenever there shall exist ... if there be no coroner then the district court may make a temporary appointment, but the coroner shall not during such vacancy discharge the duties of tax collector." So it's the district court which would appoint a coroner, and they don't call an election.

DR. LANDRY

But not while -- not in a temporary appointment, because I don't know where it is, I forgot ... I've read it, in the revised statutes it states that when the coroner is filling in as the sheriff that he shall fulfill the duties of the coroner and the sheriff until such time as the governor appoints -- calls an election and the sheriff is elected and the coroner will go back to his regular duties.

MR. WILLIS

Well, maybe the statutes do that but would not the statutes be unconstitutional?

DR. LANDRY

I don't know, sir.

MR. WILLIS

I mean this comes first. This comes before the statutes. The statutes have to be in line with this. Have you ever thought of that?

MR. WILLIS (continued)

I am talking -- I am sure you attribute an advantage to incumbency at an election. He having a good record, notably, and if very well may be that you will be placed in a position of not being an incumbent and have to run against the fellow who replaced you.

DR. LANDRY

That's in the constitution?

MR. WILLIS

I just read it, I am sure you've got ...

DR. LANDRY

Where is that?

...

What section is that, Burton?

MR. WILLIS

Seventy-one.

...

Seventy-one.

MR. WILLIS

This is the judiciary article in the present constitution.

DR. LANDRY

Where do you see that, sir?

MR. WILLIS

Section seventy-one, its last sentence or last phrase, the last phrase in the last sentence. Of course, it excepts Orleans Parish again, the free state. It says in the last independent clause, "and if there be no coroner then the district court may make a temporary appointment but the coroner shall not collect taxes." I am reading it impetuously and in my own language, so I envisage this that you may be faced to run for office against an incumbent, don't you see? You've got to stay sheriff until the term is over if that's less than a year; that's six months, and you are the sheriff for six months, then you've got to requalify for coroner, but you qualify against an incumbent.

DR. LANDRY

Well, I wish I had the revised statutes -- I don't know, sir, whether the revised statutes override ...

...

He acts as both to provide a responsible entity.

DR. LANDRY

He acts as both. I've read that, oh yes.

MR. WILLIS

Well, I will yield to his interpretation temporarily ... reserving the right, but I pose that yields a problem you coroners better straighten out or have the language verified, because it presents an ambiguity to me, although it may not present one to you.

DR. LANDRY

But that was an opinion of the attorney general sometime later, I don't remember ...

MR. WILLIS

Let me ask you -- that's not the local ...

DR. LANDRY

I know.

MR. WILLIS

That's not attorney general.

...

You get a new attorney general. I say you can get a new attorney general to change it.

MR. WILLIS

Oh, he can give you anything you want.

MR. TOBIAS

Dr. Landry, what is your present salary?

DR. LANDRY

I don't have a salary. I am on a fee basis.

MR. TOBIAS

On a fee basis?

DR. LANDRY

Yes.

...

So much per stiff?

MR. TOBIAS

What, what's the ... is that the way it's done? What is the present fee on the fee basis?

DR. LANDRY

The fee is twenty dollars for every examination or investigation and so when I have a coroner's death for example, and I examine -- I view the body and fill out the death certificate and determine whether ... the cause of death, it's twenty dollars. If I do an autopsy I am

authorized a hundred dollars or I can -- up to a hundred and fifty, from a hundred to a hundred and fifty, and St. Baton Rouge we pay pathologists a hundred and fifty when they do section studies. If I am doing an autopsy on somebody which consists of removing the bullets and I don't take sections and determine the cause of death, it's a hundred dollars. And this is the salary for that. There are fees for this.

... It's provided for in the statutes?

DR. LANDRY
That's provided for in the statutes, right.

MR. AVANT
Who pays you -- the parish pays you, is that right?

DR. LANDRY
That's correct. There's a budget -- I submit my budget and they, the parish, the city-parish council here in Baton Rouge approves the budget or disapproves.

MR. AVANT
He gets a fee for a civil offense, you know.

DR. LANDRY
For every sanity exam, for every investigation, in answer to his question, whether it be a death, or whether it be a mental exam, I get twenty dollars. The same thing like when we examine -- It takes two physicians to commit somebody to a mental institution -- so when they come into the office the coroner and the other attending physician receive twenty dollars for a sanity hearing if you commit somebody.

... Do you attend all the parish prisoners?

DR. LANDRY
Right. Right.

... .. their medical problems, and so forth. You are paid for that, also?

DR. LANDRY
I get paid for that through the parish government. I receive six hundred dollars ... six hundred and fifty-six dollars a month for being the doctor to the four hundred parish prisoners and that is a salary. I do get, excuse me, I get that in a check every month and that is the salary that I -- that's the only salary that I receive; other than that it is fees for services.

MR. DENNIS
Mr. Sandoz, do you have ...? Mr. Tobias.

MR. TOBIAS
How much are your fees per year? You have been coroner now for how long?

... One year.

... Since '72.

DR. LANDRY
A year.

MR. TOBIAS
A full year? What has been your income from this office?

DR. LANDRY
I don't know. Last year when I went in the twelfth of May till the end of the year, I earned twenty-six thousand dollars out of it which was less than I had earned in my private practice, but probably it should be -- my budget, of course, a good part of my budget goes to my deputy coroners and to pathologists, and my secretaries -- I have to pay all of my secretaries and my nurse and everybody out of my fees. I have got to earn the fee before I pay them -- I am provided quarters, office space, in the statutes, I am given quarters, but I pay my own -- I have to earn the money to pay them. They are not on the city-parish payroll. I would imagine it will be forty, maybe forty-five thousand for the year. It may be more but I don't think so.

MR. TOBIAS
Thank you very much.

DR. LANDRY
But, this is a twelve -- this incidentally is twenty-four hours a day, seven days a week. This is not an eight to five job, I don't get a vacation. When I am off, I mean my deputy coroner works and he earns money and when I am off I don't earn any money; I get paid for what I do.

MR. TOBIAS
I think I am going to go to med school ...

DR. LANDRY
Fardon?

MR. TOBIAS
I think I am going to go to med school.

MR. LANDRY
Mr. Avant.

MR. AVANT
You also do you not, Doctor, have to pay all of your expenses of printing, forms, stationery, and like.

DR. LANDRY
But that comes out of my budget, not out of my salary. I don't have to earn that money first to do it, I have a budget for this and I pay my telephone expenses and all of this is included in my budget. But my secretary and my nurse I pay myself, after I earn the money. It is not provided for.

MR. DENNIS
Doctor, when you are appointed on a sanity commission, do you render a report and testify for the twenty dollars ...

DR. LANDRY
When I -- every day ... now the sanity hearing every day, that where we either commit somebody to a hospital or somebody not, when somebody comes in to me and requests that their neighbor or their husband be examined and they either come into our office or we pick them up and we examine them, we either send them to a mental hospital or send them home or send them to the mental health or whatever destination. Now, when I am appointed to a formal sanity commission, by the judge, this does not come out of my budget. I am paid for this. I submit a bill to the 19th Judicial District and I get paid for that and I go to court. Now I don't get any money for going to court, I get it from my initial -- for my bill I receive a fee and this covers it. Now, that's what.

DR. LANDRY (Continued)
That I can receive ten dollars a day for appearing in court out of every case in which I am involved. I just read that the other day and I haven't submitted any yet. I ought to be reading a little more closely ... throughout the year ...

... Get yourself a lawyer.

MR. DENNIS
Are there any further questions for Dr. Landry?

DR. LANDRY
We haven't covered the vacancy part, sir, we've covered ...

MR. LANDRY
Oh, go ahead.

DR. LANDRY
In fact, I haven't read seventy-one, I believe we went through it though, "the qualifications to act as a sheriff" and I want to bring out this out, that Section 71 states, "The coroner of each parish shall be a doctor of medicine, regularly licensed to practice and shall be ex-officio parish physician, provided this part does not apply to any parish in which there is no regular licensed physician who will accept the office. Except in the parish of Orleans the coroner shall act for and in place of the sheriff". We will discuss that. So I think it ought to be that he ought to remain a doctor of medicine. Then under seventy-two, the last one, "if any vacancy occurs in the office of coroner it shall be filled for the unexpired term by appointment by the governor." Now of all the replies I received from the coroners throughout the state, one coroner stated that when the coroner in Ouachita -- Ouachita you say --

MR. DENNIS
Yes, that's my parish ...

DR. LANDRY
... Ouachita resigned and he resigned because of this bill last year that he couldn't live with and we are going to try and do something about it next year; that new Act 151 that was passed through the legislature last year. He resigned because of this and Governor Edwards appointed somebody that wasn't a doctor and he ...

MR. DENNIS
He's a psychologist.

DR. LANDRY
He's a psychologist? And the -- I got a letter from a doctor up there on it, it must have been an adjoining parish who would like to see that the -- of course, the governor should abide by the qualifications which state that he shall be a doctor, so when he appoints somebody I would imagine he should be a doctor of medicine.

MR. DENNIS
We couldn't get one ...

DR. LANDRY
Couldn't get one? Well, that's the reason, then alright, if you couldn't get one then that's the reason. Somebody else can do it but I don't see how they can do it. I couldn't do it -- somebody couldn't do it with my budget. A person that's not a doctor couldn't do what I do. My budget because he wouldn't get any money because he would have to pay doctors to do everything that he does so that his budget would have to be ...

MR. DENNIS
We're having a real problem with rape cases. We have to run out, or he has to, or somebody to find a doctor who will examine the victim and it's difficult to get somebody.

MR. LANDRY
Mr. Burns.

MR. BURNS
Doctor, as I correct, the police juries throughout the State fix the salary or the fees of the coroner within their respective parishes?

DR. LANDRY
No, sir. It's twenty dollars as I stated and that's throughout the state. They fix the salary that they pay you for being parish physician, they fix the difference between a hundred and a hundred and fifty dollars for an autopsy. That's at the discretion of the police jury. But the fees that you receive are fixed by the...

... state.

DR. LANDRY
... statute. Yes, sir. This is, as you know, a constitutional office.

MR. LANDRY
Mr. Willis.

MR. WILLIS
Doctor, you are on call twenty-four hours a day.

DR. LANDRY
Yes, sir.

MR. WILLIS
And I am sure that you're called ... I am sure that you are called ...

DR. LANDRY
I am right here, if they need me right now. They know they can get me right now.

MR. WILLIS
But you are -- I'm sure that if I know something about criminology, you're called more at night than during the day.

DR. LANDRY
Well, my mornings are busy from nine to one. I am very busy in the office seeing the mentally ill ...

MR. WILLIS
Administratively ...

DR. LANDRY
What?

MR. WILLIS
Administratively, but I'm talking about sudden calls, they are mostly at night.

DR. LANDRY
Oh, yes. They -- especially on Friday and Saturday nights. Beware, beware. It's amazing that most of the rapes -- of course, there are a few, a few carnal knowledge events that go on during the daytime where men are molesting children in the home, but most of the rapes of adult women are done of course at night and most all of them after eleven o'clock and very few will come in at nine or ten. Most of them are eleven -- before ... Then there are many dead ... many people that when their families wake up and they find them dead at five or six in the morning, that have died during the night, and this is not a -- we don't get a rash of them but we get -- frequently calls at five and six, of unexplained death, they just passed away at night.

MR. WILLIS
Now, I see there are three articles on coroners and I see an exception for -- what happens in Orleans about coroners, do you know?

DR. LANDRY
That's covered in the revised statutes and I have not -- I've read it and I haven't paid a lot of attention to it because it didn't pertain to me.

MR. WILLIS
Then you wouldn't know which coroner ...

DR. LANDRY
They pay them a salary plus a lesser fee. They get a salary, and they pay the deputy. They have a deputy, a chief deputy, they pay a lesser -- a salary and they pay a lesser fee than the twenty.

MR. WILLIS
Well, there are two sheriffs in Orleans. How many coroners, do you know?

DR. LANDRY
There's one chief coroner, Dr. Rayburn.

MR. WILLIS
Now which sheriff would -- suppose both sheriffs depart this life?

... You would be out a tax collector.

MR. WILLIS
You would.

... I can answer that for you.

DR. LANDRY
What kind of sheriff, he would only -- he would be the tax collector sheriff, he would be the criminal sheriff.

MR. WILLIS
Well isn't there a civil sheriff?

... Well, there's a civil sheriff.

... Read Section 17.

MR. WILLIS
Who replaces the civil sheriff? There's one coroner and two sheriffs, civil and criminal, isn't there? There's got to be.

MR. DENNIS
Any further questions for Dr. Landry? Mr. Landry, do you have a question for Dr. Landry?

MR. LANDRY
"Doc," I think awhile ago the question was asked, why do you think that you should be elected? Do you feel that possibly because of the power that the coroner has of committing someone is an incentive that you ... is that possibly the reason why they chose to make it elective so you would be responsible to the people?

DR. LANDRY
It may be a good idea. I think any elected official has -- well, I shouldn't say they have more responsibility -- I know he is going to be cognizant of his responsibility more than if appointed. I know that I am because I am looking forward to getting reelected and I -- and that's the reason I carry this dude with me so that I can answer in five minutes and I get very upset with my medical exchange if they don't get me, so if I was appointed, I don't know that I'd be as excited about pleasing everyone.

MR. LANDRY
Don't you also have another responsibility as coroner that if a person is found deceased, you also make an inventory of everything he died possessed of in his possession?

DR. LANDRY
Yes, sir. Right.

MR. LANDRY
File that with the clerk.

DR. LANDRY
Yes, sir.

MR. LANDRY
It's very responsible even though it just says coroners, it has responsibilities and quite a bit of responsibility.

MR. LANDRY
... ..

DR. LANDRY (Continued)
dies really. First he is responsible for all unexplained, unexpected, violent deaths, whether they are due to homicide, suicide, drowning, electrocution and so forth. He is -- for any unexplained death. If someone dies that hasn't seen a physician in seventy-two hours, no matter what the cause it's a coroner's case. If he is admitted to a hospital and he dies in less than twenty-four hours, it's a coroner's case. If somebody is involved in an automobile accident and they die a month later, it's a coroner's case. He is responsible for all rapes in the parish; he's got to go to court on them. He's responsible for ...

... that's why you want the job.

MR. DENNIS
Did they advise you of your constitutional rights?

DR. LANDRY
... responsible for examining all rape victims. He's responsible for all stillborns and newborns and, of course he is the ex officio parish physician and he's responsible -- in East Baton Rouge, and I think in all the other parishes, he does treat all the parish prisoners. He's responsible for committing all the people to the mental institutions. Now this is -- even a private institution. If someone, if you have some member of your family that you think is mentally deranged, and they will not come in, you can come down and sign a paper stating that he is in need of mental care, that he is dangerous to himself or others and I will call him and if he will come in voluntarily for an exam by myself and another doctor, fine. If he won't, I can send out my deputies. I have two deputy sheriffs assigned to my office permanently, and I can dispatch them to the home, bring them in, I examine them and if they can afford it I can send them to the Lady of the Lake psychiatric unit or I send them to DePauls. If they want to go to DePauls I can send them. I can send them to a V.A. hospital with a court order in Shreveport. I send them to all of the mental institutions in the state -- if they are indigent I can send them to a state hospital. And also the alcoholics and drug addicts fall under this, also. If they are dangerous to themselves or whether they are drunk or if they are addicted, I can pick them up and commit them to the appropriate institution. So this generally covers the duties of the coroner. And that's a good reason for election.

In closing I want to thank you for inviting me and I was -- I've already told you what I thought. I'd like to see it stay much the same but I appreciate anything you will do, I am sure it will be fine. If I can come back, be glad to come back.

MR. DENNIS

Doctor, we would be happy to have you come back if you want to add anything to your remarks later on or if we get into a problem that we need your advice on we will call you.

DR. LANDRY

Well, if you change it too much, if you make it appointive, will you call me back?

MR. DENNIS

Thank you, Doctor.

MINUTES

Minutes of the Judiciary Committee of
the Constitutional Convention of 1973
Held pursuant to notice mailed by the
Secretary of the Convention on May 17,
1973

Law Center, L. S. U., Baton Rouge,
Louisiana, Friday May 25, 1973

9:30 a.m.

Presiding: Judge James L. Dennis, Chairman of the Judiciary
Committee.

PRESENT

Avant
Bel
Bergeron
Burns
Dennis
Deshotels
Drew
Gauthier
Kelly
Kilbourne
Landry
Martin
Curso
Sandoz
Tate
Tobias
Willis
Willis

ABSENT

None

The committee heard the following speakers on the Orleans

Parish Prison and the criminal sheriff:

State Rep. Edward Booker, New Orleans;
Mr. Raymond Nance, president, Community Action for
Correction;
Mr. Robert Blomberg, inmate, Orleans Parish Prison.

Mr. Joseph W. Joachim, executive vice president and general
counsel, Louisiana City Marshals and Constables Association,
spoke to the committee concerning the standardization of terms
for city marshals and city constables and increasing city court
jurisdiction.

The committee recessed for lunch at 12:30 p.m.

The committee reconvened at 2:00 p.m. and Mr. Bergeron,
secretary, read the minutes of the May 11, and May 12, 1973
meetings.

Mr. Bel moved that the minutes of May 11, 1973, be adopted
as amended. Motion carried.

Mr. Tobias moved to add "no action taken" to Judge
Dennis's motion on page five of the May 12, 1973 minutes.

Motion carried.

Mr. Tobias moved to insert into the minutes of May 12,
1973, his motion prohibiting judges from practicing law, which
failed. Motion carried.

The motion was made to correct the spelling of Mayor
Nall's name on page two of the May 12 minutes. Motion carried.

Mr. Bel moved the minutes of May 12, 1973, be adopted
as amended. Motion carried.

Mr. Tobias moved that the committee consider Section
5(A) of Draft "A," qualifications of judges, to be combined
with the provision prohibiting judges from practicing law.

2

Motion carried.

Mr. Tobias moved that a judge shall be an elector of this
state who has been admitted to the practice of law in this
state. He shall have resided within the territory of the
district from which elected for two years immediately preceding
his election. Motion carried.

Mr. Avant moved as a substitute that the qualifications
of judges of the supreme court, court of appeal, and district
courts shall be: an elector of this state who has been admit-
ted to the practice of law for five years preceding his election,
residing in the territory of the district for two years prior
to his election. Motion carried.

Mr. Avant moved that the Judiciary Commission be contained
in the constitution, with its membership and the grounds for
removal clearly defined.

Mr. Deshotels made a substitute motion that the committee
defer voting on whether there should be a Judiciary Commission
and whether it should be put in the constitution, and requested
the staff to prepare a brief on how the other states handled
this question. Motion failed.

Mr. Tobias moved that the chairman appoint a subcommittee
to explore the matter and report back to the committee. Motion
failed.

Mr. Avant's primary motion was adopted.

Mr. Avant moved that the Judiciary Commission consist
of one appeal court judge, two district court judges, one
lawyer, and three citizens, the latter appointed by the
Judicial Council.

3

Mr. Willis offered a substitute motion that the Judiciary
Commission consist of one court of appeal judge and two
district court judges, appointed by the supreme court, three
members of the bar appointed by the District Judges' Association,
and three citizens appointed by the District Judges' Association.

Mr. Willis amended his motion to provide that the members
of the bar shall have practiced for at least ten years prior
to his appointment.

Mr. Avant offered an amendment to the substitute stating that the three lawyers be appointed by the Louisiana Court of Appeal Judges' Association and the three citizens be appointed by the District Judges' Association, or their successor. Motion carried.

Mr. Willis's substitute motion as amended was adopted.

Mr. Burns moved that Section 33(B) of Draft "A" be adopted. Motion carried.

Mr. Kelly moved that Section 33(C) of Draft "A" be adopted. Motion carried.

Mr. Willis moved that Section 33(D) be adopted. Motion carried.

The committee began discussion of Mr. Eugene Murret's draft proposal for grounds for removal of judges, a copy of which is attached hereto and made a part of these minutes.

Mr. Avant moved that beginning on line five of the Murret proposal, the words "habitual" to "disrepute" be deleted. Motion carried.

Mr. Sandoz moved to accept Mr. Murret's proposal as submitted. Motion withdrawn.

4

Mr. Kilbourne moved to substitute the words "notorious and public conduct prejudicial..." for the phrase "habitual... disrepute," in line five of the Murret proposal. Motion failed.

Mr. Kilbourne moved that "persistent and public conduct prejudicial..." be substituted for the phrase "habitual... disrepute," and to add the words "or conduct while in office which constitutes a felony under law or conviction of a felony." Motion carried.

Mr. Avant moved to adopt each sentence of the Murret proposal separately. Motion carried.

The first sentence was adopted as amended.

The second sentence was adopted.

The third sentence was adopted.

Mr. Vesich moved to strike the fourth sentence. Motion carried.

Mr. Sandoz moved to strike the fifth sentence. Motion carried.

The sixth sentence was adopted.

Mr. Sandoz moved to adjourn the meeting until 9:30 a.m., May 12, 1973.

Motion carried and the meeting was adjourned at 5:00 p.m.

V. J. Burns
Chairman
Eugene Murret
Vice Chairman
William Hawk Daniels
Secretary

5

Minutes of the Judiciary Committee of the Constitutional Convention of 1973
Held pursuant to notice mailed by the Secretary of the Convention on May 17, 1973

Law Center, L. S. U., Baton Rouge,
Louisiana, Saturday, May 26, 1973,
9:30 a.m.

Presiding: Judge James L. Dennis, Chairman of the Judiciary Committee

PRESENT	ABSENT
Avant	Drew
Bel	
Bergeron	
Burns	
Dennis	
Deshotels	
Gauthier	
Kelly	
Kilbourne	
Landry	
Martin	
Ours	
Sandoz	
Tate	
Tobias	
Vesich	
Willis	

The committee heard the following speakers concerning the judicial system in Louisiana:

Judge William Hawk Daniels, City Court, Division B, Baton Rouge;

Judge J. Cleveland Fruge, Third Circuit Court of Appeal;

Associate Justice Frank W. Hawthorne, retired, Louisiana Supreme Court.

The committee recessed for lunch at 12:30 p.m.

The committee resumed at 2:00 p.m.

Mr. Tobias moved to discuss Section 44 of Draft "A."

Motion carried.

Sheriff Martin moved to delete the second paragraph of Section 44. Motion carried without objection.

Mr. Deshotels moved that the question of the sheriff's provision be divided and considered point by point. Motion carried.

Judge Tate moved to provide that there will be a sheriff elected by the qualified electors of each parish who shall be elected at the general state election for a term of four years. Motion carried without objection.

Judge Tate moved to charge the sheriff with executing the orders and process of the court. Motion carried without objection.

Judge Tate moved the sheriff be charged with law enforcement duties and collection of state, parish, and all other taxes, except inheritance and municipal taxes, and such other tax collecting duties as provided by law.

2

Mr. Kilbourne moved to amend Judge Tate's motion to state that "the sheriff be the chief law enforcement officer of the parish, except as otherwise provided by this constitution." Motion carried.

Mr. Tobias moved to amend Judge Tate's motion to omit "inheritance taxes" and add "and such other duties as provided by law." Motion carried.

Judge Tate's primary motion as amended carried.

The committee discussed the tax collecting duties of the sheriff and asked the staff to determine (1) what state taxes the sheriff collects, (2) whether license and occupational taxes are considered taxes, and (3) what laws limit the jurisdiction of the state police.

Judge Tate moved to provide that in any parish at the time of the adoption of this constitution, in which there is a civil sheriff and a criminal sheriff, the office shall be continued and the duties assigned to them continued until changed by a vote of the majority of the legislature and a majority of the electorate concerned at an election called for that purpose.

Mr. Tobias moved to amend the motion to read that there shall be one sheriff in each parish of the state. Motion failed.

Mr. Avant moved to amend the motion to provide that the sheriffs as previously constituted are retained until the legislature with a majority of each house and the electorate change it. Motion failed.

Judge Tate's primary motion was adopted.

3

The committee moved to direct the staff to prepare a provision to prevent reduction of salaries of the elected officers provided for in Article VII. Motion carried.

Judge Tate moved Section 40 be adopted but inserting the word "staff" in lieu of the words "office force" Motion carried without objection.

The committee then considered Section 41 of Draft "A."

Judge Tate moved to adopt Section 41 amending the first sentence to read, "The attorney general and the first and second assistants shall..." and substitute "Attorney general shall attend to..." in the second sentence.

Mr. Kelly moved to amend Judge Tate's motion by striking the last sentence in the first paragraph. Motion carried.

Mr. Burns moved that the committee defer action on Section 41 until the research staff could draft a section to prevent the attorney general from superseding the district attorney except under certain circumstances. Motion failed.

Mr. Avant moved to amend Judge Tate's motion to delete "they deem necessary," substituting "shall be necessary." Motion carried.

Judge Tate's original motion with amendments carried.

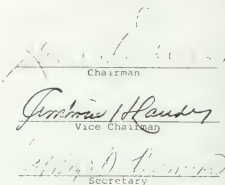
The committee tentatively adopted the second paragraph of Section 41.

Mr. Burns moved to adjourn the meeting at 5:00 p.m.

Sheriff Ourso moved to meet on June 1 and June 2, 1973. Motion carried.

Mr. Burns motion carried.

4


Chairman
Vice Chairman
Secretary

5

OFFICIAL TRANSCRIPT

OF THE
CONSTITUTIONAL CONVENTION
STATE OF LOUISIANA
1973

COMMITTEE ON JUDICIARY
MEETING OF MAY 26, 1973

MR. TATE

Mr. Chairman, now, the--as written--we say, "There shall be a sheriff elected by the qualified electors of each parish in the state except the parish of Orleans shall be elected and the sheriff, except in the parish of Orleans shall be ex officio sheriff." We should have some sentence about the parish of Orleans at this point.

?

Yes. You're right.

MR. TOBIAS

May I make a proposal? And it's not to get rid of anybody in Orleans, that we provide similar to the section of Section 15-A of our draft. Of course, I would have to go with the straight two-thirds vote of the legislature but provide that "the sheriff as presently constituted shall continue until such time as changed by a two-thirds vote of the legislature."

?

Just by the legislature only?

?

Just by the legislature.

?

I object to that very much.

?

....vote of the people.

?

And the vote of the people.

UNINTELLIGIBLE

MR. TOBIAS

For the time being make it a majority of the legislature and a majority of the people.

?

Just the way it is.

MR. VESICH
Majority of each house of the legislature.

7
Right. Presently.

7
Majority of the house and vote by the majority of the people...

7
Until changed.

7
This is another amendment?

7
Yes.

MR. TOBIAS
I accept that amendment.

MR. DENNIS
I mean in your motion in the nature of an amendment or what?

MR. TOBIAS
No. Well, it would have to be in the nature of an amendment to Mr. Bergeron's initial motion.

MR. DENNIS
Is there any objection to the amendment as amended?

MR. VESICH
You have any objection, Bergeron?

MR. DENNIS
Without objection....

MR. BERGERON
Yes. I object to it. I'd just like to get some discussion on this first. Did we decide non-bindingly that we would go along with it--the majority of each house and a majority vote of the people?

7
Yes.

MR. AVANT
Only as to Orleans Parish.

7
Majority of the electors...

7
Would it in effect lose the effect of your amendment? In other words....

MR. TOBIAS
The effect of the amendment is to take out the obvious exception of Orleans Parish to the casual reader who doesn't know anything about it.

7
You don't want to freeze the sheriff in Orleans the way they are now?

MR. TOBIAS
I don't--That's precisely. In other words, some day the legislature and the people may want to change it at this time.

7
Well, that's ridiculous...

UNINTELLIGIBLE

MR. AVANT
Mr. Bergeron just brought up something that was in my mind and I would like to direct my question to the sheriffs and I hope that you are not--it's not intended to promote any great controversy, but at various times in our history there has been conflicts between the sheriffs, or the law enforcement officers, and the state police who have authority under certain circumstances, and so forth, and I'm told that there's nothing in the constitution itself which specifically provides that the sheriff has any duties as a law enforcement officer, but as a matter of fact, we all know that the sheriff in practically all the parishes in the state is the chief law enforcement officer. Is that a problem? Or should we say anything about that or should we just let things go like they are?

MR. DENNIS
Any discussion on that?

MR. BERGERON
It has been a problem with some sheriffs where the state police came in and superseded the sheriff's department and without the sheriff's knowledge, et cetera. Now, I don't know what we could do to stop that or whether anyone wants to stop it or what. I really don't know what to say. Maybe Sheriff Martin has something to say.

MR. MARTIN
Maybe add "who shall be the chief law enforcement officer of that parish."

MR. AVANT
It's my impression....

MR. GURSO
We're supposed to be, but we're not.

MR. AVANT
Well, that's the point I'm getting at. It's my impression that as of right now that there is a hiatus in the law. In other words...

7
It doesn't say anything in here what the sheriff's supposed to do.

MR. AVANT
That's right. The constitution doesn't say that the sheriff has any law enforcement duties or prescribe what those duties are nor does the constitution provide that the state police has any law enforcement task. And as I understand it there is a hiatus in the law that has resulted in certain instances on.....

7
Well, I've never had that problem but I've heard of it.

MR. DENNIS
Mr. Willis raises a point of order. What is it, Mr. Willis?

MR. WILLIS
My point of order is that it has no relevancy to what we have under consideration, notably Mr. Tobias' amendment that with respect to--I'm for you but I think we're crossing the bridge before we get to it.

MR. AVANT
I thought we had adopted that without opposition.

7
No, we hadn't adopted it. Mr. Bergeron objected to it.

MR. AVANT
I beg your pardon.

MR. WILLIS
I'm with you, but not now.

MR. DENNIS
Is there any further discussion on the Tobias amendment?
Mr. Bel.

MR. BEL
Max, if I understand you correctly, what you're trying to do with this amendment is the same thing we've done with the judge's

MR. TOBIAS
Right. In other words make it appear.....

MR. BEL
In other words, if you ever wanted to change the system of the courts automatically this would cover it with the sheriffs at the same time.

MR. TOBIAS
No, not necessarily.

MR. BEL
Well, what it means is if they're going to change the court system, it would do away with one sheriff.

MR. TOBIAS
Not necessarily. That doesn't mean that at all. All I'm saying is that they could continue to have a division of civil sheriff and criminal sheriff; one to handle criminal matters; one to handle civil matters. All I'm saying is that for the purposes of Orleans Parish that they shall continue in office as two separate branches unless and until the legislature by a majority vote changes it, or votes to change it, and the vote of the people.

7
It could be at the same time, Mr. Bel.

MR. BEL
It could be, but it is not necessarily.

7
Probably would be.

MR. BEL
If they changed one, they'd have to change the other.

MR. TOBIAS
Probably, but not necessarily.

MR. BEL
Doesn't have to, but it can be done.

7
Max, if they change one, they'd have to change..

MR. TOBIAS
No, they wouldn't.

9 Why wouldn't they? You'd still have a civil sheriff handling the civil matters and a criminal sheriff handling criminal matters.

7 They may decide to....

7 All you would have would be gross duplication.

9 No, they may decide to combine the office and still have a separate civil court.

9 No.

9 I mean that's under his deal. In other words, one would handle the criminal matters and one would handle civil.

MR. DENNIS
Please, gentlemen. Now Mr. Kelly is next on the list.

MR. KELLY
I want to ask someone a question from Orleans. It doesn't make me any difference who answers it. Now quite obviously concerning the merger of your court systems down there, we've heard divided testimony up here concerning different judges. Some say they want to merge; some say they don't, and so forth, so I think the people that are not truly involved have kind of agreed on this 15-A, but what is the feeling of the people of Orleans? I mean, is it possible to continue your same court system that you've got now? Is it absolutely essential to have two sheriffs at this particular time?

MR. TOBIAS
No, I personally believe that you could have one sheriff, but I don't think that the majority of this committee would—I would be willing to offer a substitute to that effect and we can see what the sentiment is, but I don't think, in my opinion....

MR. DENNIS
Let me ask you, Mr. Tobias, is your amendment to this particular section?

MR. TOBIAS
Right. It's to the....

MR. DENNIS
Statement of principle, or what?

MR. TOBIAS
Well, it's an amendment to this section to get rid of the sections that provide "except in the parish of Orleans," that phrase appears twice....

MR. DENNIS
They aren't really appearing in this section as I recall.

MR. TOBIAS
Yes they are.

7 That has been deleted. Second paragraph's been deleted already.

UNINTELLIGIBLE

MR. TOBIAS
Let me try to compose it.

MR. DENNIS
....Section 89 for the Orleans sheriff provision. This one just simply excepts Orleans.

MR. TOBIAS
Right. I want to take out the exception for Orleans.

MR. DENNIS
That's not what you were saying.

MR. TOBIAS
Yes it is. That's precisely—I'm saying that I want this phrase that says, "except in the parish of Orleans" out. I'm not changing one—my intent is not to change one office holder in the city of New Orleans.

MR. DENNIS
Well, if that's all you're doing at the moment then, we don't have to—you're just saying what you will do when we get to Orleans.

MR. TOBIAS
No, No, we're here already.

MR. TATE
We're here already, Mr. Chairman. This is only an article about sheriffs.

MR. DENNIS
What about 89?

MR. TATE
Well, we're not into that.

MR. KELLY

Alright. Can I—I had the floor, please. Can I finish? As I understand—and, Max, maybe you'll make it a little more clear. In effect, what you're going to have to do is put a provision in there similar to what we put in 15-A saying that "the sheriffs as they are now constituted shall continue."

7 "In Orleans Parish".

MR. KELLY

Yes. You could cover it all. Just say "the sheriffs as they are now constituted throughout the state of Louisiana shall continue as they are now"; that covers everybody, and then add your business about the majority and all that. And that would take care of it. That way you catch 89 and you catch whatever you got in mind also, but I still—I want....

MR. DENNIS

What I'm trying to get around to is Mr. Kelly wants to pose the proposition that we don't need to preserve the distinction in the constitution as to sheriffs.

7 Right.

MR. KELLY

I'm not necessarily putting that as—I want someone from Orleans Parish who knows something about their system down there, and Max has given his idea and there's some other people here from New Orleans and I meant, the merger of your court system, I understand there's some division down there among the people, and so forth, so, I mean, we have more or less decided we'll let the people of New Orleans decide what they want to do with their court system, but when we get to the sheriff situation, is that the same way?

MR. VESICH

Well, yes, if you're directing the question to me. Clyde, what are the duties of the criminal sheriff of New Orleans besides warden of the parish prison? He has other duties.

MR. BEL

Yes, he serves all subpoenas issued by the court.

MR. VESICH

Criminal court.

MR. BEL

Criminal court.

MR. TOBIAS

The civil sheriff serves all the subpoenas issued by the civil court.

MR. BEL

Civil court.

MR. TOBIAS

And he's also the....

7

Balliff, isn't he?

MR. TOBIAS

Well, he's in charge of the voting as the civil sheriff. That's the only basic distinction. Of course, in your other parishes he's also the chief law enforcement official.

MR. DENNIS

Let me make this suggestion. Why don't we decide what the sheriff generally is going to do in the state of Louisiana and whether or not we need any additional duties in the constitution for him before we talk about the sheriffs of Orleans Parish?

Mr. Justice Tate.

MR. TATE

And to some extent we've been saying what we ought to spell out in the constitution and to some extent the present constitution leaves it to the legislature. For instance, the amount of law enforcement duties, and I wonder if that's not a good—the sheriffs might not think that's a good general approach. The sheriff is, as far as we're concerned, reason it's in the judiciary article is he's the chief....

7

Law enforcement officer.

MR. TATE

...executive officer of the court's kind of...

7

We don't even say that.

MR. TATE

No, we don't even say that. He's the chief tax collector in all parishes outside of Orleans. Who collects the taxes in Orleans?

State tax collector.

MR. TATE
State tax collector.

MR. VESICH
George Montgomery.

MR. DENNIS
Well, I don't know whether the sheriffs of Orleans are saying this, or whether they even want me to say it, but I understand that there has been some conflict from time to time in some parishes with, for example, with the district attorneys office. They have taken on investigative duties and I've even heard some of my district--assistant district attorneys refer to the district attorney as the chief law enforcement officer of the parish and I understand the attorney general's office is taking on investigative duties and I don't know whether we have a situation that is so unclear that we need to state in the constitution whether or not the sheriff is the law enforcement officer, but from what I've heard, I think it might be necessary to do it.

MR. AVANT
Well, what would you do is the point I was trying to raise.

MR. TOBIAS
If you provide that he's the chief law enforcement officer, then you run into a tremendous problem with Orleans Parish.

MR. VESICH
You'd have to leave it as it is here.

MR. TOBIAS
In Orleans Parish he is not the chief law enforcement...

MR. BEL
This first paragraph could be easily amended, but it says, "the sheriff except in the parish of Orleans shall be the chief law enforcement officer and ex officio collector of state and parish and so and so taxes."

MR. TOBIAS
I'm trying to get out that provision that says, "excepted?"

MR. BEL
Well, I mean, that's your provision, but, I mean, I would add that to the rest--the other sixty-three parishes.

MR. DENNIS
What about generally providing that in line with what Justice Tate says, that "the sheriff shall..." Mr. Bel, if you cut out--make this suggestion, "the sheriff shall perform such law enforcement and tax collecting and court duties" (or however you want to put it) "as provided by the legislature?" Something along that order.

You better watch that.

No. Ratify the constitution.

We're not asking much in the constitution.

We're asking for about one paragraph, that's all.

Okay.

MR. DENNIS
Mr. Avant.

MR. AVANT
Well, would the comments that I started to make awhile ago now in order?

MR. DENNIS
Well, I..

MR. TOBIAS
The chairman was out of order basically.

MR. DENNIS
I was making a suggestion, Mr. Tobias, to delay what he's doing until later but that's just a suggestion. His amendment's still on the floor unless he wants to withdraw it.

MR. TOBIAS
I'll just leave it up to the research staff to attempt to find a way to phrase it in such a way as to provide, not to change anything with respect to the powers of--I beg your pardon--to the number of sheriffs in the state. In other words, don't touch it. Just leave it the way it is until such time it's changed by the legislature and the people.

MR. DENNIS
Is there any objection to that?

MR. TATE
Yes.

MR. DENNIS
Justice Tate.

MR. TATE
Mr. Chairman, I think that we could reach a decision right away because I sense agreement that in the other parishes of the state he'll be the chief law enforcement officer and collector of taxes...

Collector of taxes.

MR. TATE
...and while usually we don't want to say, "except in the parish of Orleans", here's an instance where we might as well just say it, "except in Orleans Parish the sheriff shall perform the present--so forth in the language--that the present officers of sheriffs and tax collectors shall be continued unless changed by a vote of the majority of the legislature and a majority of the voters of the parish of Orleans." Whatever we said, then we won't have to come back to it if we don't want to.

MR. DENNIS
That's a suggestion.

MR. TATE
That's just a suggestion, all right.

MR. DENNIS
Mr. Tobias, were you listening to Justice Tate's suggestion?

MR. TOBIAS
Yes, I can't--I just will not go along with any exception, or a

MR. TOBIAS (cont'd)
stated exception. Now, you might want to phrase it "in any parish to the extent there's a population in excess of five hundred thousand there may be a"--I don't want to do that, but I just can't go with an exception of Orleans Parish.

I'm sorry.

MR. DENNIS
Well, you can't state that he's a law enforcement officer otherwise. I think Justice Tate is correct, because he's not in Orleans Parish.

MR. TOBIAS
But, I don't want a section on Orleans.

Sheriff Martin, I'm directing my question to you. You had made a suggestion a short while ago which sounded pretty good which explains that the sheriff shall be the chief law enforcement officer. Why couldn't we just add that to this clause as you have stated and leave the rest of it as it is? I know, Max, you don't want to say "except Orleans", but what are you going to do? If you take "except Orleans" out, you have mass confusion because you have the police department down there claiming that they have the power; you have the sheriff...

MR. TOBIAS
Right. I agree; that's a problem, but let me ask. Lee, C. B., do you think you could come up with some sort of solution or can you suggest one off the top? If not I'll...

MR. FORGOTSTON
The way you worded your motion it was still just the same as saying, "except Orleans".

MR. TOBIAS
That's right....

MR. FORGOTSTON
Just saying only in Orleans Parish you'd have a vote.

MR. TOBIAS
I was just trying to take out that one "except"--the phrase, take out Orleans Parish.

You can phrase it some way to do that. You can do that.

If you take it out, then you can't put that he is the chief law officer of the court yet.

UNINTELLIGIBLE

MR. TOBIAS
I can guarantee you they can find some way to put it.

MR. FORGOTSTON
We could say "the sheriffs shall exist as they are presently provided for in the constitution."

MR. DENNIS
Mr. Sandoz is recognized.

MR. SANDOZ

Could we not just make Max's motion a second paragraph in there which provided just what he said. In other words, so that that second paragraph would take care of the Orleans situation until such time as it is changed by the legislature and the people?

MR. DENNIS

Is there any objection to Mr. Tobias' amendment?

MR. BEL

I still object.

o

MR. DENNIS

Anybody else object?

MR. BERGERON

I understand his amendment. What I'd like to say or what I'd like to see in this article here is as Sheriff Martin has stated, that the sheriff in every parish be the chief law officer, and so forth, except in Orleans, as it is now. Now why couldn't you leave it like that?

MR. TOBIAS

Because I cannot go with that "except Orleans".

MR. BERGERON

Well, Max, you're just talking about--if you're worried about--you're worried about style...

MR. TOBIAS

I'm looking at the simple political consequences and I hate to use the phrase, but that's true, that's it. There's a lot of sentiment in this state where you have anything in the constitution that reads "except Orleans Parish" that's--somewhere along the line, when someone gets down to that provision, that's going to say "that's the straw that's broken the camel's back, I'm voting against it." I'm afraid of that. I'm just saying that it could be phrased in such a way...

MR. DENNIS

Does anyone else wish to be heard on this? Mr. Deshotels.

MR. DESHOTELS

I'd like to--on that question, I'd like to ask somebody who may know something about East Baton Rouge. East Baton Rouge Parish is a city-parish type government. How would this affect the relationship of the, for instance, chief of police and the sheriff in East Baton Rouge Parish? Anybody got any comments on that?

?

I don't know how they work now.

MR. AVANT

We're governed by

MR. DENNIS

Justice Tate from East Baton Rouge Parish, would you like to answer the question?

MR. TATE

No, no. I was raising my hand to get on your list.

MR. DENNIS

Alright. You're next. Mr. Avant is going to answer this question though.

MR. AVANT

We're governed by the plan of government of the parish of East Baton Rouge and the city of Baton Rouge.

MR. DESHOTELS

You have a charter just for the whole parish?

MR. AVANT

That's right.

MR. DESHOTELS

Well, how would the constitution...

MR. AVANT

It was adopted by the--it was drawn by the East Baton Rouge Parish Charter Commission and it was adopted pursuant to a constitutional amendment and it can only be amended in the fashion set out there. Now, the way it works in East Baton Rouge Parish, the sheriff is the chief law enforcement officer, or he is the man who enforces the law; I don't want to be giving him something that's not in the constitution, as I

19

MR. AVANT (cont'd)

understand it. Now he, as a practical matter, he enforces the law in the parish of East Baton Rouge, outside of the city of Baton Rouge. The police department of the city of Baton Rouge enforces the law in the city of Baton Rouge and I am sure whether there's some detailed provision for it or not that they--in most cases they do work in very close cooperation with one another.

MR. DESHOTELS

My question is though would this amendment as proposed by Sheriff Martin where we specifically set it out. Now, you see, you realize we're going to be adopting a new constitution. Now how will this affect East Baton Rouge?

MR. AVANT

Well, I would envision--I would envision that in all probability that new constitution is going to provide that all cities that operate under these home rule charters that they would not be changed by the adoption of this new constitution.

MR. DESHOTELS

See there is a problem.

MR. AVANT

They would continue to operate under their own home rule charter that's....

MR. DESHOTELS

Some provision will have to be made for it.

MR. TATE

What about--This is a question to inquire--it rises in my own thinking. Mr. Deshotels did raise a question that before we get--what would the effect of this be on the chief of police in Ville Platte?

?

All right.

MR. TATE

I mean not over the special--

MR. DENNIS

Well, this is almost like the suggestion I offered. It's a little bit different. Instead of saying--Why not just say that "he shall serve as a law enforcement officer and executive officer of the court"? Some provisions of a tax collector as we have here. In other words, if the "chief" word is bothering you, just provide he's a law enforcement officer.

?

He would just be the chief of police inside the town, not the chief law enforcement throughout the parish.

MR. DENNIS

Mr.--Well, Justice Tate was...

MR. BERGERON

Okay.

MR. DENNIS

...next on the list.

MR. BERGERON

Just wanted to get on the list. That's all I...

MR. TATE

Mr. Chairman, what I was about to suggest was, as a plan on discussing this, is to take up, for instance, the first amendment and I'll make a motion right after this, to take up the first sentence which is "election"--the general election to hold office for four years." I believe that's non-constitutive. Then to take up the second sentence and work on the law enforcement and collection of taxes and then as a third section to have the Orleans Parish provision. I mean, that ought to...

MR. TOBIAS

A section providing Orleans Parish?

11

MR. TATE

Figure the words out right now. In other words, to get to that point the first thing--I'll just move that the first sentence be adopted.

MR. DENNIS

....Mr. Tobias withdraws his motion.

MR. TOBIAS

No. I haven't withdrawn it.

MR. TATE

Is your motion still on the floor?

MR. DENNIS

The motion's still on the floor, Justice Tate.

MR. TATE

Oh. Alright now, what is the motion because...

MR. DENNIS

It's not clear. Maybe you'd better restate it, Mr. Tobias.

MR. TOBIAS

Perhaps I ought to try to compose something. All I'm saying is that the powers of the sheriffs in this state, as presently existing, shall continue unless changed by a majority of the legislature and a majority of the people in the jurisdiction affected, and the research staff can come up with a more appropriate expression of how to phrase this, I'm pretty sure.

MR. TATE

Mr. Chairman, can I rise to...

MR. DENNIS
There has been objection to this motion.

MR. TATE
We are trying to make a flexible constitution. You mean to say if they add to the duties of the sheriff that he's going to collect, say, sales taxes, they'd have to have a vote of the people to add to it? I just think that we have a pretty flexible system that's worked well and that the only problem we have in Orleans Parish, Orleans Parish and I'm inclined to go along with our Orleans brethren if they want a vote of the people to consolidate those two major offices or three major offices, let them do it, but let's not, for goodness sakes, freeze into the constitution any time they add a new duty to the sheriff or take it away, that you've got to have a vote in each parish that would be, you know, would end up to sixty-four--sixty-three different types of sheriffs.

MR. DENNIS
I'm making a list, gentlemen. I'll get all of you. Just a minute. Mr. Bergeron wants to be heard again.

MR. BERGERON
Okay, Mr. Tobias, I'm going to tell you how I would state the motion if--and just see how it agrees with you. Of course, I know it won't.

MR. TOBIAS
If you put "except", I will agree with anything if you don't say "except in Orleans Parish."

MR. BERGERON
Looking at Section 44, "There shall be..."

?
Other than Orleans.

MR. BERGERON
Looking at Section 44 as it reads, "There shall be a sheriff who shall be the chief law enforcement officer elected by the qualified electors of each parish in the state", and just "except in Orleans Parish." Just leave the rest of it as it is and just put in that phrase

MR. BERGERON (cont'd)
in the first sentence, "who shall be the chief law enforcement officer", between the words "sheriff" and "elect" in the first part.

?
The problem with that is that you run into the problem, what do you do, for example, in Jefferson Parish where you have the city of Kenner? We have a police department. Does that mean that the sheriff--does that mean that Allen Cronovich would control, would govern, would be able to rule the city police of Kenner?

?
Well, what happens in every parish now?

MR. TOBIAS
Because it wasn't provided.

?
Leave off the word "chief", "a law enforcement officer."

?
Or "the law enforcement officer".

?
"Shall be ex officio law enforcement."

MR. SANDOZ
Just put no "chief" because then your question comes up in all municipalities.

?
Well, what about "the law enforcement"?

?
No. Just put "a law...."

?
"A law enforcement officer."

?
If you say "the", you're saying the same thing.

?
I'm in favor of this.

MR. DENNIS
Sheriff Oursou.

MR. OUSOU
Yes, sir.

In this Section 44 you could shoot this thing down and shoot it full of holes and it's nothing but--since we knocked out one paragraph, nothing but one paragraph. All right, in Iberville, now we talked about Baton Rouge and New Orleans and the type of government in Baton Rouge and the charter and the type of deal that you have in Orleans Parish. Now, I don't have any choice but to be the chief law enforcement officer in Iberville Parish because Judge Engolio was city attorney and he drew up the charter, a new charter for the city of Plaquemine which is the

largest city in Iberville and the city police actually has no jurisdiction in reference to felony cases in the parish--in the city of Iberville--I mean of Plaquemine. They have no jurisdiction whatsoever on felony cases. They can't investigate burglaries and robberies and thefts where it goes into armed robberies, et cetera, murders or anything like that. Even on some shoplifting charges we have to go in and I was telling Don and then that today. He have to go in and investigate that, so I wouldn't have any choice but to be the chief law enforcement officer of Iberville Parish, but, as Mr. Avant stated above in this charter, I know on numerous occasions being with the Baton Rouge City Police and et cetera where the sheriff's department go in and investigate cases in the city and they make arrests and solve murders and so forth in the city and at one time there was some hard feelings between the sheriff's department and the Baton Rouge City Police when they started swapping those chiefs around and all, but then they came on around and they finally hit a happy medium and now they think they--was who's getting all the television coverage, so I think now

MR. OUSOU
it's where they bring in, they go solve a case; you have the district attorney there, you have the sheriff there, you have the chief of police there and you have the people that make the investigation and then they have a news conference. Well, it's a big deal over that, but I'm sure it's the same way in Sheriff Martin's parish, so you talk about four of the five cities or that would affect four or five parishes, but then you're forgetting about the other fifty-nine parishes that would have a problem with that because I'm sure that in a lot of these parishes where they don't have the large municipalities and et cetera where the sheriff, really, he is the man. Now, in reference to this line where it says, "Shall be ex--"

MR. DENNIS
Would you yield to a question from Mr. Sandoz?

MR. OUSOU
Yes..

MR. SANDOZ
My question is I don't know how--but maybe you may have a peculiar charter there because to the best of my knowledge most of the cities that the police forces in those individual cities can investigate any crime..

MR. OUSOU
Well, that's what's in the charter.

MR. SANDOZ
Maybe you may be an exception rather than the rule.

MR. OUSOU
Yes, well, we went into that. It was a particular case that we went into and we worked it out with the city attorney and myself and the chief of police and then we got an understanding through Ed Engolio. Now going back to this section here. Of course, I know what it says in this here and what is done is two different things. I imagine there's some parishes where some sheriffs may not do anything if he was the chief law enforcement officer, but it says, "Shall be ex officio collector of state, parish--well the state taxes are gone--state, parish and all other taxes". And all other taxes, now that would mean such as taxes that's loaded with bond issues such as your one cent sales tax that a school board may pass throughout a parish, or a one cent road tax such as we have; we have two one cent taxes in Iberville, one dedicated to roads and one dedicated to schools. The sheriff should be collecting that, but I'm not and Sheriff Martin had the same thing in his parish, that we're really not collecting the taxes that we're supposed to be collecting. The police jury went on their own and opened their own tax office and collected those taxes and then the school board passed a one cent sales tax, and, in turn, paid the police jury, their tax group, for collecting those taxes. So the police jury has infringed upon us in the collection of taxes and taken some of our duties. Now, so we--it's just--I don't think we have to get any weaker than we are and we want to stay just about where we are, but, as Mr. Avant brought up in reference to the state police, that goes back into the home rule. They just come up in and this man is appointed, he comes in and he just takes over everything and the sheriff sits back and....

MR. DENNIS
Excuse me just a minute. I think we're all tending to forget we've got Mr. Tobias' motion on the floor. Now, you're really speaking to the merits of this thing in general. Would you mind..

MR. OUSOU
Well, the problem..

MR. DENNIS
Would you let us go ahead and vote on Mr. Tobias' motion and unless--if I'm wrong, tell me, but I think what you had to say had more to do with what Mr. Avant and others....

MR. OUSOU
Well, I was going to...

MR. TOBIAS
I think we're going to clarify it. Mr. Chairman, Mr. Willis has a proposal that I think we can probably all agree upon right at the moment and I'd like him to, even though it's out of order...

MR. DENNIS
If you will withdraw your motion...

MR. TOBIAS
I'll withdraw my motion for the moment, but under this agreement that it will be the next motion.

MR. DENNIS
Sir?

MR. TOBIAS
Under this agreement I withdraw it...

MR. DENNIS
I'll recognize you again if it doesn't carry.

MR. TOBIAS
Okay.

MR. DENNIS
Will you withdraw your motion?

MR. TOBIAS
I will for the moment.

MR. DENNIS
Mr. Willis is recognized.

MR. WILLIS
Mr. Chairman, I propose that the section for sheriffs read as follows, and before so doing I propose to delineate with some precision what I understand to be the duties of a sheriff. They are twofold, first, law enforcement--Pardon me?
...first, as I understand, he's chief law enforcement officer and he's a tax collector.

MR. DENNIS
He's also the executive officer of the court.

MR. WILLIS
Well, maybe we can put that as an addendum to my proposal. Anyway, I propose the article for sheriffs to read as follows:

"The chief law enforcement officer of each parish shall be a sheriff elected for four years who shall also collect all but municipal taxes in his parish.

All sheriffs provided for at the time of the adoption of this constitution are retained, however, the legislature by a majority vote of the elected members of each house with the concurrence of a majority of the electors voting at an election called for that purpose in such parish may combine, reassign, increase or decrease these duties."

That freezes Orleans as is and it gives a majority vote; it merges Section 15-A.

MR. TOBIAS
Mr. Willis, but in New Orleans that would make the sheriff the law enforcement officer and he's not the law enforcement officer in New Orleans.

MR. WILLIS
.....I don't say "except"...

Yes, but I'm saying--I'm telling you "except in municipalities" and that would exclude the parishes where they are...

MR. DENNIS
Well, why don't we add to that, say "in Orleans Parish there shall be a civil and a criminal sheriff..."

MR. TOBIAS
I can't go along with it.

You can't do that?

MR. TOBIAS
I'm not going to...

That's where...

Read that again.

MR. DENNIS
Okay. There's a motion, Mr. Willis' motion is before us.

MR. AVANT
Okay. Let him read it again.

MR. DENNIS
Okay. Would you read it again?

MR. WILLIS
"The chief law enforcement officer of each parish shall be a sheriff elected for four years who shall also collect all but municipal taxes in his parish.

All sheriffs provided for at the time of the adoption of this constitution are retained, however, the legislature by a majority vote of the elected members of each house with the concurrence of a majority of the electors voting at an election called for that purpose in such parish may combine, reassign, increase or decrease these duties."

Now, if there is a third duty for sheriffs, we can add it, like the executive officer.

MR. DESHOTELS
Mr. Chairman.

MR. DENNIS
Mr. Deshotels.

MR. DESHOTELS
Mr. Chairman, I'm opposed to Mr. Willis' motion for this reason. I'm also opposed to Mr. Bergeron's. I think what we're talking about in Section 56, we have several thoughts in there. We have, first of all, the office; we have the term; we have the manner of selection and then we have the responsibilities and duties and for that reason I would like--I think we would proceed more orderly and with better success if we would defeat both of these motions and then start out with one thought at a time. First of all, the office, then the term, then the manner of selection and then the powers and duties. Then we can see what we're doing.

MR. WILLIS
Your motion...

MR. DESHOTELS
I'm speaking on your motion. I'm asking that it be defeated and then if both of them are, I would make a substitute motion, or at least ask the chairman to proceed one at the time.

MR. DENNIS
Mr. Deshotels, Mr. Bergeron's has been withdrawn. There's only one motion that's Mr. Willis'.

Mr. Bergeron did it.

That's the initial motion.

That's the initial motion. That's a substitute motion that he's got there.

MR. DENNIS
I guess that was one that was made before I got here.

Yes, he moved to adopt the first paragraph as is. That's the first motion. The substitute...

MR. DENNIS
Okay.

UNINTELLIGIBLE

MR. DENNIS
We know where we are.

MR. DESHOTELS
And I'm speaking against Burt's motion for that reason only.

MR. TATE
I'm more or less in accord with what Mr. Deshotels has said. I was working on the same idea that Mr. Willis has, but trying not--the thing I'm worried of Mr. Willis', when we get to it, is I would hate to say that before they could add any duty to the office of any sheriff, you had to have a vote of the people or take any duty away, I mean in a general way. It would look to me like that would be a very untimely way to do it. I don't know if that was the intention. You see, the only problem in Orleans and the only thing we're worried about is those Orleans sheriffs....If there was only some way we...

MR. DENNIS
Mr. Bergeron.

MR. BERGERON
Gentlemen, it seems as Justice Tate has just mentioned, that the problem in Orleans. Now, objection has been raised by Mr. Tobias where he doesn't want to except Orleans. You don't want to except Orleans in Section 44 or 56, whatever. Why not state this section something as follows:

"There shall be a sheriff who shall be a law enforcement officer elected by the qualified electors of each parish in the state. The sheriff shall be ex officio collector of state, parish and all other taxes except inheritance taxes and municipal taxes which, however, he may also collect if authorized by the legislature."

That's Section 44. Now Section 44-A shall say:

"In New Orleans the sheriff shall be elected at the general state election and hold office for four years. He shall not be the state tax collector, or whatever."

In other words, you're taking New Orleans out of Section 46; you're putting it in 44A; you don't have the "except Orleans" and you're taking care of all the problems.

MR. TOBIAS
You're mentioning Orleans Parish and I'm just about tired of it.

MR. DENNIS
Mr. Landry.

MR. LANDRY
A question for Mr. Willis. As I understand, Mr. Willis, your motion that you have just made would permit the sheriff, as I understand it, to collect all taxes except municipal taxes.

MR. WILLIS
Yes. I had my target on inheritance taxes.

MR. LANDRY
Do you have any idea that this would meet terrible opposition in my Parish? This would mean that the Lafourche Parish School Board tax would have to be collected by the sheriff. The municipality of Lockport, the municipality or the city of Thibodaux sales tax would have to be collected by the sheriff...

MR. WILLIS
Those are municipal....

MR. LANDRY
...At twelve percent commission instead of two percent.

MR. WILLIS
I said "all but municipal taxes."

MR. LANDRY
Yes, but how about your parish taxes?

MR. WILLIS
"Who shall collect all--well, he collects parish taxes."

MR. LANDRY
He's supposed to collect parish taxes.

MR. TATE
When we came to that, I barely mentioned it....
This comes from the present constitution and it says "he shall collect the state, the parish and all other taxes except municipal taxes", however, what it meant was all property taxes. It did not mean that he necessarily collects the state sales--for instance, the state sales tax is collected by the state. State income taxes are collected by the state. It really meant all other property taxes.

?
Who collects the one cent school board?

UNINTELLIGIBLE

MR. DENNIS
Gentlemen, let's proceed orderly, please.

MR. CORSO
There's some parishes that sheriffs are collecting sales tax and there's some sheriffs that just don't care whether they collect it or not. There's some sheriffs...

?
...isn't that by agreement though with the taxing bodies.

MR. CORSO
Well, I don't know whether it's an agreement; I don't know what they're doing, whether the police juries and then agreed or how they got it, but they're doing it. I wasn't at the meeting; I wouldn't know, but I know that according to this--as I always said, I'm not a lawyer, but it's very simple; it says "and all other taxes", and a tax is a tax. A one cent sales tax is a tax. As my friend said, "A rose is a rose as sweet as something".

15

?
That's not the way he said it.

MR. CORSO
Well, I don't know, but I know what he means.

MR. WILLIS
Gertrude Stein said "A rose is a rose is a rose". Shakespeare says, "A rose by any other name smells just as sweet."

MR. CORSO
And collecting "all other taxes" means "and all other taxes."

MR. DENNIS
Mr. Tobias.

MR. TOBIAS.

I think I might have a solution to this and perhaps you may want to correct it or do--this is just a rough statement and it can be polished by the staff.

"There shall be sheriffs (and this violates the guidelines that Style and Drafting have laid down but I'm using it in the plural in this case for one particular reason). There shall be sheriffs elected by the qualified electors of each parish who shall be elected at the general state election, hold office for four years, be ex officio collectors of state, parish and all other taxes (and I'm retaining this other provision for the moment) except inheritance and municipal taxes which he may also collect if authorized by law, chief officer of the court, and constitution law enforcement officer except in the municipalities of the parish. The sheriffs as presently constituted and the powers which they exercise are retained and continued until such time as changed by the majority of each house of the legislature and a majority of the electors in the parish affected.

MR. AVANT
Question?

MR. DENNIS
Gentlemen, I think the wisdom of Mr. Deshotels' proposal, if you take these things separately is interesting...

?
But they're retained until such change...

MR. DENNIS
Each time you make a suggestion...

?
If the legislature wants to change it....

MR. DENNIS
You're going in and out with several different things, whether or not he's going to be the chief or not the chief; whether or not he's going to collect all taxes or not taxes whether Orleans is going to be stated or not.

?
I think we'd better decide on the ... first.

UNINTELLIGIBLE

MR. DENNIS
Let's go at it one by one.

MR. WILLIS
I'll be glad to withdraw my motion to divide the questions.

MR. DENNIS
All right. The floor is open.

MR. DESHOTELS
I want a question.

MR. DENNIS
Mr. Deshotels are you making your motion?

16

MR. KELLY
May I ask a question?

MR. DENNIS
Mr. Kelly has a question he wants to ask somebody.

MR. KELLY
Alright. On that you said something about "ex officio law enforcement officer of the parish..."

?
"Except the municipalities" which would be like the chief of police.

MR. KELLY
Because that way it looks like to me that...

MR. DENNIS
He withdrew it.

MR. KELLY
Well, I know, but we're going to get... Alright, alright.

MR. TATE
Now in line with Mr. Deshotels motion I think we have three ideas before us and to try to break it down, one is that there will be a sheriff elected at the.....UNINTELLIGIBLE
I can't answer this thing until I tell the three one. "There shall be a sheriff for every parish elected", the second will be in reference to his duties, and the third will be to word it so that the Orleans people are left alone until they change it, however they want to change it. Those are the three ideas. Now, if...

MR. DENNIS
Well, why don't you make one at a time?

MR. TATE
Alright. With the understanding that for the third we'll work it that the words about Orleans, that the first one, I think this is Mr. Deshotels' motion, "There shall be a sheriff".

MR. DESHOTELS
Stop there. Stop there.

MR. TATE
That's yours.

MR. DESHOTELS
"There shall be a sheriff", does anybody object?
"For each parish."

MR. TATE
No, no, because we're going to get it in the third. We're going to
say that--if we don't say "except in the parish of Orleans".....

MR. DENNIS
Make your motion, Mr. Justice Tate. Just make your motion and
don't anybody interrupt him, please.

MR. TATE
Alright. The first thought is "There shall be a sheriff" elected by
the qualified electors of each parish who shall be elected at the general
state election and hold office for four years."

MR. DENNIS
Period.

MR. TATE
Period.

MR. DENNIS
Is there any objection? Without objection, so adopted.

MR. TATE
The second sentence, now let me try this for style. "He shall be
charged with law enforcement duties, with executing the orders and
process of the courts and with the collection of state, parish and all
other (I was going to say) property or ad valorem taxes, except municipal
taxes."

MR. DENNIS
Period.

MR. TATE
Period.

MR. DENNIS
Is there any objection?

Yes.

MR. TOBIAS
Yes.

MR. TATE
Okay, all right, let's see.

(END OF SIDE 1 OF TAPE 1)

MR. TOBIAS
Wait a second. The clerk of court in Orleans Parish is ex officio
the collector of the inheritance tax and I hate to take that away from
him.

MR. DENNIS
Alright. Mr. Burns.

MR. BURNS
The only objection I have, I understand from Judge Tate that they're
going to take, supposedly take care of Orleans in the third section, but
my objection to this present reading that he just read is leave out the
word "ad valorem taxes" because in my parish the sheriff collects sales
taxes.

MR. TATE
Well, you could do that by statute or ordinance.

MR. DENNIS
Well, Mr. Burns, I believe the way they're doing that, they're
doing it by agreement. I may be wrong, but they haven't been given that
duty in the constitution.

MR. TATE
They can't take this away from him, but they can give him other
duties if they want to.

MR. DENNIS
Mr. Willis.

MR. WILLIS
Mr. Chairman, what we are about here is to determine whether or not
it seems to me, the sheriffs should collect taxes. It seems to me that
the sheriff has the facility to collect state--all taxes but municipal
taxes; he has the machinery. Why divide the collection of taxes? If
the aversion to the sheriff's collection of taxes is that he gets too
great a percentage, then the legislature should handle it. I know

that's the aversion. Let the legislature handle what the percentage is
and let the sheriff go to the legislature. Well, why not?

MR. DENNIS
Mr. Justice Tate.

MR. TATE
Alright. Now, wait, I think we might be able to solve this. "He
shall be the collector of the state, parish and all other ad valorem
taxes except municipal taxes and such other tax collecting duties as may
be authorized..."

"By law".

MR. TATE
"By law."

MR. WILLIS
Strike out "ad valorem". That restricts it to the property, not
sales tax and not excise tax.

MR. TATE
Well, you see the point is and right now in the constitution that's
all he's got they can't take away from them, but they can give them
other things, you see? For instance, who's the collector of state
income tax right now and the state sales tax? See? But if we say this,
we going to give them--we could give some flexibility to give them other
tax collections. This is what nobody can take away from them.

MR. LANDRY
Ad valorem?

MR. TATE
Ad valorem.

MR. DENNIS
Mr. Deshotels.

MR. DESHOTELS
I'd like a clarification. Justice Tate, did you use the term "ex
officio"?

MR. TATE
I didn't--no, I used it in this--the language readily yields
another way. I just said, "He shall be charged with law enforcement
duties and executing the orders and processes of the courts, and with
the collection of state, parish and all other ad valorem taxes (if
that's the word) except municipal taxes and of such other tax collection
duties as may be authorized by law."

MR. KILBOURNE
Let's listen--could we hear from the staff? He's been doing a
little work on this very issue.

Okay, alright.

MR. DENNIS
It's your time to be recognized...

MR. AVANT
Okay. Then I'll relinquish it then.

MR. KILBOURNE
Mr. Chairman, I think one thing we ought to try to settle if we
possibly can is this matter of law enforcement. We say, "He shall be
charged with law enforcement duties". You get into--and some say,
"chief law enforcement". Of course, I don't necessarily say...

MR. DENNIS
Now, Mr. Tate--Justice Tate didn't say "chief"....

MR. KILBOURNE
I know he didn't, but I'll tell you this now, there ought to be
something about who is going to be the chief law enforcer. You run
into a lot of problems if you don't have that, now I'll tell you; I
know that.

MR. WILLIS
With the state police?

MR. KILBOURNE
Because when something happens, somebody has got to take charge of
it. Now, I don't care if it's the sheriff or who it is, but somebody
has got to be in charge of, say, a murder. Who's going to say--who's
going to take charge of that murder or that murder case? Now, if you
have this other problem too about the state police coming in...

Yes.

MR. KILBOURNE
Yes. They're not elected by anybody and they come in and take over
from the sheriff, and I'm not in favor of that.

MR. WILLIS
No.

MR. KILBOURNE
The main thing is I want this thing to state...

MR. VESICH
Wait a minute now, I don't believe that's true, Kilbourne. Didn't we pass an act to prevent all of that, except in hot pursuit of somebody?

MR. DENNIS
Gentlemen, let's proceed orderly, please.

MR. KILBOURNE
Well, in all events I think it ought to definitely be stated whether the sheriff or whether somebody else is going to be the chief law enforcer in the parish. Now, I really, definitely think that ought to be done. We ought to settle that before we do anything else.

MR. DENNIS
No. No. There's a motion on the floor and we're going to vote on this motion, either adopt it or defeat it before we do anything else unless...

MR. TATE
I would yield....

MR. DENNIS
Mr. Kelly is next, Mr. Justice Tate.

MR. TATE
Oh, excuse me. Excuse me.

MR. KELLY
Well, then this motion you're talking about collection of taxes and everything and so I mean we're talking about what the old constitution says and it simply says, "and all other taxes" like you pointed out, Justice Tate.

MR. TATE
Yes. Yes.

MR. KELLY
But now you said--now what....Are there any annotations under that, C. B.?

MR. FORGOTSON
I have nothing on that. The only thing I just remember that was the attorney general's opinion on that.

MR. TATE
It couldn't mean all the taxes because....

MR. OURSO
I saw two attorney general's opinions. One said the civil court couldn't collect it, the other said the sheriff should collect it. I saw both of them. I got a couple of them in my files...

23

MR. DENNIS
All right, gentlemen, let's proceed orderly.

MR. OURSO
Who gets to the attorney general first?

MR. DENNIS
Alright, is there any further discussion on the motion?
Justice Tate.

MR. TATE
I think, perhaps, if Mr. Kilbourne would make an amendment, we could--on the chief law enforcement officer. I have no strong feelings on it; I just thought..

MR. DENNIS
You opened up a Pandora's box when you do that.

MR. TATE
Well, I'd thought, myself, that because there's a--trouble deciding whether the chief of police, for instance, or the chief sheriff is the chief law enforcement officer in a municipality, I thought it would be better to leave it to the legislature, but I don't have any strong views.

MR. DENNIS
Well, let me say this. We've already seen that crop up here once today. We've got municipalities that do not have the power to investigate these types of crimes; we have other municipalities that do. If we provide in the constitution that he's going to be the chief law enforcement officer, we're going to--really, we may mess up some arrangements that have already been made. I would suggest strongly that we don't say that in the constitution, but we'll leave that to statutory law.

MR. KILBOURNE
Well, I'd like to offer an amendment to Judge Tate's motion that we do make the sheriff chief law enforcement officer.

MR. DENNIS
That's an amendment to an amendment.

MR. KILBOURNE
I thought he had a motion.

MR. KELLY
He's got the original motion.

MR. TOBIAS
Isn't Mr. Bergerson's motion the original motion?

MR. WILLES
No. We scrapped all that.

MR. DENNIS
Well, that's all right, he can amend the substitute motion though.

MR. KILBOURNE
I was going to offer an amendment that would say "the sheriff was the chief law enforcement officer in the parish except as otherwise provided in the constitution."

MR. TOBIAS
Point of order, Mr. Chairman.

MR. DENNIS
Yes, sir.

MR. TOBIAS
If he hasn't removed or he didn't withdraw his original motion, how could we pass "there shall be a sheriff elected by the qualified electors

MR. TOBIAS (cont'd)
of each parish and the state, et cetera," which we did. Well, all right, well then the order would have been for us to go ahead with his original motion.

MR. DESHOTELS
I have a question. Sheriff Martin made a substitute--he made an amendment to my original motion deleting the second paragraph and it was passed, so I would imagine that Section 44, the first paragraph, exists now as it is here.

MR. TATE
Well, then I would say that what I would have done then, the first thing that we passed is an amendment to the first sentence of it, and might be what we're doing and the second thing is an amendment to the second sentence.

?
Reconsider it.

MR. TATE
See, all we did was pass the amendment. We didn't pass 44, I don't believe. It's still on the floor.

MR. KELLY
No. We never did vote on it.

MR. KILBOURNE
That's right. And they hit you with another substitute motion.

MR. DENNIS
It would be simpler if you would withdraw your motion.

?
I withdraw the motion.

MR. DENNIS
Now we're back to Justice Tate's motion, the main motion and Mr. Kilbourne has offered an amendment to make it "chief law enforcement officer."

MR. KILBOURNE
"Except as otherwise provided in the constitution."

MR. DENNIS
"Except as otherwise provided in the constitution." Is there any objection to the amendment?

MR. TATE
I'd like to hear...

MR. KELLY
I'd like a question on that--on the amendment.

MR. DENNIS
Mr. Avant objects.

MR. AVANT
Well, no I wanted to ask a question.

MR. KELLY
I just want to ask a question too.

MR. DENNIS
Mr. Kelly was first, then Mr. Avant.

MR. KELLY
Why the statement "except as otherwise provided in the constitution"?

MR. KILBOURNE
Well, I was thinking about these like they have in some of these charter governments, like Baton Rouge and maybe other places where they may provide something different. I don't know.

MR. KELLY
"Why couldn't you just say, "except as otherwise provided by law", or something?"

MR. KILBOURNE
You just put it then.

7
If there is no other provision, it would be clarified then.

MR. DENNIS
Mr. Avant

MR. AVANT
Well, the question I was going to ask Mr. Kilbourne, I would assume that there are certain circumstances could exist which would require as a matter of sound government that the sheriff in a particular parish be superseded by some other law enforcement official and I would assume that someone would have to have the power and authority to make a decision as to whether or not those circumstances exist. Now, of course, the governor is the chief executive officer of the state; he is the one who's ultimately and finally charged with maintaining law and order and if there's a general complete breakdown of law and order such as riot, insurrection, invasion, rebellion, the governor as commander-in-chief of such armed forces as the state may have can declare martial law. But there are situations in between that where--I'm not saying that they ever have occurred, I'm not saying that, but I can conceive that a situation could exist in a given parish where the sheriff or whoever is charged with enforcing law and order for one reason or another is not enforcing law and order or very obviously and patently is enforcing in a biased and illegal fashion. And it seems to me, based upon history, there have been situations historically, in my lifetime, that such charges have been made. I'm not saying that they were true or false. There have been situations in which the state police then, presumably I would say with the approval of the governor, but certainly with the approval and at the direction of the superintendent of the state police, have gone into a given parish and have taken over law enforcement duties to greater or lesser extent. It has caused a good deal of concern to the people of the state because there have been charges that that was illegal, that there have been charges that it amounted to dictatorship and you're familiar with the type of things that I'm talking about. There seemed to have been a hiatus in the law. I remember that certain people say, "Well, the state police have no authority except to patrol the highways and arrest traffic violators; they have no general law enforcement authority." It seems to me that it is a matter of such serious consequences that this constitutional convention should spell out what is the law and under what circumstances can a local law enforcement officer be superseded and by whom so that if it does come about, then the general public won't have any question in their mind as to whether it is legal and in accordance with law. I don't believe that in an area like that there should be any hiatus in the law, that there should be an individual charged with the responsibility, be it the governor or whoever it is of saying that a situation prevails in a given parish which causes me to send the state police in to enforce the law and that there shouldn't be any question about its legality; it should be in accordance with certain definite required standards with a certain specific individual having the responsibility to make that decision and then it'll be up to him whether he wants to make the decision, but I think that certain things have happened in this state in my lifetime where the state police have gone into areas and exercised law enforcement authority that--I'm not saying that they should not have done it, neither am I saying that they should have done it. I just say that their authority to do it should not have been under any legal cloud. Either it should be clear that they had the right to do it or they didn't have the right

MR. AVANT (cont'd)
to do it.

MR. DENNIS
Mr. Sandoz.

MR. SANDOZ
Mr. Avant, suppose you have a sheriff who just refuses to obey the law and then who's the chief enforcement officer and you might have anarchy in that parish if the state cannot go in and supersede. Now...

MR. AVANT
Well, I think that there should be a procedure where if that prevails, and the logical person is the governor. He's the chief executive of the state.

MR. SANDOZ
Well, then he would order the state police to go in and...

MR. DENNIS
Alright, gentlemen, let's proceed orderly.

MR. AVANT
Well, what...

MR. DENNIS
Is there any further discussion on this amendment? If not, Mr. Kilbourne has the right to close.

MR. KILBOURNE
I agree with everything Jack says on this thing. I'm not sold on the idea that the sheriff should be chief law enforcement officer, but all I'm saying is somebody ought to be it and I don't know of a better place to put it than on the sheriff. Now, that's why I put in the "except as otherwise provided in the constitution" because I think the constitution can take care of and certainly will have to take care of the situation that you brought up about the governor, because the governor's going to be in charge finally.

MR. KELLY
I want to ask a question.

MR. DENNIS
Previous question's been ordered. He's closing.

MR. KELLY
Well, I can ask him a question.

MR. DENNIS
Will you yield to a question from Mr. Kelly?

MR. KELLY
Alright, sir. Now we're talking about chief law enforcement officer of the parish--parish. The parish is a subsidiary of the state and I still don't see even if you say the sheriff is the chief law enforcement officer or whatnot, that still isn't going to necessarily keep the executive office or the attorney general's office from the state power coming in and enforcing the laws, would it?

MR. KILBOURNE
I don't think it would. I don't think it would because I think the governor is going to have to have that police power to do those things. I don't think it would do that; I think there will have to be a situation where the governor could come in. I think we're going to have to do that, but until that's... Oh, well...

MR. DENNIS
Will you yield to a question from Mr. Avant?

MR. KILBOURNE
Certainly.

MR. AVANT
My question, Dick, would be do you know of any other committee that

MR. AVANT (cont'd)
is considering that particular problem or is it on our agenda that we are going to consider it later? In other words, because if you say "except as otherwise provided in this constitution or by law", then somebody has got to so provide.

MR. KILBOURNE
Well, I assume it would be taken up by the Committee on Executive, but, I mean, I don't know that, I just assume that that was the governor's....

MR. DENNIS
Mr. Willis, do you have a question?

MR. WILLIS
Yes, I do, Mr. Chairman, I have three of them. You preempted one of them. Isn't it a fact that the way your amendment reads, by using the word "chief" to modify "law enforcement officer" that you have--that the ending clause that you have, "except as otherwise provided in the constitution", would take care of the three levels of government, notably municipalities, that's local and parochial government, they would provide that the chief of police would in his little circle be the chief law enforcement officer and that the sheriff would be in between in his parish and that the executive committee would take care of what the governor can do with respect to the state police to supplant the sheriff which does what you anticipate could happen?

MR. KILBOURNE
That was the idea.

MR. WILLIS
That's the idea?

MR. KILBOURNE
Yes.

MR. WILLIS
That's what I understood.

MR. KILBOURNE
Yes.

MR. DENNIS
Do you have a question, Mr. Sheriff?

MR. OURSO
Yes.

MR. DENNIS
...of Mr. Kilbourne. He's closing.

MR. OURSO
I'm going to ask him a question. I'm going to use it as a question to make a statement.

MR. DENNIS

I suppose that's within your prerogative.

?

I don't remember the motion to the previous question.

MR. OUSO

The question is, as you stated, someone is going to have to be the chief law enforcement officer. Is that correct, sir? And it was brought out that if the sheriff doesn't do it, then who's going to do it? So if you take the sheriff away--is this correct?--if you take the sheriff away, that if he's not the chief law enforcement officer, then if the chief of police in the city doesn't do his duty and the sheriff can't go in to supersede the chief of police to handle law and order, then who is going to do it? You don't have--if the chief don't do it, then who's going to supersede him if the sheriff can't? That's my question.

MR. KILBOURNE

I agree with you. Yes. Well, your question answers itself.

MR. OUSO

That's what I wanted to know.

26

MR. DENNIS

Gentlemen, the previous question's been ordered.

?

Who ordered it?

MR. DENNIS

Well, I asked "was there any further discussion".

?

I never heard it even asked.

MR. DENNIS

Mr. Kilbourne asked to close and he closed.
As many of you as are in favor of the amendment...

?

I'd like to hear him read the amendment.

?

Yes.

?

Because I don't know where we are with this...

MR. DENNIS

Would you state the amendment again?

MR. KILBOURNE

Well, now I'm lost....

MR. TATE

"He shall be the chief law enforcement....

MR. KILBOURNE

"He shall be the chief"...

MR. DENNIS

Would you read the--word your motion as it would be if his amendment passed?

MR. TATE

All right.

MR. DENNIS

And we're not voting on this whole motion.

MR. TATE

I know. Just on the first....

?

But to give us the context of his amendment.

MR. TATE

"He shall be the chief law enforcement officer of the parish, except as otherwise provided by this constitution and shall be charged with executing the orders and process of the courts and with the collection of state, parish and all other taxes..."

?

What are we...

MR. DENNIS

That's another issue.

27

MR. TATE

When we get to taxes, we can work on that a little bit.

MR. KILBOURNE

The amendment, it's just simply, "he shall be the chief law enforcement officer of the parish except as otherwise provided in this constitution."

MR. DENNIS

Does everyone understand the amendment? As many of you as are in favor of the amendment will raise their right hand. Those opposed? Unanimous, after all this.

?

Well, we wanted to get to the bottom of it.

MR. TATE

Mr. Kilbourne? Duck? You said "as otherwise provided" or does it make any difference if it says "provided by" or "authorized by"?

?

We figured it wasn't any way.

?

When Jessel leaves, we'll reconsider.

MR. DENNIS

He said "provided by".

Now, is there any objection to the motion as amended?

MR. TATE

Now, Mr. Chairman, I say "and shall be charged with executing the orders and process of the courts". Now, we could take a vote on that because that is easy. I think that is no opposition. The next thing is going to be the tough one to work out.

MR. DENNIS

Well, you're changing the motion when you do that.

?

No.

MR. TATE

Well...

MR. DENNIS

You will be. Does anyone object to separating these parts?

?

No.

MR. DENNIS

Does anyone object to that part of the motion? Without objection, it's adopted.

MR. TATE

Alright now this is the one we have to work on a little bit, "and with the collection of state, parish and all other"--now I said "ad valorem taxes". I want to come back to it on that--"except municipal taxes and such other tax collecting duties as may be authorized by law." Now, I want to point out why I was in error when I said it was only property taxes; it's only state property taxes that were meant because you do collect parish license taxes and so I would--so with my amendment I would say it like this: "and with the collection of state property and all other--and parish"--let's see. How did it say?

?

Leave it like it is.

?

Why don't you say

MR. BERGERON

Why not just say, "he shall collect all taxes which are provided for by law."

MR. TATE

Well, I have no objection to anything like that except that I would want us to state--get to where--Sheriff Martin--state collection of, say, income tax.

?

Leave it like it...

?

...the way it is.

MR. KILBOURNE

"Shall be ex officio collector of state, parish and all other taxes except inheritance and municipal taxes which, however, may be also collected."

MR. DENNIS

Mr. Landry is recognized.

MR. LANDRY

Judge Tate.

MR. TATE

Yes.

MR. LANDRY

You mentioned state taxes, there is no more state ad valorem tax...

MR. TATE
How do you know there won't be some again?

MR. SANDOZ
There may be.

MR. DENNIS
Gentlemen, please, one at a time. Now, Mr. Landry has the floor.

MR. LANDRY
Alright. I think Sheriff Martin has answered the question. "All taxes" instead of "state taxes" because at the present time there's no state taxes, there might be some in the future. I think Sheriff Martin has the answer.

MR. DENNIS
Mr. Avant had his hand up next and then Mr. Tobias.

MR. AVANT
I just wanted to ask a question because I am really confused. In reading this I see--I presume that's the constitution as it has been for a long time.

MR. DENNIS
Here's the constitution right here as it is.

MR. AVANT
Oh, I see, well, that "except inheritance taxes"...Alright. Now, okay, well now, we're in--well, I wanted to ask a question about that "except inheritance taxes" because for years and years, of course, the sheriff was the ex officio inheritance tax collector.

MR. OURSO
Still is right now.

MR. AVANT
And is for a while. And then--Do we want--I just wonder wouldn't we be freezing that into the constitution? That system that they have adopted may not prove to be workable and I'm not here advocating attorneys for inheritance tax collector or anything. Don't get me wrong on that. Never been one but...

?
Might be one.

MR. AVANT
No. No. No, but there are certain inherent problems in having inheritance taxes collected by the collector of revenue when you are in far-flung, four corners of the state and you need to get--want to get a succession closed and I just wonder if we ought to freeze that into the constitution. I mean if we say "except that" well then we may not have it where you can go back to the old system in any degree. And another thing that I want to make sure that we are not doing, I think that various taxing authorities, by agreement with one another or contract or what, make arrangements where maybe the sheriff will collect taxes for the city under certain circumstances and I think they do that by a contract or by agreement. And then maybe a city will collect sales taxes for a school board or for a parish and...

MR. TOBIAS
In New Orleans the public service collects the garbage tax.

MR. AVANT
And I wouldn't want to put anything in here that would interfere with the ability of various taxing authorities to make arrangements by consent of the two governing bodies where they could adopt the most efficient and economical and best method of collecting their taxes. I mean, so I make my point?

MR. DENNIS
Yes, sir.
Mr. Martin.

MR. MARTIN
This language that we have here, this language we have here now, "shall be ex officio collector of state, parish and all other taxes, except inheritance and municipal taxes, which however he may also collect if authorized by the legislature." I think that covers it...In case they change this just don't work, I mean, the legislature can authorize it to collect it.

MR. KELLY
Why don't you just leave inheritance tax out though?

MR. MARTIN
Well, we can.

MR. DENNIS
Mr. Deshotel's next.

MR. DESHOTELS
Sheriff Martin, this is the problem if you caught it, if you read the question like you have it, then you'd have a serious problem that it says, "the shall be ex officio collector of state, parish and all other

MR. DESHOTELS (cont'd)
taxes. That would include income tax.

MR. MARTIN
It's been like that for years.

MR. DESHOTELS
Alright. But, I mean, possibly it's never been brought forward. I mean it's never been pushed and you're still running into problems with that. When you say he's going to be collecting all of the taxes, I don't care whether you use Webster's dictionary or anything else. "All other taxes" means all other taxes.

MR. DENNIS
Would the sheriff--are you saying, Sheriff, that the sheriffs would be satisfied with the committee if it says "collect taxes as provided by the legislature"?

MR. MARTIN
No, I'm not.

MR. DENNIS
Well, would you be satisfied?

?
Your parish taxes are not exactly--parish taxes are not approved by the legislature. We certainly don't want to lose them.

MR. DENNIS
We would have to adopt some new legislation to go along with this new constitution....

MR. DENNIS
Sheriff Ourso.

MR. OURSO
Yes, sir. I'd like to say that we're as of the first of this year, well the sheriff's department, ninety-five percent of our money comes from...in the operation of the sheriff's department is from the collection of taxes. Now, we're losing the state taxes. At the first of the year we're going to lose the collection of the inheritance tax and we can't afford to lose any more, any other taxes. Now, Mr. Deshotel's says "such as income tax". Well, you have gasoline tax; you have all other taxes, but I don't think we going to have to go ahead and spell out who you pay your income tax to and who you pay your gasoline tax to and all your taxes on your jewelry, et cetera. I think everyone knows real well. We get fifteen percent off of hunting and fishing licenses and that's not--I don't know whether you're going to call that a tax or not, but we get a percentage for doing that. So you can't just spell out everything that a sheriff's going to get, how he's going to get his money such as off the liquor and beer permits and occupational licenses. I guess you call that all taxes.

MR. DENNIS
Let me ask you this, sheriff. Would you be satisfied at this point to simply state that you'll be directed in the constitution to collect--we'll spell it out, but leave it up to the staff to figure out what the wording would be, collect whatever taxes he's able to collect right now?

MR. OURSO
And you'll spell out...

MR. DENNIS
I don't think we have enough knowledge here to know exactly what the law is regarding all these ...

MR. AVANT
Is there a motion on the floor?

MR. DENNIS
Yes, sir, Mr. Tate's.

MR. AVANT
I would want to offer an amendment to it but first I want to ask Sheriff Martin and Sheriff Ourso a question if there would be any objection to this amendment. The sense of the amendment would be that the sheriffs' duty and right and power to collect taxes as it exists under the present constitution is continued, but thereafter it is, under the new constitution it can be changed by the legislature by legislative act and they'll have such authority as the legislature gives them. Until it's changed, it stays what it is.

MR. OURSO
Can I answer that? That's real good as long as you have a friendly senator and representative.

MR. MARTIN
Yes. I was about to say that. I've seen it happening.

MR. DENNIS
Just say you object to that.

MR. OURSO
Well, I object to that.

MR. DENNIS
Alright. I think that answers your question, doesn't it?

MR. OURSO
Well, I'll explain my reason then, if he'd like to know why I object.

MR. AVANT
I have another question. If it was made that any such law would have to be a general law that applied to all parishes and all sheriffs and that they couldn't pick and take away certain tax collecting duties away from your office without taking it away from the other sixty-three, would it be objectionable?

MR. OURSO
In other words, you can't single out one, you have to shoot all sixty-four of us down. Sixty-three.

MR. MARTIN
No, it wouldn't be.

MR. AVANT
Alright. Well, I will offer an amendment to this...

MR. OURSO
Well, that's me. Wait a minute.

MR. DENNIS
Mr. Avont, I think he wishes we would object, I'm sure. This is the question I asked him earlier. Would you just leave it up to the legislature?

MR. AVANT
Well, let me state my amendment so that it'll be clear and my amendment would be, and this will only have to do with the tax collecting duties of the sheriff and I'm not getting into the Orleans Parish situation, et cetera, that "the sheriff's power and authority to collect taxes shall continue as provided in the previous constitution. The legislature may provide for the duties and authority of the sheriff to collect taxes but shall pass no special law on such subject matter."

MR. DENNIS
Is there any objection?

Yes.

He didn't make it yet, he said this is what he would propose.

Yes. I object and

MR. DENNIS
Wait just a minute. Were you making the amendment?

MR. AVANT
Yes.

I'm sorry. I said you'd propose it.

MR. DENNIS
There has been objection to the amendment.
Mr.--Sheriff Ourso.

MR. OURSO
I like his amendment up to when he said "period". The amendment-- the only part of his amendment I object to is from "period" on.

MR. AVANT
Well, I don't understand your objections, Sheriff. Would you explain it to me?

MR. OURSO
Well, you said "all other taxes as they are presently--all taxes that they are presently collecting now." But, you went into the legislature part of it and I want to eliminate the legislature part of it.

MR. AVANT
Well, I had understood you to say that if they had to do it by general law so that they couldn't single out one parish and take away from one particular sheriff his tax collecting authority that you wouldn't object.

MR. OURSO
I have a change of mind and a change of horses.

MR. DENNIS
Do you want to withdraw your amendment, Mr. Avont?

MR. AVANT
I'll withdraw my amendment.

MR. DENNIS
We're back to Mr. Justice Tate's language as he originally stated it. Is there any objection? Is there any objection?

Yes.

MR. TOBIAS
Let me know what we're on right now.

MR. DENNIS
We're on Justice Tate's language.

MR. TOBIAS
Well, which part?

MR. KELLY
Read that again.

MR. TATE
"He shall be charged with executing the orders and processes of the courts" and I had said that I'm willing to accept.

MR. DENNIS
Well, just go ahead and just read what you said in the beginning.

MR. TATE
"and with the collection of state, parish and all other taxes that shall be collected by law."

15

MR. TATE (cont'd)
That's what I said.

MR. DENNIS
Is there any objection?

MR. TOBIAS
Okay. I object.

Did you remove the ad valorem?

MR. MARTIN
He removed the ad valorem.

MR. TATE
It needs to be removed...

MR. TOBIAS
I believe, and I don't think the sheriffs disagree with this that the present provision in the constitution with respect to collection of taxes should be retained and it provides "the sheriff shall be ex officio collector of state, parish and all other taxes except municipal taxes." That's the way it reads.

That's right.

MR. AVANT
I think we ought to retain that.

MR. OURSO
Take a substitute amendment and let's go.

MR. TOBIAS
Yes. I make a substitute motion to that effect. That's the way it presently is. Don't change it.

MR. MARTIN
Wait, now. Finish it then. You got to read that last clause.

MR. TOBIAS
"Ex officio collector of state, parish and all other taxes except municipal taxes which, however, he may also collect if authorized by ..."

MR. MARTIN
All right. That's a big difference.

MR. DENNIS
Now, wait just--gentlemen, hear it?

MR. KILBOURNE
Well, it's just the same as it is now.

MR. TOBIAS
I made my motion...

MR. DENNIS
Alright. I just wanted to be sure that...

Read it all, Max.

MR. DENNIS
Just read it straight out without stopping.

MR. TOBIAS
Well, I can tell you how I've got it phrased, this sentence. "He shall be chief law enforcement officer except as otherwise provided by this constitution, be charged with executing the orders and processes of court, be ex officio collector of state, parish and all other taxes except municipal taxes which however he may also collect as authorized by law." And then I also added this sentence. "And such other duties as provided by law." In other words, to let the legislature give him other duties.

Question, Mr. Chairman.

MR. TATE
Take off that last thing.

MR. BURNS
Put "may" in there.

MR. DENNIS
Look, would you tell us what your amendment is and just say it one time?

MR. TOBIAS
My amendment is to provide that the sheriff shall be "ex officio collector of state, parish and all other taxes except municipal taxes which, however, he may also collect if authorized by law."

MR. DENNIS
Is there any objection?

MR. BURNS
One question.

MR. DENNIS
First let me find out if there is objection.

MR. BURNS
If I've got to put it in the form of an objection, I'll put it that way.

MR. DENNIS
Alright. Mr. Burns objects.

MR. BURNS
Yes, alright.

MR. TATE
My only--if I understood what we meant by state taxes I would have no objection. I don't under--the present constitution says "state taxes", but it couldn't mean state income taxes, I mean, just couldn't. Well...

MR. TOBIAS
That's the way it presently reads.

MR. TATE
It might be that the reason it doesn't mean it is there are other provisions in the constitution. You see?

MR. DENNIS
I think this is going to bear some research.

MR. TATE
Yes. Yes. What state taxes do the sheriffs collect beside state property taxes? Only the inheritance taxes is excepted, I know.

MR. DENNIS
Gentlemen, if this is pretty close, let's don't quibble because we're going to have to research this out because this is a complex area.

MR. TATE
Right. This is a tentative vote.

MR. DENNIS
Is there any...

17

Question.

MR. DENNIS
Yes, sir.

MR. MARTIN
Point of information. Is a occupational license for a liquor permit or beer permit that is issued by the state, is that considered a tax by the state?

MR. TATE
I tell you, I'm not sure. I think it's considered a license, but you-all collect that, don't you?

MR. MARTIN
No, we don't.

MR. TATE
If you don't then the state....It's considered a license tax. I'm sure it's another thing, but you'll...

MR. DENNIS
If you'll go ahead and adopt this, we'll instruct the research staff to research all of these ancillary questions.

MR. TATE
What kind of state tax...

UNINTELLIGIBLE

MR. DENNIS
With that understanding is there any objection to the amendment? Without objection, it's adopted. Is there any objection to adopting that part of Justice Tate's motion as amended by Mr. Tobias? Without objection, that's adopted. I'll instruct the research staff to research the following questions. I'll request Justice Tate to state these questions that have sprung up during the course of the debate.

MR. TATE
Alright. What sort of state taxes are included in the present authorization of the sheriff to collect state taxes and why, for instance, does it include the income tax? You know, I mean I don't--as you read it, it seems included and (2) are the license and occupational taxes considered taxes for purposes of collection because as a matter of fact, they are collected elsewhere than in the local sheriff's office?

MR. MARTIN
Also sales taxes.

MR. TATE
And the state sales taxes.

MR. DENNIS
And what about the inheritance taxes?

MR. TATE
Well, the local sales, tax and we'll have to work out why--yes.

MR. MARTIN
The state inheritance taxes, they now want to collect those...

MR. OURSO
Point of order.

MR. DENNIS
Yes, sir. Point of order, yes, sir.

MR. OURSO
Question. Point of order of a question to you, Mr. Chairman. Can anyone else's, other than on this committee, opinion be heard in

18

reference to what we're discussing?

MR. DENNIS
Sure. Certainly.

MR. OURSO
They could? See, as I said about the wise old owl, I'm just wondering if he's been listening to this. He's been listening very well because every time somebody make an amendment, he'd lean one way and he'd lean the other. And I was just wondering if he had any light that he could put on this for us. I'm sure he has a lot of wisdom in this sort of thing and it may be something that he knows that could be--I may be opening a box, but I'll take my chances in asking him is there something that he may can suggest--the judge--in helping us on some of this?

MR. DENNIS
We'll give the floor to Judge Fruge.

MR. FRUGE
I can't--I know nothing about taxes.....

MR. DENNIS
Let me ask the committee. Does anyone else have any lingering doubts or questions they'd like for the staff to research regarding the question?

MR. VESICH
Yes.

MR. DENNIS
Mr. Vesich.

MR. VESICH
I am quite certain that the legislature has passed some acts limiting the authority of the state police. I know--I can't remember exactly what they were, but I remember the '52 to '56, the Kennon era, when Grevenberg went all over the state and I'm confident that when the Long administration came in which, which as I call my rookie season in 1956, we passed some legislation and again in 1960 restricting their powers. I think that should be--we should be looking at that in light of "How did it happen? Where did the constitutional right come to restrict their powers, at all?" And let's find out what we did on that too, while we're at it.

MR. DENNIS
Mr. Avant.

MR. AVANT
Well, I was going to...

19

He said he would. C. B. marked it down and you can...

MR. AVANT
In line with Mr. Vesich's thoughts, I would like to find out, ask the staff to find out, if any other committee has under consideration a provision which would clearly define the circumstances under which the governor or anyone else could supersede a sheriff, and if anybody else is considering that--if someone else is considering that, I'd like to know what kind of a proposal they have come up with so far. But if no one else is considering that, I would like for the staff or for a subcommittee or whatever way you-all want to do it to give us something to start with because I think it is something that is very important and that somebody is going to have to suggest a proposal to the convention as to who has the authority to do that and under what circumstances, so that when that situation ever arises again in the future under this new constitution,

that there won't be any doubt in the minds of the public as to the legality of what's going on.

MR. DENNIS
...Mr. Willis.

MR. WILLIS
Mr. Chairman, I don't believe that what we're discussing, Mr. Vesich and Mr. Avant, I don't believe that that's appropriate to put on the floor.

MR. DENNIS
It's not the thing. There are lingering questions and I think the thing to do is to just check this over.

MR. WILLIS
Well, then, let me ask a question.

MR. DENNIS
..Might as well go ahead and get them down.

MR. WILLIS
Yes, sir. Well, I'll be glad to indulge. Then, aren't we, while we are deliberating here mixing, as you so pointedly stated, then--we're not making the distinction between investigation and enforcement. I envisage this type of situation, if it will give the proper example. Here is a marijuana nest in St. Martinville. The chief of police of St. Martinville is investigating; the sheriff is investigating and the state police are investigating and there is no liaison or cooperation; they're all independent; they don't communicate with each other. That, I think, is investigation. Now, enforcement, where does enforcement begin and where does investigation end? Those are questions.

MR. DENNIS
Is this something you want the research staff to grapple with?

That's why we have the research staff now.

MR. WILLIS
Well, yes, sir. That....

MR. DENNIS
Okay, sir. Put that down. That's what the floor is open for at the moment.

MR. WILLIS
Yes, sir.

MR. DENNIS
Does anyone else have any lingering questions or doubts about this section? Mr. Avant.

MR. AVANT
I just want to clarify one thing for the record, for everybody. I have defended some marijuana cases and narcotics cases that were investigated by the state police and, believe me, they did it in cooperation with the local East Baton Rouge Parish authorities and they did a doggone good job of it. I'll tell you. They had it nailed to the cross so what I'm suggesting--I don't want anybody to get the idea that I'm saying that these things are going on now, but I just want to make sure that when this new constitution is adopted, there'll never be a situation arise where somebody will come in and start arresting people and supplanting local law enforcement authorities and there will be a question in the minds of the public as to whether they are operating within the law.

MR. WILLIS
Let me, if I can by the same token that you did, emphasize that what you said is what I agree with and the reason why, I pointed out.

MR. DENNIS
Sheriff Ourso and then Mr. Burns.

MR. OURSO
Yes, sir. To Mr. Avant. Mr. Avant, what you're saying...(END OF TAPE)

Presiding: Ambrose Landry, vice chairman of the Judiciary

Committee

PRESENT

Avant
Bel
Bergeron
Burns
Dennis
Deshotels
Drew
Gauthier
Kelly
Kilbourne
Landry
Ourso
Sandoz
Tate
Tobias
Vesich
Willis

ABSENT

Martin

Secretary Bergeron read the minutes of the May 25 and May 26, 1973 meetings.

Mr. Tobias moved to add "motion carried" to his motion on page 3 of the May 25, 1973 minutes. Motion carried.

Mr. Bel moved the adoption of the minutes as amended. Motion carried.

Mr. Bergeron moved to defer voting on the minutes of May 26, 1973, pending correction of Judge Tate's motion concerning the tax collecting duties of sheriffs.

The committee began discussion of Section 42 of Draft "A."

Mr. Willis moved to adopt Section 42 as written.

Mr. Kelly amended Mr. Willis's motion to state: "The district attorney shall have been admitted to the practice of law for three years prior to his election and shall be an elector of the judicial district from which he serves for two years." Motion failed.

Mr. Avant amended Mr. Willis's motion to add to the district attorney's qualifications: "He shall be an elector of the judicial district from which he is elected for two years and admitted to the practice of law in Louisiana for five years prior to his election." Motion carried.

Mr. Willis's motion as amended carried.

Mr. Tobias moved to delete Section 43 and refer it to the committee on Legislative Liaison and Transitional Measures with the recommendation that it be included in the statutes. Motion failed.

2

MINUTES

Minutes of the Judiciary Committee of the Constitutional Convention of 1973

Held pursuant to notice mailed by the Secretary of the Convention on May 28, 1973

Law Center, L. S. U., Baton Rouge, Louisiana, Friday, June 1, 1973
9:30 a.m.

Judge Tate moved that no district attorney nor assistant district attorney shall appear, plead, or in any way defend any criminal prosecution or charge. Motion failed.

Mr. Avant moved to place a period "." after the word "charge," in Section 43 of Draft "A" and omit the remainder of the section. Motion carried.

Judge Tate moved to add a section above Section 43 authorizing the district attorney to select his assistants and other personnel and to prescribe their duties.

[1019]

Mr. Tobias moved to amend Judge Tate's motion to combine the proposed section with Section 42. Motion carried.

Judge Tate's motion as amended carried.

The committee began discussion of the draft on judges' retirement drafted by Judge Luther Cole and submitted by the Subcommittee on Retirement; Mr. Drew, Mr. Vesich, and Mr. Avant.

After lengthy discussion, Mr. Drew moved to ask the staff to shorten the draft. Motion carried.

The committee recessed for lunch at 12:30 p.m.

The committee reconvened at 2:00 p.m.

Discussion began on Section 45 of Draft "A" concerning clerks of court.

Mr. Landry moved to amend Section 45 to state: "(A)

In each parish, a clerk of the district court shall be elected by the qualified electors of the parish for a term of four years. He shall be ex officio notary public and parish recorder of conveyances, mortgages, and other acts and

3

shall have such other duties and powers as may be prescribed by law. The clerk may appoint deputies, and with the approval of the district judges, may appoint minute clerks with such duties and powers as may be prescribed by law. (B) Notwithstanding subsection (A), in each parish with a criminal and a civil district court, the office of clerk of court shall remain until changed by a majority of the elected members of each house of the legislature and a majority of the electors in the parish, and they shall exercise such duties as may be prescribed by the legislature."

Mr. Willis moved to amend Mr. Landry's motion by adding:

"(C) The legislature shall establish statewide uniform office hours for all clerks of district courts." Motion carried.

Mr. Landry's motion as amended carried.

The committee began discussion of Section 47 of Draft "A."

Mr. Sandoz moved: "In each parish a coroner shall be elected for a term of four years with such qualifications and duties as prescribed by law." Motion carried.

The committee began discussion of the staff's proposal prohibiting the reduction of salaries and retirement benefits of elected officials while in office.

Judge Tate moved: "The attorney general, district attorney, sheriff, or clerk of court shall have neither his salary nor retirement benefits diminished during his term of office." He recommended that the staff add any other constitutional officers he omitted. Motion carried.

4

After discussion of Article VII, Section 89, the committee requested the staff to draft a section protecting constitutional officers from abolishment.

The committee took a brief recess after which Chairman Dennis took the chair.

Mr. Willis moved: When a vacancy in the office of an elected official occurs, the person to succeed him be clearly defined in the constitution. He further moved that if there is no such person to assume the duties at the time of the vacancy, the governing authority or the governing body of the parish or parishes concerned shall appoint such a successor until the vacancy is filled by an election called for that purpose.

Judge Dennis amended the motion to state: "Until a vacancy is filled by..." first and the successors stated in the second part. Motion carried.

Mr. Willis's motion as amended carried.

The committee began discussion of the proposal submitted by Mr. Drew and Mr. Landry providing for the creation of parish courts.



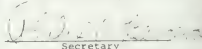
Judge Tate moved to combine Sections 15(A) and 18 of Draft "A" and the proposal submitted by Messrs. Drew and Landry with the following points considered: (1) the combination of the existing courts and that they can be changed only by a two-thirds vote of the legislature; (2) the continuation of existing judicial districts and that they can be changed only by a majority of the legislature and a majority

5

of the electors in the district affected; (3) giving the legislature the power to create additional courts such as parish courts; and (4) continue, under the proper wording, to recognize courts and officers of Orleans Parish which can be changed only by a majority of the legislature and a majority of the electors in the district affected. Motion carried.

Mr. Burns moved to adjourn the meeting until 9:30 a.m. Saturday, June 2, 1973.

The motion carried and the meeting adjourned at 5:15 p.m.


Chairman

Vice Chairman

Secretary

6

MINUTES

Minutes of the Judiciary Committee of
the Constitutional Convention of 1973

Held pursuant to notice mailed by the

Law Center, L. S. U., Baton Rouge,
Louisiana, Saturday, June 2, 1973
9:30 a.m.

Presiding: Judge James L. Dennis, Chairman of the
Judiciary Committee

PRESENT

Avant
Bel
Bergeron
Burns
Dennis
Drew
Kelly
Kilbourne
Landry
Ours
Sandoz
Tate
Tobias
Vesich
Willis

ABSENT

Deshoteis
Gauthier
Martin

Discussion began on the provisions referred to the
Judiciary Committee by the Coordinating Committee.

Mr. Kelly moved to recommend that in reference to
the legislature passing local and special laws, that the
Committee on Legislative Powers and Functions use generally
the language of the Model State Constitution and continue
enumerating the prohibitions but provide that the list be
nonexclusive. Motion carried.

Mr. Willis moved that the committee defer action on
forced heirship in Article IV, §16, for one week to allow
time for study.

Mr. Sandoz amended the motion to request the staff to
draft a proposal which would allow the legislature to change
the grounds for disinheritance. Motion carried.

Mr. Willis's motion as amended carried.

Mr. Sandoz and Mr. Willis moved to delete §16 of Article
XIX of the present constitution. Motion carried.

Mr. Avant moved that: "There shall be a regular grand
jury in each parish to serve for six months. On the recom-
mendation of the district attorney, the judges of a district
court may cause to be selected one or more special grand
juries to consider particular matters designated by the
district attorney and approved by the judges of the district
court. A special grand jury shall serve until discharged
by the court. All proceedings of a grand jury shall be
secret, including the identity of witnesses appearing before
it until an indictment has been returned. Any violation

2

of the secrecy of grand jury proceedings shall constitute
a contempt of the court appointing it."

Mr. Kelly offered a substitute motion stating there
shall be a grand jury or grand juries in each parish of
the state whose qualifications, duties, and responsibilities

shall be prescribed by law. The legislature shall also
provide for the secrecy of such proceedings.

Judge Dennis moved to amend the substitute motion
stating, "The legislature may provide..." Motion failed.

Mr. Kelly's substitute motion passed.

Mr. Avant moved to request the staff to draft a simple
and short provision stating that any officer of the court
who discloses any information pertaining to the proceedings
of the grand jury, including the identity of witnesses who
testify before the grand jury, before the return of an indict-
ment, shall be guilty of contempt of the court.

Mr. Tobias moved to table the motion. Motion failed.

Mr. Avant's motion carried 7-6 with Mr. Bergeron ab-
staining.

The committee recessed for lunch at 12:20 p.m.

The committee reconvened at 1:45 p.m.

Mr. Kelly moved to reconsider the last two motions
passed by the committee. Motion carried.

Mr. Kelly moved to delete both motions previously
passed and substitute: "There shall be a grand jury or
grand juries in each parish whose qualifications, responsi-
bilities, and duties shall be prescribed by law. The

3

legislature shall further provide for the secrecy of the pro-
ceedings including the secrecy of the identity of witnesses
appearing before the juries." Motion carried.

Mr. Bergeron read the minutes of May 26, 1973. Mr.
Bel moved the minutes be adopted as corrected. Motion carried.

Mr. Landry moved: "A citizen of the state, upon reaching
the age of majority shall be eligible to serve as a juror.
The supreme court by rule shall provide for the selection
and drawing of competent and intelligent jurors for the
trial of civil and criminal cases."

Mr. Sandoz moved to amend Mr. Landry's motion to delete
"competent and intelligent." Motion carried.

Mr. Landry's motion as amended carried.

Mr. Kelly moved to request the Legislative Liaison
and Transitional Measures Committee to explore the possi-
bility of creating an indigent defender system in Louisiana.
Motion carried.

Mr. Burns moved to notify the Coordinating Committee
that the Committee on Local and Parochial Government and
the Judiciary Committee had acted inconsistently concerning
the filling of vacancies for district attorney, sheriff,
clerk of court, and coroners. Motion carried.

Mr. Sandoz moved to amend Mr. Kelly's motion to delete
"competent and intelligent." Motion carried.
forfeiture, imprisonment, or fine in excess of one hundred
dollars without the right of an appeal based upon a com-
plete record of all evidence upon which such judgment is

4

based. This section does not limit the power of any court to punish a contempt in its presence as otherwise provided by this constitution."

Judge Tate moved to insert "or supervisory review" between "appeal" and "based."

Mr. Tobias offered a substitute motion stating all proceedings in all courts in Louisiana shall be recorded when requested. Motion carried.

Judge Tate moved that no new court shall be established except such as served by full-time judges with the qualifications of district judges. Motion carried.

Mr. Drew asked the committee to consider at the meeting of June 8, 1973, the use of the words "control of" in Section 5 of the Third Preliminary Draft of the committee.

Mr. Sandoz moved to adjourn.

Motion carried and the meeting adjourned at 5:00 p.m.

James L. Dennis
Chairman
James H. Landry
Vice Chairman
John A. Sandoz
Secretary

5

MINUTES

Minutes of the Judiciary Committee of
the Constitutional Convention of 1973

Held pursuant to notice mailed by the
Secretary of the Convention on June 11,
1973.

Committee Room One, State Capitol
Baton Rouge, Louisiana, Friday,
June 15, 1973, 9:30 a.m.

Presiding: Judge James L. Dennis, Chairman of the
Judiciary Committee

Secretary Bergeron called the roll.

PRESENT

Avant
Bel
Bergeron
Burns
Dennis
Deshotels
Drew
Gauthier
Kelly
Kilbourne
Landry
Martin
Oursou
Sandoz
Tate
Tobias
Trepach
Willis

ABSENT

None

Secretary Bergeron read the minutes of the meeting on
June 8, 1973.

Mr. Tobias moved to lower case the letters following
the semicolons in the last paragraph on page four, continu-
ing on page five. Motion carried.

Mr. Landry moved to adopt the minutes as corrected.
Motion carried.

Mr. Bel moved for the committee to begin discussion of
the provision on jurisdiction in coastal waters, Article VI,
Section 1(A-1) of the present constitution referred to the
committee by the Coordinating Committee.

Mr. Kelly moved that the committee defer action on Article
VI, Section 1(A-1) and requested the staff bring to the at-
tention of the Bill of Rights Committee the problems in the
provision.

Judge Dennis amended Mr. Kelly's motion to request the
staff to draft a comprehensive proposal to apply to waters
all over the state and to suggest to the Bill of Rights
Committee to allow the legislature latitude. Motion carried.

Mr. Kelly's motion as amended carried.

The committee began discussion on the staff's proposed
sections on merger, establishment, and abolition of courts and
retaining the Orleans officials.

Mr. Deshotels moved the adoption of Paragraph (A) of
the staff proposal. Motion carried.

Mr. Deshotels moved that Paragraph (B) state: "Notwith-
standing any provision of Subsection (A) to the contrary, the

2

legislature may, with the approval in a referendum in the
parish affected, create in that parish a court to be called
the 'Parish Court of ____ Parish.' The judge of a parish
court shall possess the same qualifications as a district
court judge and shall not practice law. All other courts
of limited jurisdiction in the parish are simultaneously
abolished."

Mr. Kelly moved to amend Mr. Deshotels' motion to in-
clude: "The term of the judges shall be six years."

Mr. Deshotels moved to add Subsection (C), stating:
"The parish court created under the provisions of Subsection
(B) shall have jurisdiction limited to the trial of misdemeanors
and three thousand five hundred dollars, exclusive of interest
and costs."

Mr. Avant moved to amend Mr. Deshotels' motion to state:
"The legislature may establish a parish court of jurisdiction
limited to three thousand five hundred dollars and criminal
jurisdiction not to exceed one thousand dollars and imprison-
ment not to exceed six months. When a parish court is created,
other courts of limited jurisdiction are simultaneously
abolished."

Judge Dennis relinquished the chair to Mr. Landry in
order to submit a substitute motion.

Judge Dennis moved: "(a) The following are submitted subject to abolition, merger, or realignment by two-thirds vote of each house of the legislature: the judicial districts, the district courts, the family court, juvenile courts, city courts, parish courts, municipal court, traffic court.

3

(B) The legislature by two-thirds vote of the elected members of each house, may create new courts."

Judge Tate moved to amend Judge Dennis' motion to delete "the district court" in Section (A). Motion carried.

Judge Dennis' motion failed 4-14.

Mr. Avant moved to have Mr. Deshotels' motion put in writing for the committee.

Mr. Deshotels amended Mr. Avant's motion to state that his written proposal be the first order of business after lunch. Amendment carried.

Mr. Avant's motion as amended carried.

Mr. Sandoz moved to begin discussion on the "Fourth Preliminary Draft." Motion carried.

Mr. Vesich moved the adoption of Section 1 of the draft. Motion carried.

Judge Tate moved to insert in Section 2 of the draft "a writ of habeas corpus," between the words "issue" and "all," and add a new sentence at the end: "The power of the courts to punish for contempt shall be limited by law." Motion carried.

Section 2 was adopted as amended.

Mr. Sandoz moved the adoption of Section 3.

Mr. Tobias moved to amend Mr. Sandoz's motion to delete the words "seven judges" and insert "a chief justice and six associate justices," in Section 3. Motion carried.

Mr. Sandoz's motion as amended carried.

Mr. Burns moved the adoption of Section 4 of the draft. Motion carried.

4

Mr. Drew moved to delete the words "control of and" in Section 5 of the draft and have the first line read: "The supreme court shall have general. . ." Motion carried.

Mr. Avant moved to insert the word "other" in lieu of the word "inferior" in the first sentence of Section 5(A). Motion carried.

Judge Tate moved the adoption of Section 5(A) as amended. Motion carried.

The committee recessed for lunch at 12:05 p.m.

The committee reconvened at 1:30 p.m.

The committee adopted Section 5(B) of the "Fourth Preliminary Draft."

Mr. Avant moved to defer action on Section 5(C) until the committee had acted on Mr. Deshotels' motion. Motion carried.

Mr. Tobias moved the adoption of Section 5(D) of the draft. Motion carried.

Mr. Deshotels moved the adoption of his three-part proposal.

Mr. Bergeron moved to discuss each section of Mr. Deshotels' proposal separately. Motion carried.

Mr. Deshotels moved the adoption of Subsection (A) of his proposal.

Mr. Avant moved to amend Mr. Deshotels' motion to insert the word "trial" in lieu of the words "these courts or" in Subsection (A). Motion carried.

Mr. Willis moved to amend Mr. Deshotels' motion changing the word "create" to the word "establish" in Subsection (A). Motion carried.

5

Judge Tate moved to insert the words "merge trial courts of limited or specialized jurisdiction or" between the words "or" and "judicial" in Subsection (A). Motion carried.

Mr. Deshotels' motion to adopt Subsection (A) carried as amended.

Mr. Deshotels moved the adoption of Subsection (B) of his proposal.

Mr. Tobias moved to change the word "create" to "establish." Motion carried.

Mr. Avant moved as a substitute motion that Subsection (B) read: "Notwithstanding any provision of Subsection (A) to the contrary, the legislature may, with approval in a referendum in the parish affected, establish in that parish, a parish court, and other courts of limited jurisdiction may be simultaneously abolished. A judge of a parish court shall be elected, for a term which shall not exceed six years."

Mr. Kelly moved to amend Mr. Avant's substitute motion to state: "A judge of a parish court shall be elected for a term of six years." Motion carried.

Mr. Avant's substitute motion as amended carried.

Mr. Deshotels moved the adoption of Subsection (C) of his proposal.

Mr. Willis moved to amend Subsection (C), changing the word "created" to the word "established" and inserting the words "be uniform throughout the state and" between "shall" and "be."

Judge Tate moved as a substitute amendment to Subsection (C) to state: "When the legislature establishes a trial court

6

of limited or specialized jurisdiction under Subsections (A) or (B), such courts shall have jurisdiction of uniform statewide limits as provided by law."

Mr. Landry moved to amend Judge Tate's motion adding: "The criminal jurisdiction of such courts shall be limited to the trial of misdemeanors." Amendment accepted.

Mr. Deshotels moved to amend the Tate amendment to delete the words "the legislature establishes" and insert between the words "jurisdiction" and "under" the words "is established." Amendment accepted.

Judge Tate moved the adoption of Subsection (C) as amended.

Mr. Avant moved the words "or specialized" in Subsection (C) be deleted. Motion carried.

Judge Tate moved to revert to Subsection (A) of the Deshotels proposal. Motion carried without objection.

Mr. Kelly moved to revert to Subsection (C) of the Deshotels proposal. Motion carried without objection.

Mr. Kelly moved to reconsider everything done in Subsection (C). Motion carried without objection.

Mr. Deshotels moved the adoption of Subsection (C) of his proposal.

Mr. Willis moved to amend Mr. Deshotels' motion changing the word "created" to the word "established" and inserting the words "be uniform throughout the state and" between the words "shall" and "be" in Subsection (C). Motion carried.

Judge Tate moved as a substitute motion for Subsection (C) to state: "When a trial court of limited jurisdiction is

established under Subsection (A) or (B), such courts shall have jurisdiction of uniform statewide limits as provided by law. The criminal jurisdiction of such courts shall be limited to trial of misdemeanors."

Judge Tate's substitute motion failed.

A roll call vote was requested and taken on Mr. Deshotels' motion:

<u>YEAS</u>	<u>NAYS</u>
Avant	Bergeron
Bel	Kelly
Burns	Ourso
Deshotels	Tate
Drew	Tobias
Gauthier	Vesich
Kilbourne	
Landry	
Martin	
Sandoz	
Willis	

Mr. Deshotels' motion as amended carried eleven to six.

Mr. Avant moved the adoption of Mr. Bel's proposal which would continue the officers in Orleans Parish which are presently provided for in Article VII, §89.

Mr. Tobias moved to amend the proposal to include certain changes for style and drafting. Motion carried without objection.

Mr. Bel moved the adoption of the proposal as amended.

Motion carried without objection.

Mr. Bergeron moved to revert to Section 5(C) of the "Fourth Preliminary Draft." Motion carried.

Mr. Avant moved to amend the first sentence of Section 5(C) to read: "In civil cases, an appeal to or review by

the supreme court's jurisdiction extends to both law and facts; however, no finding of fact by the trial court shall be set aside or otherwise modified unless found to be manifestly erroneous and then, upon detailed written reason specifying with particularity, the evidentiary basis upon which such action is based and concurred in by five judges."

Mr. Kilbourne moved to amend Mr. Avant's motion to change "five judges" to "four judges." Mr. Avant accepted the amendment.

Mr. Avant's motion as amended failed.

Mr. Burns moved to adjourn until 9:30 a.m., June 16, 1973.

The motion carried and the meeting adjourned at 5:05 p.m.

James L. Dennis
Chairman
James H. Landry
Vice Chairman
Richard A. Bergeron
Secretary

9

MINUTES

Minutes of the Judiciary Committee of the Constitutional Convention of 1973

Held pursuant to notice mailed by the Secretary of the Convention on June 11, 1973

Louisiana State Library, Baton Rouge, Louisiana, Saturday, June 16, 1973, 9:30 a.m.

Presiding: Judge James L. Dennis, Chairman of the Judiciary Committee

Secretary Bergeron called the roll.

PRESENT

Avant
Bel
Bergeron
Burns
Dennis
Deshotels
Drew
Gauthier
Kelly
Kilbourne
Landry
Martin
Ourso
Sandoz
Tate
Tobias
Vesich
Willis

ABSENT

None

Discussion continued on the "Fourth Preliminary Draft of the Judiciary Article."

Mr. Tobias moved to delete the last sentence of Section 5(C). Motion carried.

Judge Tate moved to adopt Section 5(C) as amended. Carried without objection.

Section 5(D) was adopted without objection.

Mr. Deshotels moved to amend Section 5(E) by striking out the first line and the words "on any issue" of the second line and inserting in lieu thereof the words "Subject to the provisions of Subsection (C)"; in the third line strike out the word "other", at the end of the line strike out the period ".", and insert in lieu thereof the words "any civil action properly before it."

Mr. Sandoz moved to adopt Section 5(E) as amended. Motion carried without objection.

Mr. Landry moved to amend Section 6(A) to provide that the selection of the chief justice be by seniority. Motion carried.

Mr. Sandoz moved to adopt Section 6(B). Motion carried without objection.

Mr. Landry moved the adoption of Section 7. Motion carried without objection.

Section 8 was adopted without objection.

Section 9 was adopted without objection.

Section 10(A) was adopted without objection.

Mr. Willis moved the adoption of Section 10(B). Motion carried without objection.

Section 11 was adopted without objection.

-2-

Mr. Landry moved to amend Section 12 to require that the chief judge be selected by seniority. Motion failed 8 to 8.

Mr. Kelly moved to reconsider Sections 6(A) and 12. Motion carried.

Mr. Kelly moved to amend Sections 6(A) and 12 to provide for the selection of the chief justice and chief judge by seniority, and to require that the successor to the offices be the judge oldest in point of service on the court below the age of 65.

Mr. Bergeron moved for a roll call vote. Motion carried.

The results of the roll call vote were:

<u>Yeas</u>	<u>Nays</u>	<u>Abstentions</u>
Avant	Burns	Bel
Bergeron	Gauthier	
Deshotels	Kilbourne	
Drew	Ourso	
Kelly	Vesich	
Landry		
Martin		
Sandoz		
Tate		
Tobias		
Willis		

Mr. Kelly's motion carried 11 to 5.

Mr. Bergeron moved the adoption of Section 13. Motion carried without objection.

Mr. Bergeron moved the adoption of Section 14. Motion carried without objection.

Mr. Deshotels moved to defer action on Section 15(A) until the staff could come up with an alternative to the motion. Motion carried.

Mr. Willis delivered prepared remarks to the committee concerning the tenure of judges which are attached hereto and made as

-3-

part hereof.

Mr. Willis moved to strike out all of Section 15(B) with the exception of the first line and the second sentence and in the second sentence change the word "lengthen" to the word "shorten".

A roll call vote was requested and ordered; the results were:

<u>Yeas</u>	<u>Nays</u>
Avant	Bel
Deshotels	Burns
Kelly	Bergeron
Landry	Dennis
Sandoz	Drew
Tobias	Gauthier
Willis	Kilbourne
	Martin
	Ourso
	Tate
	Vesich

Mr. Willis' motion failed 11 to 7.

Mr. Avant moved to amend Section 15(B) by adding after the word "election" in the fourth line the words "and those in the judicial district where the state capital is located".

Mr. Tobias moved to amend Mr. Avant's motion to read:

"The term of a district judge shall be twelve years. This provision shall not be construed to lengthen the term for which any judge has been elected."

Mr. Bel moved for a roll call vote. Motion carried without objection. The results were as follows:

<u>Yeas</u>	<u>Nays</u>	<u>Abstentions</u>
Bel	Avant	Willis
Bergeron	Burns	
Dennis	Drew	
Deshotels	Kilbourne	
Gauthier	Landry	
Kelly	Martin	
Tate	Ourso	
Tobias	Sandoz	
Vesich		

-4-

Mr. Tobias motion carried 9 to 8 with 1 abstention.

Mr. Willis asked to be allowed to change his vote to yes, thereby making the final vote 10 yeas and 8 nays.

Mr. Avant moved to reconsider the vote by which Mr. Tobias' motion carried.

A roll call vote was requested and ordered on the motion to reconsider; the results were as follows:

<u>Yeas</u>	<u>Nays</u>
Avant	Bel
Bergeron	Dennis
Burns	Deshotels
Drew	Gauthier
Kilbourne	Kelly
Landry	Tate
Martin	Tobias
Ourso	Vesich
Sandoz	
Willis	

Motion to reconsider carried 10 to 8.

Mr. Avant moved to withdraw his original motion. The chairman ruled that he could not as objection was urged.

Mr. Kelly moved for a ten-minute recess. Motion carried without objection and the committee recessed.

The committee resumed debate.

A roll call vote was requested and ordered on reconsideration of Mr. Tobias' amendment to Mr. Avant's motion. The results were as follows:

<u>Yeas</u>	<u>Nays</u>
Bel	Avant
Bergeron	Burns
Dennis	Drew
Deshotels	Kelly
Gauthier	Kilbourne
Tate	Landry

-5-

<u>Yeas</u> (continued)	<u>Nays</u> (continued)
Tobias	Martin
Vesich	Curso
	Sandoz
	Willis

Mr. Tobias' motion on reconsideration failed 10 to 8.

Mr. Avant withdrew his previous motion to amend Section 15 (B)s.

Mr. Kilbourne moved to delete all of the first sentence of Section 15(B) with the exception of the first line and in the second sentence change the word "lengthen" to "shorten".

Mr. Bergeron offered a substitute motion to leave Section 15(B) as drafted.

Mr. Deshotels moved to amend the substitute motion to read as Mr. Kilbourne's motion.

Mr. Bergeron withdrew his motion.

Mr. Tobias moved to amend the main motion to leave Section 15(B) as drafted. A roll call vote was requested and order, the results were as follows:

<u>Yeas</u>	<u>Nays</u>
Tobias	Avant
Bel	Willis
Bergeron	Burns
Vesich	Dennis
Gauthier	Deshotels
Martin	Drew
Curso	Kelly
Tate	Kilbourne
	Landry
	Sandoz

Mr. Tobias' motion failed 10 to 8.

Mr. Tobias moved to amend the main motion to provide six-year terms for district judges, except in Orleans and Jefferson Parishes where they shall have twelve-year terms, and the pro-

-6-

vision is not to be construed to lengthen any present terms.

A roll call vote was requested and ordered; the results were as follows:

<u>Yeas</u>	<u>Nays</u>
Bel	Avant
Bergeron	Burns
Gauthier	Dennis
Martin	Deshotels
Curso	Drew
Tate	Kelly

Tobias
Vesich

Kilbourne
Landry
Sandoz
Willis

Mr. Tobias' motion failed 10 to 8.

Judge Tate offered a substitute motion to require the legislature to provide uniform statewide terms of not less than six nor more than twelve years, and until they act the terms as they presently are shall be retained.

A roll call vote was requested and ordered and the results were as follows:

<u>Yeas</u>	<u>Nays</u>	<u>Abstentions</u>
Bel	Avant	Drew
Bergeron	Burns	
Dennis	Deshotels	
Gauthier	Kelly	
Tate	Kilbourne	
Tobias	Landry	
Vesich	Martin	
	Curso	
	Sandoz	
	Willis	

Judge Tate's motion failed 10 to 7 with 1 abstention.

Mr. Vesich moved: All terms of district judges shall be six years. The present terms of judges are retained. By a vote of the legislature and a referendum of the people in the parish, in any parish where the judges have terms in excess of six years, they

-7-

may be reduced to not less than six years.

A roll call vote was requested and ordered; the results were as follows:

<u>Yeas</u>	<u>Nays</u>
Bel	Avant
Bergeron	Burns
Deshotels	Dennis
Drew	Kelly
Gauthier	Kilbourne
Martin	Landry
Curso	Sandoz
Tate	Willis
Tobias	
Vesich	

Mr. Vesich's motion carried 10 to 8.

The committee recessed for lunch at 1:00 p.m. and reconvened at 2:15 p.m.

Debate continued on the "Fourth Preliminary Draft of the Judiciary Article".

Mr. Avant moved the adoption of Section 17.

Mr. Tobias moved to amend the motion to delete the word "multi-judge". Amendment accepted.

Mr. Avant's motion as amended carried without objection.

Mr. Sandoz moved to adopt Section 18. Motion carried without objection.

Section 19 was adopted without objection.

Section 20(A) was adopted without objection.

Mr. Sandoz moved to adopt Section "20 alternative".

Mr. Avant moved to amend the Sandoz motion to allow the supreme court to appoint more than one person to fill a vacancy. Amendment accepted.

Mr. Sandoz's motion as amended failed.

-8-

Mr. Landry moved to adopt Section 20(B). Motion carried without objection.

Mr. Kilbourne moved to reconsider Section 15(B).

A roll call vote was requested and ordered; the results were as follows:

<u>Yeas</u>	<u>Nays</u>
Avant	Bel
Burns	Bergeron
Deshotels	Gauthier
Kelly	Martin
Kilbourne	Ourso
Landry	Tate
Sandoz	Tobias
Willis	Vesich
	Dennis

Mr. Kilbourne's motion to reconsider Section 15(B) failed 9 to 8.

Mr. Deshotels moved the adoption of Section 15(A) on the "special sheet" prepared by the staff.

Mr. Avant moved to amend the motion to add the words "the civil and criminal district courts" after the words "district courts" in the first line, and in the sixth line after the words "judicial districts" add the words "or may merge a criminal and a civil district court in a parish". The amendment was accepted.

Mr. Deshotels' motion as amended carried.

Mr. Avant moved that in Section 16 in the second line strike out the words "or by law" and in the first line after the word "provided" insert the words "or authorized" and in the fourth line after the word "jurisdiction" strike out the word "in" and insert in lieu thereof the words "of all felony cases and". Motion carried.

Section 16 as amended carried without objection.

-9-

Mr. Landry moved the adoption of Section 19 on the "special sheet". Motion carried without objection.

Mr. Bergeron moved the adoption of Section 20(A) on the "special sheet". Motion carried without objection.

Section 20(B) on the "special sheet" was adopted without objection.

Mr. Vesich moved to reconsider Section 16. Motion carried.

Mr. Vesich moved to add to Section 16 a "(B)" section to provide that a civil district court and criminal district court shall have the jurisdiction provided in subsection (A), respectively.

Mr. Avant moved the adoption of Section 21 as amended at the committee meeting on June 8, 1973.

Mr. Willis moved to change "one-third" to "two-thirds" in Section (D)3. Motion carried without objection.

Mr. Avant's motion as amended carried without objection.

Mr. Landry moved to amend Section 22 at the beginning of line two by striking out the word "or" and after the word "court" insert the words "or parish court" and on line four after the word "district" insert the words "or parish". Motion carried without objection.

Judge Tate moved to strike out the word "resided" in line four of Section 22 and insert in lieu thereof the words

"domiciled". Motion carried without objection.

Section 22 as amended was adopted without objection.

Mr. Avant moved to adopt Section 23. Motion carried without objection.

Section 24 was adopted without objection.

Mr. Vesich moved to adopt Section 26(A) and to delete Section 26(B).

-10-

Mr. Avant moved to insert in line three of Section 26(A) (A) after the word "parish" the words "except as otherwise provided by this constitution". Motion carried without objection.

Mr. Vesich's motion as amended carried without objection.

Mr. Burns moved to adopt Section 27. Motion carried without objection.

Sheriff Ourso moved to adopt Section 28. Motion carried without objection.

Mr. Kelly moved to adopt Section 29(A) and delete Section 29(B). Motion carried without objection.

Section 29(C) was adopted without objection.

Section 30 was adopted without objection.

Section 31 was adopted without objection.

Mr. Deshotels moved the adoption of Section 32.

Mr. Bel moved to amend the motion to insert in the proposal that the officers in Orleans Parish retained in the constitution be provided for insofar as their terms compensation and retirement benefits be reduced. Amendment accepted.

Mr. Deshotels' motion as amended carried without objection.

Mr. Bergeron moved to adopt Section 33. Motion carried without objection.

Mr. Landry moved to adopt Section 34 as per staff amendments. Motion carried without objection.

The Section prepared by the staff concerning continuing mayors' courts and justices of the peace was adopted without objection.

Mr. Tobias moved to adopt the provision requiring all courts

-11-

to record all proceedings when requested. Motion carried without objection.

Judge Dennis read a letter from some of the judges in Orleans Parish concerning Justice Summers' remarks at a previous committee meeting.

Mr. Avant moved that the proposal as voted on be introduced on July 5, 1973, subject only to technical changes.

The meeting adjourned at 5:20 p.m.

James L. Desha
Chairman
Robert H. Landry
Vice-Chairman
Michael Bergeron
Secretary

-12-

MINUTES

Minutes of the Judiciary Committee of
the Constitutional Convention of 1973

Held pursuant to notice mailed by the
Secretary of the Convention on June 11
1973

Louisiana State Library, Baton
Rouge, Louisiana, Saturday, June
16, 1973, 9:30 a.m.

Presiding: Judge James L. Dennis, Chairman of the
Judiciary Committee

Secretary Bergeron called the roll.

PRESENT

Avant
Bel
Bergeron
Burns
Dennis
Deshotels
Drew
Gauthier
Kelly
Kilbourne
Landry
Martin
Sandoz
Tate
Tobias
Vesich
Willis

ABSENT

None

Mr. Willis moved the adoption of Section 10(B). Motion
carried without objection.

Section 11 was adopted without objection.

-2-

Mr. Landry moved to amend Section 12 to require that the
chief judge be selected by seniority. Motion failed 8 to 8.

Mr. Kelly moved to reconsider Sections 6(A) and 12. Motion
carried.

Mr. Kelly moved to amend Sections 6(A) and 12 to provide
for the selection of the chief justice and chief judge by
seniority, and to require that the successor to the offices be
the judge oldest in point of service on the court below the age
of 65.

Mr. Bergeron moved for a roll call vote. Motion carried.

The results of the roll call vote were:

<u>Yeas</u>	<u>Nays</u>	<u>Abstentions</u>
Avant	Burns	Bel
Bergeron	Gauthier	
Deshotels	Kilbourne	
Drew	Ours	
Kelly	Vesich	
Landry		
Martin		
Sandoz		
Tate		
Tobias		
Willis		

Mr. Kelly's motion carried 11 to 5.

Mr. Bergeron moved the adoption of Section 13. Motion carried
without objection.

Mr. Bergeron moved the adoption of Section 14. Motion
carried without objection.

Mr. Deshotels moved to defer action on Section 15(A) until
the staff could come up with an alternative to the section. Motion
carried.

Mr. Willis delivered prepared remarks to the committee con-
cerning the tenure of judges which are attached hereto and made a

-3-

part hereof.

Mr. Willis moved to strike out all of Section 15(B) with
the exception of the first line and the second sentence and in the
second sentence change the word "lengthen" to the word "shorten".

A roll call vote was requested and ordered; the results
were:

<u>Yeas</u>	<u>Nays</u>
Avant	Bel
Deshotels	Burns
Kelly	Bergeron
Landry	Dennis
Sandoz	Drew
Tobias	Gauthier
Willis	Kilbourne
	Martin
	Ours
	Tate
	Vesich

Mr. Willis' motion failed 11 to 7.

Mr. Avant moved to amend Section 15(B) by adding after the
word "election" in the fourth line the words "and those in the
judicial district where the state capitol is located".

Discussion continued on the "Fourth Preliminary Draft of
the Judiciary Article."

Mr. Tobias moved to delete the last sentence of Section 5(C).
Motion carried.

Judge Tate moved to adopt Section 5(C) as amended. Carried
without objection.

Section 5(D) was adopted without objection.

Mr. Deshotels moved to amend Section 5(E) by striking out the
first line and the words "on any issue" of the second line and
inserting in lieu thereof the words "Subject to the provisions of
Subsection (C)"; in the third line strike out the word "other", at
the end of the line strike out the period ".", and insert in lieu
thereof the words "any civil action properly before it."

Mr. Sandoz moved to adopt Section 5(E) as amended. Motion
carried without objection.

Mr. Landry moved to amend Section 6(A) to provide that the
selection of the chief justice be by seniority. Motion carried.

Mr. Sandoz moved to adopt Section 6(B). Motion carried
without objection.

Mr. Landry moved the adoption of Section 7. Motion carried
without objection.

Section 8 was adopted without objection.

Section 9 was adopted without objection.

Section 10(A) was adopted without objection.

Mr. Tobias moved to amend Mr. Avant's motion to read:

"The term of a district judge shall be twelve years. This provision shall not be construed to lengthen the term for which any judge has been elected."

Mr. Bel moved for a roll call vote. Motion carried without objection. The results were as follows:

<u>Yeas</u>	<u>Nays</u>	<u>Abstentions</u>
Bel	Avant	Willis
Bergeron	Burns	
Dennis	Drew	
Deshotels	Kilbourne	
Gauthier	Landry	
Kelly	Martin	
Tate	Oursou	
Tobias	Sandoz	
Vesich		

-4-

Mr. Tobias motion carried 9 to 8 with 1 abstention.

Mr. Willis asked to be allowed to change his vote to yea, thereby making the final vote 10 yeas and 8 nays.

Mr. Avant moved to reconsider the vote by which Mr. Tobias' motion carried.

A roll call vote was requested and ordered on the motion to reconsider; the results were as follows:

<u>Yeas</u>	<u>Nays</u>
Avant	Bel
Bergeron	Dennis
Burns	Deshotels
Drew	Gauthier
Kilbourne	Kelly
Landry	Tate
Martin	Tobias
Oursou	Vesich
Sandoz	
Willis	

Motion to reconsider carried 10 to 8.

Mr. Avant moved to withdraw his original motion. The chairman ruled that he could not as objection was urged.

Mr. Kelly moved for a ten-minute recess. Motion carried without objection and the committee recessed.

The committee resumed debate.

A roll call vote was requested and ordered on reconsideration of Mr. Tobias' amendment to Mr. Avant's motion. The results were as follows:

<u>Yeas</u>	<u>Nays</u>
Bel	Avant
Bergeron	Burns
Dennis	Drew
Deshotels	Kelly
Gauthier	Kilbourne
Tate	Landry

-5-

<u>Yeas</u> (continued)	<u>Nays</u> (continued)
Tobias	Martin
Vesich	Oursou
	Sandoz
	Willis

Mr. Tobias' motion on reconsideration failed 10 to 8.

Mr. Avant withdrew his previous motion to amend Section 15 (B)s.

Mr. Kilbourne moved to delete all of the first sentence of Section 15(B) with the exception of the first line and in the second sentence change the word "lengthen" to "shorten".

Mr. Bergeron offered a substitute motion to leave Section 15(B) as drafted.

Mr. Deshotels moved to amend the substitute motion to read as Mr. Kilbourne's motion.

Mr. Bergeron withdrew his motion.

Mr. Tobias moved to amend the main motion to leave Section 15(B) as drafted. A roll call vote was requested and ordered. The results were as follows:

<u>Yeas</u>	<u>Nays</u>
Tobias	Avant
Bel	Willis
Bergeron	Burns
Vesich	Dennis
Gauthier	Deshotels
Martin	Drew
Oursou	Kelly
Tate	Kilbourne
	Landry
	Sandoz

Mr. Tobias' motion failed 10 to 8.

Mr. Tobias moved to amend the main motion to provide six-year terms for district judges, except in Orleans and Jefferson Parishes where they shall have twelve-year terms, and the pro-

-6-

vision is not to be construed to lengthen any present terms.

A roll call vote was requested and ordered; the results were as follows:

<u>Yeas</u>	<u>Nays</u>
Bel	Avant
Bergeron	Burns
Gauthier	Dennis
Martin	Deshotels
Oursou	Drew
Tate	Kelly
Tobias	Kilbourne
Vesich	Landry
	Sandoz
	Willis

Mr. Tobias' motion failed 10 to 8.

Judge Tate offered a substitute motion to require the legislature to provide uniform statewide terms of not less than six nor more than twelve years, and until they act the terms as they presently are shall be retained.

A roll call vote was requested and ordered and the results were as follows:

<u>Yeas</u>	<u>Nays</u>	<u>Abstentions</u>
Bel	Avant	
Bergeron	Burns	Drew
Dennis	Deshotels	
Gauthier	Kelly	
Tate	Kilbourne	
Tobias	Landry	
Vesich	Martin	
	Oursou	
	Sandoz	
	Willis	

Judge Tate's motion failed 10 to 7 with 1 abstention.

Mr. Vesich moved: All terms of district judges shall be six years. The present terms of judges are retained. By a vote of the legislature and a referendum of the people in the parish, in any parish where the judges have terms in excess of six years, they

-7-

may be reduced to not less than six years.

A roll call vote was requested and ordered; the results were as follows:

<u>Yeas</u>	<u>Nays</u>
Bel	Avant
Bergeron	Burns
Deshotels	Dennis
Drew	Kelly
Gauthier	Kilbourne
Martin	Landry
Ourso	Sandoz
Tate	Willis
Tobias	
Vesich	

Mr. Vesich's motion carried 10 to 8.

The committee recessed for lunch at 1:00 p.m. and reconvened at 2:15 p.m.

Debate continued on the "Fourth Preliminary Draft of the Judiciary Article"

Mr. Avant moved the adoption of Section 17.

Mr. Tobias moved to amend the motion to delete the word "multi-judge". Amendment accepted.

Mr. Avant's motion as amended carried without objection.

Mr. Sandoz moved to adopt Section 18. Motion carried without objection.

Section 19 was adopted without objection.

Section 20(A) was adopted without objection.

Mr. Sandoz moved to adopt Section "20 alternative".

Mr. Avant moved to amend the Sandoz motion to allow the supreme court to appoint more than one person to fill a vacancy. Amendment accepted.

Mr. Sandoz's motion as amended failed.

-8-

Mr. Landry moved to adopt Section 20(B). Motion carried without objection.

Mr. Kilbourne moved to reconsider Section 15(B).

A roll call vote was requested and ordered; the results were as follows:

<u>Yeas</u>	<u>Nays</u>
Avant	Bel
Burns	Bergeron
Deshotels	Gauthier
Kelly	Martin
Kilbourne	Ourso
Landry	Tate
Sandoz	Tobias
Willis	Vesich
	Dennis

Mr. Kilbourne's motion to reconsider Section 15(B) failed 9 to 8.

Mr. Deshotels moved the adoption of Section 15(A) on the "special sheet" prepared by the staff.

Mr. Avant moved to amend the motion to add the words "the civil and criminal district courts" after the words "district courts" in the first line, and in the sixth line after the word "judicial districts" add the words "or may merge a criminal and a civil district court in a parish". The amendment was accepted.

Mr. Deshotels' motion as amended carried.

Mr. Avant moved that in Section 16 in the second line strike out the words "or by law" and in the first line after the word "provided" insert the words "or authorized" and in the fourth line after the word "jurisdiction" strike out the word "in" and insert in lieu thereof the words "of all felony cases and". Motion carried.

Section 16 as amended carried without objection

-9-

Mr. Landry moved the adoption of Section 19 on the "special sheet". Motion carried without objection.

Mr. Bergeron moved the adoption of Section 20(A) on the "special sheet". Motion carried without objection.

Section 20(B) on the "special sheet" was adopted without objection.

Mr. Vesich moved to reconsider Section 16. Motion carried.

Mr. Vesich moved to add to Section 16 a "(B)" section to provide that a civil district court and criminal district court shall have the jurisdiction provided in subsection (A), respectively.

Mr. Avant moved the adoption of Section 21 as amended at the committee meeting on June 8, 1973.

Mr. Willis moved to change "one-third" to "two-thirds" in Section (D)3. Motion carried without objection.

Mr. Avant's motion as amended carried without objection.

Mr. Landry moved to amend Section 22 at the beginning of line two by striking out the word "or" and after the word "court" insert the words "or parish court" and on line four after the word "district" insert the words "or parish". Motion carried without objection.

Judge Tate moved to strike out the word "resided" in line four of Section 22 and insert in lieu thereof the words "domiciled". Motion carried without objection.

Section 22 as amended was adopted without objection.

Mr. Avant moved to adopt Section 23. Motion carried without objection.

Section 24 was adopted without objection.

Mr. Vesich moved to adopt Section 26(A) and to delete Section 26(B).

-10-

Mr. Avant moved to insert in line three of Section 26(A) (A) after the word "parish" the words "except as otherwise provided by this constitution". Motion carried without objection.

Mr. Vesich's motion as amended carried without objection.

Mr. Burns moved to adopt Section 27. Motion carried without objection.

Sheriff Ourso moved to adopt Section 28. Motion carried without objection.

Mr. Kelly moved to adopt Section 29(A) and delete Section 29(B). Motion carried without objection.

Section 29(C) was adopted without objection.

Section 30 was adopted without objection.

Section 31 was adopted without objection.

Mr. Deshotels moved the adoption of Section 32.

Mr. Bel moved to amend the motion to insert in the proposal that the officers in Orleans Parish retained in the constitution be provided for insofar as their terms compensation and retirement benefits be reduced. Amendment accepted.

Mr. Deshotels' motion as amended carried without objection.

Mr. Bergeron moved to adopt Section 33. Motion carried without objection.

Mr. Landry moved to adopt Section 34 as per staff amendments. Motion carried without objection.

The Section prepared by the staff concerning continuing mayors' courts and justices of the peace was adopted without objection.

Mr. Tobias moved to adopt the provision requiring all courts

-11-

to record all proceedings when requested. Motion carried without objection.

Judge Dennis read a letter from some of the judges in Orleans Parish concerning Justice Summers' remarks at a previous committee meeting.

Mr. Avant moved that the proposal as voted on be introduced on July 5, 1973, subject only to technical changes.

The meeting adjourned at 5:20 p.m.

James H. Dennis
Chairman
Ambrose B. Landry
Vice-Chairman
Philip O. Bergeron
Secretary

-12-

MINUTES

Minutes of the Judiciary Committee of
the Constitutional Convention of 1973

Held pursuant to notice

Committee Room One, State
Capitol, Baton Rouge, La.
Wednesday, July 25, 1973

5:00 p.m.

Presiding: Judge James L. Dennis, Chairman of
the Judiciary Committee

Secretary Bergeron called the roll.

Present

Avant
Bergeron
Burns
Dennis
Deshotels
Drew
Kelly
Kilbourne
Landry
Martin
Ourso
Tate
Tobias
Vesich
Willis

Absent

Bel
Gauthier
Sandoz

Chairman Dennis called the meeting to order.

Secretary Bergeron called the roll. A quorum was present.

Guest speaker Chief Justice Sanders, Louisiana Supreme Court, spoke on the unification of the trial courts. A copy of his speech is attached hereto.

William A. Culpepper, Judge of the Third Circuit Court of Appeals, appeared as Chairman of the Judiciary Commission of Louisiana.

Paul B. Landry, Jr., Judge of the First Circuit Court of Appeals, also appeared.

Professor Leon Hebert, former Chairman of the Committee on Professional Responsibility for the Louisiana State Bar Association, spoke to the committee concerning the retention of Section 4-F, Article IX, in the present constitution.

Meeting adjourned at 7:15 p.m.

James H. Dennis
James H. Dennis, Chairman

Ambrose Landry, Vice Chairman

Philip O. Bergeron, Secretary

PRESENTATION OF CHIEF JUSTICE JOE W. SANDERS
TO THE JUDICIARY COMMITTEE OF THE LOUISIANA
CONSTITUTIONAL CONVENTION ON JULY 25, 1973 AT
5 P.M., IN COMMITTEE ROOM 1, STATE CAPITOL,
BATON ROUGE, LA.

Judge Dennis and Members of the Committee:

I appreciate this second opportunity to appear before you for the purpose of expressing my views on the judicial article. In my first appearance, on March 23, I discussed with you eight major points of court organization. Since then, you have prepared and filed with the convention a proposed article, providing for the judicial branch of government.

I have reviewed the proposal and called a number of drafting problems to the attention of the staff of the Committee. Today, I would like to center your attention upon the provisions for unifying the trial courts. Unification has been an objective of agencies concerned with the improvement of justice since Roscoe Pound's famous address to the American Bar Association in 1906. In 1961, in a study sponsored by the Louisiana State Bar Association, the National Council on Criminal and

Delinquency recommended court unification by merging family and juvenile courts into a specialized division of the district court.¹ In 1972, court unification in our state was again recommended by the Institute of Judicial Administration in its state-wide court study commissioned by the Chief Justice of Louisiana.² In May of this year, the American Judicature Society completed a study of our trial courts of limited jurisdiction and likewise recommended that city, family and juvenile courts be merged into the district courts.³

Your work draft, as I construe it, leaves all trial courts--district, juvenile, family, and city--as they are now. Provision is made for future unification upon the enactment of legislation approved by a majority of the elected members of both houses, accompanied by approval in a referendum election in the area affected.

Although well-intended, the procedure for

1. A System of Family Courts for Louisiana (1961), Louisiana Youth Commission.
2. A Study of the Louisiana Court System (1972), Institute of Judicial Administration.
3. Modernizing Louisiana's Courts of Limited Jurisdiction (1973), American Judicature Society.

-2-

unification is cumbersome and defers the problem for future handling on a piece-meal basis. It also violates a general objective of the Constitutional Convention, that of reducing the number of items on which the people are required to vote.

I think it would be far better to face the problem of unification now. It seems to me that there are three alternatives: (1) A three-tier court system: supreme court, court of appeal, and district court, with the city, family and juvenile courts merged into the district court; (2) A four-tier court system: supreme court, court of appeal, district court, and parish court; and (3) An intermediate approach: a constitutionally created three-tier court system--supreme court, court of appeal and district court--with authorization for the legislature to create a parish court where and when needed. Because of its long and unique history in a special court structure, Orleans Parish could well be excepted from strict unification.

-3-

Of these alternatives, I am of the opinion that Number 3, the intermediate approach, is the most reasonable at this time and should be seriously considered.

With this approach, the Constitution would create only one court at the trial level, the district court of general jurisdiction. Into it would be merged the present judges of city and local courts, separate juvenile courts, and family courts. These courts of special and limited jurisdiction would cease to exist.

The district court would have divisions established by court rule, thus providing maximum flexibility. For example, the court rule might well provide for the following divisions: criminal, civil, family, traffic, and small claims.

The present juvenile and family court judges would staff the family division. They would continue to have a specialized staff of probation officers and counsellors to prevent marriage break-up and rehabilitate children.

The traffic and small claims divisions would, of course, be authorized to hold hearings at various places

-4-

in the parish as needed, utilizing when possible the courtroom facilities of the present city courts.

The judicial article would authorize the legislature to create parish courts of uniform limited jurisdiction to serve parish-wide when and where needed under the new court structure. Hopefully, in most parishes, the enlarged district court will provide adequate service and the parish court will not be needed.

Although court reorganization is always difficult and requires a tedious process of practical detail, I believe we should undertake it. This may be our last chance for another half century. I place the matter before you for consideration.

I shall, of course, be happy to answer any questions that you may have.

-5-

MINUTES

Minutes of the Judiciary Committee
of the Constitutional Convention of
1973

Held pursuant to notice

Room 206 State Capitol, Baton
Rouge, Louisiana, Friday,
July 27, 1973, 9:00 a.m.

Presiding: Judge James L. Dennis, Chairman of the
Judiciary Committee

Roll Call:

<u>Present</u>	<u>Absent</u>
Avant	Kelly
Bel	Kilbourne
Bergeron	Tate
Burns	Tobias
Dennis	Vesich
Deshotels	Willis
Drew	Landry
Gauthier	

* * *

Mr. Avant moved that under Section 22, on page 6, lines
31 and 32 be deleted in their entirety and to insert in lieu
thereof the following:

"Section 22. No person shall be subjected
to any imprisonment or fine in excess of one
hundred dollars or forfeiture without an appeal
of right based upon a complete transcript of all
evidence upon which such sentence is based."

The chairman appointed a subcommittee composed of Messrs. Avant,
Drew, Kelly and Tate to study the proposal.

Mr. Tobias proposed an amendment to Section 2:

On page 1, line 16, between "2." and "Orders"
delete "Needful Writs, Habeas Corpus" and insert
in lieu thereof "Habeas Corpus, Needful Writs"

The amendment was adopted with no objections.

Mr. Tobias offered an amendment to Section 3:

On page 1, line 24 in the title, after the
word "Court," delete remainder of line and
insert "Composition; Judgments; Terms"

There being no objections, amendment was adopted.

Mr. Tobias offered an amendment to Section 5(A) as
follows:

On page 2, line 8, after the word "over" and
before the word "all", insert the following:
"and control of"

The amendment failed. Mr. Avant moved to reconsider the
matter. Mr. Kilbourne seconded the motion and asked for
a roll call vote:

<u>Yeas</u>	<u>Nays</u>	<u>Abstaining</u>	<u>Absent</u>
Tobias	Avant	Vesich	Tate
	Bel	Willis	Kelly
	Bergeron		
	Burns		
	Dennis		
	Deshotels		
	Drew		
	Gauthier		
	Kilbourne		
	Landry		

Page 3

The amendment failed 12 to 1 with 1 abstention and 1
absent.

Chairman Dennis moved: On line 10, page 2, immediately
after the words "assign a" and before the word "judge" delete

the words "sitting or retired" and insert in lieu thereof the
following:

"retired judge, with his permission or a sitting"

The roll call vote was as follows:

<u>Yeas</u>	<u>Nays</u>	<u>Absent</u>
Avant	Bel	Kelly
Burns	Bergeron	Vesich
Deshotels	Deshotels	Dennis
Kilbourne	Drew	
Landry	Gauthier	Tate
	Tobias	
	Willis	

The amendment failed with 8 yeas to 5 yeas and 2 absent.

Mr. Deshotels presented an amendment to Section 5, line 10:

"At the end of the line, remove the word "another"
and insert in lieu thereof the word "any"

Without objection amendment passed.

Mr. Tobias' amendment:

On page 2, line 20, after the word "law" insert
the words "or ordinance"

was passed by roll call vote as follows:

<u>Yeas</u>	<u>Nays</u>	<u>Absent</u>
Avant	Burns	Kelly
Bel	Deshotels	
Bergeron	Gauthier	
Dennis	Kilbourne	
Drew	Tate	
Landry		
Tobias		
Vesich		
Willis		

* * *
Page 4

MINUTES

Minutes of the Judiciary Committee
of the Constitutional Convention
of 1973

Held pursuant to notice

Committee Room No. 1, State

Capitol, Baton Rouge, Louisiana

Thursday, August 2, 1973, 9:30 a.m.

Presiding: Judge James Dennis, Chairman of the Judiciary
Committee

Roll Call:

<u>Present</u>	<u>Absent</u>
Avant	Deshotels
Bel	Ourso
Bergeron	
Burns	
Dennis	
Drew	
Gauthier	
Kelly	
Kilbourne	
Landry	
Martin	
Sandoz	
Tate	
Tobias	
Vesich	
Willis	

Chairman Dennis called the meeting to order. Roll was
called and a quorum was present.

Mr. Avant offered the amendment to page 6, lines 31 and
32, which the subcommittee of Messrs. Tate, Drew, Kelly and
Avant were appointed to consider:

[1033]

"Section 22. No person shall be subjected to imprisonment or fine nor suffer forfeiture without a right of review based upon the complete transcript of all evidence upon which such judgment is based."

Mr. Drew proposed an amendment to the amendment to include after the word "forfeiture" and before the word "without" the words "in any court"

There was no objection to Mr. Drew's amendment to the amendment.

The Chairman asked the subcommittee if they would reconsider the amendment. It was decided that they would not.

Mr. Tobias proposed a substitute motion that chairman create another subcommittee to reconsider the amendment for one week.

Substitute motion carried 10 to 3.

The chairman appointed Messrs. Tobias, Tate, Landry, Bergeron and himself to the subcommittee adding that anyone who desired could attend the meeting.

Mr. Bel proposed an amendment to Section 19.

On page 6, between lines 10 and 11, insert the following:

"The city courts of New Orleans shall have exclusive original jurisdiction in all cases where the amount in dispute or fund to be distributed does not exceed one thousand dollars,

Page 2

exclusive of interest, including suits for the ownership or possession of movable property not exceeding that amount in value, and including suits by landlords for possession of leased premises when the monthly rent does not exceed three hundred dollars. It has concurrent jurisdiction with the civil district court for the parish of Orleans in all cases except divorce, alimony, titles to real estate and probate matters, when the amount in dispute or fund to be distributed exceeds one thousand dollars but does not exceed two thousand five hundred dollars, exclusive of interest, attorneys fees, and penalties, including suits for the ownership or possession of movable property not exceeding one thousand dollars in value."

The amendment was defeated 5 to 4.

Mr. Tobias proposed amendments on page 3, line 4, to capitalize the word "court" and change the word "Clerk" to "Clerks".

Without objection the amendments were adopted.

Chairman Dennis proposed amendments Section 7:

Page 3, line 8, at the end of the line delete the period "." and insert in lieu thereof the following: "and compensation."; and on page 4, line 22, at the end of the line delete the period "." and insert in lieu thereof the following: "and compensation."

Both amendments were adopted without objection.

Chairman Dennis proposed amendments to Section 10:

Page 3, line 32, immediately after the word "prosecutions" insert a period "." and delete the remainder of the line; and on page 4, line 1, at the beginning of the line delete the word "juveniles" and delete the period ".".

They were defeated 10 to 1.

Page 3

The meeting adjourned at 12:15 p.m.

James L. Dennis, Chairman

Ambroise Landry, Vice Chairman

Philip O. Bergeron, Secretary

Page 4

MINUTES

Minutes of the Judiciary Committee of the Constitutional Convention of 1973

Held pursuant to notice
Committee Room Nine, State
Capitol, Baton Rouge, La.
Wednesday, August 8, 1973
9:00 a.m.

Presiding: Judge James L. Dennis, Chairman of the Judiciary Committee

Secretary Bergeron called the roll:

Present	Absent	
Avant	Landry	Burns
Bel	Martin	Gauthier
Bergeron	Curso	
Burns	Sandoz	
Deshotels	Tate	
Drew	Tobias	
Kelly	Vesich	
Kilbourne	Willis	

Chairman Dennis called the meeting to order. Secretary Bergeron called the roll and a quorum.

The chairman asked delegates to study minutes of previous meetings in order to pass on them at the next meeting.

Chairman Dennis proposed an amendment:

On page 2, line 18, immediately after the letter "(D)" and before the word "following" delete the word "The" and insert in lieu thereof the following: "In addition to appeals provided for elsewhere in this constitution, the"

It was decided to pass by this amendment until later.

Chairman Dennis introduced Amendment No. 1:

On page 5, line 28, immediately after the word "cour:" and before the word "elect" delete "may" and insert in lieu thereof the word "shall"

Adopted 6 to 4.

Amendment No. 2:

On page 5, line 30, immediately after the partial word "tions" and before "as" insert the following: "administrative functions and for such terms"

Adopted without objection.

Chairman Dennis proposed amendment to Section 16:

On page 5, line 16, immediately after the word "cases" and before the word "involving" insert the words "and cases"

Adopted with one objection.

Mr. Tobias proposed an oral amendment:

On page 4, delete lines 7 and 8.

Adopted without objection.

Page 2

Mr. Tobias proposed:

On page 6, line 25, delete words "Mayors' Courts;"

It was decided to pass over this amendment until later.

Mr. Tobias moved to delete lines 23 through 26 in their entirety, on page 5, and delete capital letter (A) on line 13. Then pick up the deleted paragraph again in Section 37.

Without objection the amendment was adopted.

Chairman Dennis proposed:

On page 7, line 2, at the end of the line add a semicolon ";" and the words "nonjudicial Functions, Prohibited" The amendment failed by tie vote 6 to 6.

Mr. Tobias called for reconsideration of the vote. The reconsideration failed 8 to 5.

Chairman Dennis moved:

On page 7, line 29, immediately after the word "except" delete remainder of line and insert the following:

"that a sitting judge who has attained the age of seventy years at the time of the adoption of this constitution or who will attain that age before the expiration of his present term may remain in office until his seventy-fifty birthday."

Mr. Avant offered substitute motion:

On page 8, line 2, following the word "term" and before the word "provided" delete the comma "," and insert the word "as"

Substitute motion adopted without objection.

Mr. Tobias proposed:

On page 7, line 12, delete the words "the day" Page 3

and insert in lieu thereof "the date on which"

Adopted.

Chairman Dennis proposed:

On page 8, line 14, immediately after the word "be" and before the word "en-" insert the words "vested with and"

Adopted.

Mr. Tobias moved to add

on page 9, line 23, and page 11, line 12, after the word "law" and before "for" the words "in this state."

Adopted.

Chairman Dennis moved to adopt on page 10, between lines 31 and 32, insert the following:

"(F) Action against a judge under this

Section shall not preclude disciplinary action against his practice of law.

Adopted.

Mr. Bel introduced an amendment:

On page 13, between lines 31 and 32, insert the following:

"Section 37(a). City Marshals; Continued Section 37(a). The office of city marshal is continued, subject to change by a majority vote of the elected members of each house of the legislature and by approval in a referendum in the area affected."

Mr. Bergeron sent word he would like to be heard on this amendment. It was decided to hold up temporarily.

Mr. Vesich offered amendment:

On page 13, between lines 31 and 32, insert the following:

"A judge of the juvenile court of Orleans Parish shall have practiced law in their state for not less than five years previous to his election and shall have resided in the Orleans Parish for at least two years immediately preceding his election."

It was decided to withdraw this amendment temporarily.

Chairman Dennis proposed:

On page 14, delete lines 1 through 3, and insert:

"Section 38. The supreme court by rule shall provide for the qualification and selection of jurors."

Mr. Willis questioned on page 13, line 32, the word "Selection"

Chairman Dennis asked committee to pass over and requested staff to work on this section.

Mr. Willis recommended Section 38 read:

"All electors are eligible to serve as jurors."

Mr. Ourso moved:

On page 13, line 32, delete the word "Selection" and on page 14, at the end of line 2, delete "The supreme court" and delete line 3 in its entirety. Motion adopted.

Mr. Tobias moved:

On page 7, line 18, change word "all" to "a" and on line 25, after the word "year" and before the word "the" insert the words "in which"

Adopted.

Mr. Tobias proposed:

On page 8, line 4, delete the word "thereof"

Adopted.

Page 5

Mr. Tobias moved:

On page 9, line 27, in place of "Membership" insert the word "Composition" Adopted.

Mr. Tobias also moved:

On page 11, line 10, after the phrase "Section 29." add

"(A)", and on line 20, before "In" add "(B)"

Adopted.

Mr. Bel introduced amendment adding new Section. 40:

On page 14, line 11, add the following:

"Section 40. Fees; Orleans Parish
Section 40. The judges of the civil district
court and the city courts of Orleans Parish
shall set the fees for civil cases filed in
their respective courts."

Adopted.

Mr. Landry moved:

On page 4, delete lines 27 through 32, both
inclusive, in their entirety and delete the
committee amendment approved thereto on July
27, 1973, and insert in lieu thereof the
following:

"Section 15. Courts; Continued; Juris-
diction; Judicial District Changes; Terms
Section 15(A) The district, parish, city,
family, and juvenile courts existing at the
time of the adoption of this constitution are
retained. Except as provided in Section 37
of this Article, the legislature may abolish
or merge trial courts of limited jurisdiction
subject to the limitations in Sections 16 and
23 of this Article. Except as provided in
Section 37 of this Article, the legislature
may establish trial courts of limited juris-
diction which shall be uniform throughout the
state.

(B) The judicial districts existing at the
time of the adoption of this constitution are
retained. The legislature, by a majority vote
of the elected members of each house, with
approval in a referendum in each district or
parish affected, may establish or merge judi-
cial districts, subject to the limitations of
Section 23 of this Article."

Page 5

Adopted.

Mr. Tobias moved to adjourn until further notice.

There being no objection, the meeting adjourned at 12:00 noon.


James L. Dennis, Chairman

Ambrose Landry, Vice Chairman

Philip O. Bergeron, Secretary

Page 7

MINUTES

Minutes of the Judiciary Committee of
the Constitutional Convention of 1973

Held pursuant to notice

Committee Room One, State

Capitol, Baton Rouge, La.

Thursday, August 9, 1973

6:30 p.m.

Presiding: Judge James L. Dennis, Chairman of the
Judiciary Committee

Secretary Bergeron called the roll:

	<u>Present</u>	<u>Absent</u>
Avant	Kelly	Martin
Bel	Kilbourne	Vesich
Bergeron	Landry	
Burns	Ours	
Dennis	Sandoz	
Deshotels	Tate	
Drew	Tobias	
Gauthier	Willis	

The meeting was called by Chairman Dennis. Roll was
called and a quorum present.

Mr. Avant offered amendment to Mr. Deshotels' amendment
of the previous meeting.

Mr. Kelly suggested substituting the No. 2 we adopted
in lieu of Mr. Avant's No. 2. Then instead of "exercising
Judicial", say "advise and assist a district attorney in the
prosecution of a case."

Mr. Burns moved to put Mr. Deshotels No. 2 in place of
Mr. Avant's No. 2 and use "advise and assist" and adopt
Mr. Avants' amendment.

Adopted.

Mr. Landry:

On page 8, delete lines 5 through 32 in their entirety
and insert in lieu thereof the following:

"(C) A judge taking office after the adoption
of this constitution and a judge in office who so
elects within ninety days of the adoption of this
constitution by notifying the secretary of state,
shall be vested and entitled to the following retire-
ment benefits:

(1) This subsection applies to a judge of a
court authorized by this constitution, except
mayors and justices of the peace.

(2) A judge with sixteen years of judicial
service may retire at any age; a judge of twelve
years of judicial service may retire with benefits
commencing at the age of fifty-five. On retirement,
a judge shall receive annually as retirement, bene-
fits four percent of his salary times the number of
years served, but not more than ninety percent.

(3) A judge who is physically or mentally incapa-
citated to perform his duties shall be retired. He
shall receive as annual retirement benefits two-thirds
of his annual salary, or four percent of his salary
times the number of years served, whichever is greater,
not to exceed the maximum amount provided in paragraph
(2).

(4) Upon the death of a judge, in office or retired,
the surviving spouse, until remarriage, shall be

Page 2

entitled to one-half of his annual salary as judge
prior to death or retirement. If the judge is not
survived by a spouse, or if the spouse dies, his
unmarried children shall be entitled to the benefits
provided in this subsection until the age of eighteen."

This substitution would also delete line 1 through 11 in their
entirety on page 9.

By roll call vote the amendment was adopted 11-3 as follows:

<u>Yeas</u>	<u>Nays</u>
Bel	Deshotels
Bergeron	Drew
Burns	Kelly
Gauthier	
Kilbourne	
Landry	
Ours	
Sandoz	
Tate	
Tobias	
Willis	

Chairman Dennis offered Amendment No. 1 proposed by subcommittee concerning right of appeal:

On page 2, line 25, at the end of the line add the following:

"In other criminal cases an accused shall have the right of appeal or review, as provided by law or by rule of the supreme court not inconsistent therewith."

and Amendment No. 2:

On page 6, between lines 1 and 2, insert the following:

"Section 19. Preservation of Evidence
Section 19. Evidence shall be preserved in all trials. The method of preservation shall be provided by law or by rule of the supreme court not inconsistent therewith."

The amendments being divisible, No. 1 adopted 11 to 1, and

Amendment No. 2, adopted 9 to 3.

Page 3

Mr. Bel moved:

On page 14, line 12, add the following:

"Section ____ . Judicial Expense Fund; Orleans Parish; Continued
Section ____ . The judicial expense fund of Orleans Parish as existing at the time of the adoption of this constitution is retained subject to change by two-thirds vote of the elected members of each house of the legislature."

Adopted.

Vice Chairman Landry assumed the chair.

Judge Dennis moved adoption:

On page 3, between lines 8 and 9, insert the following:

"Section 8. Budget
Section 8. The Supreme Court shall submit an annual consolidated budget for the entire judicial system and the total cost of the system shall be paid by the state. The legislature may provide by law for the reimbursement to the state of appropriate portions of such cost by political subdivisions."

Amendment defeated 8 - 2 with 1 abstention.

Chairman Dennis resumed the chair and introduced the amendment.

On page 5, delete lines 5 through 11, both inclusive, in their entirety, and insert in lieu thereof the following:

"(C) The term of a district judge upon initial election to that office for a full term shall be six years. If, without an interruption in service, he is reelected, each succeeding term shall be twelve years."

"This provision shall not extend the term which a judge is serving at the time of the adoption of this constitution. It shall apply to a judge who is reelected thereafter."

Defeated.

Page 4

Mr. Bel suggested stylistic changes be accepted.

There were no objections to reporting the proposal as substitution.

Judge Tate moved stylistic changes be adopted. No objection. Adopted.

Mr. Tobias moved amendments adopted at this meeting be

put in substitute proposal as adopted unless another meeting is called.

Motion adopted.

Meeting adjourned at 8:25 p.m.

Page 5

MINUTES

Minutes of the meeting of the Judiciary Committee of the Constitutional Convention of Louisiana of 1973

Held pursuant to notice in the Treaty Room of the White House Inn, Baton Rouge, Louisiana, November 14, 1973, 5:15 p.m.

Presiding: Judge James L. Dennis, Chairman of the Judiciary Committee.

Present

John L. Avant
Clyde F. Bel, Sr.
James L. Dennis
R. Harmon Drew
Wendell H. Gauthier
Richard H. Kilbourne
Ambrose H. Landry
Gordon J. Martin
Albert Tate, Jr.
Anthony J. Vesich, Jr.
J. Burton Willis
Max H. Tobias, Jr.

Absent

Philip O. Bergeron
James T. Burns
Errol D. Deshotels
Donald G. Kelly
Jesse M. Ours, Sr.
Lawrence B. Sandos, Jr.

Chairman Dennis called the meeting to order.

A quorum was present.

The chairman announced Delegate Johnny Jackson was present to discuss his Delegate Proposal No. 43 concerning juvenile courts original jurisdiction.

Mr. Jackson introduced guests Sidney Barthelemy, Director, City Welfare Department, City of New Orleans; and Mrs. Elyne B. Bryant, Juvenile Protection Chairman, East Baton Rouge Parish PTA.

Mr. Jackson stated he would prefer to report the proposal "Without Action".

Mr. Avant moved to report the Proposal "Without Action."

There being no objections, Delegate Proposal No. 43 will be reported "Without Action."

Chairman Dennis read a letter from the judges of the Orleans Parish Juvenile Court urging acceptable provision for Juvenile Courts to have rank of District Courts. (Copy attached hereto)

Chairman Dennis then brought the matter of Delegate Proposal No. 32.

Mr. Drew stated he had no objection to reporting his proposal "Without Action."

Mr. Landry moved to report the proposal "Without Action." There were no objections.

Mr. Tobias moved for adjournment.

There being no objections, the meeting adjourned at
5:40 p.m.

that each member of the Committee receives a copy before its reading
in order that its content may be considered with reflection.

With best personal regards, we remain,

James L. Dennis
JAMES L. DENNIS, CHAIRMAN
Ambroise H. Landry
AMBROISE H. LANDRY, VICE CHAIRMAN
Philip H. Bergeron
PHILIP H. BERGERON, SECRETARY

Leo Blessing
J. Polkman
E. S. S.

Emile J. Trainor
David W. ...
AP. & C. Judge

-2-

1/3 11/11/73

FOURTH PRELIMINARY DRAFT

BASED ON NONBINDING VOTES OF THE
COMMITTEE ON THE JUDICIARY

TELEPHONE 524-5283

ARTICLE ____ THE JUDICIARY DEPARTMENT

Section 1. Judicial Power

Section 1. The judicial power shall be vested in a
supreme court, courts of appeal, district courts, and such
other courts as this constitution may authorize.

Section 2. Needful Writs, Orders and Process

Section 2. A judge may issue all needful writs, orders
and process in aid of the jurisdiction of his court. Exer-
cise of this authority by a judge of the supreme court or
court of appeal is subject to review by the whole court.

Section 3. Supreme Court; Membership; Terms

Section 3. The supreme court shall be composed of
seven judges, four of whom must concur to render judgment.
The term of a judge of the supreme court shall be fourteen
years.

Section 4. Supreme Court; Districts

Section 4. The state shall be divided into at least
six supreme court districts, with at least one judge elected
from each. The present districts and the number of judges
assigned to each are retained, subject to change by a two-
thirds vote of the elected members of each house of the
legislature.

Section 5. Supreme Court; Supervisory, Original, and Appel-
late Jurisdiction; Rule-Making Power; Assignment of Judges

Section 5. (A) The supreme court has control of and
general supervisory jurisdiction over all inferior courts.
It may promulgate procedural and administrative rules not in
conflict with law. It may assign a sitting or retired judge
to another court.

(B) The supreme court has exclusive original jurisdiction
of disciplinary proceeding involving members of the bar.

ORLEANS PARISH JUVENILE COURT
CIVIL COURTS BUILDING - CIVIC CENTER
401 LOUOLA AVENUE

NEW ORLEANS 12, LA
November 14, 1973

LEO B. BLESSING
JAMES P. GONNOR
EDWARD G. GILLIN
ERNEST H. MORIAL



The Honorable James L. Dennis
Chairman, Judiciary Committee
State Capitol Building
Baton Rouge, Louisiana

Dear Judge Dennis:

The Judges of this court are unable to attend the Committee
meeting to be held this afternoon at 5:00 P.M. because of a prior
commitment which we are unable to cancel. We understand that further
efforts are being made to make the Juvenile Courts Constitutional
Courts and to set forth the jurisdiction of such Courts in the
Constitution.

As you may recall, Judge Gillin has, on two occasions, ap-
peared before your Committee urging that the status of Juvenile
Courts as Constitutional Courts be perpetuated. The last provision
which we have seen does not so provide. At a time when throughout
this Country there is a concerted movement to upgrade Juvenile Courts,
it appears that your Committee and the members of the Convention as a
whole are prepared to take a step backward. There is no reason or
justification for the failure of the Committee and the Convention to
advocate that Juvenile Courts have the rank of District Courts (this
being the present status of Juvenile Courts in the Louisiana Constitu-
tion). If Juvenile Courts are to be subject to the kinds of emotions
expressed at the last session of the Legislature, it is predictable
with certainty that more harm will result than good considering the
worthy postulates of the Juvenile Justice System. We again strongly
urge the adoption of a sensible acceptable provision which provides
that Juvenile Courts have the rank of District Courts; that the juris-
diction of Juvenile Courts be set forth in the Judicial Article; that
the Legislature be given no authority to alter such jurisdiction; and
that the language "to abolish Juvenile Courts" be deleted. If these

-2-

provisions are not carried forward into the proposed new Constitution,
we can foresee much opposition, which, in turn may further jeopardize
the passage of the basic document.

Please read this letter to your Committee and if possible see

(C) In civil cases, the supreme court's jurisdiction extends to both the law and the facts except as otherwise provided in this constitution. In criminal matters, its appellate jurisdiction extends to questions of law only. The legislature, however, may provide for a directed verdict of acquittal in criminal cases.

(D) The following cases shall be appealable to the supreme court:

- (1) A case in which a state law has been declared unconstitutional;
- (2) A criminal case in which the penalty of death or imprisonment at hard labor may be imposed, or in which a fine exceeding five hundred dollars or imprisonment exceeding six months has been actually imposed.

(E) If a case is appealed properly to the supreme court on any issue, the supreme court has appellate jurisdiction over all other issues involved in the case.

Section 6. Supreme Court; the Chief Justice

Section 6. (A) When a vacancy in the office of chief justice occurs, the judges, of the supreme court, by a majority vote shall elect one of their members to the office for a five-year term.

(B) The chief justice shall be chief administrative officer of the judicial system of the state, subject to rules adopted by the court.

Section 7. Supreme Court; Judicial Administrator, Clerk, and Staff

Section 7. The supreme court shall have authority to select a judicial administrator, its clerks, and other personnel, and prescribe their duties.

Section 8. Courts of Appeal; Panels; Number Necessary to Decision; Term

Section 8. The state shall be divided into at least four circuits, with one court of appeal in each circuit.

2

Each court shall sit in panels of at least three judges selected according to rules adopted by the court. A majority of the judges sitting in a case must concur to render judgment. The term of a court of appeal judge shall be twelve years.

Section 9. Courts of Appeal; Circuits and Districts

Section 9. Each circuit shall be divided into at least three districts, with at least one judge elected from each. One or more judges may be elected at large from within the circuit. The present circuits and districts and the number of judges as elected in each circuit are retained, subject

to change by a two-thirds vote of the elected members of each house of the legislature.

Section 10. Courts of Appeal; Appellate and Supervisory Jurisdiction

Section 10. (A) Except in those cases appealable to the supreme court and as otherwise provided in this constitution, a court of appeal has appellate jurisdiction of all civil cases decided within its circuit. It has appellate jurisdiction of all matters appealed from the family and juvenile courts, except criminal prosecutions of persons other than juveniles. It has supervisory jurisdiction over all cases in which an appeal would lie to that court.

(B) Except where limited to questions of law by this constitution or, as provided by law in the case of review of administrative agency determinations, its appellate jurisdiction extends to both the law and the facts.

Section 11. Courts of Appeal; Certifications to Supreme Court of Questions of Law; Determination

Section 11. A court of appeal may certify to the supreme court any question of law before it, whereupon the supreme court may give its binding instruction, or consider and decide the case upon the whole record.

Section 12. Courts of Appeal; Clerks; Judges; Staff

Section 12. When a vacancy in the office of clerk of a court

3

occurs, a majority of the judges of the circuit shall elect one of their number to the office for a five-year term, who shall administer the court, subject to rules adopted by the court.

Section 13. Courts of Appeal; Clerks and Staff

Section 13. Each court of appeal shall have authority to select its clerk and other personnel and prescribe their duties.

Section 14. District Courts; Judicial Districts

Section 14. The state shall be divided into judicial districts, each composed of one or more parishes and served by one or more district judges.

Section 15. District Courts; Changes; Terms

Section 15. (A) The district courts, the judicial districts, and the number of judges elected to each as provided for at the time of the adoption of this constitution are retained. Parish, city, municipal, traffic, family, and juvenile courts existing at the time of the adoption of this constitution are retained. The legislature by a majority vote of the elected members of each house, with the concurrence of a majority of the electors voting at an election called

for that purpose in each district, parish or portion thereof affected, may create, abolish, consolidate, realign, or separate courts of original jurisdiction subject to the limitations in Section 19 of this Article.

(B) The term of a district judge shall be six years; however, a judge elected in a judicial district composed of only one parish having a population greater than 300,000 according to the latest decennial census before his election shall serve a twelve-year term. This provision shall not be construed to lengthen the term for which any judge has been elected.

4

Section 16. District Courts; Original Jurisdiction

Section 16. Unless otherwise provided in this constitution or by law, a district court shall have original jurisdiction in all civil and criminal matters. It shall have exclusive original jurisdiction in all cases involving the title to immovable property; the right to office or other public position; civil or political rights; probate and succession matters; the state, a political corporation, or a succession, as a party defendant, regardless of the amount in dispute; and the appointment of receivers or liquidators to corporations or partnerships.

Section 17. District Courts; Chief Judge

Section 17. Each multi-judge district court may elect from its members a chief judge who shall exercise such administrative functions as prescribed by rule of court.

Section 18. Juvenile Courts; Jurisdiction

Section 18. The jurisdiction of juvenile courts shall be as provided by law.

Section 19. Judges; Term of Office or Compensation May Not Be Decreased

Section 19. The term of office or compensation of a judge shall not be decreased during the term for which he is elected.

Section 20. Judges; Election; Vacancy in Office

Section 20. (A) The election of judges shall be held at the regular congressional election.

(B) A newly created judgeship or a vacancy in the office of any judge shall be filled by a special election which shall be called by the governor, and held within six months of the day the vacancy occurs or the judgeship is created, except when the vacancy occurs in the last six months of an existing term. Until the vacancy is filled, the supreme court

shall appoint a person meeting the qualifications for judge to the office, to serve at its pleasure, who shall be ineligible to be a candidate for election to the judgeship.

Section 20 (A) and (B) Alternative: Judges shall be elected. Vacancies and newly created judgeships shall be filled by the supreme court, to serve until the position is filled by election. The appointee of the supreme court shall be ineligible to be a candidate for the judgeship.

(C) All judges serving on the date of adoption of this constitution shall continue in office for the term to which elected and shall serve through December thirty-first of the last year of their term or, if the last year of their term is not in the even-numbered year of a general judicial election, then through December thirty-first of the year next succeeding. The election for the next term in the office will be held in a general judicial election of the year the term expires, as provided above.

Section 21. Judges; Retirement

Section 21. (A) The legislature shall provide a retirement system for judges of courts provided for by this constitution. Until such time as the legislature provides a retirement system for judges, any judge taking office after the adoption of this constitution shall be afforded the same retirement benefits as judges holding office prior to the adoption of this constitution.

(B) No judge or judicial administrator, either in office or retired, at the time of the adoption of this constitution, shall have diminished any retirement or judicial service rights he had under the previous constitution; nor shall the benefits to which a surviving spouse thereof was entitled be reduced.

6

(C) A judge of a court of record who is found by two competent physicians selected by a majority of the supreme court to be physically or mentally incapacitated to perform his duties shall be retired at two-thirds pay, or any greater sum to which he would be legally entitled to by law.

(D) A judge shall retire upon reaching the age of seventy years.

(E) The provisions of this section do not apply to justices of the peace.

Section 22. Judges; Qualifications; Practice of Law; Probation

Section 22. A judge of the supreme court, court of appeal, or district court shall have been admitted to the practice of law for at least five years prior to his election, shall have resided in the respective circuit or district for at least two years immediately preceding election, and shall not practice law.

Section 23. Judiciary Commission; Membership; Terms; Vacancy

Grounds for Removal; Powers

Section 23. (A) The Judiciary Commission shall consist of one court of appeal judge and two district court judges selected by the supreme court; three attorneys admitted to the practice of law for at least ten years who are not judges, active or retired, nor public officials, selected by the Louisiana Conference of Court of Appeal Judges' Association or its successor; and three citizens, not lawyers, judges, active or retired, nor public officials, appointed by the Louisiana District Judges' Association or its successor.

(B) A member of the commission shall serve a four-year term and shall not be eligible to succeed himself.

(C) A member's term shall terminate when he loses the status causing his appointment or when an event occurs which would have made him ineligible for appointment.

(D) When a vacancy occurs, a successor shall be appointed for a four-year term by the appropriate authority for the period for which the vacancy occurred.

(E) On recommendation of the Judiciary Commission, the supreme court may censure, suspend with or without salary, remove from office or retire involuntarily a judge for willful misconduct relating to his official duty, willful and persistent failure to perform his duty, persistent and public conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or conduct while in office which would constitute a felony, or conviction of a felony. On recommendation of the Judiciary Commission, the supreme court may disqualify a judge from exercising any judicial function, without loss of salary, during the pendency of the proceedings in the supreme court. On recommendation of the Judiciary Commission, the supreme court may retire involuntarily a judge for disability that seriously interferes with the performance of his duties and that is, or is likely to become, of a permanent character. The supreme court shall make rules implementing this section and providing for confidentiality and privilege of proceedings.

Section 24. Department of Justice; Composition; Attorney General; Election and Assistants

Section 24. There shall be a department of justice consisting of an attorney general, a first and second attorney general, and other necessary assistants and staff. The attorney general shall be elected for a term of four years at the state general election, and the assistants shall be appointed by the attorney general to serve at his pleasure.

Section 25. Attorney General; Qualifications; Powers and Duties; Vacancy

Section 25. The attorney general and the first and second assistants shall have resided in this state and been admitted to the practice of law for at least five years

and authority to initiate and prosecute, or defend, in any and all suits or other proceedings, civil or criminal, as shall be necessary for the assertion or protection of the rights and interest of the state.

In case of a vacancy in the office of attorney general, the first assistant attorney general shall perform the duties of the attorney general until his successor is elected and qualified.

Section 26. Sheriff; Duties; Tax Collector; Exception

Section 26. (A) In each parish, a sheriff shall be elected for a term of four years. He shall be the chief law enforcement officer in the parish and shall execute court orders and process. He shall be the collector of state and parish ad valorem taxes and such other taxes and licenses as provided by law.

(B) Notwithstanding subsection A, in a parish with a civil sheriff and a criminal sheriff, the two offices shall exist until changed by a majority of the elected members of each house of the legislature and a majority of the electors in the parish, and they shall exercise such duties as may be prescribed by the legislature.

Section 27. District Attorney; Election; Qualifications; Assistants

Section 27. In each judicial district a district attorney shall be elected by the qualified electors of the district for a term of six years. He shall have been admitted to the practice of law in the state for at least five years prior to his election and shall have resided in the district for the two years immediately preceding election. A district attorney may select his assistants and other personnel and prescribe their duties.

Section 28. Defense of Criminal Prosecutions; Powers

Section 28. Each district attorney or assistant district attorney shall appear, plead or move, defend or conduct in defending any criminal prosecution commenced. A district attorney shall have the right to

Section 29. Clerk; Election; Powers and Duties; Qualifications; Exceptions; Office Hours

Section 29. (A) In each parish, a clerk of the district court shall be elected by the qualified electors of the parish for a term of four years. He shall be ex officio notary public and parish recorder of conveyances, mortgages, and other acts and shall have such other duties and powers as may be pre-

TENTATIVE WORKING DRAFT PROPOSED TO SERVE AS A

POINT OF DEPARTURE ONLY

scribed by law. The clerk may appoint deputies with such duties and powers as may be prescribed by law and he may appoint, with the approval of the district judges, minute clerks with such duties and powers as may be prescribed by law.

(B) Notwithstanding subsection (A), in each parish with a criminal and a civil district court, the office of clerk of court shall remain until changed by a majority of the elected members of each house of the legislature and approval in a referendum in the parish, and they shall exercise such duties as may be prescribed by the legislature.

(C) The legislature shall establish statewide uniform office hours for all clerks of district courts.

Section 30. Coroner; Election; Term; Qualifications; Duties

Section 30. In each parish, a coroner shall be elected for a term of four years with such qualifications and duties as may be prescribed by law.

Section 31. Vacancies

Section 31. Until filled by election as provided by law, when a vacancy occurs in the following offices, the duties of the office shall be assumed by: in the case of sheriff, the chief criminal deputy; district attorney, the first assistant; clerk of a district court, the chief deputy; coroner, the chief deputy. If there is no such person to assume the duties at the time of the vacancy, the governing authority or authorities of the parish or parishes concerned shall appoint a qualified person to assume the duties of the office until filled by election.

10

Section 32. Reduction of Salaries; Benefits Prohibited

Section 32. The attorney general, a district attorney, a sheriff or a clerk of the district court shall have neither his salary nor retirement benefits diminished during his term of office.

Section 33. Jurors; Qualifications; Selection

Section 33. A citizen of the state who has reached majority is eligible to serve as a juror. The supreme court by rule shall provide for the selection of jurors.

Section 34. Grand Jury

Section 34. There shall be a grand jury or grand juries in each parish whose duties, qualifications, and responsibilities shall be provided by law. The secrecy of the proceedings, including the identity of the witnesses appearing, shall be provided for by law.

NOTE:

Delegate Tate drafted the following tentative working paper as an aid to discussion of concepts proposed at our meetings. He does not advocate this draft or any of the proposals contained in it, some of which he may not agree with. Cross-references are listed to provisions of the Constitution of 1921 and to the 1954 Project by the Louisiana State Law Institute for a new state constitution. We have also prepared a compilation of the provisions of the present constitution which should possibly be transferred to statutory form, some subject to amendment by majority vote and some subject to amendment only by two-thirds of the legislature. The staff will also send you a shorter draft, prepared at my direction, known as "Draft B".

ARTICLE _____ THE JUDICIARY DEPARTMENT

GENERAL

PART A. JUDICIAL POWER IN GENERAL

Section 1. Judicial power

The judicial power shall be vested in a supreme court, courts of appeal, district courts, and such other courts as this constitution may authorize.

Source: Article VII, Section 1.

Project: Article VI, Section 1.

Comment: No essential change except to simplify language.

* * *

Section 2. Needful writs, orders, and process

The courts established or authorized by this constitution may issue writs of habeas corpus in cases within their jurisdiction and all other needful writs, orders, and process in aid of their respective jurisdictions, original, appellate, or supervisory. This authority may be exercised by a judge of the supreme court or of the court of appeal, subject to review by the court of which he is a member.

Source: Article VII, Section 2.

Project: Article VI, Section 11.

Comment: No essential change except to simplify language.

* * *

PART B. THE SUPREME COURT

Section 3. Supreme court; membership; domicile

The supreme court shall be composed of a chief justice and six associate justices. The supreme court shall be domiciled in New Orleans.

Source: Article VII, Section 4.

Project: Article VI, Section 14.

Comment: No essential change except to simplify language.

* * *

Section 4. Supreme court; number necessary to judgment; calling in judge of other court; divisions

(a) When the court sits en banc, at least four of the judges of the court must concur to render judgment. When, due to vacancy or absence

of more than two weeks caused by illness, less than seven judges participate,

the court shall have authority to assign any judge of the court of appeal

or district court to sit in such cases as the court may direct.

(b) The court may sit in divisions of three or more judges, under such rule as the court may adopt. In such event, applications for rehearings shall be decided by the court en banc.

Source: Article VII, Sections 4, 5, 6 and 7.

Project: None.

Comment: As to (a), no essential change other than simplification of language. This provision should be retained to provide authoritative direction in the event of internal disagreement within the court.

As to (b), the authority to sit in divisions should be retained to assure a means of extending the court's manpower to dispose of routine appeals of right in the event of continuing increase. This procedure was only utilized once, during 1921-23, but the reserved power should be retained

-2-

in the event of future need. Minor changes are made in the present provisions, such as eliminating the power to call up other judges to form additional divisions and such as eliminating the provision that rehearings shall be submitted to another division (rather than considered en banc as here proposed).

* * *

Section 5. Supreme court; qualifications; districts; terms

(a) A judge of the supreme court shall be an elector of this state who has been admitted to practice law in this state at least ten years preceding his election. He shall have resided within the territory of the district from which elected for at least two years immediately preceding his election.

(b) The state shall be divided into at least six supreme court districts with at least one judge elected from each district. The presently constituted districts, and the number of judges assigned to each, are retained, subject to change by two-thirds vote of the legislature.

(c) The judges shall be elected to terms of fourteen years. A vacancy in an office shall be filled as provided by section 30 of this article.

Source: Article VII, Sections 6, 7, 9.

Project: Article VI, Sections 14, 15.

Comment: No substantial change is made, except as noted below.

As to (a), the age requirement is eliminated as unnecessary.

As to (b), the present districts are retained, but it is provided that they may be changed by two-thirds vote of the legislature (i.e., two-thirds of the members of each house, as to be defined in the article on the legislative department.). The districts will be defined by supplementary statute or by appendix, as the Co-Ordinating Committee decides by way of general approach. It is suggested that this may provide a method of changing the districts to reflect population changes in the future, without the necessity of statewide vote on the amendments. There will be a saving provision that the term of no judge may be shortened by gerrymandering.

As to (c), a method of filling vacancies in all judicial offices will be suggested in section 30 below.

* * *

-3-

Section 6. Supreme court; supervisory, original, and appellate jurisdiction; rule-making power

(a) The supreme court has control of, and general supervisory jurisdiction over all inferior courts. The supreme court shall also exercise general procedural rule-making power not in conflict with procedural statutes and codes enacted by the legislature.

(b) The supreme court has exclusive original jurisdiction of disbarment cases involving misconduct of members of the bar, with the power to suspend or disbar under such rules as the court may adopt.

(c) In civil cases, its appellate jurisdiction extends to both the law and the facts. In criminal matters, its appellate jurisdiction extends to questions of law only.

(d) The following cases shall be appealable to the supreme court:

(i) A case in which a law of this state has been declared unconstitutional;

(2) A criminal case in which the penalty of death or imprisonment at hard labor may be imposed, or in which a fine exceeding five hundred dollars or imprisonment exceeding six months has been actually imposed.

If a case is appealed properly to the supreme court on any issue, the supreme court has appellate jurisdiction over all other issues involved in the case.

(e) (Upon certification by a majority of the supreme court that such relief is necessary?), the legislature may by two-thirds vote transfer the criminal appellate jurisdiction of the supreme court to the courts of appeal (or to such other intermediate court as the legislature may create?). (Upon certification by a majority of the supreme court that such relief is no longer necessary?), this transfer may not (may?) be rescinded.

Source: Article VII, Section 10.

Project: Article VI, Sections 16 and 17.

-4-

Comment: Except to eliminate obsolete provisions (i.e., with the Judiciary Commission there are no longer suits to remove judges) or those unnecessary in view of other provisions (i.e., the needful orders provision, Section 2, above, eliminates any express need to state supreme court has original jurisdiction to determine its own appellate jurisdiction; in addition to which, since monetary limits on amounts appealed has not applied since 1958, no useful purpose is any more served by the 1921 provision), no substantial change has been made except:

As to (a), the second sentence expressly recognizing the present rule-making power is added at the suggestion of Chief Justice Sanders.

As to (c), the direct civil appeals to the supreme court have been restricted to instances where legislative action has been declared unconstitutional, in view of Chief Justice Sanders' recommendation. Also, in accordance with same, the monetary threshold in criminal appeals has been raised from three hundred to five hundred dollars.

As to (e), authority is provided to the legislature to transfer criminal appellate jurisdiction, thus eliminating the need for statewide amendment to accomplish this result. I am not certain that such a major change should not need the full amendment process; nor, if not, that supreme court certification should be necessary. Other alternatives are noted in parentheses with question marks.

* * *

Section 7. Supreme court; certiorari and other writs to the courts of appeal

(a) The supreme court may require by writ of certiorari, or otherwise, any case to be certified from the courts of appeal to it for review, with the same power and authority in the case as if it had been carried directly by appeal to the said court.

(b) Where the application is based solely upon the ground that the decision of the question of law involved is in conflict with a decision of the supreme court or of another court of appeal or panel thereof upon a question not yet decided by the supreme court and it is found that such is the fact, or where the court of appeal has declared unconstitutional a law of this state, then the application shall be granted as a matter of right.

(c) The supreme court shall not exercise the power conferred by this article unless the application shall have been made to the court or to one of the justices thereof within thirty days after a rehearing shall have been denied by the court of appeal.

-5-

(d) The application shall be made as provided by the rules of the court.

Source: Article VII, Section 10.

Project: Article VI, Section 16 (in passing).

Comment: The chief substantial change is to eliminate detailed constitutional regulation of the applications, other than retaining the maximum period of thirty days within which such application shall be "made". See (c). The term "made" is broad enough to permit the supreme court rule (see (d)) to provide that timely mailing is sufficient, in the writer's belief.

The other change is made in (b): the grant of right is extended to conflicts between panels of the courts of appeal (as well as courts themselves), in view of the proliferation of panels, as well as to cases ordinarily appealable as of right (where unconstitutionality is held) where the court of appeal rather than a trial court declares an enactment unconstitutional. This last may not be needed, since the supreme court jurisprudence now so provides.

* * *

Section 8. Supreme court; the chief justice

(a) Whenever a vacancy in the office of chief justice occurs, the justice oldest in point of service on the court shall succeed to the office.

(b) The chief justice shall serve as chief administrative officer of the judicial system of the state. His powers in this regard shall be provided or limited by general rule adopted by the court.

Source: Article VII, Section 7.

Project: Article VI, Section 14.

Comment: No substantive change is made.

As to (a), this authorizes and ratifies the present practice. Chief Justice Sanders suggested this. It may be that a Judicial Council should be created by the constitution, which (rather than the court itself) should provide for the administrative powers of the chief justice.

As to (b), the committee might suggest some alternative. For instance, to avoid the supernumerated chief justice who continues to serve only in order to attain the title, perhaps the senior justice below sixty-five (sixty?) years of age should succeed. Again, since the chief justice has

administrative functions and perhaps should be chosen for administrative ability rather than age, perhaps whenever a vacancy occurs the court should be authorized to elect a chief justice from its membership for a term long enough to provide leadership and direction (e.g., seven years?).

-6-

eligible to succeed himself. We have been fortunate in that our long-term chief justices have possessed administrative ability (Chief Justice Sanders is an outstanding example), and perhaps should not tamper with fate; on the other hand, by the chance of a few days or months of seniority, the court system could be saddled with a long-term chief justice with no interest in administration.

* * *

Section 9. Supreme court; judicial administrator, clerk and staff

The supreme court shall have authority to appoint a judicial administrator and its own clerks and other staff personnel and to prescribe their duties. They shall serve during the pleasure of the court.

Source: Article VII, Sections 12.1 and 15.

Project: Article VI, Section 9.

Comment: No substantive change.

* * *

Section 10. Supreme Court; assignment of judges

(a) In addition to the authority provided by Section 4 of this article, the supreme court shall have the power to assign a court of appeal judge, with the consent of the court of which a member, to another court of appeal or to a district court.

(b) In addition to the authority provided by Section 4 of this article, the supreme court shall have the power to assign a judge of the district court to another district court or to a court of appeal.

(c) The supreme court shall have the power to assign a judge of any statutory court authorized by this constitution to another statutory court or to a district court.

(d) The supreme court may, with his consent, assign any judge entitled to judicial retirement benefits to any court created or authorized by this constitution.

-7-

(e) The assigned judge shall possess the qualifications of length of admission to practice law in this state required of a judge elected to the office to which assigned.

(f) If otherwise entitled to practice law, any judge so assigned may not do so during the period of his assignment, unless the judges permanently serving on such court may do so.

(g) The legislature shall make necessary appropriations to pay the reasonable expenses and the supplements to salaries or retirement benefits to such assigned judges, so

that they receive compensation equal to that of judges permanently serving in the position to which assigned.

Source: Article VII, Sections 4, 5, 8(h), 12, 13, 20 G, 23, 26, 38, 96.

Project: Article VI, Section 10.

Comment: This proposed section is intended to consolidate assignment provisions scattered throughout the present constitution.

The authority to assign court of appeal and district judges to the supreme court is provided by Section 4 above and is limited to calling up judges to fill vacancies or absences.

The proposed section also broadens the assignment power by expressly authorizing (a) assignment of court of appeal judges to other positions (but, since each court of appeal has a collegiate responsibility to develop a uniform jurisprudence for the territory it services, only with the consent of a majority of the court) (see (a) above) and (b) fourth tier judges, i.e., of the statutory courts, to the district courts and to other fourth-tier courts (see (c) above).

In isolated instances (i.e., Article VII, Sections 26 and 96), the present authority of the courts themselves or of the supreme court to appoint qualified non-judge lawyers is omitted as unnecessary and rarely utilized. Perhaps, instead, the committee should consider granting express authority to assign qualified non-judge lawyers to courts, thus increasing the available manpower.

Another alternative possibility is provide a broad provision permitting the supreme court to assign any active or retired judge of any court of record to serve on any court.

If the judge is assigned to fill a temporary vacancy, Section 30 below provides that the assigned judge may not be or become ineligible to fill the vacancy.

-4-

PART C. THE COURTS OF APPEAL

Section 11. Courts of appeal; membership; domiciles; sessions

(a) The state shall be divided into four court of appeal circuits. The court of appeal for each circuit shall be composed of five or more judges.

(b) The courts of appeal shall be domiciled as follows: First, at Baton Rouge; Second, at Shreveport; Third, at Lake Charles; Fourth, at New Orleans.

(c) The sessions of the several courts of appeal shall be held in the parish of their domiciles only.

Source: Article VII, Section 20.

Project: Article VI, Section 19.

Comment: No substantive change, except to eliminate from constitution specific territorial description of circuits and districts thereof. In Section 13 below present circuits and districts will be continued, subject to change by two-thirds vote of the legislature.

Section 12. Courts of appeal; panels; number

necessary to decision; appointment of district judges to sit in the case

(a) The courts of appeal shall sit in rotating panels

composed of at least three judges selected in conformity with the rules adopted by the court. However, when deemed expedient by the judges thereof, a court of appeal may sit en banc.

(b) A majority of the judges sitting in the case must concur to render judgment.

(c) If for any reason a majority of judges do not concur, or if a judge is absent or unable to serve, then a majority of the court may appoint a district judge to sit in the case.

-9-

Source: Article VII, Sections 23 and 26.

Project: None

Comment: No change. The authority to appoint judges ad hoc is retained (Section c), as for the single case need this is less cumbersome than the supreme court appointment process. In event of such ad hoc appointment, no salary supplement is paid, as at present.

Section 13. Courts of appeal; qualifications; circuits and districts; terms

(a) A judge of a court of appeal shall be an elector of this state who has been admitted to practice law in this state at least six years preceding his election. He shall have been domiciled within the territory from which elected for at least two years immediately preceding the election.

(b) Each circuit shall be divided into three districts, with at least one judge elected from each. One or more judges of each court of appeal may be elected at large from within the circuit. The presently constituted circuits and districts thereof, and the number of judges elected either at large or from districts in each circuit, are retained, subject to change by two-thirds vote of the legislature.

(c) The judges shall be elected to terms of twelve years. A vacancy in an office shall be filled as provided by Section 30 of this article.

Source: Article VII, Section 20.

Project: Article VI, Section 20.

Comment: No substantial change is made, except as noted below.

As to (a), the age requirement is eliminated as unnecessary.

As to (b), the present circuits and districts are retained, but it is provided that they may be changed by two-thirds vote of the legislature. (i.e., two-thirds of the members of each house, as to be defined in the article on the

legislative department.) The circuits and districts will be defined by supplementary statute, or by appendix, as the Co-ordinating Committee decides by way of general approach. It is suggested that this may provide a method of changing the circuits and districts to reflect population changes in the future, without the necessity of statewide vote on the amendment.

ments. There will be a saving provision that the term of no judge may be shortened by gerrymandering.

As to (c), a method of filling vacancies in all judicial offices will be suggested in Section 30 below.

* * *

Section 14: Courts of appeal; appellate and supervisory jurisdiction

(a) The courts of appeal have general appellate jurisdiction of all cases decided by district and other courts within their respective jurisdictions, except as otherwise provided by this constitution.

(b) Where, in a case otherwise appealable to the court of appeal

(1) The amount in dispute or fund to be distributed, exclusive of interest and attorney's fees, or

(2) The value of the movable property the possession or ownership of which is sought, or

(3) The monthly or yearly rent, or rent for the unexpired term of the lease,

is less than one (three?) hundred dollars, then the trial court decision is not appealable, but review thereof may be obtained only by application to the supervisory jurisdiction of the court of appeal with appellate jurisdiction over decisions of such trial court. If the court of appeal grants supervisory review, then the matter shall be decided by it as in the case of an appeal. The appellate jurisdiction under this subsection is determined by the prayer in the main demand.

-11-

(c) The appeal to the court of appeal shall be on both the law and the facts, except where the appeal is limited to questions of law by provisions of this constitution or, in the case of civil service or administrative determinations, by legislative enactment.

(d) Each court of appeal has supervisory jurisdiction, subject only to the general supervisory jurisdiction of the supreme court, over all cases in which an appeal would lie to the court of appeal.

Source: Article VII, Section 29. However, Article VII, Sections 1, 35, 36, and 48 must also be consulted.

Project: Article VI, Section 22.

Comment: A major simplification of present provisions has been sought by the present proposed section.

Generally speaking, as the source provisions note, the courts of appeal presently have appellate jurisdiction over all cases fileable in the district court except those which may also be filed in the justice of the peace courts. (These generally fall in the categories of (b) above, being minor matters of less than one hundred dollars in value.) This essential scheme has been retained.

The provision as written provides for direct appeals

to the court of appeal in all such matters. However, the proposal envisages review by the court of appeal under its supervisory jurisdiction of matters below the appealable threshold. The chief changes thus proposed are: (1) to eliminate the appeal and trial de novo to the district court in city and municipal courts (this will be retained for the justice of the peace, if the office is retained, see below) and transfer them in civil cases to the court of appeal and (2) to provide for review under supervisory jurisdiction (i.e., discretionary) by the court of appeal rather than (as now) the supreme court where the amount decided is below this jurisdictional threshold.

The committee should seriously consider raising the threshold of appeal from one hundred to three hundred dollars. The one hundred dollar figure was established by the Constitution of 1879, when the purchasing power of the dollar was much greater.

The above proposal does not expressly note that the

-12-

court of appeal is not given jurisdiction of criminal prosecutions in family or juvenile court against persons other than juveniles, as presently expressly stated in Section 29. By Section (d) above, the supreme court is given exclusive appellate jurisdiction in criminal cases.

With regard to (d), the supervisory jurisdiction of the court of appeal is made subject only to the supervisory jurisdiction of the supreme court, thus overruling judicial interpretations which provide that, if the court of appeal grants a supervisory writ, its judgment does not become final until the full appellate delays run (i.e., a minimum of forty-four days). As Dean McMahon noted, these interpretations are mistaken and have the effect of making resort to the court of appeal's supervisory power useless in many cases. See Michigan Wisconsin Pipe Line Company v. Fruge, 201 So.2d 672 (La.App.3d Cir.1967) for full discussion.

* * *

Section 15. Courts of appeal; certifications to supreme court of questions of law; determination

A court of appeal shall have the power to certify to the supreme court any question of law before it; and thereupon the supreme court may give its binding instruction, or it may consider and decide the case upon the whole record.

Source: Article VII, Section 25.

Project: Article VI, Section 22.

Comment: No substantive change. The simplification of language of the Project is substituted for the present version. Certification is a useful enough procedure, in the writer's opinion, to be retained.

* * *

Section 16: Courts of appeal; presiding judge

The senior judge in service on the court of appeal shall be the presiding judge and shall exercise administrative powers as provided by general rule of the court.

Source: Article VII, Section 23.

Project: Article VI, Section 19

-13-

Comment: Since more administrative responsibility may be entrusted to the presiding judge, perhaps the court should be authorized whenever a vacancy occurs to elect a presiding judge from its membership for a term long enough to provide leadership and direction (i.e., five years?),

eligible to succeed himself. Also, perhaps the title should be changed to "chief judge".

Section 17. Courts of appeal; clerks and staff

Each court of appeal shall have authority to appoint its respective clerk and staff personnel and to prescribe their duties. They shall serve during the pleasure of the court.

Source: Article VII, Section 28.

Project: Article VI, Section 9.

Comment: No substantive change. Eliminated from the proposal is the present provision of Section 28 that the sheriff of the parish must furnish a deputy to execute the orders of the court.

Section 18. Courts of appeal; court facilities

The governing authority of the parish in which the court of appeal is domiciled shall provide adequate court-rooms, offices, and other facilities for the use of the court, its judges, and staff.

Source: Article VII, Section 28.

Project: None.

Comment: The writer considered eliminating this provision from the draft. Properly speaking, the state should bear the expense of operating this state facility. However, in point of fact, each domiciliary parish has already furnished these facilities; it might cause more disruption than reform to change the present arrangements. Perhaps, however, this provision should be transferred to the statutes rather than retained in the constitution.

PART D. THE DISTRICT COURTS

Section 19. District courts; judicial districts

-14-

The state shall be divided into judicial districts,

each composed of one or more parishes and served by one or more district judges.

Source and Project: See Section 20 below.

Section 20: District courts; qualifications; districts; divisions; terms

(a) A district judge shall be an elector of this state who has been admitted to practice law in this state at least five years preceding his election. He shall have resided within the district from which elected for at least two years immediately preceding the election.

(b) The judicial districts as presently constituted, and the number of judges elected to each, are retained, with the Civil and Criminal District Courts for the parish of Orleans being combined to form the Orleans District Court having the

same total number of judges as are presently elected to each of these courts. The Family Court for the Parish of East Baton Rouge is combined with the district court serving this parish, with said district court having the same total number of judges as are presently elected to each.

(c) By two-thirds vote, the legislature may create a judicial district, transfer a parish from one district to another, or may alter the number of judges elected from a district.

(d) In multi-judge districts, a majority of the judges may by court rule establish specialized divisions and provide for assignment of cases and judges to each, subject to the general supervisory rules of the supreme court.

-15-

(e) Except in the parish of Orleans, the district judges shall be elected to terms of six years. In Orleans Parish, the district judges shall be elected to terms of twelve years. A vacancy in an office shall be filled as provided by Section 30 of this article.

Source: Article VII, Sections 31-34, 53, 80-82.

Project: Article VI, Section 23.

Comment: The proposed section creates a unified district court within each judicial district, combining the Civil and Criminal District Courts of Orleans and the East Baton Rouge Family Court into a district court. I think a better drafting technique could be used to accomplish this result (i.e., without referring in the new constitution to abolished courts), but I am not taking the time to do it now.

The present power of the legislature to re-arrange districts (Article 34) and to add judges by two-thirds vote is retained. (Query: Do we need a two-thirds vote to add judges?) However, the legislature is additionally empowered to create new judicial districts. The present districts will be defined by supplementary statute or by appendix, as the Co-Ordinating Committee decides by way of general approach.

The twelve-year term for Orleans Parish judges is retained because (a) a uniform term of twelve years (or more than six) for all district judges throughout the state could probably not pass and (b) it will be unfair to decrease the terms of judges elected in Orleans Parish on the basis of twelve-year terms, which are moreover probably justified by the exorbitant cost of political campaigns in that parish. Perhaps we should study Judge Cole's suggestion of an initial six-year term for all judges, followed by twelve-year terms if re-elected.

The power of a majority of the judges in the district to provide by rule for specialized divisions is recognized, but the supervisory rule-making power of the supreme court is preserved for the extreme cases where a local district's approach results in inefficiency.

Section 21. District courts; original jurisdiction

The district courts shall have original jurisdiction in all civil and criminal matters, unless otherwise provided in this constitution or by law. They shall have exclusive original

-16-

jurisdiction in all cases involving the title to immovable property; the right to office or other public position; civil or political rights; probate and succession matters; the state, a political corporation, or a succession, as a party defendant, regardless of the amount in dispute; and the appointment of receivers or liquidators to corporations or partnerships.

Source: Article VII, Sections 35, 81, 82.

Project: Article VI, Section 26.

Comment: With a minor change in wording, the section above was taken from the 1954 Project. It retains the traditional jurisdiction of the district courts. Query: Should this be retained? Is it really essential, for instance, that district courts be given exclusive jurisdiction of liquidators suits or suits against successions (recognizing, however, the better policy probably is to provide such exclusive jurisdiction to prevent disruption of settlement by splitting up jurisdiction)?

Perhaps the committee should note and may prefer the approach of the Constitutional Revision Commission, Dean Morgan's committee:

§30. Jurisdiction

Except as otherwise provided in this constitution or by statute, district courts have original jurisdiction in all legal matters.

District courts have such appellate jurisdiction as may be conferred upon them by general laws.

The legislature may, by law affecting the parish of Orleans only, establish the civil jurisdiction and the criminal jurisdiction of the district court or courts in the district composed of the parish of Orleans, which jurisdiction may be vested separately in separate district courts.

Source: Former §35.
* * *

Section 22. District courts; appellate jurisdiction

(a) A district court shall have appellate jurisdiction in all matters decided by justices of the peace within its district, and in all criminal cases where a fine or imprisonment has been imposed by a statutory court authorized by this constitution within its district.

-17-

(b) An appeal from a justice of the peace court shall be tried de novo.

(c) An appeal in a criminal case shall be on the law and the facts and shall be on the record made in the statutory court.

Source: Article VII, Sections 36, 81, and 83.

Project: Article VI, Section 28.

Comment: The proposed article retains the appeal and trial de novo in justice of the peace cases. However, it eliminates the trial de novo in other minor civil cases tried before other statutory courts, since in these instances the review is by supervisory writ by the court of appeal, see Section 14(b) above.

In criminal cases, review on law and facts is retained as presently provided. However, instead of a trial de novo in non-Orleans district courts (with the unworkable provision that no evidence not introduced below may be admitted), it provides for review on the record made in that court. This may be an optimistic assumption that facilities are available to make such a record, as they should be. This is in fact the

provision presently in effect for review of fourth-tier criminal or juvenile adjudications in Orleans Parish. See Article VII, Section 83. However, in Orleans Parish review is by two or more district judges.

There may be some question as to the need of investing appellate jurisdiction in the district courts, rather than having those minor convictions reviewed (as they are in district court minor criminal cases) under the supervisory jurisdiction of the supreme court. The writer submits this to the judgment of the committee: on the whole, however, possibly the more adequate district court review of a decision by one judge of a fourth-tier court should be retained.

* * *

Section 23. District courts; presiding judge

(a) Each multi-judge district court shall elect a presiding judge from among its judges. The presiding judge shall serve for a term of three years and is eligible for re-election. When a vacancy occurs in the office, the successor shall be chosen for a term of three years. If a

-18-

majority of the judges cannot agree, or during the period of the vacancy, the judge most senior in continuous service on that court shall serve as acting presiding judge.

(b) The presiding judge shall exercise such administrative functions as may be prescribed by rule of that court or by supervisory rule of the supreme court.

Source and Project: None.

Comment: In the more complex and contested trial courts of this date more administrative leadership is necessary.

* * *

Section 24: District courts; minute clerks, court reporters and staff

Each district court shall have authority to appoint its minute clerks, court reporters, and other staff personnel. A district court may appoint a judicial administrator to assist the presiding judge in the performance of administrative functions.

Source: Article VII, Section 85 (Criminal District Court of Orleans only)

Project: None.

Comment: This section may be controversial and is hesitantly advanced only in response to the several suggestions to the effect that the district court should have control of the personnel immediately serving it. The present system of the personnel being furnished by the clerk of court and the sheriff has worked reasonably well. Also, perhaps this should be omitted and left to statutory regulation. Further, if the courts can find the money (i.e., the local government), I think they can at present appoint judicial administrators without constitutional authority.

This section is primarily included to provoke discussion and because the Orleans Criminal Court presently has such a provision. At this time we should also discuss whether, for instance, the constitution should make the power of the legislature to provide for commissioners or magistrates, to be appointed by the courts (like the Associate Judges in Illinois), to carry out quasi-ministerial duties (committing magistrate, confirm defaults, etc.).

-19-

Section 25. District courts; appointment of judges

ad hoc

If for any reason a district judge is unable to serve in a case, he may appoint a lawyer to serve as judge ad hoc who has all the qualifications required for a district judge except that of residence in the district, or he may arrange for another district judge to serve in his place.

Source: Article VII, Section 38.

Project: None.

Comment: This easily administered provision for an ad hoc judge should probably be retained. Query: Is it necessary to do so in the constitution? (Note: The supreme court may also assign another judge to sit for the recused or absent judge, but this provision does specifically authorize the use of non-judge lawyers.)

PART E. STATUTORY COURTS

Section 26. Statutory courts; in general

The legislature may, by two-thirds vote, establish, abolish, or otherwise affect other courts of trial jurisdiction. The legislature may also, by two-thirds vote, merge any statutory court authorized by this constitution with the district court of the parish.

Source and Project: None.

Comment: This general provision affects the present special and fourth-tier courts, which are continued by the following section, and it also enables the legislature to establish parish courts or a procedure by which they may be established. In my view, it authorizes the legislature to provide that parish courts may sit in divisions and have judges elected from separate territorial areas within a parish, and to transfer city judges to it (i.e., by consolidating the existing city court(s) with the parish court). We may or may not wish to spell this out. I think not, as the legislature has more flexibility.

-20-

Section 27. Statutory courts; existing courts

continued

Juvenile courts that exist on the effective date of this constitution, and courts existing on the effective date of this constitution that have jurisdiction inferior to that of district courts, including but not limited to city courts, parish courts and the courts in the parish of Orleans inferior to the district courts, are continued in existence as statutory courts.

Source: Section 46 of draft Judiciary Article prepared by Louisiana Constitutional Revisions Commission. Cf., Article VII, Sections 46-50, 51, 51(a), 52, 79, 90-94, and 96.

Comment: This continues justice of the peace courts, among others. Presently these courts may be abolished by majority vote of the legislature. See Article VII, Section 46. Similarly, mayor's courts are continued as statutory courts (with jurisdiction over violations of municipal ordinances; these may presently be established or abolished by majority vote, Article VII, Section 51 E.). The effect of including

both of these as statutory courts is to require a two-thirds vote of the legislature to do so. (Query: Should these courts be exempted from the two-thirds requirement, as now?)

All of the Statutory Courts so mentioned will be specified by re-enactment of present constitutional articles regulating them as special statutes or as an appendix to this constitution, as the Co-Ordinating Committee may decide.

Section 28. Statutory courts; ex officio juvenile judges

In all parishes where separate juvenile courts have not been established, the district judges of the district including that parish shall be ex officio juvenile judges for that parish. In all such instances, the judge of a city court within the parish shall within his jurisdiction, be ex officio judge of the juvenile court, exercising juvenile jurisdiction concurrent with that of the district court.

Source: Article VII, Section 52.

Project: Article VII, Section 31 (Domestic Relations Court)

Comment: This provision is continued in view of its importance under present operations of our juvenile law. I am inclined to think it should instead be relegated to the two-thirds statutory provisions, as it is included within the present constitutional section creating and regulating juvenile courts.

(Note: This draft does not incorporate a provision providing for selection of a presiding (administrative) judge for multi-judge statutory courts. Perhaps it should, if this general scheme is adopted for district courts. The reason for the omission is that the legislature, in creating the courts, may provide for the office.)

PART F. JUDGES IN GENERAL

Section 29. Judges; term of office or compensation may not be decreased

(a) The term of office or compensation of a judge elected to any of the courts established or authorized by this constitution shall not be decreased during the term for which he is elected.

(b) If the legislature exercises its authority to affect a statutory court as provided by section 26 of this article, it may provide that the judge of the statutory court so affected shall serve as an additional judge of the court to which the jurisdiction of the statutory court is transferred.

(c) If the legislature transfers the parish in which a supreme court or court of appeal judge is domiciled to another district, no vacancy in office is so created and the term of the judge shall not be affected by this transfer.

(d) If the legislature transfers the parish in which a district judge is domiciled to another district, the term of the judge shall not be affected by this transfer.

Source: Article VII, Section 40.

Project: Article VI, Section 4.

Comments: The source article also prevented change in the territorial jurisdiction, reacting in 1940 against the gerrymandering of Judge Pavy out of office in 1935. Continuation of this limitation is not recommended, since the isolated instance does not justify the rigidity for the future; it would hamper the consolidation of the statutory courts and, for instance, the creation of parish courts which include the city courts within the parish as divisions.

* * *

Section 30. Judges; non-partisan election;

vacancy in office; terms

(a) The general election of judges shall be held at the regular congressional election or, if the legislature so provides, at one of the statewide primaries therefor; unless a special election to fill a vacancy is required to be held at another time by subsection b of this section.

(b) If a vacancy occurs in the office of any judge, a special election to fill such vacancy shall be called by the governor and held within four months of the time the vacancy occurs. Until the vacancy is filled, the supreme court shall assign a judge to the duties of the office as provided by section 10 of this article, but this assigned judge shall be ineligible to be a candidate for election to the vacancy. The judge elected at the special election shall be elected to a term as provided by subsection (e) of this section.

(c) The election of judges shall be by a ballot separate from the party contests for other offices. The candidates for election as judge shall be nominated by nominating papers signed by at least one hundred qualified electors of the election district and filed with the secretary of state at

-23-

least thirty days before the date of the election. The candidates for each judicial office shall be placed in alphabetical order without reference to party affiliation or any individual designation. If no candidate for the office receives a majority, a second election shall be held at least five weeks from the date of the first election, as the legislature provides.

(d) All judges serving on the date of adoption of this constitution shall continue in office for the term to which elected and shall serve through December 31st of the last year of their term or, if the last year of their term is not in the even-numbered year of a general judicial election, then through December 31st of the year next succeeding. The election for the next term in the office will be held in a general judicial election of the year the term expires, as provided above.

(e) A judge chosen at a special election to fill

a vacancy shall be elected to a full term in the office which commences on January 1st of the year following the next general judicial election. He shall also serve an interim term commencing with his qualifying to serve as judge after the special election until the full term commences.

Source and Project: None. Cf., La.R.S.17:121 (1970), (non-partisan elections for Orleans Parish School Board)

Comment: The above proposal is a major change in at least three respects: (a) it provides for a non-partisan election of judges; (b) it provides that all judges elected to vacancies shall serve a full (rather than an unexpired) term, as well as for the interim between the special election and the full term; and (c) it reverts to the pre-1966 method of selected district judges by special election by the people, rather than a gubernatorial appointment. Since in each instance the judge elected at the special election will serve the interim between it and the full term, no provision is made for appointment of judges when a year or less of the term remains.

-24-

The term of court of appeal judges ends in odd-numbered years, but the election for the office is at the congressional election of the year preceding. This leads to an anomalous situation where a sitting judge serves on a year past his defeat and the newly elected judge cannot take office for the year.

Ideally, the detail in providing for non-partisan elections should be omitted from the constitution. Perhaps a simple provision that judges shall be chosen by separate non-partisan ballot at the time of the regular congressional election, as the legislature may provide, should suffice. Perhaps by two-thirds schedule legislation (if the Co-ordinating Committee recommends this general approach) we should remove this detail from the constitution. On the other hand, perhaps we want to specify a simple nominating petition (only one hundred voters) procedure, to prevent the possibility, for instance, that in the future five thousand voters might be required, unless the candidate is an incumbent.

* * *

Section 31. Judges; retirement

(a) The legislature shall provide a retirement system for judges of courts established or authorized by this constitution.

(b) No judge, either in office or retired, at the time of the adoption of this constitution, shall have diminished any retirement or service rights he had under the previous constitution nor shall the benefits to which widows thereof were entitled be reduced. For purposes of this subsection, "judge" includes any judicial administrator or ^{his}widow entitled to judicial retirement benefits at the time of adoption of this constitution.

(c) A judge of a court of record who is found by two competent physicians selected by a majority of the supreme court to be physically or mentally incapacitated to perform his duties shall be retired at two-thirds pay.

-25-

(d) A judge shall retire upon reaching the age of seventy years. In such event, he may not receive as retirement

(c) Upon an order for recusal, a judge, if the judge is called with a judge or judges, shall be called with the judge or judges. A judge who has been removed is ineligible to receive future need facilities.

Section 37. Judiciary Commission; proceedings; confidential nature.

All documents filed with, and evidence, in proceedings before the Judiciary Commission, are confidential to the extent that they are confidential to the Supreme Court and proceedings before the Commission shall be confidential.

Section 38. Judiciary Commission; recusal; alternative procedures

(a) A judge who is a member of the Commission or a portion of the Commission shall be ineligible to hear proceedings before the Commission or its committees.

(b) Action pending a judge under this section shall not preclude disciplinary action against the judge by the Supreme Court.

(c) This section, in addition to any other provisions contained in which law, rules, or regulations of the Judiciary Commission, shall not preclude the Commission from taking any other action it deems necessary for the public interest.

Section 39. Judiciary Commission; Judicial Administrator is executive officer; duties

The Judicial Administrator is the executive officer of the Judiciary Commission and shall manage the business of the Commission and shall perform the duties of the Commission as provided in the Constitution, in addition to the duties provided in the Supreme Court (Amendments, July 1990, No. 10, adopted Nov. 7, 1990).

-29-

[Concluding note on sections pertaining to judges:]

The writer did not try to formulate the concept of judges at large available to fill any vacancy as needed, as outlined by some speakers. This briefly would consist of four judges, appointed from judges with twelve years' tenure, one for each circuit, to serve wherever assigned as needed by congestion, illness, death, retirement, etc. They would be appointed for 12-year terms, eligible for reappointment, probably by the Governor and confirmed by the senate, possibly from a list of three submitted by the supreme court or judicial council. Since these judges had already been elected at least once, perhaps the appointment might not be subject to as much criticism; an election would be too prohibitive. Since these judges need to be highly skilled and to fit in at all levels of the judiciary, their appointment should be limited to experienced judges; it would not do for this to be a political plum of the governor or legislature. Again, perhaps the creation of these judges should be left to the legislature as statutory judgeships.]

PART H. THE DEPARTMENT OF JUSTICE.

Section 40. Department of Justice; establishment, etc.

[Note: The following sections are taken without study or comment from the report of the Constitutional Revision Commission study, in the interests of completeness. They concern the department of justice, district attorneys, sheriffs, clerks, and coroners, all presently regulated by Article VII. Since we have not discussed them or even decided whether, say, the Attorney General

should be in the executive department rather than the judiciary, the writer made no effort to evaluate the provisions.]

PART H. Department of Justice

Section 40. Establishment; composition, attorney general, election and assistants

There shall be a Department of Justice consisting of an attorney general, a first assistant attorney general, a second assistant attorney general, and other necessary assistants and office force. The attorney general shall be elected every four years at the general state election, and the assistants shall be appointed by the attorney general to serve during his pleasure.

Source: Former §55.

-30-

Section 41.

§53. Attorney general; qualifications, powers and duties, vacancies

The attorney general and the assistants shall have actually resided in this state and shall have been a member of the bar of this state for at least five years preceding their election and appointment. They, or one of them, shall attend to, and have charge of all legal matters in which the state has an interest, or to which the state is a party, with power and authority to institute and prosecute or to intervene in any and all suits or other proceedings, civil or criminal, as they may deem necessary for the protection or preservation of the rights and interests of the state. They shall exercise supervision over all attorneys representing any executive or administrative agency of the state and the several district attorneys throughout the state, and shall perform all other duties imposed by law.

In case of a vacancy in the office of attorney general, the first assistant attorney general shall perform the duties of the attorney general until his successor shall have been duly elected and qualified.

Source: Former §56.

PART I. District Attorneys

Section 42. §54. Establishment of office; election, term

There shall be a district attorney for each judicial district in the state.

Each district attorney shall be elected by the qualified electors of the judicial district at the congressional elections for a term of six years.

Source: Former §58.

Section 43. §55. Defense of criminal prosecutions; removal from office

It shall be gross misconduct, and a cause for removal from office, for any district attorney or assistant district attorney to appear, plead, or in any way defend, or assist in defending, any criminal prosecution, or charge, involving a penalty or punishment for the violation of any law, or ordinance, in the state.

Source: Former §63.

Note: We omitted consideration of establishing a public defender system. This should possibly be discussed; xxxxx probably it is better to leave this to the legislature, however.

-31-

PART IJ. Sheriffs

Section 44. §56. Establishment of office; election, ex officio tax collector, bonds, discharge as collector

There shall be a sheriff elected by the qualified electors of each parish in the state except in the Parish of Orleans, who shall be elected at the general state election and hold office for four years. The sheriff, except in the Parish of Orleans, shall be ex officio collector of state, parish

and all other taxes, except inheritance and landhold taxes, which, however, he may also collect if authorized by the legislature.

Within sixty days from the date of his commission, he shall give separate bonds as required by law, for the faithful performance of his duties in each capacity, and in default thereof the officer shall be declared vacant. He shall not be discharged as tax collector until he makes satisfactory proof that he has exhausted the legal remedy to collect taxes.

Source: Former §63

PART K. Clerks

Section 45. §57. Establishment of office, election, powers and duties

There shall be a clerk of the district court in each parish, the parish of Orleans excepted, who shall be elected by the qualified electors of the parish every four years, and shall be ex officio notary public and parish recorder of conveyances, mortgages, and other acts.

The supreme court may by rule and under regulated conditions, vest in clerks of court authority to grant such orders and to do such acts as may be deemed necessary for the furtherance of the administration of justice.

Source: Former §56.

Section 46. §58. Deputies

With the approval of the district judges, clerks of district courts may appoint deputies with such powers as shall be prescribed by the supreme court not inconsistent with law, and the district court shall have the power to continue one of the deputies in office in case of the death of a vacancy until his successor shall be appointed or elected, and qualified.

Source: Former §57

PART L. Coroner

Section 47. §59. Judicial office, appointment, term

In each parish there shall be a medical officer who shall be appointed for a term of four years by the parish governing authority, and in the parish of Orleans by the City Council. The medical officer of each parish shall be a doctor of medicine regularly licensed to practice medicine in this state, however, if there is no such licensed doctor of medicine residing in the parish who will accept the office, the medical officer shall be such a licensed doctor of medicine who resides in a parish within the judicial district in which the parish is included.

The medical officer shall be certified parish physician for the parish that appoints him.

Source: Former §§ 70 & 71.

(B) The judicial districts existing at the time of the adoption of this constitution are hereby continued. The legislature, by a majority vote of the elected members of each house, with approval in a referendum in each district or parish affected, may establish or merge judicial districts, subject to the limitation of Section 23 of this Article."

AMENDMENT NO. 2

On page 5, delete lines 1 through 4 in their entirety

AMENDMENT NO. 3

On page 5, line 5, at the beginning of the line change "B)" to "(C)"

AMENDMENT NO. 4

On page 6, delete lines 2 through 24 in their entirety

AMENDMENT NO. 5

On page 13, delete lines 18 through 31, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 37. Orleans Parish, Courts, Officials;

Continued
Section 37. Notwithstanding any provision of this Article to the contrary, the following courts and officers in Orleans Parish are maintained, subject to change by a majority vote of the elected members of each house of the

legislature and by approval in a referendum in the parish: the civil and criminal district courts, the city, municipal, traffic and juvenile courts, the clerks of the civil and criminal district courts, the civil and criminal clerks, the constables and the clerks of the first and second city courts, the register of conveyances, and the recorder of mortgages. These officers shall be elected for four-year terms with such duties and powers as provided by the legislature and terms of office, retirement benefits, or compensation shall not be reduced during their terms of office."

section

DRAFT B

The judicial power shall be vested in a supreme court, courts of appeal, district courts and such other courts as may be provided in this constitution.

section

The courts may, in aid of their authority, issue all needful writs, orders and process. A judge of the supreme court or of a court of appeal, subject to review by the other members of his court, and a judge of a district court may issue writs of habeas corpus in cases within their jurisdiction on behalf of any person in custody.

section

No function shall ever be attached to any court of record, or to the judges thereof, except such as are judicial; nor shall such judges practice law.

section

The legislature shall provide a retirement system for judges. However, no judge in office, elected or retired

COMMITTEE AMENDMENT

Amendment 8 proposed by Committee on the Judiciary

to	Committee	Proposal	No
by Delegate	Dennis, et al.		

Amend printed proposal as follows

AMENDMENT NO. 1

On page 4, delete lines 27 through 32, in their entirety and insert in lieu thereof the following:

"Section 15. Courts; Continued; Judicial District Changes; Terms

Section 15(A) The district, parish, city, family, and juvenile courts existing at the time of the adoption of this constitution are retained. Except as provided in Section 37 of this Article, the legislature may establish, abolish or merge trial courts of limited jurisdiction subject to the limitation in Sections 16 and 23 of this Article.

prior to the adoption of this constitution shall have his retirement benefits reduced or his contributions to a retirement system increased.

section

No judge shall have his salary, or retirement benefits diminished during the term for which he was elected.

section

Service of citation shall not be waived, nor judgement confessed, prior to the maturity of the obligation sued on, except for purpose of executory process.

section

The courts shall have the right to select and remove their own clerical and other personnel.

section

The supreme court shall be composed of a chief justice and six associate justices, electors of the state when elected. Each shall have been licensed to practice law in this state for at least ten years preceding his election, and each shall have resided in the district from which elected for two years immediately preceding his election. The term shall be fourteen years. Whenever a vacancy shall occur in the office of the chief justice, the senior justice in point of service shall succeed thereto. The domicile of the supreme court shall be in the city of New Orleans.

section

The supreme court has control of, and general supervisory jurisdiction over all other courts.

section

A judge of a court of appeal shall be an elector of the state licensed to practice law in the state for at least six years preceding his election, and shall have resided in the district from which elected for the two years immediately preceding his election. The term shall be twelve years. Whenever a vacancy occurs in the office of presiding judge, the senior judge in point of service shall succeed thereto.

section

A district judge shall be an elector of the state

licensed to practice law in the state for at least five years preceding his election, and shall have resided in the district from which elected for two years preceding his election. The term shall be six years.

section

There shall be a department of justice directed by an attorney general who shall have the power to appoint assistants to serve at his pleasure. He shall be an elector of the state and have resided in the state and have been licensed to practice law in the state for at least five years preceding his election. He shall exercise supervision over the district attorneys and perform the duties imposed by law.

section

There shall be a district attorney for each judicial district who shall be an elector and who shall have been a resident of the district from which elected for three years and licensed to practice law in the state for at least three years. The term shall be six years.

section

All district attorneys serving at the time of the adoption of this constitution, may retire on reaching the age of eighty years, if they have served continuously as district attorney for thirty years, immediately preceding their retirement, and shall thereafter receive full pay for life. Provided however, no district attorney previously retired under this provision shall have his benefits diminished.

section 16

There shall be a sheriff elected by the electors of each parish in the state, who shall be elected at the general state election and hold office for four years. The sheriff shall be ex-officio collector of state, parish and all other taxes, except municipal taxes, which, however, under legislative authority, he may also collect.

section

There shall be a clerk of the district court in each parish, who shall be elected by the electors of each parish at the state general election and who shall hold office for four years, and shall be ex-officio notary public and parish recorder of conveyances, mortgages, and other acts.

The legislature shall have power to vest in clerks of court authority to grant such orders and to do such acts as may be deemed necessary for the furtherance of the administration of justice; and in all cases the powers thus vested shall be specified and determined.

section

Vacancies in the office of judge, district attorney, sheriff, clerk of district court shall be filled by appointment by the governor, with the advice and consent of the senate to serve until such time as their successors shall be chosen.

section

Unless otherwise provided by law, there shall be a coroner elected by the electors of each parish, who shall be elected at the state general election and who shall hold office for four years.

DRAFT I

ARTICLE ____ THE JUDICIARY DEPARTMENT

GENERAL

PART A. JUDICIAL POWER IN GENERAL

Section 1. Judicial power

The judicial power shall be vested in a supreme court, courts of appeal, district courts, and such other courts as this constitution may authorize.

Section 2. Needful writs, orders and process

A judge may issue all needful writs, orders and process in aid of the jurisdiction of his court. Exercise of this authority by a justice of the supreme court or a judge of the court of appeal, is subject to review by the whole court.

PART B. THE SUPREME COURT

Section 3. Supreme court; membership; terms

The supreme court shall be composed of seven justices, four of whom must concur to render judgement. The term of a justice shall be fourteen years.

Section 4. Supreme court; districts

The state shall be divided into at least six supreme court districts, with at least one justice elected from each. The present districts, and the number of justices assigned to each, are retained, subject to change by two-thirds vote of the legislature.

Section 5. Supreme court; supervisory, original, and appellate jurisdiction; rule-making power; assignment of judges

(A) The supreme court has control of, and general supervisory jurisdiction over all inferior courts. It may pro-

mulate procedural and administrative rules not in conflict with law. It may assign a sitting or retired judge to another court, provided the consent of the court of a sitting judge be obtained.

(B) It has exclusive original jurisdiction of disciplinary proceedings involving members of the bar.

(C) In civil cases, its jurisdiction extends to both the law and the facts except as otherwise provided in this constitution. In criminal matters, its appellate jurisdiction extends to questions of law only. The legislature, however, may provide for a directed verdict of acquittal in criminal cases.

(D) The following cases shall be appealable to the supreme court:

(1) A case in which a state law has been declared unconstitutional;

(2) A criminal case in which the penalty of death or imprisonment at hard labor may be imposed, or in which a fine exceeding five hundred dollars or imprisonment exceeding six months has been actually imposed.

(E) If a case is appealed properly to the supreme court on any issue, the supreme court has appellate jurisdiction over all other issues involved in the case.

Section 6. Supreme court; the chief justice

(A) When a vacancy in the office of chief justice occurs, the justices by a majority vote, shall elect one of their members to the office for a five-year term.

(B) The chief justice shall be chief administrative officer of the judicial system of the state, subject to rules adopted by the court.

Section 7. Supreme court; judicial administrator, clerk and staff

The supreme court shall have authority to select a judicial administrator and its clerks and other personnel and to prescribe their duties.

PART C. THE COURTS OF APPEAL

Section 8. Courts of appeal; panels; number necessary to decision; term

The state shall be divided into at least four circuits, with one court of appeal in each circuit. Each court shall sit in panels of at least three judges selected according to rules adopted by the court. A majority of the judges sitting in a

2

case must concur to render judgement. The term of a court of appeal judge shall be twelve years.

Section 9. Courts of appeal; circuits and districts

Each circuit shall be divided into at least three districts, with at least one judge elected from each. One or more judges may be elected at large from within the circuit. The present circuits and districts, and the number of judges as

elected in each circuit, are retained, subject to change by two-thirds vote of the legislature.

Section 10. Courts of appeal; appellate and supervisory jurisdiction

(A) A court of appeal has appellate jurisdiction of all civil cases decided within its circuit, except those appealable to the supreme court and except as otherwise provided in this constitution. It also has appellate jurisdiction of all matters appealed from the family and juvenile courts, except criminal prosecutions of persons other than juveniles. It has supervisory jurisdiction over all cases in which an appeal would lie to that court.

(B) Its appellate jurisdiction extends to both the law and the facts, except where limited to questions of law by this constitution or, in the case of review of administrative agency determinations, by law.

Section 11. Courts of appeal; certifications to supreme court of questions of law; determination

A court of appeal may certify to the supreme court any question of law before it, whereupon the supreme court may give its binding instruction, or consider and decide the case upon the whole record.

Section 12. Courts of appeal; chief judge; duties

When a vacancy in the office of chief judge occurs, a majority of the judges of the circuit shall elect one of their number to the office for a five-year term. He shall be administrator of the court, subject to rules adopted by the court.

3

Section 13. Courts of appeal; clerks and staff

Each court of appeal shall have authority to select its clerk and other personnel and prescribe their duties.

PART D. THE DISTRICT COURTS

Section 14. District courts; judicial districts

The state shall be divided into judicial districts, each composed of one or more parishes and served by one or more district judges.

Section 15. Jurisdiction changes; terms

(A) District courts, the judicial districts, and the number of judges elected to each as provided for at the time of the adoption of this constitution are retained. Parish, city, municipal, traffic, family, and juvenile courts existing at the time of the adoption of this constitution are retained. The legislature, with the concurrence of a majority of the electors in each parish or portion thereof affected, may create or abolish courts of original juris, and may by the same procedure consolidate, realign, or separate courts of original jurisdiction.

Mayors' courts and justices of the peace as existing at

the time of the adoption of this constitution are retained, subject to the power of the legislature to alter or abolish them.

(B) The term of a district judge shall be six years, provided that a judge elected in a judicial district composed of only one parish having a population of more than 300,000 according to the latest decennial census before his election shall serve a twelve-year term. This provision shall not be construed to lengthen the term for which any judge has been elected.

Section 16. District courts; original jurisdiction

The district courts shall have original jurisdiction in all civil and criminal matters, unless otherwise provided in this constitution or by law. They shall have exclusive original jurisdiction in all cases involving the title to immovable property; the right to office or other public position; civil or political rights; probate and succession matters; the state, a political corporation, or a succession, as a party defendant.

4

regardless of the amount in dispute; and the appointment of receivers or liquidators to corporations or partnerships.

5

PRELIMINARY DRAFT #2

BASED ON NONBINDING VOTES OF THE
COMMITTEE OF THE JUDICIARY

ARTICLE _____. THE JUDICIARY DEPARTMENT

Section 1. Judicial power

Section 1. The judicial power shall be vested in a supreme court, courts of appeal, district courts, and such other courts as this constitution may authorize.

Section 2. Needful writs, orders and process

Section 2. A judge may issue all needful writs, orders and process in aid of the jurisdiction of his court. Exercise of this authority by a justice of the supreme court or a judge of the court of appeal, is subject to review by the whole court.

Section 3. Supreme court; membership; terms

Section 3. The supreme court shall be composed of seven judges, four of whom must concur to render judgment. The term of a judge shall be fourteen years.

Section 4. Supreme court; districts

Section 4. The state shall be divided into at least six supreme court districts, with at least one judge elected from each. The present districts, and the number of judges

assigned to each, are retained, subject to change by a two-thirds vote of the elected members of each house of the legislature.

Section 5. Supreme court: supervisory, original, and appellate jurisdiction; rule-making power; assignment of judges.

Section 5(A). The supreme court has control of, and general supervisory jurisdiction over all inferior courts. It may promulgate procedural and administrative rules not in conflict with law. It may assign a sitting or retired judge to another court.

(B) It has exclusive original jurisdiction of disciplinary proceedings involving members of the bar.

(C) In civil cases, its jurisdiction extends to both the law and the facts except as otherwise provided in this constitution. In criminal matters, its appellate jurisdiction extends to questions of law only. The legislature, however, may provide for a directed verdict of acquittal in criminal cases.

(D) The following cases shall be appealable to the supreme court:

- (1) A case in which a state law has been declared unconstitutional;
- (2) A criminal case in which the penalty of death or imprisonment at hard labor may be imposed, or in which a fine exceeding five hundred dollars or imprisonment exceeding six months has been actually imposed.

(E) If a case is appealed properly to the supreme court on any issue, the supreme court has appellate jurisdiction over all other issues involved in the case.

Section 6. Supreme court; the chief justice

Section 6(A). When a vacancy in the office of chief justice occurs, the judges of the supreme court, by a majority vote, shall elect one of their members to the office for a five-year term.

(B) The chief justice shall be chief administrative officer of the judicial system of the state, subject to rules adopted by the court.

Section 7. Supreme court; judicial administrator, clerk and staff

Section 7. The supreme court shall have authority to select a judicial administrator and its clerks and other personnel and to prescribe their duties.

Section 8. Courts of appeal; panels; number necessary to decision; term

Section 8. The state shall be divided into at least four circuits, with one court of appeal in each circuit. Each court shall sit in panels of at least three judges

selected according to rules adopted by the court. A majority of the judges sitting in a case must concur in the final judgment. The term of a court of appeal judge shall be twelve years.

Section 9. Courts of appeal; circuits and districts

Section 9. Each circuit shall be divided into at least three districts, with at least one judge elected from each. One or more judges may be elected at large from within the circuit. The present circuits and districts, and the number of judges as elected in each circuit, are retained, subject to change by a two-thirds vote of the elected members in each house of the legislature.

Section 10. Courts of appeal; appellate and supervisory jurisdiction

Section 10(A). A court of appeal has appellate jurisdiction of all civil cases decided within its circuit, except those appealable to the supreme court and except as otherwise provided in this constitution. It also has appellate jurisdiction of all matters appealed from the family and juvenile courts, except criminal prosecutions of persons other than juveniles. It has supervisory jurisdiction over all cases in which an appeal would lie to that court.

(B) Its appellate jurisdiction extends to both the law and the facts, except where limited to questions of law by this constitution or, in the case of review of administrative agency determinations, by law.

Section 11. Court of appeal; certification of questions of law to the supreme court

Section 11. A court of appeal may certify to the supreme court any question of law before it, whereupon the supreme court may give its binding instruction, or consider and decide the case upon the whole record.

Section 12. Courts of appeal; chief judge; duties

Section 12. When a vacancy in the office of chief judge occurs, a majority of the judges of the circuit shall elect one of their number to the office for a five-year term. He shall be administrator of the court, subject to rules adopted by the court.

Section 13. Courts of appeal; clerks and staff

Section 13. Each court of appeal shall have authority to select its clerk and other personnel and prescribe their duties.

Section 14. District courts; judicial districts

Section 14. The state shall be divided into judicial districts, each composed of one or more parishes and served by one or more district judges.

Section 15. District courts; changes; terms

Section 15(A). District courts, the judicial districts, and the number of judges elected to each as provided for at the time of the adoption of this constitution are retained. Parish, city, municipal, traffic, family, and juvenile courts existing at the time of the adoption of this constitution are retained. The legislature by a majority vote of the elected members of each house, with the concurrence of a majority of the electors voting at an election called for that purpose in each district, parish or portion thereof affected, may create or abolish courts of original jurisdiction, and may by the same procedure consolidate, realign, or separate courts of original jurisdiction, subject to the limitations in Section 19 of this Article.

(B) The term of a district judge shall be six years, provided that a judge elected in a judicial district composed

4

of only one parish having a population of more than 300,000 according to the latest decennial census before his election shall serve a twelve-year term. This provision shall not be construed to lengthen the term for which any judge has been elected.

Section 16. District courts; original jurisdiction

Section 16. The district courts shall have original jurisdiction in all civil and criminal matters, unless otherwise provided in this constitution or by law. They shall have exclusive original jurisdiction in all cases involving the title to immovable property; the right to office or other public position; civil or political rights; probate and succession matters; the state, a political corporation, or a succession, as a party defendant, regardless of the amount in dispute; and the appointment of receivers or liquidators to corporations or partnerships.

Section 17. District courts; chief judge

Section 17. Each multi-judge district court may elect from its members a chief judge who shall exercise such administrative functions as prescribed by rule of court.

Section 18. Juvenile courts; jurisdiction

Section 18. The jurisdiction of juvenile courts shall be as provided by law.

Section 19. Judges; term of office or compensation may not be decreased

Section 19. The term of office or compensation of a judge shall not be decreased during the term for which he is elected.

Section 20. Judges; election; vacancy in office

Section 20(A). The election of judges shall be held at the regular congressional election.

(B) A newly created judgeship or a vacancy in the office of any judge shall be filled by a special election which shall be called by the speaker, and held within six

months of the day the vacancy occurs or the judgeship is created, except when the vacancy occurs in the last six months of an existing term. Until the vacancy is filled, the supreme court shall appoint a person meeting the qualifications for judge to the office, to serve at its pleasure, who shall be ineligible to be a candidate for election to the vacancy.

Section 20 (A) and (B) Alternative: Judges shall be elected. Vacancies and newly created judgeships shall be filled by the supreme court, to serve until the position is filled by election. The appointee of the supreme court shall be ineligible to be a candidate for the vacancy.

(C) All judges serving on the date of adoption of this constitution shall continue in office for the term to which elected and shall serve through December thirty-first of the last year of their term or, if the last year of their term is not in the even-numbered year of a general judicial election, then through December thirty-first of the year next succeeding. The election for the next term in the office will be held in a general judicial election of the year the term expires, as provided above.

Section 21. Judges; retirement

Section 21(A). The legislature shall provide a retirement system for judges of courts provided for by this constitution. Until such time as the legislature provides a retirement system for judges, any judge taking office after the adoption of this constitution shall be afforded the same retirement benefits as judges holding office prior to the adoption of this constitution.

(B) No judge or judicial administrator, either in office or retired, at the time of the adoption of this constitution, shall have diminished any retirement or judicial service rights he had under the previous constitution; nor shall the benefits to which a surviving spouse or beneficiary was entitled be reduced.

6

(C) A judge of a court of record who is found by two competent physicians selected by a majority of the supreme court to be physically or mentally incapacitated to perform his duties shall be retired at two-thirds pay,

or any greater sum to which he would be legally entitled to by law.

(D) A judge shall retire upon reaching the age of seventy years.

(E) The provisions of this section do not apply to justices of the peace.

Section 22. Judges; practice of law; prohibited

Section 22. A judge of the supreme court, court of appeal, or district court shall not practice law.

THIRD PRELIMINARY DRAFT BASED ON NONBINDING VOTES OF THE COMMITTEE ON THE JUDICIARY

ARTICLE ____ THE JUDICIARY DEPARTMENT

Section 1. Judicial Power

Section 1. The judicial power shall be vested in a supreme court, courts of appeal, district courts, and such other courts as this constitution may authorize.

Section 2. Needful Writs, Orders and Process

Section 2. A judge may issue all needful writs, orders and process in aid of the jurisdiction of his court. Exercise of this authority by a judge of the supreme court or court of appeal is subject to review by the whole court.

Section 3. Supreme Court; Membership; Terms

Section 3. The supreme court shall be composed of seven judges, four of whom must concur to render judgment. The term of a judge of the supreme court shall be fourteen years.

Section 4. Supreme Court; Districts

Section 4. The state shall be divided into at least six supreme court districts, with at least one judge elected from each. The present districts and the number of judges assigned to each are retained, subject to change by a two-thirds vote of the elected members of each house of the legislature.

Section 5. Supreme Court; Supervisory, Original, and Appellate Jurisdiction; Rule-Making Power; Assignment of Judges

Section 5. (A) The supreme court has control of and general supervisory jurisdiction over all inferior courts. It may promulgate procedural and administrative rules not in conflict with law. It may assign a sitting or retired judge to another court.

(B) The supreme court has exclusive original jurisdiction of disciplinary proceedings involving members of the bar.

(C) In civil cases, the supreme court's jurisdiction extends to both the law and the facts except as otherwise

provided in this constitution. In criminal matters, its appellate jurisdiction extends to questions of law only. The legislature, however, may provide for a directed verdict of acquittal in criminal cases.

(D) The following cases shall be appealable to the supreme court:

- (1) A case in which a state law has been declared unconstitutional;
- (2) A criminal case in which the penalty of death or imprisonment at hard labor may be imposed, or in which a fine exceeding five hundred dollars or imprisonment exceeding six months has been actually imposed.

(E) If a case is appealed properly to the supreme court on any issue, the supreme court has appellate jurisdiction over all other issues involved in the case.

Section 6. Supreme Court; the Chief Justice

Section 6. (A) When a vacancy in the office of chief justice occurs, the judges, of the supreme court, by a majority vote shall elect one of their members to the office for a five-year term.

(B) The chief justice shall be chief administrative officer of the judicial system of the state, subject to rules adopted by the court.

Section 7. Supreme Court; Judicial Administrator, Clerk and Staff

Section 7. The supreme court shall have authority to select a judicial administrator, its clerk, and other personnel, and prescribe their duties.

Section 8. Courts of Appeal; Panels; Number Necessary to Decision; Term

Section 8. The state shall be divided into at least four circuits, with one court of appeal in each circuit.

Each court shall sit in panels of at least three judges selected according to rules adopted by the court. A majority of the judges sitting in a case must concur to render judgment. The term of a court of appeal judge shall be twelve years.

Section 9. Courts of Appeal; Circuits and Districts

Section 9. Each circuit shall be divided into at least three districts, with at least one judge elected from each. One or more judges may be elected at large from within the circuit. The present circuits and districts and the number of judges as elected in each circuit are retained, subject to change by a two-thirds vote of the elected members in each house of the legislature.

Section 10. Courts of Appeal; Appellate and Supervisory Jurisdiction

Section 10. (A) Except in those cases appealable to the supreme court and as otherwise provided in this constitution, a court of appeal has appellate jurisdiction of all civil cases decided within its circuit. It has appellate jurisdiction of all matters appealed from the family and juvenile courts, except criminal prosecutions of persons other than juveniles. It has supervisory jurisdiction over all cases in which an appeal would lie to that court.

(B) Except where limited to questions of law by this constitution or, as provided by law in the case of review of administrative agency determinations, its appellate jurisdiction extends to both the law and the facts.

Section 11. Courts of Appeal; Certifications to Supreme Court of Questions of Law; Determination

Section 11. A court of appeal may certify to the supreme court any question of law before it, whereupon the supreme court may give its binding instruction, or consider and decide the case upon the whole record.

Section 12. Courts of Appeal; Chief Judge; Duties

Section 12. When a vacancy in the office of chief judge

3

occurs, a majority of the judges of the circuit shall elect one of their number to the office for a five-year term, who shall administer the court, subject to rules adopted by the court.

Section 13. Courts of Appeal; Clerks and Staff

Section 13. Each court of appeal shall have authority to select its clerk and other personnel and prescribe their duties.

Section 14. District Courts; Judicial Districts

Section 14. The state shall be divided into judicial districts, each composed of one or more parishes and served by one or more district judges.

Section 15. District Courts; Changes; Terms

Section 15. (A) The district courts, the judicial districts, and the number of judges elected to each as provided for at the time of the adoption of this constitution are retained. Parish, city, municipal, traffic, family, and juvenile courts existing at the time of the adoption of this constitution are retained. The legislature by a majority vote of the elected members of each house, with the concurrence of a majority of the electors voting at an election called for that purpose in each district, parish or portion thereof affected, may create, abolish, consolidate, realign, or separate courts of original jurisdiction subject to the limitations in Section 19 of this Article.

(B) The term of a district judge shall be six years; however, a judge elected in a judicial district composed of only one parish having a population greater than 300,000 according to the latest decennial census before his election shall serve a twelve-year term. This provision shall not be construed to lengthen the term for which any judge has been elected.

4

Section 16. District Courts; Original Jurisdiction

Section 16. Unless otherwise provided in this constitution or by law, a district court shall have original jurisdiction in all civil and criminal matters. It shall have exclusive original jurisdiction in all cases involving the title to immovable property; the right to office or other public position; civil or political rights; probate and succession matters; the state, a political corporation, or a succession, as a party defendant, regardless of the amount in dispute; and the appointment of receivers or liquidators to corporations or partnerships.

Section 17. District Courts; Chief Judge

Section 17. Each multi-judge district court may elect from its members a chief judge who shall exercise such administrative functions as prescribed by rule of court.

Section 18. Juvenile Courts; Jurisdiction

Section 18. The jurisdiction of juvenile courts shall be as provided by law.

Section 19. Judges; Term of Office or Compensation May Not Be Decreased

Section 19. The term of office or compensation of a judge shall not be decreased during the term for which he is elected.

Section 20. Judges; Election; Vacancy in Office

Section 20. (A) The election of judges shall be held at the regular congressional election.

(B) A newly created judgeship or a vacancy in the office of any judge shall be filled by a special election which shall be called by the governor, and held within six months of the day the vacancy occurs or the judgeship is created, except when the vacancy occurs in the last six months of an existing term. Until the vacancy is filled, the supreme court

5

shall appoint a person meeting the qualifications for judge to the office, to serve at its pleasure, who shall be ineligible to be a candidate for election to the judgeship.

Section 20 (A) and (B) Alternative: Judges shall be elected. Vacancies and newly created judgeships shall be filled by the supreme court, to serve until the posi-

tion is filled by election. The appointee of the supreme court shall be ineligible to be a candidate for the judgeship.

(C) All judges serving on the date of adoption of this constitution shall continue in office for the term to which elected and shall serve through December thirty-first of the last year of their term or, if the last year of their term is not in the even-numbered year of a general judicial election, then through December thirty-first of the year next succeeding. The election for the next term in the office will be held in a general judicial election of the year the term expires, as provided above.

Section 21. Judges; Retirement

Section 21. (A) The legislature shall provide a retirement system for judges of courts provided for by this constitution. Until such time as the legislature provides a retirement system for judges, any judge taking office after the adoption of this constitution shall be afforded the same retirement benefits as judges holding office prior to the adoption of this constitution.

(B) No judge or judicial administrator, either in office or retired, at the time of the adoption of this constitution, shall have diminished any retirement or judicial service rights he had under the previous constitution; nor shall the benefits to which a surviving spouse thereof was entitled be reduced.

6

(C) A judge of a court of record who is found by two competent physicians selected by a majority of the supreme court to be physically or mentally incapacitated to perform his duties shall be retired at two-thirds pay, or any greater sum to which he would be legally entitled to by law.

(D) A judge shall retire upon reaching the age of seventy years.

(E) The provisions of this section do not apply to justices of the peace.

Section 22. Judges; Qualifications; Practice of Law; Prohibited

Section 22. A judge of the supreme court, court of appeal, or district court shall have been admitted to the practice of law for at least five years prior to his election, shall have resided in the respective circuit or district for at least two years immediately preceding election, and shall not practice law.

Section 23. Judiciary Commission; Membership; Terms; Vacancy; Grounds for Removal; Powers

Section 23. (A) The Judiciary Commission shall consist of one court of appeal judge and two district court judges selected by the supreme court; three attorneys admitted to the practice of law for at least ten years who are not judges,

active or retired, nor public officials, selected by the Louisiana Conference of Court of Appeal Judges' Association or its successor; and three citizens, not lawyers, judges, active or retired, nor public officials, appointed by the Louisiana District Judges' Association or its successor.

(B) A member of the commission shall serve a four-year term and shall not be eligible to succeed himself.

(C) A member's term shall terminate when he loses the status causing his appointment or when any event occurs which would have made him ineligible for appointment.

(D) When a vacancy occurs, a successor shall be appointed for a four-year term by the appointing authority for the position for which the vacancy occurred.

(E) On recommendation of the Judiciary Commission, the supreme court may censure, suspend with or without salary, remove from office or retire involuntarily a judge for willful misconduct relating to his official duty, willful and persistent failure to perform his duty, persistent and public conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or conduct while in office which would constitute a felony, or conviction of a felony. On recommendation of the Judiciary Commission, the supreme court may disqualify a judge from exercising any judicial function, without loss of salary, during the pendency of the proceedings in the supreme court. On recommendation of the Judiciary Commission, the supreme court may retire involuntarily a judge for disability that seriously interferes with the performance of his duties and that is, or is likely to become, of a permanent character. The supreme court shall make rules implementing this section and providing for confidentiality and privilege of proceedings.

Section 24. Department of Justice; Composition; Attorney General; Election and Assistants

Section 24. There shall be a department of justice consisting of an attorney general, a first and second attorney general, and other necessary assistants and office staff. The attorney general shall be elected for a term of four years at the state general election, and the assistants shall be appointed by the attorney general to serve at his pleasure.

Section 25. Attorney General; Qualifications; Power and Duties; Vacancy

Section 25. The attorney general and the first and second assistants shall have resided in the state and been admitted to the practice of law for at least five years preceding their selection. The attorney general shall attend to, and have charge of all legal matters in which the state has an interest, or to which the state is a party, with power

and authority to institute and prosecute or to intervene in any and all suits or other proceedings, civil or criminal, as shall be necessary for the assertion or protection of the rights and interest of the state.

In case of a vacancy in the office of attorney general, the first assistant attorney general shall perform the duties of the attorney general until his successor is elected and qualified.

Section 26. Sheriff; Duties; Tax Collector; Exception

Section 26. (A) In each parish, a sheriff shall be elected for a term of four years. He shall be the chief law enforcement officer in the parish and shall execute court orders and process. He shall be the collector of state and parish ad valorem taxes and such other taxes as provided by law.

(B) Notwithstanding subsection A, in a parish with a civil sheriff and a criminal sheriff, the two offices shall exist until changed by a majority of the elected members of each house of the legislature and a majority of the electors in the parish, and they shall exercise such duties as may be prescribed by the legislature.

9

MINUTES

Minutes of the meeting of the Executive
Department Committee on the Constitutional
Convention of 1973

Held pursuant to notice mailed by the Secretary
of the Convention on March 15, 1973

State Capitol, Baton Rouge, Louisiana

Room 205, Monday, March 26, 1973 and

Tuesday, March 27, 1973, 9:00 a.m.

Presiding: Tom Staggs, Chairman of the Executive
Department Committee

Absent: Moise Dennerly
Present: Mack Abraham
Reverend Avery C. Alexander
Joseph E. Anzalone
Greg Arnette
Emmett Asseff
Hilda Brien
Stanwood R. Duval
Camille F. Gravel
Tom Staggs
Reverend James L. Stovall
Representative Elmer R. Tapper

Others Present: Honorable Wade O. Martin, Jr.,
Secretary of State
Honorable Roy Theriot, State Comptroller
Governor Robert Kennon
Governor John J. McKeithen
Honorable Nat B. Knight, Public Service Com.
Honorable Charles Roemer, Division of
Administration

* * *

Registrar of State Lands. A copy of Mrs. Moore's presentation is attached hereto as Exhibit E and made a part of these minutes. Mrs. Moore reiterated on her presentation and agreed to submit to the committee her recommendations as to where the different sections

[1062]

of the State Land Office should go in the new constitution.

The Committee on the Executive Department recessed at 12:00 p.m. and reconvened at 1:30 p.m.

The Chairman introduced Lieutenant Governor James Fitzmorris. A copy of Governor Fitzmorris' presentation is attached hereto as Exhibit F and made a part of these minutes. Governor Fitzmorris stated that there are advantages of the Lieutenant Governor and the Governor running on the same ticket. He urged the committee to spell out the duties of the Lieutenant Governor. Governor Fitzmorris also stated that it is very improper to give an elected official the responsibility of serving as chairman of the Pardon Board merely making recommendations.

Chairman Staggs introduced Mary Evelyn Parker, State Treasurer. A copy of Mrs. Parker's presentation is attached hereto as Exhibit G and made a part of these minutes. Mrs. Parker reiterated on her presentation stating that the most general function the treasurer performs is that the Treasurer and Comptroller act as a check and balance on each other. It was requested by the members that Mrs. Parker provide the committee with a list of all funds which are not received by the Treasurer's office, and why. It was also requested that Mrs. Parker prepare a recommended

-8-

statement that might be put into the new constitution.

Chairman Staggs introduced Mr. Douglas Fowler, Custodian of Voting Machines. A copy of Mr. Fowler's presentation is attached hereto as Exhibit H and made a part of these minutes. Mr. Fowler stressed that the office of Custodian of Voting Machines should be an elective office. He stated that Louisiana was the first state to elect a Custodian of Voting Machines. He suggested that there should be a Commissioner of Elections for the State of Louisiana.

Chairman Staggs introduced Mr. Edward W. Staggs of the Council For a Better Louisiana. After Mr. Staggs noted that he would not bloviate, Chairman Staggs asked that the records show that "bloviate" be defined as "to come and tell more than you know". Mr. Staggs said that the council has taken the position in the past in support of governmental reorganization from the standpoint of consolidation of agencies and reduction in the number of agencies. The Constitution should not attempt to delineate too many of these agencies. He stated that generally, the present powers that the governor has are good. He suggested that the committee take into consideration the following points:

1) Pardon Power - It might be desirable for the governor to have this in capital cases; perhaps set up

an agency to handle pardons rather than having it before the governor.

* * *
-9-

MINUTES

Minutes of the meeting of the Committee on Executive Department of the Constitutional Convention of 1973

Held pursuant to notice mailed by the Secretary of the Convention on April 23, 1973

State Capitol, Baton Rouge, Louisiana
Monday, April 30, 1973, 9:00 a.m.
Tuesday, May 1, 1973, 9:00 a.m.
Wednesday, May 2, 1973, 9:00 a.m.

Presiding: Tom Staggs, Chairman of the Executive Department Committee

Present on all days:

Absent:

Mack Abraham
Avery C. Alexander
Joseph E. Anzalone
Greg Arnette
Emmett Asseff
Hilda Brien
Stanwood R. Duval
Camille F. Gravel
Tom Staggs
James L. Stovall
Elmer R. Tapper

Moise W. Dennyery

Others Present:

Honorable William J. Guste, Jr.
Mr. Ed Ware
Mr. Charles Tapp
Judge William J. Fleniken
Mr. Harry Howard
Harold Forbes
Roy Schaefer, Jr.
Mr. N. B. Hackett
Mr. Lyle C. Kyle
J. B. Keith
Honorable Edwin W. Edwards
Honorable Louis J. Michot

* * *
Mr. Anzalone offered a motion that the staff include in the proposal all constitutional elective state executive officials including their duties and functions. After discussion, the motion was approved.

Dr. Asseff offered the motion to recess for lunch. The motion was approved. The committee recessed at 12:00 a.m.

The Committee on Executive Department reconvened at 1:30 a.m.

Mr. Gravel offered the motion that on page 1 of CC/RS-202, after auditor general, the names of present constitutional executive offices be included. The motion was approved. Further discussion ensued on CC/RS-202.

Chairman Staggs introduced the Honorable William J. Guste, Jr., attorney general. Mr. Guste stated that in forty-two (42) states, the office of attorney general is an elective office. He recommended that the office of attorney general remain a constitutional elective office. He further stated that the office now has a broad range of

authority and should remain so. He further stated that the office of attorney general should not be under any branch of government. Mr. Guste also stated he is in favor of a cabinet form of government. He also stated that he is in favor of a professional board of pardons. The attorney general could be an advisor to that group.

Dr. Asseff requested that Mr. Guste submit a specific statement on how the attorney general could supersede the

-3-

district attorney.

Mr. Guste recommended that the justice of the peace be retained in the new constitution.

Chairman Staggs introduced Mr. Ed Ware, president of the Louisiana District Attorneys' Association. Mr. Ware stated that the office of district attorney should be an elective office. He further stated that the attorney general should have some authority to supersede the district attorney. Mr. Ware suggested that the language in the new constitution should be broad leaving the details to the legislature. He recommended that the qualifications for assistants be less strict, enabling them to be hired right out of law school instead of requiring three (3) years of law practice.

Chairman Staggs introduced Mr. Charles Tapp, director of Consumer Protection for the governor's office. Mr. Tapp stated that in 1972 the legislature passed an act for the office of consumer protection creating the consumer division within the office of attorney general. Mr. Tapp urged that the office not be included in the new constitution. He further stated that the office should be a political one. Also, he stated that the office should be answerable to the legislature under its budgetary process.

The committee requested that Mr. Tapp submit a draft of suggested language for the new constitution.

Mr. Arnette offered a motion that the public be asked to speak. The motion was approved.

4

A lengthy discussion followed on the provisions under the purview of the Committee on Executive Department.

Mr. Tapper offered the motion to recess. The motion was approved. The committee recessed at 5:00 a.m.

The Committee on Executive Department reconvened on Tuesday, May 1, 1973, at 9:00 a.m.

Chairman Staggs recommended that the committee members submit their comments and recommendations on provisions they would like to amend.

The chairman introduced William J. Fleniken, Judge, First Judicial District, Caddo Parish. Judge Fleniken stated

that the system now being used for the Pardon Board is a good one. Judge Pleniken also stated that he would not be opposed to a professional pardon board. The Pardon board now consists of the attorney general, the lieutenant governor, and the sentencing judge. He further stated that the Pardon Board could be put in the statutes.

Chairman Staggs introduced Mr. Harry Howard, Secretary of the Louisiana Board of Pardons. Mr. Howard presented the committee with a copy of rules governing applications for pardons. A copy is attached hereto and made a part of these minutes. Mr. Howard stated that he has been Secretary to the Board of Pardons for six (6) years. He commented on the general confusion between the Pardon Board and the parole system. He stated that the Pardon Board is an advisory board to the governor. Mr. Howard said that he does not feel that the board need have a professional staff. Mr. Howard stated the following functions of the Pardon Board:

5

1. Granting an outright pardon;
2. Recommend that a person's sentence be commuted to time served;
3. Reducing sentence;
4. Recommend a consecutive sentence;
5. Parole eligibility after the governor signs for parole is handled by pardon board;
6. Certifies probation or unsupervised probation.

Mr. Howard stated that the law could be statutory.

Chairman Staggs introduced Mr. Harold Forbes, director of the State Civil Service Department. Mr. Forbes submitted a presentation to the committee, a copy of which is attached hereto and made a part of these minutes. Mr. Forbes recommended the article on civil service in the Project in the new constitution. Mr. Forbes stated that a five-member board as it is now constitutionally written is the best approach. He also said that the provision could be shortened considerably.

The chairman introduced Mr. Roy Schaefer, Jr., director of the State Employees Retirement System.

Representative Tapper informed the committee members that less than thirty percent (30%) of the registered voters voted for civil service in 1952.

Chairman Staggs introduced Mr. N. B. Hackett, Secretary-treasurer of the Teachers' Retirement System. Mr. Hackett submitted a written presentation, a copy of which is attached hereto and made a part of these minutes. The committee recessed at 12:00 and reconvened at 1:30 a.m.

The chairman introduced Mr. Lyle C. Kyle, director of

* * *

6

Verbatim Statement of Governor Edwin W. Edwards
May 27, 1973

If I may reiterate and point out, I am very pleased to be here. But I must state that I am not in a good mood and I might say it's almost the insistence, of the chairman who called me prior to the time you wrote the letter. I make that observation because I want to make it perfectly clear to this committee and to the convention and to the people of the state, that it is this convention, and not I, that is charged with the responsibility of writing the new constitution. And it is this convention and not to me that the people of the state are looking to for a successful task. However, as governor of the state, as one who has served in three levels of government, eight years in city government, a portion of a term in the state senate, four terms in the House of Representatives, and now as governor of the state, I think it would be less than appropriate if I didn't afford this committee and reiterate to the people of the state some things that I said during the campaign. May I point out that I probably say that I, more than any other candidate running for governor in the last gubernatorial race, emphasized repeatedly the need for a new constitution. I did so aware of the fact the polls at the time and my own feedback from talking to people left me with the definite impression that a very small minority of citizens in Louisiana were aware of the need, were aware of the problems that we have with the constitution, and I did so recognize them but it really was not a campaign issue because of the small number of people who were aware of the problem, but I made it an issue because I felt like a new constitution was a must in the last third of the twentieth century. And because I'm totally dedicated to a principle that I have said many times before and it is simply this--that the system by which we govern this state is not working, and will not work adequately for a state of four million people; and one that has moved from primarily an agricultural state as it existed in 1921 when the last constitution was written to a complex economic and social structure we now have in Louisiana today, and which will get more complex in the thirty years between now and the next millennium. I do not have an easy, popular, acceptable answer to the problem of restructuring state government. Any change is bound by fifty years of tradition and which has entrenched groups of people, organizations, and vested interests in the system

* * *

look at what you have suggested and say, "Well, I don't like this particular sentence, therefore, I'm against the constitution." And you're going to have a lot of it.

Camille F. Gravel: Governor, do you have a suggestion or recommendation as to what changes if any might be made with respect to pardon boards and the governor's role in giving the pardons?

Governor Edwards: Number one, the governor has no business being a part of the pardon. Let me tell you what happens from a practical standpoint. I go home at 11:00, 12:00 at night and among the things that I have to do is to review fifteen or twenty applications for pardons or paroles which have been approved by the pardon and parole board. Most of the time files are on the desk which I usually have to make an arbitrary decision whether the pardon or parole board voted for this, therefore, I just sign them. Or I have to sit there as I do and review each case, and then sign or disapprove them. It is a function that I don't have the time to do, and I don't have the knowledge and I certainly shouldn't make a decision that responsibility in the life of one person to society in general--based on reviewing the whole file. The least that a man has an ultimate responsibility to do is spend a half an hour talking with the fellow, because a lot of times he can get his feelings off of people, not all people, but sometimes you can get a feeling as to how sincere he would be. I repeat, the governor has no business signing pardons or paroles; it is a function that shouldn't be relegated to him. You should have, in my opinion, a professional board working on a continuing basis with parole officers, probation officers, the knowledge of sociologists, psychiatrists those involved in the system who themselves will make final decisions. If this board ultimately determines that this man should or should not be pardoned, that decision should be final. That's been an unpopular position, but now decisions are made by the attorney general, lieutenant governor and the judge who happens to sentence a person. I don't think the sentencing judge should be involved in the determination on whether a man has an early release. The sentencing

judge had his shot at the fellow when he sentenced him, and at that time could determine whether he should be in the penitentiary for ten years or three years. So it's inappropriate for a judge who sentenced a man to ten years when he could have given him three in the first instance four years later to have to determine whether or not his sentence should be cut

-15-

to four years. Besides, I don't think it's a responsibility of the judge and I think we should remove the system from all of that and provide for a board which would come from categories—a businessman, a housewife, a psychiatrist, a sociologist, a penologist, and they would make a decision.

Mr. Gravel asked a question relative to the structure of board (Pardon) and the functions of the board; whether to include this in the constitution.

Governor Edwards: For goodness sakes, don't put that in the constitution. It's one of the hundreds of things that I have read about being considered by the convention. And I shouldn't say this, but it shouldn't be considered as constitutional material. The pardon board doesn't belong in the constitution. I don't care whose pardon board it is. The pardon system doesn't belong in the constitution, because ten years from now there will be as much change in attitude about pardons and paroles as there's been in the last two hundred years. And if we're locked into a system in the constitution we're going to have to go back to a million and one-half voters to determine whether we need a changed system and that isn't too good.

Mr. Anzalone: Governor, we have heard some proposals concerning the possibility of placing certain things in the constitution, which are taken out of the constitution and which would require, say not a majority rule of the legislature, but some percentage in excess of that, for a particular section without being in the constitution. How do you feel about that?

Governor Edwards: The most controversial and the one that's best known is the two-thirds vote for raising taxes, I would leave it in the constitution, because I don't think you can pass the constitution if it's not in it. However, it doesn't belong in the constitution. A system where one-third of a deliberative body can impede two-thirds—that's bad. We operate this country by a majority. We decide whether people get killed by majority rule; we decide whether twenty million people in the last hundred years have been drafted to go and put their lives on the line by a majority rule; yet we have a system here one-third can stop two-thirds from raising taxes. It's a bad rule, but you better leave it in because we'll never get the constitution passed. Now, other than that I don't think there should be any impediments to the deliberations of the legislature in the constitution.

-16-

Governor Edwards: If I had my druthers, I would rather the governor do it, because I think he's in a better position to make decisions. I think he'd be more sellable — of course that's something you can work under. People thought the legislature, and I might say the press reported one comment not subject to the civic code, I don't think it really makes much practical difference because under either system, I think the governor would have a strong say-so.

Mr. Abraham: Should the treasury be responsible for revenue inflation rather than the department where you have it?

Governor Edwards: It really doesn't make much difference. I would prefer to see it stay under the leadership of the governor, but I'm not married to any particular concept.

Mr. Abraham: Now you show on your department of insurance you show that a separate department than you have under there than in the office of consumer affairs but might not that better be a department of consumer affairs in which you would place insurance regulations, public service-type commissions, regulations, this type of thing?

Governor Edwards: Probably as a concept it would be better. But as an item of selling to people, I think an insurance

office is important because insurance rates are much in the minds of people....

Mr. Abraham: You would have it in office, but it would be an office under a particular department of consumer affairs?

Governor Edwards: It's probably a neater way of doing it.

Mr. Abraham: One more question...If you had a separate pardon and parole board, a professional board, wouldn't that be an office under the department of human resources?

Governor Edwards: Yes sir.

Mrs. Brien: Governor, you talked about election, about how much a campaign costs. There was a recommendation that the governor's term should be only two years. What is your feeling about this?

Governor Edwards: I think that the four year term is a minimum, and I think that the present system of limiting the governor to one term succeeding himself is a good one. Saying it another way, there are arguments to be made in every direction, but if I had the authority to make the decision I would say the governor's term should

-21-

BOARD OF PAROLES
ROOM 107 SUPREME COURT BUILDING
301 LOYOLA AVENUE - 527-8468
NEW ORLEANS, LOUISIANA 70111

JAMES E. FITZMAURIS, JR.,
LIEUTENANT GOVERNOR, CHAIRMAN

WILLIAM J. CUSTE, JR.,
ATTORNEY GENERAL

HARRY H. HOWARD,
SECRETARY

RULES GOVERNING APPLICATIONS FOR PARDON, ETC. (As amended February 1, 1973)

1. All applications for pardon, commutation of sentence, or restoration of citizenship must be accompanied by (1) the prison conduct record of the applicant, to be obtained from the record clerk of the state penitentiary or from the sheriff of the parish of imprisonment, (2) a petition, (3) a certificate of publication, (4) a certified copy of the charges and sentences, which can be obtained from the clerk of court in the parish of conviction, (5) copy of request to district attorney for post-sentence statement; (6) copy of request to the Department of Corrections for division of probation and parole report; and (7) other letters or supporting documents, if any.
2. Applications if clipped or stapled should be submitted in the following descending order:
 1. current prison record
 2. petition (only one copy)
 3. notice of publication
 4. charges and sentences
 5. copy of request to district attorney
 6. copy of request to Department of Corrections
 7. any other letters or supporting documents.
3. Notice of the application must be given by three publications, covering ten days, or three successive publications if not a daily, in a newspaper in the parish where the offense is alleged to have been committed; certificate of such publication is given by the newspaper to the applicant and this certificate must be attached to the application.
4. Applications must include a copy of a written request upon the district attorney of the courts of conviction that a post-sentence statement be sent directly by the district attorney to the pardon board, sufficiently identifying applicant by name, docket number, prison number, offense and date of conviction.
5. Application must include a copy of a written request upon the Division of Probation and Parole, Department of Corrections, P. O. Box 4494, Baton Rouge, La. for a departmental report, if any, to be sent directly to pardon board, sufficiently identifying applicant as in paragraph 4.
6. FIRST OFFENDERS receiving suspended or probationary sentences must show they have applied to the sentencing court for dismissal of the charges under the provisions of La. Code Crim. Proc., Arts. 893 and 894.
7. All petitions must be signed and indicate home address of applicant.
8. Where applicant has not served time in a state prison and there is no prison record, the applicant should submit detailed information regarding previous offenses, dates, sentences, conduct, employment and any other information to facilitate the board in its consideration of the application.

9. Whenever the application is based upon material facts affecting the guilt or innocence of the applicant, sworn proof of such facts must accompany the application.
10. All applications for pardon and restoration of citizenship must be accompanied by the required documents for all crimes previously committed and evidence as to the applicant's conduct, employment, etc. since his final discharge. Applicants for pardon who are not incarcerated are expected to appear before the board at the time fixed for hearing on the applications.
11. Before filing, the otherwise complete application must be presented to the presiding judge of the sentencing court for his endorsement with full statement of facts, reasons and considerations which prompt him to give or withhold his recommendations. (except in the Parish of Orleans as the judges attend the meeting and vote at that time). In order to avoid undue delays the application should be mailed to the court with envelope or envelopes already stamped and addressed so that the application may be sent on to the next involved court or to the pardon board. See 21
12. The regular meetings of the board will be held at 8:30 a.m., 2601 Tulane Ave., 2nd Floor, New Orleans, La. on the first Monday, Tuesday and Wednesday of January, April, August and November of each year. (Monday 1st - 15th Judicial Districts; Tuesdays 16th - 33rd Judicial Districts; and Wednesday, Orleans Parish). Provided, holidays or election days may require an adjustment of these dates.
13. DEADLINE FOR APPLICATIONS. All applications must be filed and received complete no later than 21 days before the regular meeting of the board. See 21
14. Persons opposing a pardon, commutation, or remission, may file a written protest setting forth the facts upon which they base their opposition or appear before the board
15. All applications docketed for a particular board meeting must be acted upon at that time. However, upon good cause shown, an application may be continued.
16. Applicants, attorneys and designated parties will be notified of pardon board action within 21 days following the meeting of the board; because of necessary processing, please do not make inquiries before this time.
17. A new application or reapplication will not be considered unless one year shall have elapsed since the date of the last action by the board on applicant's file. See 21
18. In order to reapply, a new petition must be filed, accompanied by all of the papers, documents, and notices set forth and required by these rules excepting charges and sentences that are already on file.
19. Special meetings may be held at any time that the board desires. However, no special meetings will be held unless the application is one of extreme emergency
20. No application will be accepted or filed unless these rules are strictly complied with.
21. LATE APPLICATIONS WILL BE AUTOMATICALLY DEFERRED AND DOCKETED FOR THE NEXT MEETING OF THE BOARD. PREMATURE OR INCOMPLETE APPLICATIONS WILL NOT BE DOCKETED OR FILED AND WILL BE REGARDED AS NOT BEING RECEIVED.

AS AMENDED FEBRUARY 1, 1973

2.

OFFICIAL TRANSCRIPT

OF THE

CONSTITUTIONAL CONVENTION

STATE OF LOUISIANA

1973

COMMITTEE ON EXECUTIVE DEPARTMENT

MEETING OF APRIL 30, 1973

MR. STAGG

Billy, we're glad to see you and delighted to have you. Would you care to have any of your numbers of your staff to be here with you or you want to just...

MR. GUSTE

Well, I think that there are... we have here Mr. DeJean who heads our civil division office in Baton Rouge, Mr. Kendall Vick, who is assistant A. C. but a delegate himself in his own right and also Mr. Jack Telverton who heads our criminal division and I brought Mr. Weill. I want to say, and I'm glad to see that you have Mr. Ed Ware here who is the president of the District Attorney's Association, so if I say anything bad...

MR. STAGG

Well, he's coming on in a little while.

Billy, what we have been doing in the presentation of our witnesses, sometimes our committee members ask questions that last too long and amount to repeating and sometimes the answers do too, so in order to preserve the time, that such signal is always given to any of them and they've been very, very helpful to the chairman up to now. For the purpose of discussing the Department of Justice, its place in the framework of government and any other subject matter that he wants to bring to this committee of the constitutional convention, Billy Guste, attorney general.

MR. GUSTE

Thank you. First of all, Mr. Stagg, I'd like to say I compliment you on the work that you've been doing and the constant in general. I think you really have approached the task seriously and I think up to now there's a certain amount of support of the public, the people are confident that you're trying to do a good job and I think that's all to the good.

MR. STOVALL

Excuse me.

MR. GUSTE

I'm glad...

MR. STAGG

Rev. Stovall.

MR. STOVALL

Excuse me just a minute. Do you have those study guides for the different members as you did on the other departments?

MR. STAGG

You think you need the study guide on the attorney general's office? Did you bring yours?

MR. STOVALL

Had they already been given out?

MR. STAGG

They had been given out in Staff Memo No. 2, I think. You would have it in your briefcase.

MR. STOVALL

I probably will. Excuse me.

MR. GUSTE

I can give you some general information. In forty-two states the office of the attorney general is an elective office. He's the most prevalent of all of the elected state offices except for governor. In addition, it's an office that's recognized as such in the constitutions of those states. It's a constitutional office. In one or two states it's not a constitutional office. I note here that in Alaska and Hawaii it's not a constitutional office. In one or two states the office is appointed by the governor, for example, and without giving you too much more information I'd like to tell you my own feelings about the office.

First of all I think it definitely should be a constitutional office as it presently is. Secondly, I think it should be an elective office as it presently is and thirdly, in general, except for some semantic changes which we will give you in due course, we think that the authority of the office as described in the present state constitution is excellent. It's a broad grant of authority and it doesn't get into specifics but it, in effect, leaves it to the legislature to add any specifics which it might wish us to have. It makes, as Mr. Stagg well knows, the attorney general the chief legal officer for the state with responsibility for all civil and criminal matters in which the state has an interest. Now, this--under this broad grant of authority we work very well and the office of the attorney general, has functioned very, very well. Now the courts have held this does not limit the right of any department of government to have its own attorney if it wishes to have it and if the legislature authorizes it and provides the funds for it. On the other hand, it gives the attorney general supervisory authority over these other legal offices in the sense that that office is not deprived of the right to review that legal work even if they have been concerned. So, basically, I think that the grant of authority and the broad statement of the powers and duties of the attorney general as stated in the constitution are good.

As to what branch of government that the office of the attorney general should be placed, I'd like to say that I don't believe it should be under any branch of government. I believe it's its own branch of government. The present constitution places the office of the attorney general under the judiciary and this is following the general concept that we have three branches of government, judicial, executive and legislative, and I think in placing it under the judiciary they were following a traditional pattern. Actually, however, it's a distinct branch even though it's under the article of the judiciary; it's a distinct branch of government just as the district attorneys are a distinct branch of government and I haven't had a chance to discuss this with Ed Ware and I propose to do so, so I wouldn't wish you to consider this a formal statement. I feel that the office of the attorney general should be a distinct article since it is a distinct branch of government, not under the executive, judiciary or legislative and that, since the constitution charges the attorney general with having supervisory power over district attorneys, the district attorney should be in that same article as a distinct branch of government. I see Mr. Ware nodding his head now and although we haven't discussed it, he's familiar with my philosophy about it.

As to whether attaches--the attaches of the court, like sheriffs and clerks, actually are more intimately connected with courts although they perform necessary services for attorneys as well, should be under the judiciary, I would think. So, in the broad sweep of the pen those

are the ideas that I have about the philosophical approach to the office and I think that's what you're concerned with at this time without detail.

2

MR. GUSTE (cont'd)

In due course though I would like to present to you a suggested draft, if you will. We'll work on that.

MR. ALEXANDER

Mr. Guste, there has been quite a bit of discussion throughout the state especially during this convention about a cabinet form of government, umbrella departments, something to that extent. I think you've indicated that that would not be desirable, but that it is done anyway and your office is made appointive, how would that affect law enforcement in the state so far as your department is concerned--your activities...

MR. GUSTE

Well, now let me...

MR. ALEXANDER

Would it be adverse or?

MR. GUSTE

Well, let me see if I can divide--do you mind if I try and divide the question because I sense there are several nuances there that ought to be separated. First of all, I favor the idea of having some cabinet form of government and when I say that the attorney general's office, the Department of Justice of the state, ought to be a separate branch of government, that doesn't indicate that I don't feel that the attorney general should be a part of a cabinet if there was going to be such a thing. He's the chief legal officer of the state. Now if you don't want to make him part of the cabinet, just say that he's the adviser to the cabinet. Handle it any way you see fit, but, certainly, that wouldn't mean though that he would have to be under the executive branch of government because he shares the responsibility and owes a duty to the cabinet. If I answered part of the question there. Now, the other part of the question was if, however, they decided that there was going to be an executive branch of government, how would that affect the operation of my office? Well, let's just face it that--the office then becomes politically beholden to the executive branch of government and not beholden to the people and I believe that office ought to be responsible to the people. Its purpose should be to, if necessary, investigate the executive branch of government for the protection of the people and as an appointee of the executive branch there would be an obvious built-in conflict of interests, as I see it.

MR. ALEXANDER

This only needs to be brief, Mr. Guste, can you tell me how you handle the minority problem in your office. I mean black whether--how they're employed, whether there are any employed, et cetera.

MR. GUSTE

Yes. I don't believe I have the current statistics but we have made, I think, considerable progress in this matter. We have black attorneys, I know at least three. Incidentally, we have a black lawyer, black investigators and black clerical help in Shreveport. We have black attorneys, students and clerical help in the office in Baton Rouge and in the office in New Orleans. In addition, I have issued a memorandum to all department heads in our organization, in our Department of Justice, that they shall either hire a black person or a female or give me a reason why they haven't and they're all aware of this. Well, now this poses some problems. The first one I got was from the committee doing the investigating and a man came in and he said, "I can't hire a woman", and we said, "Well, why not?" He said, "Well, these people have to travel and we work in pairs," and he says, "They go and stay in motels and they are away from home and you're going to cause domestic intranquility." So we had to give up the idea of the female thing in that case, but other than that, we're making progress and we've got even people like in two....and so forth.

MR. ALEXANDER

Thank you, sir.

3

MR. GUSTE

Mr. Lamont, do you know those figures right now?

MR. LAMONT

Not as of today but as of about a week ago there were between forty and I think forty-two blacks employed out of a hundred and around a hundred and forty-three or forty-six in the department. Something on this order.

MR. STAGG

Mr. Abraham and then Mr. Gravel.

MR. ABRAHAM

Mr. Guste, I just wanted to explore a little further this line of reasoning of the attorney general's office being a separate department. Right now the article covering it happens to be included in the judiciary section and it says that "There shall be a Department of Justice," but if the attorney general were still an elective office and this were transferred, say, to the executive department section, would it make it any more dominated by the executive department than what it is now by the judicial department, the judiciary?

MR. GUSTE

Let me just say this As it's presently written, the department is

situated in the article dealing with the judiciary, but the fact of the matter is it's not connected in any way in the constitution as it's developed and is a separate branch of government now. It is now and I would imagine if you did the same thing and put it in the executive branch of government, it would be still a separate branch of government. But from the psychological standpoint and in order to make it absolutely clear that it is not beholden in any way to the executive branch of government I think it would be a mistake to put it under the executive article.

MR. ABRAHAM

I don't follow why it would be beholden any more than what it is now.

MR. STAGG

Mr. Abraham, may I clarify or ask you to clarify your question? That is presupposing that the attorney general is still fully elected statewide by the people his duties and functions simply were written in an executive article rather than the judicial article. Is that the nature of your question?

MR. ABRAHAM

Yes. That's what I'm trying to find out.

MR. STAGG

Leave him fully elective but just write him in a different section of the constitution.

MR. ABRAHAM

That's what I'm trying to do.

MR. GUSTE

I have to say that other than the fact that I think it--I don't like the idea of being placed under the executive article simply because it may give some implication somewhere, or the court might draw an implication, that it's in some way subservient to the executive.

MR. ABRAHAM

Assuming it were a separate article then how would you tie then the attorney general's office in with the executive department to the extent that he is the chief law enforcement officer of the state? Shouldn't there be some connection there?

MR. GUSTE

There is now and this is done--I'd like to check this whether it's

4

MR. GUSTE (cont'd)

done by a legislative act or a constitutional provision.

MR. ABRAHAM

Maybe you can give us something later on.

MR. GUSTE

I'd like to do that. There's a present provision in the law. I don't know whether it's constitutional law or statutory law, which requires the attorney general upon the request of the governor to take legal action. I don't know whether that's in the law and I'd have to check it. I don't recall whether it's in the law or the constitution but if the governor asks me to file a suit or to do something, the law presently requires me to do it.

MR. ABRAHAM

One other question then. I've heard this from several people and they keep coming back to the sheriffs are in the judiciary department because they do perform certain functions for the judiciary but they also perform other functions too. They're tax collectors and everything else so where should the sheriffs go?

MR. GUSTE

Well...

MR. ABRAHAM

Should they be under local and parochial affairs or what?

MR. GUSTE

I don't mind studying the question. My own view is that they've been historically treated as attaches of the court in the sense that they serve process papers and that kind of thing. They're process servers and they are like the constables to the J. P.s. They're officers who service the courts. Now in addition the sheriffs have police powers in parishes but insofar as the state is concerned, as distinguished from parish governments, they're part of the judiciary.

MR. ABRAHAM

Thank you.

MR. STAGG

Mr. Gravel is next. Following is Mr. Duval.

MR. GUSTE

Just like the clerks of court are part of the judiciary.

MR. ABRAHAM

Well, I appreciate that, but to me they do different, much different jobs.

MR. GUSTE

Sure, but the job of being police officers--the sheriffs also serve

in police functions--is a power that is delegated to them by the legislature through them by the legislature by a legislative act and by the police jury, not by the constitution. There isn't a word in here about the sheriff being a police officer. They perform those functions by virtue of action of the legislature and the delegation of authority by the police jury to do these functions.

MR. STAGG
Mr. Gravel.

MR. GRAVEL
Gentlemen, I can agree with you one hundred percent that there's no place in the judiciary article for the attorney general or even for district attorneys because I don't think that your office nor the office of the district attorneys perform any judicial functions, but it seems to me rather clear--and maybe I'm overlooking something, maybe don't know enough about that--that just attorney general and the district attorneys are the enforcement arm, so to speak, of the executive department and, for example, in criminal cases the district attorney represents the state in the execution of state laws and the attorney general is the adviser primarily to the executive department and as you pointed out the legislature has seen fit to require that the attorney general shall perform certain duties and functions for the executive department and I just fail to see how you can categorically say that there isn't an identification between the attorney general's office and the district attorneys of the state with the department of the executive.

MR. GUSTE
What you say is absolutely correct. There is an identification there. There's an identification with the judiciary as well and there's an identification with the legislature. For example, if you consider the legislature, as I do, the board of directors of the people, the attorney general is representing the interest of the people in defending, prosecuting or initiating legal actions in behalf of the people of the state, then you can put the office under the legislative branch of government. In other words, you can find a philosophical basis for putting it almost in any one of those articles if you wish and that's all the more reason why I think it ought to be...

MR. GRAVEL
My point is I can't find that. Apparently, you can't because I don't see where the attorney general's office or the district attorney's office performs any judicial function or any legislative function. Almost exclusively you perform functions that are relegated to the executive branch of government, and that is you fully control--I'm talking about you and the district attorneys, the enforcement portion of the executive department and all I'm trying to determine is how can it successfully predicted that you're not working primarily for the executive branch of government which I think you are. Just as the treasurer is a statewide elected officer; just as the secretary of state is a statewide elected officer.

MR. GUSTE
Well, it's a matter of philosophical approach. I just disagree with you. I recognize the validity of the point you make. It's a question of where you want to place the emphasis.

MR. GRAVEL
One other point that gives me some concern, I think we should address ourselves to it because historically it's been a problem. The constitution says that the attorney general's office shall be--the attorney general shall supervise the district attorneys. Now when we say that the supreme court supervises the lower court, it means that you can supersede them, overturn them, overrule them, do anything to the contrary with the lower courts. The present jurisprudence of Louisiana is pretty much to the effect that the attorney general can't do that. He can't supersede a district attorney. He cannot supersede a district attorney. Do you think that there should be clearly spelled out in the constitution more specifically the extent of the authority that the attorney general's office ought to have over the district attorneys to cope with this possible situation? That is, if a district attorney, for example, wants--doesn't want to prosecute a case within his jurisdiction could the attorney general then go in and prosecute over the objection of him?

6

MR. GUSTE
I think we have that authority right now and I see no difficulty with the present form. Let me just say this on the subject of supervision, I am developing I would say, have developed in a number of cases a very good rapport with the district attorneys. It isn't only the constitution that says that the attorney general shall supervise district attorneys, the statutes say so and this is working out very well. But because the A. G. has the right to initiate any criminal procedure, granted the district attorney didn't do it, he has the authority to do it now except in a capital case which requires the grand jury to indict.

MR. GRAVEL
One of the two cases that require a grand jury....What's the other one?

MR. GUSTE
Capital cases and what--there's another one, isn't there? Alright. Except in a capital case, so that if the A. G. saw fit to do so, I think that he could take on the district attorney.

Now the subject of supersede, even though I would say that the law

is somewhat hazy, I see no difficulty. As I read the law in that famous case, Kemp versus Stanley, all it really said was that you couldn't supersede without cause. So if there's a cause I think the courts would uphold it.

MR. GRAVEL
Well, that's precisely my question. Shouldn't we start in view of the problem I think

MR. GUSTE
You may have a point.

MR. GRAVEL
It says--because of the Stanley case...

MR. GUSTE
If you wanted to put words like "only with cause" or something that's very brief and broad I would be for it. If you want to try and get down into giving details, I'd be against it.

MR. GRAVEL
What I'm thinking of is the possibility that a district attorney for some reason within his jurisdiction doesn't take action.

MR. GUSTE
Right.

MR. GRAVEL
It seems to me that we should spell out in the constitution the authority of the attorney general to supersede and supplant the district attorney under certain circumstances.

MR. GUSTE
Well, I think that if you want to make it broad and let the decision as to whether it's for reasonable cause or something like that, that would leave the ruling with judicial determination here according to being improperly superseded. I would be for that. I think that's a good suggestion.

MR. GRAVEL
I think there is some haziness in the law, there is certainly in my mind about really what the attorney general can do under certain circumstances.

MR. GUSTE
There's some haziness because there's no late decision on it. We go back to this old case which was really a very bad case and a political case.

7

MR. GRAVEL
Well, that's exactly what I'm saying.

MR. DUVAL
Mr. Attorney General, in order to perhaps assist us in solving the dilemma as to where the attorney general is placed in the constitution could you tell me what you consider to be the primary function, if there is such an animal, of the attorney general. What is your primary responsibility?

MR. GUSTE
I look upon the attorney general's office exactly the way that the constitution states it. He's the chief legal officer of the state. That's my concept. Now what is a legal officer? In my mind the legal officer is trying to give legal advice as protects the interest of the people and, historically, if you go back into the common law, attorney generals had very great power to be, so to speak, the advocate for the people's interest, the people's arm of government, and I look upon the office in this way.

MR. DUVAL
Isn't--you're the legal officer for--the legal representative of all state agencies, for instance, who don't have special counsel, isn't that so?

MR. GUSTE
This is correct.

MR. DUVAL
And whenever the state is sued the attorney general will represent the state.

MR. GUSTE
That's normally correct.

MR. DUVAL
And aren't you directed somewhat by the executive in some of your functions?

MR. GUSTE
No, only if the governor specifically asks us to do something about a certain case would we be.

MR. STAGG
Do you yield to Mr. Gravel?

MR. GRAVEL
I'd like you to ask the attorney general where that provision is that the attorney general is the chief legal officer?

MR. GUSTE
It is in the constitution.

MR. CRAVEL

Where?

MR. GUSTE

That's it. It's in Article 56--Article VII, Section 56. "They or one of them shall attend to and have charge of all legal matters in which the state has an interest or is a party with power to institute, prosecute or intervene in any and all suits or other proceedings, civil or criminal, as they may deem necessary for the assertion or protection of the rights and interest of the state." That, in effect, says they

8

MR. GUSTE

are the chief legal officers.

MR. DUVAL

Just one other question. In trying to resolve where we're going, I know you said that the attorney general is really a separate--in your opinion, really a separate part, not really part of the executive, legislative or judicial, but in setting up the constitution, right now it's in the judiciary and wouldn't you say--wouldn't you agree it relates less to the judiciary than it does to the executive? Would't you say you're more a part of the executive branch of government than, certainly the judiciary?

MR. GUSTE

I say that the office is an independent branch of government and it's semantic as to whether you put it under executive, judicial or legislative; you can put it under any one of these.

MR. DUVAL

Would you be happier then...

MR. GUSTE

I'd be happier if you've got to put it under any...I'd be happier if it's another independent article under which you have the attorney general, and since he is required to supervise them, you would have the district attorneys. Now, on that subject, may I just add one point. I haven't talked to Mr. Webb, but I think he'll agree, in the constitution there's no statement--broad statement as to what a district attorney's power is and authority is and there ought to at least be a broad statement. It just said "They shall be district attorneys" and it fixes their salaries and it puts them under the retirement system and it never says in this constitution that their job, in effect, is to be the chief prosecuting criminal officer of the state and that they also should protect the rights of the innocent and have discretionary power. In a very few words those concepts should be in the constitution and not just in statutory form.

MR. STAGG

Next is Mr. Tapper followed by Rev. Stovall and Dr. Asseff.

MR. TAPPER

General, in the last, I think in '72 there were several bills dealing with the possibility of making the investigators in the attorney general's office and in the district attorneys' offices, just district attorneys' peace officers.

MR. GUSTE

Yes.

MR. TAPPER

I don't think that passed. Something happened to it.

MR. GUSTE

No, there was great opposition on the part of the sheriffs..

MR. TAPPER

Well, that's the reason I asked that because you mentioned something about the sheriffs and that they are not really spelled out in the constitution as far as their police powers are concerned.

MR. GUSTE

That's correct.

MR. TAPPER

I think you felt that the D. A. investigators and also your investigators or the attorney general's investigators should have this...

MR. GUSTE

Some of our investigators perform perilous jobs and the only way that they can have direct authority to make an arrest in the case of an emergency is if they're granted police powers.

9

MR. TAPPER

Otherwise they have to call upon the sheriffs.

MR. GUSTE

Correct, and some of the men in the criminal division felt very strongly that their self-protection they should have the right to make an arrest if necessary. The sheriffs, you know, under the old principle of home rule were opposed to this. I think that somebody from a higher level could come into their jurisdiction and make an arrest and it did for that reason. I think that they ought to have that authority for their own protection.

MR. TAPPER

I agree with you, general, but as far as right now is concerned if you felt like...let's say you assume that the sheriff is the peace officer, a particular function that he should and your investigators seek out and find some type of crime or a gang or something and make sure that the attorney isn't doing anything about it, you're powerless to make an arrest or have an arrest made, unless the sheriffs go for it.

MR. GUSTE

You can get into these things and you can build positions that cause fear. There's the fear that the attorney general will become a super-cop; that's not the idea of our office and as soon as you say designated persons can have arrest power, this is what's envisioned by many people, but...

MR. TAPPER

But you're really hamstringing now in carrying out the functions that you...

MR. GUSTE

The way you protect against that is through the budgetary process. The legislature will handle that.

MR. TAPPER

Don't give you too many guitars.

MR. GUSTE

That's right. That's exactly right, but for goodness sake let the men that are in that perilous position protect themselves and that's...

MR. STAGG

Rev. Stovall.

MR. STOVALL

Mr. Guste, if the secretary of state is elected, he becomes the chief officer for elections; if the treasurer is elected, he's the chief officer for finance; at the same time they are generally in the executive department. Now what about your election as attorney general recognizing that you would be the chief state legal officer? Would not the fact of your statewide election assure your ability to be independent of the executive department if you were placed there?

MR. GUSTE

The answer to the question is "yes" assuming that you rewrite in similar areas with minor semantic corrections the same grant of authority that's in the present constitution...

MR. STOVALL

Now the next question. You serve as a member of the board of pardons.

MR. GUSTE

Now I'm not withdrawing from my prior position that I think there ought to be an independent article, you understand, when answering the question specifically.

MR. STOVALL

Well, I think that's a--in other words it's my own thinking, you know, that...

MR. GUSTE

Just like you see the three articles, the three department forms

10

MR. GUSTE (cont'd)

of government have never...

MR. STOVALL

It's the historic pattern. At the same time I feel that elections should be free of any intervention through the governor, the chief executive officer. Likewise, you know, legal opinions should be free and financial affairs, you see? And the point that I'm making is the fact that you are elected statewide. This is the thing that gives to you your independence and not the fact that you'd be in a separate article in the constitution.

MR. GUSTE

This is correct as it's presently written in the constitution. Under the Department of Justice we have asked that we...as far as the constitution document is concerned we have no responsibility to the court insofar as being part of a chain of command and if you did it the same way and put it under the executive department, there would be no responsibility to the executive department. I'm talking about psychology, not about the formality of the document.

MR. STOVALL

The other question. You're a member of the board of pardons presently. Do you feel that this is a--that is that the proper arrangements for pardons is what it should be, or would you suggest an alternative procedure for pardons for...

MR. GUSTE

Well, let me say this. This is one of the most onerous duties that the attorney general is called upon to perform, is to be a member of the pardon board and, frankly, because of the total inadequacy of our corrective system, we perform this in a most haphazard and unprofessional manner. I have favored the idea of a professional board of pardons that would also include--would be one board with the parole board because in

both cases you're talking about releasing people back to society again and whether they're being granted a pardon or a commutation of sentence or even the right to furlough and other things, I think there should be one agency doing it and it ought to be people who have some competency in the field. I wouldn't object to the attorney general being an advisor to that group in some capacity, as a legal advisor, but I have to tell you there is some--and I'd be unfair to some people who have discussed this with me if I didn't tell you there's an opposite view that simply says, "Look, juries are not professional and yet we have the jury system in trials in courts and grand juries are not professional and justices of the peace are not professional in many cities, or people that perform judicial functions in some cases are not professional and in effect what you're really trying to represent is the interest of the people. Is it safe to release a person? That's the prime test. Is he going to come back into society and commit another crime or is it reasonable that he'll adopt a meaningful life in peaceful society? That's what you're trying to do and sometimes the judgment of a lay person is adequate. That's one opinion. I share the view that many times these things depend on people who have been trained professionally to make that judgment who are probably better qualified than I am as a layman.

MR. STAGG
Anything else, Reverend Stovall?

MR. STOVALL
Yes. In response to what you've just said, I mean, it seems to me that, you know, in recent years we have developed professional skills in understanding people better than maybe we did, you know, fifty years ago when this constitution was written and that, you know, we could do much better to have some type of professional board of pardons and I'm just wondering if you would consider writing some suggestions along this line. You say you feel that this would be desirable and even though there are, you know, two schools of thought, I think it would be very helpful to us if you would or could, or some of your staff people, put some--give to us a definite recommendation for a professional board of pardons for the state.

MR. GUSTE
I'd be glad to do that, Doctor. I'd like to add this though, I do believe that the power and the authority of the governor in that matter is well spelled out in the constitution as it presently is. I mean he doesn't have to follow then--he's not required to follow the judgment of the board of pardons and on the other hand, without the board of pardons

11

MR. GUSTE (cont'd)
I think in certain cases he can act.

MR. STOVALL
This, I think, is a part of the problem though as I see it. You know, again I don't think the governor welcomes that responsibility any more than you do and I think that we need to move toward a professional...

MR. GUSTE
Well, that's my view or I share that view, and we will prepare a draft of the proposal for you. I'd like you to know it's not easy. I had a number of meetings with the former lieutenant governor who felt very strongly, Mr. Taddy Aycock, about this.

MR. STAGG
We had the same testimony in this chair from Mr. Fitzmorris who thought that he would like to be relieved of that responsibility and honor.

MR. GUSTE
Did Taddy--did you get a copy, because basically the bill...and I'm going to research it and find it?

MR. STAGG
Well, would you send it to us?

MR. GUSTE
Yes. I think it largely would do what you're talking about.

MR. STAGG
Dr. Asseff.

MR. ASSEFF
Mr. Guste, first I do not believe in vague grant of power to anybody not only your office but any other office....

MR. GUSTE
And what is that?

MR. ASSEFF
A vague grant of power. I mean I would like to see you submit to us a specific statement of under what circumstances you feel that you should supersede a district attorney. In other words I don't want "just cause," because to me what's "just cause" is a matter of opinion and I'm not very sympathetic to superseding anyhow. But if a grant is a specific one, then my attitude may differ. In other words "just cause" doesn't say anything. Now, I'd like for you to say from your experience in the office to date under what circumstances, specific, did you feel that you should have the authority to supersede a district attorney, then everybody will know the circumstances.

MR. GUSTE
Well, let me give some thought to that and when we come back...

MR. ASSEFF
I'm asking only that you suggest it to us.

MR. GUSTE
Maybe we're really talking about the same thing and we'll see.

MR. ASSEFF
And my other comment is this, with no reflection on you, of course, I feel you ought to be a part of one of the three branches of government and I'd put you in the executive, period, but the other is this. You have given us your arguments, I mean we've heard it quite often I think here, keep you out of politics, independence--everybody seems to want to be independent of the executive and stay out of politics and that type of thing. I mean I'm just wondering if deep down it really isn't something else. Somebody isn't trusting somebody and all I'm trying to do, I'm not--no reflection on you, sir; everybody has said the same thing. You're not the only one.

MR. GUSTE
When the redactors of the United States Constitution divided government into judiciary, executive, and legislative it wasn't a matter of not trusting, they were trying to maintain a balance of power.....

12

MR. ASSEFF
No, sir. I mean relative to your being elected. I mean the only state that the legislature elects him in is Massachusetts. I know how well that has worked out. You're correct in that basically he is the most elected official other than governor. I was just curious. Everybody keeps saying, "Keep me out of politics." I'm not putting you on the spot. You don't have to comment.

MR. GUSTE
No.

MR. ASSEFF
So we've heard it and I think everybody will agree with me. Independent, isn't that right? Independent of the executive; keep us out of politics, you know, stupidity, so I...

MR. STAGG
I think he should respond, that's if he wants to respond.

MR. ASSEFF
He may or may not. That's up to you. Yes, sir?

MR. GUSTE
Any office that's elected is a political office in the sense that he is an elected official.

MR. ASSEFF
Well, that's what I'm telling you. You can't take politics out of politics.

MR. GUSTE
And I think that it adds to the balance of power in state government to have that officer which is the legal officer of the state responsible to the people.

MR. ASSEFF
Well, the only thing I'd like to ask, Mr. Guste, if you don't mind, with our attorney general reclining in the federal penitentiary, I wouldn't like it to be. I'd like the authority being placed on some other ground. I didn't put him there, but I don't feel that--no reflection on you. I won't be... I've watched one, three attorney generals work so you've got good ground, I just would rather it be put on some place.

MR. STAGG
Mr. Guste, we have--Mr. Gravel, do you have some more questions?

MR. GRAVEL
I have some more questions if I have time.

MR. STAGG
You have time. We have about four more minutes.

MR. GRAVEL
General Guste, what position do you think we should take in this constitution, if any, with respect to prohibiting the attorney general or his assistants, district attorneys and their assistants, from engaging in the private practice of law while they're holding office?

MR. GUSTE
I don't think it ought to be. I'll tell you what the policy of our office is. The policy of the office is in general, I'm trying to develop all full-time lawyers who are working at their desks, their place to go. It's a superior system and they know where they are and what they're doing. That's our goal and basically I think we're pursuing that policy. And our people who are not protected by civil service and I don't want them to be. I want to be able to have professional people who we can fire if we have to or...

MR. GRAVEL
Pay more than civil service....

MR. GUSTE
...pay more than civil service gives. You're just not going to get lawyers if you don't. But this is what I've done. I've told them,

"Now, look, if any of you do want to handle a private case, like a court case or you are get in on a succession or something like that, in each case you've got to come in and get specific approval from the attorney general to ensure that there is no conflict of interest and secondly,

13

MR. GUSTE (cont'd)

You've got to give me compensatory time. I feel I'm entitled in forty hours a week of your time. I tell them all you have to give me forty hours a week, so if you spend time in court on this court case that you may be able to make a fee on, you work on Saturdays or in the evenings some other time and this has worked very, very well and I do not believe there ought to be a constitutional prohibition. I don't think you are going to get people, at least not right away. I hope to develop it in the future.

MR. GRAVEL

Primarily because of the inadequacy of the salary allowances under your budget.

MR. GUSTE

That is correct and every time you go down there before the budget committee, as soon as they see some salary a little above the civil service they want to know why. Well, the reason why is you just can't get good men at this salary.

MR. STAGG

The last questions will be from Rev. Alexander and Mr. Tapper and then you asked for one more minute. Correct? Alright. Mr. Alexander, real fast.

MR. ALEXANDER

Mr. Guste, there are two schools of thought in the state about civil service. One group feels that civil service as it is written discriminates against blacks. Others feel that the employer or the appointing officer, the hiring officer, is at fault. What is your opinion?

MR. GUSTE

Well, really, I didn't come prepared to discuss that subject today, Rev. Alexander. In the past, I know, from personal experience civil service has been used to discriminate against blacks. There's no question about it. Everybody knows it, that even where blacks appeared in the top three, they haven't been selected. Now, I understand that the government has initiated a policy where he's more or less encouraged department heads if a black got into the top three, let's accept him. I don't know whether that's true or not; I understand that that's supposed to be his policy. Perhaps you would want to broaden that to a larger number to afford a better chance for blacks to get into this top five or six.

MR. STAGG

This isn't really in the realm of the attorney general's...

MR. GUSTE

It really isn't and I'd prefer, while I have a feeling on it now that we ought to try and find ways to overcome the historical disparities existing, I don't think you're going to do it in a constitution. I really think you're going to have to do it through legislation and through administrative policy.

MR. STAGG

One more very short question from Representative Tapper.

MR. TAPPER

With reference to Justices of the peace and constables, do you have any thought on that whether they should be retained?

MR. GUSTE

I'd like to tell you I do. I'll actually say that I think that there are some Justices of the peace that do absolutely nothing, but the great majority of the Justices of the peace are performing a function that if you didn't have them, you'd have to actually create them. Now that's a fact. I just finished yesterday performing my legislative duty of conducting the law requires me to conduct a training school for Justices of the peace and I work with the Louisiana State Law School in that and Dean Sullivan himself came down to open it. We put on a very fine school; we print a book; we have fine lecturers who explain and teach them. They function in most cases as city courts; they're hearing little claims. If they didn't take that kind of small litigation--their jurisdiction is up to a hundred; it ought to be at least three hundred; it was a hundred in 1885. When I started practicing law in the city court of New Orleans the jurisdiction was a hundred dollars; it's now a thousand, you know? In Baton Rouge I think they raised it recently to five hundred or a thousand, the city courts. Well, in many places they're functioning

MR. GUSTE (cont'd)

Just like city courts but much more informally because they're not worried with rules and dockets. If they didn't have those courts, the district courts with all of the problems of docket and formality, would just be overburdened and I'd like you to know that that view is shared in by Dean Sullivan of the Louisiana State Law School and by Justice Tate on the supreme court who's written a very fine paper on the whole subject and who served on many national committees on this subject and has come up with that conclusion. If you didn't have them, you'd have to create them or something like them.

MR. STAGG

We're out of time, but see if you can finish.

MR. TAPPER

Don't you think this, there's a way that we can rearrange it where--you said some of them don't do anything at all.

MR. GUSTE

Right.

MR. TAPPER

Some of them do a lot of work.

MR. GUSTE

You might want to provide, subject to approval--and I'm not giving this as the way to do it, but one way might be on a local option parish by parish basis or something like that. I'm not saying that that's the way. It may be that the legislature would decide.

MR. STAGG

I have a question, Billy, one of the members asked, "Did I understand Mr. Guste to say he had prepared some language or would prepare other language on what he thinks should be included in the constitution on the attorney general's office?"

MR. GUSTE

I will. I will not prepare today to give you formal language, but I will. I'd like to study it carefully.

MR. STOWALL

On this thing that Mr. Tapper's speaking about, would it be necessary to detail the Justice of the peace though in the constitution? Could it simply be a general statement of the supreme court and then let these offices be statutory law and so forth?

MR. STAGG

Since that report the legislature may devise other duties.

MR. GUSTE

You could do it either way. They're presently in the constitution, aren't they? Yes. I think you could have a brief constitutional officer which would provide for city courts or justices of the peace, as may be provided by the legislature.

MR. STAGG

Now, you asked for one more minute.

MR. GUSTE

Yes. In the present article the way the article is written and has been interpreted by prior attorney generals for a guy to be an assistant attorney general he has to have practiced law for five years. Now, that's all right for the attorney generals as a qualification for running and it's all right to say the first assistant and the second, but we've just got to have it where we can hire people out of law school and I've got to clean up that language, and I'd appreciate your help in doing it. The other one, of course, is the salary of the attorney general is in here...

MR. STAGG

We hope not to have any salaries in it.

?

I don't see anything wrong with \$6500.00.

MR. STAGG

Thank you very much, Mr. Attorney General. We appreciate your coming.

MR. GUSTE

Thank you all.

15

CONSTITUTIONAL CONVENTION

OF THE

STATE OF LOUISIANA

1973

COMMITTEE ON THE EXECUTIVE DEPARTMENT

MEETING OF MAY 1, 1973

MR. STAGG

We have present in the room one distinguished district judge from the First Judicial District, first not only in number but in quality of the people it represents. Bill, come over here. Ladies and gentlemen, this is Mr. William Fleniken of the parish of Caddo. You know, Jack Abraham, I don't whether you know him or not and Reverend Alexander from New Orleans, Judge Fleniken. Greg Arnette, Stanwood Duval.

MR. FLENIKEN

How do you do?

MR. STAGG

Reverend Stovall is here, Hilda Brien is here, Elmer Tapper is approaching ...

MR. ?

From the rear.

MR. STAGG

Judge Flenken ... Judge Flenken has practiced law in our parish for longer than thirty years. He was formerly a United States District Attorney. He has been a district judge now, how long, Bill?

MR. FLENKEN

Going on the twelfth.

MR. STAGG

On the twelfth year. We have been discussing in these committee sessions, Judge, various aspects of the Executive Department, and one of those aspects which we have had less than the required amount of input concerns the state's current system of probation and parole, and we are wondering how it can be strengthened constitutionally. The staff invited you to appear as a long-term district judge who has been involved in the matter of probation and parole, and we need to ask you to discuss that with us and anything else that might, you think concerns the committee on the executive department.

MR. FLENKEN

Thank you, Tom. Mr. Howard can give you a great deal of detail on this.

MR. STAGG

Would you care for him to come and sit with you? Mr. Howard is scheduled for 10 o'clock, we're gonna get him by himself. We wanted it from -- you can come over and join us. Mr. Harry Howard is the secretary of the board of parole. How that is a different, pardon board.

MR. FLENKEN

Harry, don't be afraid, I mean I know they don't know where to seat you but we'll be kind of easy ...

MR. STAGG

Alright, Judge Flenken, if you will continue.

MR. FLENKEN

Personally I know very little about the parole department because of the fact that we have individual parole members who operate that department. And to me as a judge, leave it to them because they're supposed to know, they're supposed to have records and know and investigate the individual cases. So I do not, occasionally the officer

MR. FLENKEN (cont'd)

who conduct the investigation of that -- this just happens to come to our probation officer, the one that serves as our probation officer for our area -- but he'll ask me, "Well, what's your recommendation on this?" Or we come up there and he inquires about it and I say, "Well, I'll tell you mine, but now the responsibility is with the board." Because we have a board whose duty it is to investigate the matter and then make their determination. I sentence a man and I sentence him to whatever period of time I feel that he should serve. I know although I sentence him that he is eligible for some good time credit, good time that he will be eligible for parole. And now, if it's a first offense, he'll be eligible for a pardon at the completion of his sentence. I know those things and based on that, as I say, I very, very seldom ever express an opinion when it comes to the question of parole. They do that, I'm sure they do not come to me in all the cases where the men that I have sentenced make application for parole. And I don't know whether that's their prerogative or not, but as I say, occasionally they will, ... someone who serves as the probation officer will contact me about that.

MR. STAGG

Now about the position in our state where the sentencing judge, we're into the system of pardons.

MR. FLENKEN

Well ...

MR. STAGG

... as well as to parole.

MR. FLENKEN

Well fine, fine ...

MR. STAGG

... that what district judges ...

MR. FLENKEN

... I think, I think the system that we have set up now is very good. Now if the governor compels this, and the legislature, I think as a neutral judge, I like that, because he's familiar with the case. He sits in as a member of the board. I go whenever I possibly can, I attend these meetings of the pardon board, some of them do not, I understand, but I do. I express my opinion because -- and the district Attorney writes a resume in the case when a man is sentenced and I have that in my file, and I'll go over that and I have the presentence report on a great number of them, well, some of them, and I have before me coming out of the United States Attorney's office, I suppose I have, I order more presentence reports than anyone else and I'm gonna have to stop that, because we just don't have the probation personnel to make the investigations. But I like to know the background of a man before I sentence him and as I say, I give him the sentence that I think he should have. And the pardon board as I understand the law, the governor has the privilege of either commuting the sentence or pardoning anyone where the -- one of the three is the attorney general, lieutenant governor, and the sentencing judge who all sit on the board -- where two of them

are satisfied and make written application to him, he has the right to pardon or to commute the sentence. That's all it takes to commute the sentence to the time served which would make a man eligible for parole. So, as I say, that I'm in favor of. As I understood it, Governor McKeithen followed pretty well the idea that unless the sentencing judge approved it, of course, that is in the law, but unless the sentencing judge approved -- he didn't do that I'm sure in all cases, but being a sentencing judge I feel very strongly that I should be hearing that and I should know what they do is their responsibility and it's up to them. But I think the law as written is very good. Now, one thing I was wondering how these people could get off ... could get out on a furlough. About a year, two years ago, I had a man -- I came out of my office at noon for lunch, I mean out of court, there was a man in my office and the secretary said, "This man wants to see you." Well, I said, "Well, get me his file." I have a file on everybody who is sentenced in this state. I said, "I had sentenced the man to life in prison, and I said, 'Well, what are you doing out?'" He said he's out on an Easter furlough. But he hadn't been ... he hadn't been in prison for five years, and there he was out on a furlough. Last year, last year I get a letter from an attorney in Lake Charles wanting

2

MR. FLENKEN (cont'd)

to me to occur in a pardon for a man, the name didn't mean anything to me, I got my file, I had sentenced that man for, well, it was for life in prison also; he had murdered a woman there in Shreveport, put her body in the trunk of the car and driven her down into Cross Lake. The man had been in town about three days -- this was my presentence report on him -- and he had gone to some bar and there were three women, and this particular one was a clerk in one of the stores. They were not ... they were respectable people I'll say, there wasn't anything in the background of these people, these women except, of course, they got ... they were at the wrong place. But they met these two fellows and they took them out to their car and then this woman and this young fellow, she was a mature woman, and he was, I think he was in probably his thirties. Now that was the last that any of them saw of those two until they found this car at Cross Lake with her body stuck in the back end, in the trunk. I couldn't conceive of this and this attorney, I couldn't find ... this fellow was an attorney, but he had a letter here, the attorney wanting me to vote for a pardon for the fellow and said he had had him in his home. Well, my first inclination was to tell him how stupid he was to have someone like that in his home not knowing any more, I assumed he didn't know any more, anything about the background of the case -- certainly you and I wouldn't have had the man in our home. I just told him if he inquired into the matter I'm sure he wouldn't have him back into his home, and I certainly would not give a pardon to him. Now those are two instances. So then I get back to the law, how ... "How do they let them out," I said. The only legal basis that I can conclude that would be that the constitution provides that the governor can grant a reprieve. I believe that Mr. Pool says, he's a secretary of state or something like that, but I don't know really, but it's a matter of politics, I know. That's something that I certainly don't agree with; I don't know how they do it or why.

MR. STAGG

Well, Judge, we've had several people, witnesses and various other suggestions as to the probable ethics, the good thing that could come if instead of having -- for instance when Lieutenant Governor Fitzmorris sat in that chair, he said the one thing he hoped this new constitution would relieve him of was the necessity of sitting down on three or four hundred pardon applications every year. Then when Billy Guste was here he spoke yesterday about the pardon board situation. And it was the suggestion of these witnesses and others that this state's new constitution provide for a professional pardon board. If we had a professional pardon board instead of elected politicians sitting on pardon applications, would you feel that there still would be some pressure from the district judge who sentenced him, or do you think that it will be by appearance before the board to give your views or in writing give your views? What is your feeling that you have as a long-term district judge on the merit of having as we do in in paroles, a professional pardon board, rather than three politicians or two politicians and a judge sitting down to decide the question of a pardon?

MR. FLENKEN

If I would have a sufficient number. Now I don't ... of course you get a lot of applications, I'm sure that, I believe that we got the ... of course, we do, and then Mr. Howard can probably answer that, but on the question of having someone else to sit in, the law now provides the district attorney shall be given notice and he has the right to appear, of course, or to vote if he wants to. I don't know if the district attorney does, he writes a recommendation in every case if he doesn't go down himself. I think if you have a professional pardon board, I certainly would not be opposed to that. If the attorney general and the ... of course, the attorney general, he has a staff that can assist him. Now the lieutenant governor, I don't know what kind of a staff he would have that would assist him but as long as they give you notice and you have people who are qualified to hear the case, I think the judge is all right as ... I wouldn't be opposed to that. Just as there is with your parole board.

MR. STAGG

Doctor Asseff has a question.

MR. ASSEFF

Well, when he's ready I don't mean to interrupt the Judge.

MR. FLENKEN

Alright. Go ahead.

3

MR. ASSEFF
Judge, may, one, I know from experience that various judges aren't too good, you opened it wide open by your comment ...

MR. FLENIKEN
That ... that ...

MR. ASSEFF
I'll be glad to restrict, but you yourself have opened it. Several times when there are, let us say six judges, well one, I'm trying to think of how to correct it, one judge, you as you well know, attorneys will seek to bring their cases before a particular judge for a particular offense because some judges are noted for being very light on certain cases but very rough on another. Do you have any way of say correct-- I know, that's human nature and I don't blame you, sir?

MR. FLENIKEN
Well we, in our district, I think we're pretty well regulated on that because we rotate on the bench on the criminal court and they don't really have a lot of selection in our court. I think it's pretty well regulated there. Now ...

MR. ASSEFF
I see ...

MR. FLENIKEN
Now possibly there are places where ...

MR. ASSEFF
Well, I have seen people get five years for the same offense and somebody else ten. Well, my second question is this, since we've had comments on it, what would be, I know it's not before this committee but I'd like to hear your opinion. As you know the mayor's court is questionable from a constitutional standpoint. What do you think, sir, of abolishing, for us say, the mayor's court, the city court and the justices of the peace? If you don't want to answer it's alright and ...

MR. GRAVEL
I don't think this, Mr. Chairman, just a moment, I don't believe that's germane at all to ...

MR. ASSEFF
Well, he's opened it. He's opened it.

MR. FLENIKEN
Let me say this one thing about the parole, if you will.

MR. ASSEFF
Yes.

MR. FLENIKEN
As I say, I do not have anything to do with that board or the operation of the board at all. But I would like to see some means or some procedure whereby the people that I sentence and are jailed have the same opportunity for parole that the man has in Angola. You have a staff and I believe they stay involved at Angola.

MR. ASSEFF
Well ...

MR. FLENIKEN
They have a right to go to these other jails, but how many parishes do you have, you have a jail in practically every parish. That would be about sixty odd jails they would need to go to.

MR. ASSEFF
Well, let me ask you a question, that is because we've had that question of "germaneness" and I haven't raised it, but in many a question it has not been germane to this committee.

MR. STAGG
Do you have a question, Doctor Asseff?

4

MR. ASSEFF
And I repeat it. Yes, sir, I want to say that though since he raised the question; then raise it for somebody else, when the question is not germane. Personnel is not germane to this committee; structure is. So I'm really tired of the "germaneness" -- I'll raise it too. The other question that probably is germane, the judge raised it himself, is this. I personally do not like ex officio boards, judge, because I feel that a board -- I know the board of paroles is not but you commented on the board of paroles. See, I don't like ex officio boards because I feel that it's secondary to them. I mean there's no reflection on their qualifications. What do you think, sir, of the board of paroles. You come on the board of paroles, you kind of referral to the board of pardon, do you have any ideas, let's say to its composition? I ... its duties would be different.

MR. FLENIKEN
I have, I thought the ... and then if the lieutenant governor and the attorney general have time, I think they are certainly well qualified to sit ...

MR. ASSEFF
Well, I'm not questioning their qualifications at all, sir.

MR. FLENIKEN
They would be the ones to make the decision or to advise you as to whether or not they have the time to devote to this.

MR. ASSEFF
I know of no authority governmentally that would approve an ex-officio, you know, thank. The governor is a very busy man, one to one, you know, attorney general, I was just wondering whether you'd ever given any thought to it, its composition or whether you would be, you know, willing to give us ...

MR. FLENIKEN
No, sir, other than the ones we have, I did not have any recommendations or suggestions.

MR. STAGG
Mr. Tapper is seeking recognition. Representative Tapper.

MR. TAPPER
Judge, as it stands now, even though it may not be in the law, it was under the McKeithen administration. I don't know if it's continued that way, but if the sentencing judge does not recommend a pardon then the pardon is not granted, isn't that so?

MR. FLENIKEN
Well, that would strictly be a matter of policy because the law says that any two, which shall be two of the three, the attorney general, lieutenant governor and the sentencing judge, any two of those with written requests to the governor he will pardon or commute the sentence. That's the way the law is.

MR. TAPPER
Now as far as the furlough is concerned I believe that, correct me if I'm wrong, but there's a statute passed by the legislature which provides for such a furlough on his own. Whether that's good or bad... Another question now, Judge, don't you think that it would relieve the sentencing judge of not only the responsibility but also of the problem of having to sit in judgment on the pardon of an individual that he sentenced? I understand that you take into consideration all the facts before you render a sentence, but then you give him the sentence that you think he's entitled to or should get as far as society is concerned. But then when it comes to the pardon, it should be based upon, not so much upon prior record don't you think, but upon whether or not he's been rehabilitated or a professional may believe that he's been rehabilitated. What I'm getting at is this, I really don't believe that the sentencing judge should, or the district attorney should, have the say about whether or not a person is ready to go back into society. I was just throwing that out ...

5

MR. FLENIKEN
Well, that's correct, and I'd have no objection to that. I believe in each one assuming the responsibility if we give it to him, that's his, you select the man and you try to select a man that's qualified and shall do what is right, and I would have no objection to someone else sitting in if he, as you say, the sentencing judge, he knows all the background and that might influence him somewhat in the decision on the pardon, but that's hard to say. The law now provides that on the first offense at the completion of his sentence that of course, the governor can go ahead and pardon him, without the concurrence of anyone.

MR. TAPPER
Well now, doesn't the law also say statutorily that you have to serve, if you're sentenced to more than for five years or more, you have to serve at least one-third of your sentence though.

MR. FLENIKEN
Yes, that's the one difference.

MR. GRAVEL
Not before a pardon.

MR. TAPPER
No, that's before a parole.

MR. GRAVEL
Because they can ... the pardon board can commute your sentence if time served.

MR. STAGG
Mr. Abraham wanted to ask a question, Judge.

MR. ABRAHAM
Judge, is there any real need for constitutional language relative to pardons and parole, can't it all be handled just as well statutorily?

MR. FLENIKEN
I think a great deal of the law could be handled by statute. You have a contrary to your statutes providing that there be no pardon. And that would be contrary to your constitution because the governor has a right to pardon, you see.

MR. ABRAHAM
What I'm asking, can't it just as well ...

MR. STAGG
We'll have to write some language in the constitution or either leave it out and that's why we're ...

MR. ABRAHAM
..... this paragraph or this section that deals with reprieves, pardons and commutation of sentences and so forth that would give the

governor that authority, can't that just be lifted out of the constitution completely or left out and let this type of thing be handled statutorily in order to take care of the needs of the future?

MR. FLEINIKEN

It could be done by statute, yes, sir.

MR. ABRAMAM

Is there any need for it to be constitutional ...

MR. FLEINIKEN

Well, except that the governors use, he's always had a great deal of power when it comes to reprieves and the power of pardon and so forth. But that's due to ... by tradition, I suppose would be the only reason.

MR. ABRAMAM

Well, that's the only question I had, just whether it's necessary or not from a constitutional standpoint. What happens ...

6

MR. STAGG

Just a minute, Reverend Alexander, I'll be right with you.

What happens, Judge, when you have a three man pardon board as we have and the sentencing judge has died, what happens in that case?

MR. FLEINIKEN

His replacement sits in in his stead.

MR. STAGG

Even though he doesn't know anything about the case other than what he could read in the files.

MR. FLEINIKEN

Yes, that's correct.

MR. STAGG

Reverend Alexander.

MR. ALEXANDER

Judge, I ... I think this is the first judge who has appeared before this committee and I have two questions here that may not be altogether germane to the problem. They're for my general information because sooner or later we're going to have to vote on something.

MR. ASSEFF

I am going to object.

MR. ALEXANDER

The question is -- well, after I pose the question, Mr. Asseff. The question is that there has been according to statistics a phenomenal increase in crime recently. Now, these statistics are sometimes questioned on the basis of whether the statistics are based on the number of crimes committed per one hundred thousand population or whether it's just a mass increase in crime, taking into consideration the population growth and the dissemination of information by a mass media, a news media. I just would like to get your views on that, whether the increase in crime is really a myth. And then if there is really this kind of increase in crime, what in your opinion could this convention eventually do, or anybody for that matter, to clear it?

MR. FLEINIKEN

Well that's a ... that's a big question, that's a big question. First, you know statistics depends on who prepares those statistics as to what they reflect. I would say there has been an increase in crime and primarily among the younger people. I know you have more perversiveness, I think, just personally, I would say that. Then, as I say, these statistics, I think that generally, of course they ... each one of the different law enforcement agencies has a different type of appeal than another, and for that reason you have, you just can't say that this district is so much higher than the other and so much less than the other, unless you get the method in which they compute theirs.

MR. STAGG

Do you have a second question, Reverend Alexander?

MR. ALEXANDER

The second was, we've been probing, I think everybody, we're talking about social problems, we're talking about whether additional penalties, we're talking about the death penalty, you know, whether to improve social conditions would do it or whether to increase penalties would have the effect.

MR. FLEINIKEN

Well, I don't think increasing penalties in some areas is going to help at all. Now personally I'm in favor of capital punishment, many other people are not, but I think it would be a deterrent. But you take some of these other penalties are so harsh until you let a jury know that the man can get, this man can get ninety-nine years for

7

MR. FLEINIKEN (cont'd)

armed robbery and he couldn't ... if he gets life for murder and then gets the commutation of his sentence down to some years, in time to come this man with ninety-years, no commutation of sentence you see, no

parole, the man that's sentenced to death, well he can ... he can get, eventually he will get commutation and he'll get parole. So, but as I say, I never complain too much about what the legislature does about the penalties because it always gives the judge the discretion of exercising his own opinion as to what should be given.

MR. ALEXANDER

Thank you.

8

MR. STAGG

Would you give this committee that your ... the benefit of your views on the general subject of the constitutional provisions that we might consider on both pardon and on parole? And the governor being the key factor in it, that's why this committee is interested in the subject. Because we are the committee on the executive department and the governor is the end figure in all this process.

MR. HOWARD

Well, thank you, Mr. Chairman and members of the committee. I won't talk too much at all about the parole board except coincidentally. And that will be the first thing I'll mention. I think the greatest problem we have with our pardon and parole system here seems that we're always in general confusion between the two. I guess the greatest proof I can give is looking at your agenda today saying, "Harry Howard, Secretary of the Louisiana Board of Parole." This is no one's fault, really. And I guess if we say there's fault somewhere I would say it was mostly by development within the pardon board itself. I think that they both, the pardon and parole board, perform distinct needs. I think the parole board should be concerned with rehabilitation, psychological factors in just about everything concerned with the commission of crime and the resulting sentence and confinement. I think the pardon board should function only to provide an area of extraordinary relief. For instance, like last time we just happened to have a case where both the mother and an inmate were suffering from terminal illness. Well they were granted a pardon -- he was granted at time served. Sometimes a person might need a pardon to get a license, to get a permit or to take a job. I would say it would just be an unusual circumstance, general speaking, that someone should be given pardon or pardon board relief. Because after all everything else is now within the power of the parole board. As was brought out, and I don't know if you had a chance to look at this, the pardon board is a constitutionally created office by virtue of being included among the powers of the governor under that pertinent section of the constitution. The pardon board is merely an advisory board. The governor by the constitution is granted the power of pardon but only after a recommendation by the pardon board, and the pardon board, as mentioned as consisting of the lieutenant governor, the attorney general and the presiding judge. Now without belaboring that point as was raised by the chairman, "What if the presiding judge is dead?" Well, it will be the successor judge, just like if for some reason or other the attorney general or the lieutenant governor is not present someone will be shortly named to function for them. But the presiding judge of the court would be the successor judge if it is not the original sentencing judge. And what we have, as I say, is merely an advisory committee that recommends to the governor. Now generally, as I mentioned, if we're going to cast any fault for this confusion which all of us must admit exists between the pardon and parole board, it's more the blame of the pardon board because over the years, I would say unconsciously, the pardon board acted as just another avenue of routine relief for an inmate in an institution. And if you had the money or you had someone interested enough that would take your case before the pardon board, it didn't matter whether he was considered previously by the parole board or would be considered by the parole board a month later. As a matter of practice the pardon board function is just another avenue of routine relief, potentially routine relief. Now, we did have rules and again by practice, I guess they are observed more in the breach than in the letter. I will say that the present administration, they wanted to do certain things and started off by just applying the rules that we had, we hardly touched them since everyone might be satisfied the way we do things now and I hope Mr. Gravel might feel that way ...

MR. GRAVEL

I might.

MR. HOWARD

... because he's before the board very often and I think ...

MR. GRAVEL

Several times.

MR. ASSEFF

Harry, since you've used the terms interchangeably and said we made a mistake on the title before, I am sorry if I interrupted you, what should it be? You said it was wrong.

9

MR. HOWARD

Well, the Secretary of the Louisiana Board of Pardons.

MR. ASSEFF

Oh, well that's what I thought from the way you were talking, I'm sorry, thank you.

MR. STAGG

- Go ahead now.

The present administration has adopted these rules, you said.

MR. HOWARD

[illegible]

MR. STAGG

Alright, sir, we have questions. Wait a minute, let me make the list. Gravel, Stovall, Abraham, Tapper and Alexander. Mr. Gravel.

19

MR. GRAVEL

Mr. Howard, if I understand you correctly, and it seems to me that the observation makes a lot of sense, is what your saying is that as it presently operates the pardon board is active mainly in the area in which a parole board should be active? Or it's requested to do so in any event. Isn't that correct?

MR. HOWARD

No, I would say it is not functioning that way now. I think we're really getting away from this area. I'm saying it has functioned, and I'm not blaming the previous board because this is something that I'm sure you know, it's something that developed along the years. And ...

MR. GRAVEL:

But, aren't you ...

MR. HOWARD

... And because of that, it is really just another avenue of routine relief.

MR. GRAVEL

Q Aren't you saying though that it's your opinion that a substantial part of the cases that come before the pardon board really should be considered by a professional parole board, ideally rather than by the pardon board? That the relief sought for such as you know, commutation to time served or commutation of the sentence or commutation of parole eligibility, those things, aren't those really properly functions for the professionals?

MR. HOWARD

Well, someone raised the question and presented it to the judge, that depending on the philosophy of any court in any section of the country there might be a sentence, say of three years for simple robbery up in Shreveport, just for an example, and it might be ten years in Orleans, it might be a suspended sentence in Lake Charles. Well this is an area where I think the pardon board should and probably would look at with the overall view. And this is not faulting any particular judge in

any particular section of the state, because there you have to assume they're operating within the philosophy of the people they represent. Whereas the pardon board would look at something like this and we have to, for instance on armed robbery sentences, because they are not parolable, armed robbery convictions have to come before the pardon board. That would be an area where they could look at, at the actual sentences.

MR. GRAVEL:

"That's because, not only because of the statute, the state would be amended in such a way as to permit armed robbery cases to go before the parole board, they can't do it now. That's why I say I don't think the parole board, they're not saying, 'I'm saying I understand you, it is that the pardon board beyond considering pure pardon cases, that is applications for full restoration of citizenship with the granting of a full pardon, actually is requested in most instances to consider applications for full restoration of citizenship with the granting of a professional parole board; I'm not talking about in every instance, but whether or not a certain individual's sentence should be say commuted to time served or commuted to parole eligibility, those concepts bring into play the individual's criminal record, more investigation that would be permitted to the pardon board."

MR. HOWARD

Well, if I may, I disagree with you on that, Mr. Gravel.

MR. GRAVES:

I wasn't stating a position; I thought that was what you said.

MR. HOWARD

Q Because here don't believe the parole board should have the authority to affect sentence imposed by a court of judicial process. I don't believe a parole board should act as a star chamber, a power over the judges and the judicial practices of our state. This is what I say, I believe that the pardon board is needed, and it's needed in the area of commutation because, for negatively, because I don't think that a board or any other board should be able to overrule or amend or change a sentence imposed by a court or the judicial process of the state.

13

MR. STOVALL.

Is the purpose of incarceration to fulfill the judge's sentence or to rehabilitate an individual?

MR. HOWARD

Nowadays we've got a lot of strange reasons why people are sentenced and are kept in jail. I would say the popular thought is quite foreign to mine, why people go to jail and why should they just stay there, and why they should get out.

MR. STOVALL

Mr. Howard, it seems to me that we have to begin by recognizing that our penal system has really not fulfilled its function. And we have to look for some remedy, some cure. Even the increase in crime, you know, is in some cases related to imprisonment and what happens to people there. Now, in thinking of a professional parole or pardon board, and I realize that there's a distinction here, but it seems to me that the two are very closely related, you know you may parole a man temporarily, your pardon is complete, as I understand it.

MR. HOWARD

Well, Reverend, would it help if at this time I give you a quick rundown of what a pardon board does recommend? It's about four or five or six things.

MR. STOVALL

Alright.

MR. HOWARD

Alright, a pardon board can grant an outright pardon; a pardon board can recommend that a person's sentence be commuted to time served; a pardon board can recommend that a person's sentence be reduced; the pardon board can recommend the commutation of the sentence to life years or to three years which would have the effect of changing the time served to three years from the original sentence of life years; the pardon board also has the power, say if various judges or a judge for various crimes gives consecutive sentences, the pardon board can run at the same time two more things, the pardon board could also recommend or commute a person's sentence to parole; if it is a parole board, it is not unusual that it is it is it is unusual that it could immediately be considered by the parole board; the parole board could also recommend commutation to supervised probation; the parole board could recommend probation; and that is the sum of what the pardon board ...

MR. STOVAL:

Doesn't this whole system really work to give pardon to the man who has influence and the man of wealth and it really works against the poor man who has no one in a position of influence? You said a moment ago that, you know, if a man has someone to represent his case before the pardon board that he could get a hearing.

MR. HOWARD

Well, that's not, I'm glad you brought that up because that absolutely positively is not the case today and I'll tell you why; this is also, you also have to give credit to the department of corrections. We now have full-fledged clerks specially assigned, I guess they're inmates, specially assigned at all institutions to help inmates with the processing of applications. So, and I would say that generally these people do a much better job than some lawyers.

MR. STOWALL
the more question.

MR. HOWARD
Because they're done properly and they're done timely and really
it's a wonderful service. So this business about you need money or
things like that, that was a matter in the past it certainly doesn't
exist now. If someone continues, I would say you can check the records
and you'll see that you won't, I say there's certainly no political
influence with this administration's actions upon parole.

13

MR. CRANFEL
I don't mean that, and I don't ... maybe we're not going to ever
get on the same wave length.

MR. HOWARD
No, you're talking about commutation.

MR. CRANFEL
No, I'm saying this; I recognize that when the parole board acts
favorably in behalf of an applicant and gives that applicant relief,
that he still belongs to the department of corrections or to the insti-
tution. In other words, he's really, although physically he's released
from the institution, technically he's not, legally he's not, he still
belongs to the institution. It's my understanding of what parole means.
And all I'm saying is that it seems to me that what we might give considerable
thought to is a possibility of really absolutely delineating the authority
and jurisdiction of the pardon board and making its authority more restrictive,
that is the case in which it would act when it would grant pardons.
That's more to that kind of activity than situations where they ask,
for example, say that commute a sentence, which would be a consideration
that I think a professional body could determine. And even if you were
going to commute the sentence, get the person physically out of the
institution, frankly the board ought to be in a position to say, "Well
if you don't behave yourself over a certain period of time, then you're
going to have to go back and serve your sentence," which is pure parole.
And all I'm saying is that it seems to me that it could very well be the
function of this committee and of this constitutional convention to
delineate as between the role of a properly functioning parole board and
a properly functioning board of pardons. If we did that then I would
think we would have a whole lot less cases before the pardon board
and there would only go before the pardon board more or less automatically
those cases in which pardons would routinely be granted or in very
exceptional cases such as you have described.

MR. HOWARD
I agree with your suggestion but your example, I still don't agree
with. You're still giving me an example where the parole board would
be invested with power or a professional board would be in ... parole board
would be invested with power to affect a judge's sentence, to cut it, to
revoke a judge's sentence and I'm not going to believe that's right.
I believe it's an excellent idea, there shouldn't be any question about
what are the limits of pardon board authority. But remember we've got
this ... the basic principle is that this pardon board is just an advisory
committee to the governor. So it's a question of what you all ...

MR. CRANFEL
But the governor can't act until he gets it ...

MR. STAGG
Gentlemen, the time has expired. Reverend Stovall is recognized.

MR. STOWALL
Mr. Howard, what is the function and who makes up the parole board?
Now, I'm not quite clear at this point.

MR. HOWARD
The parole board is now a creature of the legislature and appointed
by the governor.

MR. STOWALL
How many people make up the parole board?

MR. HOWARD
Five. There are five people on the parole board.

MR. STOWALL
Are they citizens; are they people with particular training in this
area?

MR. HOWARD
I don't believe they require any special talent or qualifications.
I think this rests with the discretion of the governor.

12

MR. STAGG
Because me, but we've got to shorten the question plus the answers
because we are running out of time.

MR. STOWALL
Don't you think that what we really need is maybe a rehabilitation
board, which would work in conjunction with the penal institutions and

that the man who, you know, is paroled or pardoned is the man who is
really ready to be rehabilitated and there might still be some type of
follow-up, you know, ministry and service to him and with him.

MR. HOWARD
Well I believe that this is presently the function and practice of
the parole board at this time.

MR. STAGG
Mr. Abraham, you got ...

MR. HOWARD
Could I say just one thing? Some of these young people need guidance.
In misdemeanor cases we can put them on probation or the judge can give
them a sentence and suspend a part of it, let them have a little taste
of jail, but then suspend the balance of it and put them on supervised
probation. Now if we had a sufficient number of probation officers to
really supervise those young people, it would be a tremendous help. I
think. Now in felony cases we do not have that privilege. There are
many times I would like to let that young fellow have a little taste of
jail for a short period of time and then put him on supervised probation.
But now he's ... he has to it I give him time, and sometimes he needs
it, he has to have it because of the nature of the offense, but he's got
to go before the parole board.

MR. STAGG
Before he can get it.
Mr. Abraham and then Mr. Tapper.

MR. ABRAHAM
Well, we brought up several things actually which are statutory
more than they are constitutional. But, Mr. Howard, I didn't follow
your line of reasoning awhile ago in which you said that the parole
board should not be allowed to override the decision of the court, or
something like that, to that effect.

MR. HOWARD
Well, this is in the area of commutation of sentence, where a
commutation of sentence is actually changing say a ten year sentence to
a five year sentence.

MR. ABRAHAM
You're saying you wouldn't let the parole board have this?

MR. HOWARD
And I don't believe the parole board should be given that authority.

MR. ABRAHAM
Well, why should the parole board not be given the authority and
the pardon board should? By whatever name you call them they're still a
board.

MR. HOWARD
Well, the pardon board does not have this authority at the present
time. The parole board merely makes the recommendation to the governor.

MR. ABRAHAM
Alright so, but in effect, if the recommendation is made to the
governor, the governor approves it.

MR. HOWARD
No, that's not so either.

14

MR. ABRAHAM
Not so, okay.

MR. HOWARD
In most instances, and this again seems to be traditionally, the
governor would sit on recommendations.

MR. ABRAHAM
I see, alright.

MR. HOWARD
Governor Edwards has pledged to somebody that he would act on
recommendations one way or the other.

MR. ABRAHAM
Well, then let me ask you this, ...

MR. HOWARD
My guess is that he's probably failing behind on that.

MR. ABRAHAM
Alright then assuming, whatever the composition of the board may
be, suppose you did have a committee of the parole board or
whatever you want to call it and however way it might be constituted,
with some professional and some elected officials or whatever it may be,
if you could have this recommendation procedure or something like that
in which they would either pass on it with the approval or concurrence
of the governor or however it may be. Is there any reason why one board
couldn't perform the same function?

MR. HOWARD
Yes, because I think the philosophy is and should be different. I
think with the parole board, it's seated in the department of corrections,

Mr. Abraham offered the substitute motion that the secretary of state and attorney general be retained as elective offices. Dr. Asseff objected to the substitute motion stating that it was out of order.

Reverend Stovall offered the motion that the office of comptroller be eliminated as an elective office. The

* * *
2

combined with the secretary of state.

Mr. Abraham offered a motion not to consider further the office of auditor general. Mr. Gravel seconded the motion and it was unanimously approved.

Reverend Stovall offered a motion that the attorney general be retained as a statewide elective office and placed in the executive branch of government in the constitution. The motion was unanimously approved.

Mr. Gravel offered the motion that the commissioner of agriculture, commissioner of insurance, and superintendent of education be placed in the executive department of government as statewide offices subject to the right of the legislature to change the method of selection, to consolidate those offices, or to abolish those offices. Chairman Staggs suggested that Mr. Gravel bring his motion in writing to the committee at a later date.

Mr. Denberry offered a substitute motion that the staff be directed to bring a draft of a provision such as Mr. Gravel has suggested and that a vote be taken on Mr. Gravel's motion. The motion carried.

A lengthy discussion ensued on Mr. Abraham's recommendations. Discussion ensued on general concepts of reorganization of state government.

The number of departments in the executive branch was discussed following which Mr. Arnette offered a motion that there be no more than twenty (20) principal departments in

* * *
5

Asseff was opposed to the motion.

A motion was offered by Mr. Denberry to delete any mention of the years of practice. Reverend Stovall seconded the motion. Mr. Denberry offered an amendment to the motion to state that all offices require that the office holder be at least twenty-five (25) years of age, a citizen of this state for at least five (5) years, and hold no other public office. The motion was seconded by Reverend Stovall and carried.

Mr. Gravel offered a motion that all statewide elected officers be permitted to serve as many terms as the people will let them, but that the governor be limited to two

consecutive elective terms; also, that all public officers will serve four (4) year terms. The motion was unanimously carried.

A motion was offered by Mr. Arnette that the lieutenant governor be allowed to serve only one term if he serves over one-half of a full term. The motion carried with a vote of nine (9) for and two (2) against.

Reverend Stovall offered the motion to recess. The motion was approved and the committee recessed at 5:00 p.m.

The committee reconvened on Thursday, May 10, 1973, at 9:00 a.m. in Room 205 of the State Capitol, Baton Rouge, Louisiana.

After a lengthy discussion, Mr. Duval offered the motion that a first assistant be appointed by the secretary of state, treasurer, and attorney general subject to the approval of the Senate. The first assistant shall succeed to that office

8

until the next state election. The motion was seconded by Mr. Abraham and carried with a vote of seven (7) for and two (2) against. Mr. Denberry abstained.

Mr. Gravel asked that the motion be amended to read "shall serve until the official promulgation of the results of the next statewide election." The amended motion was accepted.

Mr. Arnette offered a substitute motion to appoint a first assistant who will succeed to the office without any confirmation whatsoever. The substitute motion failed with a vote of two (2) for and eight (8) against. Dr. Asseff and Mr. Arnette voted for the substitute motion.

Mr. Gravel offered a motion that in the event of a vacancy in the office of governor or governor elect, the order of succession shall be the following elected officials:

1. Lieutenant Governor
2. Secretary of State
3. Attorney General
4. State Treasurer
5. President Pro-Tempore of the Senate
6. Speaker of the House of Representatives
7. In the absence of those above to succeed, the legislature decides.

The motion carried.

Mr. Anzalone offered a motion that the lieutenant governor, in the event of succession to the chair of governor, be given the right to appoint a successor with the advice of the Senate.

* * *
9

Asseff seconded the motion and it was approved with a vote of six (6) for and three (3) against.

Executive clemency - to include pardons

A motion was offered by Mr. Anzalone that the basic inherent power be with the governor himself to grant reprieves and pardons after conviction. The motion carried. Dr. Asseff voted against the motion.

Section 13 - Appointive Power

Mrs. Brien offered a motion that the governor may appoint any officers, constitutional or otherwise, if his appointment or election is not otherwise provided for, but where the constitution provides for a particular procedure, senatorial confirmation is not necessary; also the legislature can provide the mode of filling offices which it creates.

Mr. Duval offered a substitute motion that the governor shall have the power to remove at his pleasure those department heads whom he appoints. The substitute motion was unanimously carried.

A motion was offered by Mr. Duval that all legislative or constitutional boards that are appointed by the governor as a result of some form of nominating procedure not be subject to his removal at his pleasure. The motion carried with a vote of nine (9) for and one (1) against. Representative Tapper abstained.

Mr. Arnette offered a motion that if the governor appoints someone for a term, he cannot be removed. The motion passed

* * *
12

The committee reconvened at 1:30 p.m.

Section 27. Treasurer - Duties & Powers

Mr. Maciasz of the treasurer's office reported that the language submitted by his office submitted for inclusion in the constitution did not embrace retirement funds.

Mr. Duval offered a motion that all state agencies, including nonbudget agencies, will deposit those funds in the treasury. The motion was unanimously carried with one (1) abstention.

A motion was offered by Mr. Staggy that there shall be a treasurer who will be the head of the department of treasury. The motion was unanimously carried. Powers and duties of the treasurer were discussed and Mr. Abraham's written recommendation was accepted.

Attorney General and Department of Justice

A motion was offered by Chairman Staggy that the attorney general shall be the head of the department of justice. The motion carried by a vote of six (6) for and one (1) against. Reverend Alexander offered a motion that in concept, the attorney general and only the first assistant shall be bound by the five (5) years practice of law and his other assistants not be so encumbered. The motion was approved.

A motion was offered by Mr. Denberry that the attorney

general will be in charge of state legal matters unless otherwise prescribed in the constitution. Mr. Duval asked that the motion be amended to read "as otherwise provided

18

by law." The amended motion carried with a vote of six (6) for and five (5) against. A motion was offered by Mr. Arnette that there should be some grounds for the attorney general to supersede the district attorney. The motion carried with a vote of six (6) for and four (4) against.

Motions were taken on the following constitutional agencies referring to whether they should be retained or deleted in the new constitution:

Adjutant General, Military Department

Reverend Alexander offered the motion to delete. The motion carried with a vote of six (6) for and two (2) against. Mr. Arnette voted against the motion.

Banking, State Commissioner and Department

Dr. Asseff offered the motion to delete. The motion carried with a vote of eight (8) and one (1) abstention.

Commerce & Industry, State Board and Department of

Mr. Abraham offered the motion to delete. The motion carried with a vote of eight (8) and one abstention.

Ethics, La. Commission on Governmental

Ethics for State Elected Officials. La. Board of Mr. Denberry offered the motion that it shall remain in effect until amended by the legislature and refer it to the schedule. The motion carried with a vote of six (6) for and three (3) against. Mr. Arnette and Representative Tapper voted against the motion.

Fire Marshall, State

Mr. Abraham offered the motion to delete. The motion carried with a vote of seven (7) for the motion with Mr. Anzalone and Mr. Denberry abstaining.

Health, State Board of and State Health Officer

Mr. Duval offered the motion to delete. The motion carried with a vote of eight (8) for and two abstentions by Mr. Anzalone and Dr. Asseff.

19

Highways, Board and Department of

Mr. Duval offered the motion to delete. The motion carried with a vote of six (6) and two abstentions by Mr. Denberry and Dr. Asseff.

Liquified Petroleum Gas Commission

Mrs. Brien offered the motion to delete. The motion carried with eight (8) votes and one abstention by Mr. Anzalone.

Museum, Board of Managers of the Louisiana

State (Consolidated)
Reverend Alexander offered the motion to delete. The motion carried with nine (9) votes and one abstention by Mr. Anzalone.

Pardons, Board of

Dr. Asseff recommended that it be retained in the constitution but with a change in membership. He is also opposed to giving any governor unlimited power to pardon. He recommended that the parole and pardon boards be combined.

Public Service Commission

Refer to a subcommittee.

Public Welfare, State Board, Commissioner and Department of (Consolidated)

Mr. Abraham offered the motion to delete. The motion carried with a vote of six (6) and two (2) abstentions by Mr. Anzalone and Dr. Asseff.

Revenue, Collector and Department of
 Mr. Abraham offered the motion to delete.
 The motion carried with nine (9) votes.
 Mr. Duval was in favor of the motion but
 opposed removing limitation on income tax.

Stadium and Exposition District, Louisiana
 Mr. Abraham offered the motion to delete.
 The motion carried with nine (9) votes
 and one abstention by Representative Tappier.

Tax Commission, Louisiana
 Mr. Duval offered the motion to defer to
 Committee on Revenue, Finance and Taxation.
 The motion carried with eight (8) votes
 and one abstention by Mr. Denberry.

* * *

MACK ABRAHAM

70

1670 LEGION STREET LAKE CHARLES, LOUISIANA 70601
 Phone - Residence 433-1970 - Business 477-5448 - 433-1609

* * *

Section 9. Powers and Duties of Attorney General

- A. The attorney general shall be the chief executive officer of the department of justice.
- B. He shall attend to and have charge of all legal matters in which the state has an interest or to which the state is a party, with power and authority to institute and prosecute, or to intervene in any suit or other proceeding, civil or criminal, as he may deem necessary for the assertion on protection of the rights and interests of the state.
- C. He shall exercise supervision over the district attorneys throughout the state, and perform such other duties as prescribed by law.
- D. He shall appoint an assistant attorney general, subject to the approval of the senate, and may remove him at his pleasure.
- E. The assistant attorney general shall succeed to the office of attorney general at such times and in such manner as provided for in this constitution, or as may be prescribed by law.

* * *

OFFICIAL TRANSCRIPT

OF THE

CONSTITUTIONAL CONVENTION

1973

COMMITTEE ON EXECUTIVE

MEETING OF MAY 9, 1973

It's called "Executive Clemency" which we'll consider along with "Executive Clemency to Include Pardons." The language in Section 12 says, "The governor shall have power to grant reprieves, commutations and pardons after conviction for all offenses and may delegate such powers subject to such procedures as may be prescribed by law."

Mr. Abraham.

MR. ABRAHAM

I submit, Mr. Chairman, that this does not even need to be in the Executive Article. How these are going to be handled should be a matter of statute. Leave it out of the constitution completely.

MR. STAGG

Mr. Anzalone.

MR. ANZALONE

Mr. Chairman, I respectfully submit that some sort of executive clemency certainly should exist in this constitution.

MR. STAGG

Alright. Let's go how far into it?

MR. ANZALONE

Not to say that--to sum up the whole thing--not to say that some other board would not have the full authority to delve into the problem.

MR. STAGG

To recommend to the governor, perhaps.

MR. ANZALONE

Or even involve "prescribe" and they could take it upon themselves and rid him of the duty of doing it.

MR. STAGG

Mr. Anzalone, would you yield for a second to the chairman? We have heard from the lieutenant governor who said he wants out of this business. We've heard from the attorney general who says, "I want out of this business." We've heard from the governor who says, "I want out of this business." And when Mr. Abraham made his remark to which you took exception I feel he must have certainly been trying to heed what was said to us by those present incumbents though we're not bound by their sentiments.

Okay, I'm sorry. Go ahead.

MR. ANZALONE

Is that a question, Mr. Chairman?

MR. STAGG

Yes. Yes.

MR. ANZALONE

Mr. Chairman, my statement was not directed at doing anything if the chief executive officer did not want the provision. I wouldn't do anything like that, but...

MR. STAGG

The hell you wouldn't.

MR. ANZALONE

The point that I'm making is that wherever you place this authority I would still like to have the governor to have the authority to say, "Regardless of what happens, if I want to do it, I can grant this person a pardon because I am the chief executive officer of the state." And then if you want to give it to Joe Blow and Jim Smith as a board, then that's perfectly all right with me, but he still has the inherent power to do it when and if he wants to do it.

MR. STAGG

Mr. Duval and then Mr. Gravel.

MR. DUVAL

I just want to say I agree with Mr. Anzalone.

MR. STAGG

Mr. Gravel.

MR. GRAVEL

I want to say I agree with Mr. Anzalone and also with Mr. Duval with one footnote. I think that we need to give the governor the power to grant reprieves and pardons after conviction. That power should be vested in the governor, but beyond that the power of commutation of sentence and the other things that can be done, parole and all that, should be relegated to a parole--to the activities of a parole board. I think where we've run into the problem as far as the governor and the attorney general and lieutenant governor's concerned is that about ninety percent of the things that they're concerned with are really properly a parole board's functions and really relate more to concepts of commutations than they do to pardons or reprieves. Now, I believe if we differentiate between reprieves and pardons and other kinds of release that can be handled and should be handled by a professional type board, that we'll be a long way toward solving our problem but for the moment, for the present I agree with Mr. Anzalone that we should have in the constitution a provision giving to the governor authority to grant reprieves and pardons. I'd like to leave out commutations.

MR. ANZALONE

Would that not stifle the

MR. GRAVEL

No.

MR. STAGG

Mr. Denberry is recognized for a--you want to ask a question?

MR. STAGG
 We're on another one of those tentative nonbinding rippers and

MR. DENNERY
Yes, and I don't know whether I'm asking this of Joe or Mr. Duval or both. In discussing this Section 12 are you assuming that if the governor has the power to grant reprieves and pardons that he should have the right to delegate that power?

MR. ANZALONE
No, sir. No, sir.

MR. DENNERY
In other words your motion, if it were a motion, would be that the governor shall have the power to grant reprieves and pardons after for all offenses subject to such procedure or without.....

MR. ANZALONE
'All offenses'.

MR. GRAVEL
The governor and not his delegate. Of course, if you don't say "and not his delegate", you're not accomplishing anything.

MR. STAGG
Mr. --Rev. Stovall.

MR. STOVALL
I ask the question either to Mr. Gravel or to yourself. Well, what's the history back of the governor having this, I would say, absolute power?

2

MR. STAGG
The king had it.

MR. STOVALL
Such an insult to the judiciary system.

MR. STAGG
The king had that power.

MR. GRAVEL
Had nothing to do with the judiciary. Judiciary has had its bite at this cherry already.

3

MR. GRAVEL
In other words this is just a part of the sovereign authority invested in the governor. If we were going to proceed along the line that I'm suggesting, that a pardon would be a right that the governor could exercise as the highest, you know, officer in the state as inherent in the sovereign power of the state but as far as I know, every state given at least the power of reprieve and pardon to the governor and based historically for that reason.

MR. STAGG
Mr. Dennery.

MR. DENNERY
Goes a little beyond that too, Camille, I think. A man can have served his sentence but he is still prohibited under the law, due to the particular crime, from serving as a state officer....

MR. STAGG
Or voting.

MR. DENNERY
...Or voting unless he is pardoned and normally that would not be a judicial function to give that pardon, it would be an executive privilege. That power of reprieve certainly is an executive function rather than a judicial function because what it is really is just what it says. It's a delayed suspension...

MR. STAGG
You see it in the movies, in the late night movies, the governor's on the phone to the deathhouse and the juke went on and the thing was all over but, you know, that bad phone connection.

MR. DENNERY
But I think that the power of reprieve and the power of pardon has to be an executive matter.

MR. STAGG
Mr. Duval.

MR. DUVAL
No, sir. I pass.

MR. STAGG
Mr. Anzalone.

MR. ANZALONE
Mr. Chairman, and I just throw this out because I'm not too sure about my statement, but I believe it to be true. Is this right really the only check that you have on the jury system as we now know it today?

MR. STAGG
Yes.

MR. ANZALONE
And for that reason is why the governor..

MR. STAGG
No, there's some appeal. No. You can go through a series of appeals and...

3

MR. ANZALONE
Is this not the check on the jury, the final check on the jury system?

MR. DENNERY
Except for parole power.

MR. GRAVEL
Because no system is absolutely foolproof. There's no question about that.

MR. STAGG
All right, Mr. Anzalone. How about Mr. Abraham?

MR. ABRAHAM
I submit that this is a real exercise in inconsistency in that we spent fifteen minutes awhile ago on such an ape arguing about the word "supreme" in the executive power of the governor and that he could not enforce the law alone but we turn as hell make his supreme now when he can override all the courts and everything else and pardon a man.

MR. STAGG
Well, your president can do it if your United States constitution is handy.

4

MR. GRAVEL
There's a good reason for this.

MR. STAGG
Wait. We'll come back to you because Mr. Arnette, Mr. Arnette, you're the next, Stovall, and then Gravel.

MR. ARNETTE
Well, I'm just wondering, I definitely think we ought to have some form of..

MR. STAGG
Let's pay attention to the man who has the floor and is attempting to express himself.
Joe, stop all that, please, sir.

MR. ARNETTE
No, I think there ought to be some form of pardon or reprieve or something like this, but I don't think--I think we ought to give it to the governor and he ought to have the power to give it to whomever he wishes.

MR. STAGG
As in a professional pardon board or in a professional parole board?

MR. ARNETTE
If he wishes to have a professional pardon board give pardons, that ought to be his privilege.

MR. STAGG
To advise him rather than to do it?

MR. ARNETTE
Yes.

MR. ANZALONE
In other words you want him to sign every pardon?

MR. GRAVEL
There're not that many pardons.

MR. STAGG
We'll get to you, sir. Mr. Stovall is next, please, fumes.

MR. STOVALL
The only point I want to make is that somewhere in the constitution I think there should be a provision that when a man is sentenced and

4

MR. STOVALL (cont'd)
then he fulfills his sentence that he should be pardoned, period, and should be permitted to come back into the community and assume full responsibilities of voting and participation in the life of the community. Otherwise, if you send a man to prison for two years or five years or whatever, it means nothing if you do not give to him the right of full citizenship when he has met the rules of society. Now, that's somewhat unrelated to this but one reason why I'm aware of this is that in our composite committee hearings we had a number of people who came before the composite hearings and said, you know, "Look, we feel that some correction should be made here," and it certainly is a basic human right. I feel that this is very significant.

MR. STAGG
You have a question for him or a statement?

7 I want to make a statement.

MR. STAGG
We'll be behind Mr. Gravel who is next.

MR. GRAVEL
Am I recognized for a question or a statement?

MR. STAGG
Yes, sir. Anything you wish. You're it.

MR. GRAVEL
I again agree with the position taken, I believe, by Mr. Anzalone, but to kind of address myself to your illustration there, Rev. Stovall, there are very often exceptional circumstances that would require the governor to exercise his authority to pardon somebody in situations that don't involve the full, that is the convict or the prisoner having served his full term. Just as a quick illustration, suppose somebody has been erroneously convicted and he is serving under a legal conviction but he's serving time in the penitentiary and the crime for which he was supposed to have been guilty, it develops by confession or otherwise was committed by someone else. Certainly, the governor ought to have the power to pardon under those circumstances and it just seems to me that we're giving to the governor the right in extreme emergency and unusual circumstances by the power of reprieve and the power of pardon to do purely a ministerial act in ninety-nine percent of the cases. If we get away from him completely the idea of acting in discretionary areas when he's got to determine whether or not a person's sentence should be commuted either to time served or to parole eligibility or such other stage of the rehabilitation process as might afford some kind of a relief to the inmate in the institution. So I would think we need to develop beyond this idea--it doesn't have to take a whole lot of wording to do it--that "there shall be established a board of parole," constituted in such a way as we may determine. So I think there are two concepts; I think they should be based in the constitution but not extended.

Thank you.

MR. STAGG
Any further comment?

MR. DENNIERY
I was going to address myself to Rev. Stovall. It seems to me that we're overlooking something when we say if a man has completed his sentence. His sentence includes not only imprisonment but under the law as it presently exists it also provides that he may not hold public office and he may not vote. Now, if you want to change that concept of the law, there's one thing, you don't do it by removing the pardon power from the governor.

MR. STOVALL
I prefaced it by saying it was somewhat unrelated but...

MR. STAGG
Any further conceptual thoughts?

7 Do we have a motion?

MR. STAGG
No, sir, we do not.

7 I thought Mr. Anzalone made a motion.

MR. STAGG
Oh, well, yours was a motion. I'm sorry, Mr. Anzalone.

7 Would you tell us what the motion is?

MR. STAGG
Would you...

MR. ANZALONE
My motion is exactly what Mr. Gravel said it was.

9 Would you repeat that, please?

MR. GRAVEL
The governor shall have power to grant reprieves and pardons...

MR. ANZALONE
There is going to be--I propose the concept of having within this constitution the basic inherent power within the governor himself, and no other, the right to...

MR. GRAVEL
Grant reprieves and pardons.

MR. ANZALONE
Grant reprieves and pardons.

MR. STAGG
After conviction.

MR. ANZALONE
I'm not saying that the law cannot delegate pardon boards, commutation boards and any other kind of boards it wants to. I'm just saying that he's got the inherent power to do it when and if he sees fit.

MR. STAGG
Alright. That's the motion that's before the floor. Is there any other discussion?

Hearing none, all those who are in favor of that concept being included in the Executive Article raise one hand. I see one, two, three, four, five, six, seven, eight, nine. I see lots of hands and I see enough to have adopted it. It's unanimous. One objection. All opposed, two...it was your motion, don't you vote "no".

MR. DENNIERY
No, Mr. Abraham voted "no".

MR. STAGG
I know. There were two "no" votes.

7 Who was the other "no" vote?

MR. STAGG
Gentlemen, we will stand at ease for five minutes, no more.

RECESS

MR. STAGG
We have been discussing the, around the edges of the appointment by the governor of the...with the advice and consent of the senate of those officers whose appointment has not otherwise been provided to serve.

6

MINUTES

Minutes of the meeting of the Subcommittee on
Powers and Duties of Other Elective Officials;
and Boards and Commissions

Held pursuant to notice mailed by the Secretary
of the Convention on May 29, 1973

LSU Law School, Baton Rouge, Louisiana
Thursday, June 7, 1973, 9:00 a.m.
Friday, June 8, 1973, 9:00 a.m.

Presiding: Stanwood R. Duval, Jr., Chairman of the
Subcommittee on Powers and Duties of Other Elective
Officials; and Boards and Commissions

Present: Joseph E. Anzalone, Jr.
Stanwood R. Duval, Jr.
Tom Stagg
James L. Stovall

The chairman called the meeting to order and stated that the agenda included the consideration of the powers and duties of the lieutenant governor, attorney general, secretary of state, and treasurer; dual office-holding provisions; the Conservation, Forestry, and Wildlife Boards; and the Board of Ethics, and the Public Service Commission.

In considering the powers and duties of the lieutenant governor, Mr. Stagg offered a motion to adopt the proposal CC/203 prepared by the staff with an amendment in the comment. After considerable discussion, the motion carried without objection. This provision is titled Section 1, of the attached CC-2.

The subcommittee then discussed CC/204 pertaining to the attorney general. After discussion, Mr. Stagg offered a motion that language shown in Section 3 of CC-2 be adopted. The motion carried without objection.

In discussion of the powers and duties of the secretary of state, Reverend Stovall moved that the subcommittee adopt the language submitted by the secretary of state. However, Mr. Anzalone stated his objection to the phrase "administer the laws relative to voting machines or other voting devices as now or hereafter provided by this constitution or by law". The motion by Reverend Stovall carried with three yeas and one abstention by Mr. Anzalone to adopt the language as shown in Section 2, of CC-2.

In considering the proposal concerning the office of state treasurer, there was considerable discussion concerning the effect of the existing retirement systems. Mr. Staggs stated that the subcommittee should not make specific references to the retirement funds in the constitutional provision. Mr. Staggs offered a motion to adopt the language as shown in Section 4 of CC-2. With no objections, the motion carried.

Discussion then turned to a provision concerning dual office-holding. The chairman stated that it was the consensus of the full committee that the subcommittee would draft an article prohibiting the possibility of dual office-holding. Mr. Staggs offered a motion that the staff prepare a draft using the

* * *

OFFICIAL TRANSCRIPT
OF THE
CONSTITUTIONAL CONVENTION
STATE OF LOUISIANA
1973
COMMITTEE ON EXECUTIVE DEPARTMENT
SUBCOMMITTEE
MEETING OF JUNE 8, 1973

MR. STAGG
Well, in the final printing I'm sure that they could print the article in one color and the comment in another and that clearly differentiates between the two.

MR. DUVAL
I might point out gentlemen that insofar as the qualifications and succession etc., that ... we're not skipping those, those are to be decided by another subcommittee. We're merely delineating the powers and duties applying to the various offices. At this point we can move on to ... I have the department of justice. That would be, of course, the attorney general. Now, rather, also looking at the proposal, I think that we should look at the concepts set forth in Section 20, well, Section 30 of the May 15th memorandum. We also might look at the working papers that were submitted to us by the staff and that would also be Section 30, Section 29 and 30 of the work ... 29, 30 and 31 of the working papers, 31 really isn't under our auspices.

MR. STAGG
Well, we did discuss the five year provision and approve it.

MR. DUVAL
Right.

MR. STAGG
And I have noticed that other committees and the chairman of the convention have also held that the five year provision shall apply to district attorneys, the judiciary committee decided and I think judges have the five year provision and the question arose in this committee as being not permitted to practice law until 21 and that the age for all the other offices were to begin at age 25, yet an attorney general could only begin at 26 by the calendar and that was ... we talked about that too long. But it's still okay.

MR. DUVAL

I'd like to go over the concepts set forth in Sections 29 and 30 and 31 in the May 15th memorandum. I think some of the concepts are not embodied in the staff proposal and I think we ought to be aware of it. "The attorney general is to administer the department of justice, one of the twenty principal departments in the executive branch. There is to be only one assistant who is to have the same qualifications as the attorney general." I don't think it should be his only one ... the first assistant, I think should be the ...

MR. ?
Oh, I'm sorry.

MR. DUVAL
I think that the ... in concept number two, that actually the real ... the concept passed by this committee was that there should be a first assistant who is to have the same qualifications as the attorney general. The duties of the attorney general which is really what we are studying, is that the attorney general is to have charge of all legal matters to which the state is a party, all state attorneys to be a part of the office of the attorney general, except as otherwise provided by law, whatever that means, and the attorney general is to supersede district attorneys in certain instances.

MR. ?
Whatever that means.

MR. DUVAL
Whatever that means. So at this point, the floor is open for discussion. Does any member of the subcommittee wish to discuss this particular article? Yes, sir.

MR. ANZALONE
Ever so slightly.

MR. DUVAL
Mr. Anzalone.

MR. ANZALONE
Is the language that's proposed in this, "Department of justice shall be headed by the attorney general who shall have charge of all legal matters in which the state has an interest and perform such other functions as provided by law." Is that restrictive to the power of the testimony by one of the members of the attorney general's staff that every attorney who is to be employed by the state of Louisiana shall be a member of the staff of the attorney general?

MR. DUVAL
I don't ... I don't ... excuse me, would one of you all like to comment on that?

MR. ?
I don't think that that says it.

MR. ?
Well, that's what he said that it said.

MR. ?
We passed a concept, now this committee, and I say, we, this committee passed a concept that all state attorneys had to be a part of the office of the attorney general, except as otherwise provided by law. Now, that's quite ...

MR. ANZALONE
Now, that I understand. But this doesn't say that.

MR. ?
That is ... that is, I agree with you.

MR. ANZALONE
Now, if we are going to operate under the premise that the courts are going to be held by this regardless of what this says, then of course I'd say we've got us a fine article, there's no question about it. But this thing as in this proposal is restrictive to the point that if the courts don't take into consideration what we really intended, and they say that you did not intend that, then of course we've got something else in this article, that's why I think at this time ... I think we should say what we intended exactly.

MR. STAGG
Well in the legislative appropriation debate they finally did add \$200,000 to the attorney general's budget for the employment of some additional attorneys and I think, I haven't been able to keep up with the Baton Rouge papers that well during the last period of these debates, and I would bow to somebody who has followed it but I, if I'm not too far wrong, did not the debates include the discussion that the attorney general shall be the lawyer for the state of Louisiana and that all lawyers of the state would be members of the attorney general's staff, which is a governmental concept far removed from the practice now being carried on. Is this ... now, direct the question to the staff or to the Baton Rouge ...

MR. DUVAL
I wish the staff would help us if they can.

MR. ?
I'm not certain, I can't tell you, I followed it up to the point where they did get their increase in appropriations, but I'm not sure ...

MR. STAGG: ... do at night now the ATTORNEY of the state have not been placed among the attorneys general's offices.

MR. STAGG: I know that, but did not the appropriate \$200,000 additional money to the office and then when the committee I got discussed that he should have the lawyer for the state and nobody else? Mr. O'Neill.

MR. O'NEILL: They made that point, Mr. Stagg, that he should be the lawyer for the state, now beyond that I didn't hear anything about that.

MR. ANGLADE: I might point out ...

MR. STAGG: Well, if the news that seeps to Shreveport is the same as that you get in Baton Rouge, that's true.

MR. ANGLADE: I might point out that of course I think that in this constitution we, this subcommittee, is going to have to decide regardless of what the legislature did, what we want to put in the constitution.

MR. DUVAL: Thank you, sir.

MR. STOVALL: If you have the statement here who shall have charge of all legal matters, does that imply that all attorneys in the state are under?

MR. DUVAL: I don't, personally I don't think so.

MR. ? : I don't think so, Mr. Chairman.

MR. DUVAL: Go ahead, would you like to comment on that?

MR. ? : Yes, it wouldn't put all of the attorneys in his department, in other words, it wouldn't put all the attorneys on his payroll, but he would have, he would have an interest in all of the cases that are handled by state attorneys as to the department of public safety, when they defend a state trooper for a violation of somebody's civil rights or from the ... or just anything like that. They wouldn't be on the attorney general's payroll; they would still be on the payroll of each department but the attorney general would have charge of all legal matters.

MR. ? : What it does is they can have legal counsel, but it doesn't prohibit the specific department from retaining its own attorney, as I understand.

MR. ? : I could not disagree more. I don't care what you have here, it says the department of justice shall be headed by the attorney general who shall have charge of all legal matters in which the state has an interest, and I don't care what it says, that can be broadened to the standpoint that even the executive counsel to the governor is going to be a member of the staff of the attorney general. It's just that simple. Now if you don't think that it can be interpreted like that, you go back and read some interpretations on some other stuff. Now, if we don't intend for it, I think that we ought to make it a little bit more clear. Just that simple.

MR. DUVAL: Mr. Stagg.

MR. STAGG: There have been some extensive discussions in the committee on the judiciary on the status and powers of the attorney general. I wonder if a member of the staff could be deputized to go back to the fourth floor to the judiciary office and find out from them, bring back to us from them, what they have said since they have also contained and retained jurisdiction on the attorney general. Is that possible?

3

MR. JARVIS: Any information would be helpful if we can have it.

MR. ? : Yes. Go see if C. B. Forgotton is in; he is the research ...

MR. STAGG: He's in, I saw him a few minutes ago.

MR. ? : ... person assigned to the judiciary committee.

MR. DUVAL: Gentlemen, I might point out this, we are bound by the concepts that were adopted by the committee, I would think.

MR. STAGG: May I, Mr. Chairman, speak to that? The concepts in the creation of the department of justice were that this was going to be one of the front departments ...

MR. DUVAL: Right.

MR. STAGG: ... and he'd have one assistant ... it says there is to be only one assistant, well that ...

MR. DUVAL: Means the first assistant.

MR. STAGG: ... one principal, one first assistant, one principal assistant. Then it says, "The attorney general is to have charge of all legal matters to which the state is a party," and then it says, "All state attorneys are to be part of the office of the attorney general except as otherwise provided for by law," and I think in this instance you give legislature the leave to depart, and that's the point, that's the concept that is absent from this language.

MR. DUVAL: That is correct.

MR. STAGG: As is the language that the attorney general may supersede a district attorney ...

MR. DUVAL: That is also correct.

MR. STAGG: ... under appropriate circumstances and we have no language submitted to us by the staff on that, nor did I bring any myself, so I'm in default as you may consider yourself to be also. However, I do believe, and I think there has to be some discussion as to those state departments which demand a level of continuity and expertise. For instance, I think those attorneys who are permanently staffing the department of revenue are more competent to handle revenue department suits, because that's all the suits that they become interested in rather than ... there could be a section of the attorney general's staff called "the revenue section." Those attorneys who fight and defend expropriation suits are specialists; I've been up against them several times and they're damn good at what they do, and that's all they do, so they are better equipped to face other lawyers when expropriation cases are before the court on evaluation or whatever. I don't think in this constitution we can delineate that level of responsibility, but we can give the legislature the ability to decide that such officers of the attorney general's office may be permanently assigned to other departments within the executive branch to cover these needed areas of expertise. I don't want to go back the other way, which would permit the cosmetology board to have a high paid lawyer who does not do a damn thing, or the optometrist or the radio-television examining board to have a lawyer and these other little bitty departments who have platoons of lawyers not under the attorney general. I favor the concept that we adopted that all state attorneys ... "All state attorneys are to be a part of the office of the attorney general," but I also agreed to the concept because it had a "... except as otherwise provided for by law."

4

MR. ? : That's right. I think we're bound, I think the intent, as would've stated, the intent of that was to, in case the legislature in a specific instance may be demanding some particular expertise wanted to allow a particular board or agency to have an attorney not in the attorney general's office, that this could be done. I think that was the purpose of the concept. I would suggest that we might start thinking about language ...

MR. ? : May I make an observation?

MR. DUVAL: Yes, sir.

MR. ? : In drafting legal language and in drafting legislation or constitutions this charges a vague abstraction and if you want to accomplish what your working papers have indicated, the language should be specific. This is an abstraction, this is a vague term.

MR. STOVALL: The phrase, "shall be headed," that impresses me as being somewhat inappropriate language. "Shall be headed" ...

MR. DUVAL: The chair will entertain any, would be delighted to entertain any motion containing certain language.

MR. ? : Stan, may I?

MR. DUVAL: Go ahead.

MR. ? : We ran across this problem in the legislative committee, we used the word, "govern, headed and etc.", we finally landed on the word, "manage", we found that the most suitable word. Thought I'd throw that in and perhaps ...

MR. ? : "Manage" seems to be to me to be lovely too.

MR. 7
In looking at other constitutions this term "headed" seems to be fairly common. They look at principal department heads...

MR. 7
I have no problem.

MR. 7
I just was talking ...

MR. STAGG
But, gentlemen, that stranger that just joined us is Mr. C.B. Forgotton ...

MR. DUVAL
How do you do, sir?

MR. STAGG
... lawyer and researcher for the committee on judiciary. Can we enter into a discussion with him ...

MR. DUVAL
Right.

MR. STAGG
... with you and the chairman.

MR. DUVAL
Go ahead, Mr. Stagg.

MR. STAGG
We are discussing either legally or illegally in the executive branch, the attorney general, and we are going to continue to, because we differ with the judiciary committee that this man is a part of the executive branch, even though he may appear in Article 7. He shall, if we are not

5

MR. STAGG (cont'd)
overruled by the whole convention be a part of the executive branch, as one of the heads of the departments of the executive branch. It has come to my attention that your committee has also written an article on the attorney general and I wondered if you'd be able to share this language with us.

MR. FORGOTTSON
Well, we don't really. I don't think the committee has actually taken a vote to say that it is part of the judiciary article rather than part of the executive.

MR. STAGG
Well, Billy Guste wanted to be too generous, he wanted to be out there in Article X, as a ...

MR. FORGOTTSON
Right. Well, we didn't ever ...

MR. STAGG
... fourth department of government, and I don't think that's right.

MR. FORGOTTSON
I think that the way the committee is going along with most of these things is that we felt by the rules we are supposed to consider them, but it doesn't make any difference to us if maybe style and drafting, or whoever, wants to suggest to take it and put it in any other article. Now, he appeared before us and said, I think, pretty much the same thing before you all did, he either wanted to have his own article or he wanted to be in the judiciary.

MR. 7
I see.

MR. STOVALL
Our point is that we are going to consider it, so really our question is not, you know, that background but really what functions ... what powers and functions that you all thought out of this, given to the attorney general.

MR. FORGOTTSON
Well, if you-all would like I'll just read this section that we have ...

MR. DUVAL
Yes, please.

MR. FORGOTTSON
... it's a preliminary section.

MR. DUVAL
That's it, that's exactly what we're interest in.

MR. STOVALL
That's what we want.

MR. FORGOTTSON
Okay, first of all, "There shall be a department of justice consisting of an attorney general, a first and a second attorney general and other necessary assistants and staff. The attorney general shall be elected for a term of four years at the state general election and the assistant shall be appointed by the attorney general to serve at his pleasure." Now, "The attorney general and his first and second assistants shall

have resided in this state and been admitted to the practice of law for at least five years preceding this election. The attorney general shall attend to and have charge of all legal matters in which the state has an interest or to which the state is a party with assets and liabilities, we institute and prosecute or to intervene in any and all suits or other proceedings, civil or criminal, as shall be necessary for the assertion or protection of the rights and interests of the state. There is hereby a vacancy provision, "In case of a vacancy in the office of the attorney general, the first assistant attorney general shall perform the duties of the attorney general until his appointment is elected and qualified." Now I understand that general had taken about four questions.

MR. DUVAL
That is correct.

MR. FORGOTTSON
... power over the district attorneys?

MR. DUVAL
All we did was, we adopted a concept with respect to the real, real specific concrete thing ... I want the concept meant, that the attorney general is to supersede district attorneys in certain instances ... and we are now at the position where we have to translate that concept into specific understandable language.

MR. FORGOTTSON
We ran into that exact same problem and it was felt first of all that the provision was in the preliminary draft that Justice Tate came up with similar to the way it is now that they shall have supervisory powers over the district attorneys. This was one of the first things we struck out because they didn't want it complete power ...

MR. DUVAL
That's right.

MR. FORGOTTSON
... so, we came up with the idea that there should be specific instances where he could supersede the district attorney, but then we ran into the problem of how do you word it.

MR. DUVAL
That's right.

MR. FORGOTTSON
And we just really sort of avoided the situation by trying to come up with these general powers and everything to allow him to intervene in any suit. Then ...

MR. STAGG
Well, that's in the present constitution.

MR. FORGOTTSON
Yes.

MR. STAGG
... "shall attend to and have charge of all legal matters in which the state has an interest or to which the state is a party with power and authority to intervene or prosecute ... to institute, prosecute or intervene in any and all suits, civil or criminal, as may be necessary for the assertion or protection of the rights and interests of the state." Then the next sentence, "They shall exercise supervision over the several district attorneys throughout the state and perform all other duties imposed by law." Since Kemp against Stanley, there hasn't been a whole lot of supervision, now the new attorney general seems to be wanting to do these things and has constitutional mandate, I think, to do so.

MR. FORGOTTSON
Yes, sir. Well, the question came up in the committee about the Kemp case, in that that limited his right to come in and institute prosecution and then Sheriff Orsco brought up the problem of what happened to him, where an attorney general came in and instituted a prosecution against him without the district attorney.

MR. STAGG
Bully.

MR. FORGOTTSON
So, this is ... this is where we got this, they felt that the Kemp case didn't necessarily hold up right now so that it would give the district attorney complete power to come in and institute prosecution on his own at any time so that the committee, ... attorney general, I mean, didn't want that. The committee felt that that was sort of a, what's the use of having a district attorney if he didn't have any discretion of when to prosecute and when not to prosecute.

MR. STAGG
Well, as long as we have a federal system it's okay that we have law district attorneys.

MR. 7
Oh, come on now.

MR. STAGG
But there are some district attorneys that will not prosecute.

MR. ?
Oh, come on now, Mr. Stagg.

MR. DUVAL
Let me ask the staff something that might help us get going on this article. It might really help if we could have a copy of the language pertaining to, not the succession or the vacancy portion, but the duties ... yes, could we maybe make us each a copy?

MR. ?
Okay.

MR. DUVAL
That we can look at.

MR. STAGG
That's Section 56 of Article 7.

MR. FORGOTSON
Well we ...

MR. DUVAL
I'm talking about of his...that's right, to look at.

MR. STAGG
Alright, now did you all ...

MR. DUVAL
Their draft.

MR. STAGG
... in your draft do anything about "all attorneys for the state of Louisiana shall be under the attorney general's office?"

MR. FORGOTSON
I believe that was either in Justice Tate's preliminary draft or that was ... somebody brought that up during the meeting, I don't remember exactly, but there was something about "shall be in charge of all administrative" and "such as lawyers for all administrative boards" and agencies, something like that.

MR. STAGG
Well, I think this language, they or one of them shall attend to and have charge of all legal matters in which the state has an interest is ... has been uniformly ignored and nobody's called his hand or their hand on lawyers for cosmetology and lawyers for other matters in which the state has an interest and if they have uniformly ignored it in the past, shall we not then write language stronger than that?

MR. FORGOTSON
Well, I don't know if you-all are familiar with the last session of the legislature in '72. There were several bills introduced to give the attorney general power...or more or less put all the attorneys in the state under his supervision, which in that case I work for the legislative council, and I'm an attorney, so that would have put me under his supervision which I think would have been sort of a conflict of interest when we're talking about the attorney general and the legislature. So, that was just one of the problems and I ...

MR. STAGG
Well, we had some language in there, "except otherwise ... as otherwise provided by law."

MR. FORGOTSON
Well, we didn't have that in our draft and this wasn't proposed, I don't think, before the legislature and it also would have meant that the governor's general counsel and any attorneys for him would have been under the supervision of the attorney general.

8

MR. STOVALL
The legislative council, well that's subject to the legislature, right?

MR. FORGOTSON
Yes, we work for the legislature.

MR. STOVALL
Now, I think that if you define the attorney general's office as being in the executive department, then you can have in writing, I mean language to the effect that he would have supervision over all attorneys in the executive department.

MR. ANZALONE
Then what are you going to do with the supervision over the district attorneys who are in the judiciary?

MR. STAGG
Good point, Joe. "Except as otherwise provided by law" is the way you prevent that. You let the legislature, if they want to, go back to giving a lawyer to this agency or that agency.

MR. DUVAL
Could we have a copy of that so that we can ... If somebody could give us a copy. We're going to have to get something before us here.

MR. FORGOTSON
Well, let me get you another draft, too. One we were working with of Justice Tate's that might help you ...

MR. DUVAL
Alright.

MR. FORGOTSON
What we took ours from.

MR. DUVAL
Alright.

MR. FORGOTSON
It's a little more on what you-all are trying to do.

MR. DUVAL
I think, there are only two things we're having a problem with and we have to reduce it to language, one, the state attorney problem, whether or not all state attorneys are to be a part of the office of the attorney general and how we word it, and also the superseding problem.

MR. STAGG
May we request a five minute recess?

MR. DUVAL
Yes, sir.

RECESS

MR. DUVAL
Gentlemen, we have before us the proposed draft by the judiciary committee and another draft that I'm not sure...could you tell me the origin again of ...

MR. FORGOTSON
Alright, this is from the constitutional revision commission ... the small ...

MR. STAGG
Where is the other draft you spoke of?

MR. DUVAL
Oh, you didn't get the other draft?

MR. FORGOTSON
Right here.

MR. STOVALL
Make us a copy of that too.

MR. FORGOTSON
Of this one? Yes, sir. And in this one they say "they shall exercise supervision over all attorneys representing any executive or

9

MR. FORGOTSON (cont'd)
administrative agency of the state and the several district attorneys throughout the state and shall perform all other duties imposed by law." I think this was the language you-all were working with, at least as far as the other attorneys in the state.

MR. DUVAL
I noticed that in the draft that was adopted, that is proposed by the committee that they use ... basically in the matter of superseding, they use basically the same language that's used in the present constitution.

MR. FORGOTSON
Yes.

MR. DUVAL
Now I think the language in the present constitution is eminently clear. To me it's very clear. I think the Kemp case ...

MR. STAGG
The Kemp case was an aberration.

MR. DUVAL
That's right, it obviously is. Don't you think ...

MR. STAGG
Because Earl ... because Huey Long, no, Earl Long ... Bolivar Kemp ...

MR. ?
He was a political ...

MR. STAGG
... was a political enemy of the district attorney who would not prosecute a man carrying a gun who was a friend of another politician and Mr. Stanley and Mr. Kemp went to court about who is boss of his office. And because of all of the fulsome political implications of it, you ought to read "Fifteen Southern Second" beginning at page 1, Kemp against Stanley reeks with political reasoning. And that's why the hell it came to pass. So let's not be governed by Kemp against Stanley; I don't think it's good law.

MR. DUVAL
And another thing I think we can do is if this language is clear, is to specifically put in our comments that it's the clear intent to overrule that decision.

MR. STOVALL
This is shattering and disillusioning to me that political consideration should have an influence on legal judgment.

MR. DUVAL
It's a rare occasion, Reverend Stovall.

MR. STAGG
Reverend Stovall, your mental processes in that regard are yet in their swaddling clothes.

MR. DUVAL
Gentlemen, I would certainly entertain ... I'd like to make a motion but since I can't, I'd like to have ...

MR. ?
Well, can we, you know we did this in the full committee to give Tom the right to do that and I think we should do the same thing here, especially in the committee of four, if you make the right motions.

MR. DUVAL
Well, I can't guarantee that, but I think we are going to have to get something as a point of departure. I think, as I correct in stating, and please, individually correct me if I'm wrong, that we do agree with the concept that the attorney ... that all state attorneys shall be part of the attorney general's office however with a proviso giving the legislature the right to make other ... to legislatively assign other attorneys to a specific board. Is that ... an I correct in saying that?

10

MR. ?
This paragraph in this Section 41, it says exactly that, it says, "they shall exercise supervision over all attorneys representing any executive or administrative agency of the state and the several district attorneys throughout the state and shall perform all other duties imposed by law." In other words, this gives the district attorney, I mean the attorney general, as I understand it, the power of being "the buck stops here", so to speak.

MR. STOVALL
Mr. Chairman, I like that ... this language in 41 very much and if it would be in order I would go along with Joe that we designate Mr. Stagg to ...

MR. STAGG
Watch out, Reverend.

MR. STOVALL
... to write this article for us.

MR. DUVAL
Well, I tell you what, I'd like to do it right, I'd like to get a draft of that article right here and now. I'd like for us to do it and I think we can; I think we have enough available information on it to draft an article.

MR. STAGG
I'd like for us not to bog down in a subcommittee of a subcommittee, Mr. Chairman, with all due respects to my Reverend friend.

MR. STOVALL
Okay, okay, let's write it then.

MR. STAGG
Does there need to be anything in here about the necessity of the attorney general to render opinions? I guess not.

MR. DUVAL
I think, Mr. Stagg, I think we can do ... I think we also ought to have a provision, "and other duties as provided by law." And he's certainly going to have some legislative duties perhaps that the legislature can enact, because we can't cover them all. I think we have to state the basic general idea of what the attorney general does in the constitution.

MR. FORGOTSON
Can I just point out one thing that came up in my committee? The wording is a little bit different on this first part here. They had, "as they may deem necessary," and we changed it to "shall be necessary," so it wouldn't exactly, at least the committee felt that that word would change it so it wouldn't just be in a whim, there had to be some, certainly the court might have to decide, but it's different between, "shall be necessary," and "may deem," because he may deem it in his own mind and there's no interpretation involved.

MR. DUVAL
Well, there'd be a mandamus proceeding to compel him to do it, that would be the only mandatory thing I guess maybe that might ... That "shall", that mandatory ...

MR. FORGOTSON
Well, I think it was, probably is a different ... the opposite of that where he would intervene too much. And he can intervene any way he deemed necessary. He deemed, well that would give him pretty much discretion rather than "shall be necessary for the assertion of the state," this would limit his intervention to a certain extent. Rather than him just going around and getting involved in all matters. I don't know whether you-all, which way you-all want it, but that was just something that came up in our drafting of it and it was a change.

MR. STAGG
Who has the language that was submitted to us by the attorney general? I'm looking through my files and I'm, either I've got a lousy set of files...

MR. DUVAL
I have that file but I left it in my room because I couldn't carry them all.

MR. STAGG
Where is Gene Turner?

MR. ?
I'll get him. Where is ...

MR. STAGG
I would like to have ... I'm still looking for it.

MR. STOVALL
Tell him we'd like to have the language that was submitted by the attorney general himself. Tom, do you like this language that turns up in 41?

MR. STAGG
I think it's damned ... it covers it. I was looking for further language from the project but I just, like I say, I'm almost struck dumb by not having the damned thing.

MR. FORGOTSON
Can I just point out one other thing, too? Mr. Wood had mentioned this to me just a few minutes ago and we've changed in our committee. In the first words of the second sentence, "They or one of them shall attend to," and this would give each one of his assistants the same rights as the attorney general. Other "they serve at his pleasure" any one of the assistants could go in and have supervision over all of the attorneys etc.

MR. STAGG
Yes, and that would make it clear that if he wanted to send his chief criminal assistant in to supersede as they do, as they did in the case of Osaie Brown's case against somebody here in Baton Rouge or the state's case against somebody here in Baton Rouge could then be prosecuted by the assistant, Mr. Yelverton, or whoever he was.

MR. FORGOTSON
Well I don't think ... that wasn't the problem. I think they could still do that, because they are his assistants they do whatever he wants. But, I think, it was pointed out that one person should have the power, this is delegating to an assistant, who's not even elected, the exact same powers as the attorney general.

MR. STAGG
Right.

MR. DUVAL
And I think we deal with assistants in actually I think in any other article; I think right here we're dealing with the attorney general. I've got some proposed language that I'd like to throw forth and see what you-all think about it.

MR. STAGG
Okay.

MR. DUVAL
Listening to the discussions and let's see if I can get this, you-all listen carefully and see if I can get this, have it make sense. And I'll do it ... I'll read it slowly, see what you-all, if this generally embodies the concepts we've talked about. "The attorney general shall be the chief administrator of the department of ... the administrator of the department of justice and shall have charge of all legal matters in which the state has an interest. All state attorneys are to be a part of the office ...

MR. STOVALL
Just a minute, a little slower on that ...

MR. DUVAL
Alright, I'll leave that out. Alright.

12

MR. STOVALL
"Administrative department of justice" and what?

MR. DUVAL
"And shall have charge of all legal matters in which the state has an interest. The attorney general shall have the power and authority to institute and prosecute or to intervene in any and all suits or other proceedings, civil or criminal, as shall be necessary for the assertion or protection of the rights and interests of the state. The attorney general shall exercise supervision over all attorneys representing any executive or administrative agency of the state and the several district attorneys throughout the state and to perform all other duties imposed by law."

MR. STAGG
Now, that's generally in accordance with Section 41.

MR. DUVAL
That is correct.

MR. STAGG
But I would like to raise the question, would everyone, would you get your 41 before you, Jim, and count down right here? Count down 1, 2,

1, 4, 5, 6, 7, in the last line, "that he has the authority to institute and prosecute or to intervene in any and all suits or other proceedings, civil or criminal" and then you say, "as shall be necessary for the assertion or protection of the rights and interests of the state."

MR. DUVAL
That's right.

MR. STAGG
You changed that language from ...

MR. DUVAL
That ... they may be ...

MR. STAGG
... discretionary on the part of the attorney general, and you raise the point which a good defense attorney might raise, "is his intervention necessary for the assertion or protection of the rights and interests of the state?" And that raises an essential defense to the presence of the attorney general, saying, "Well, Mr. ... Your Honor, it's not necessary that he be here for the protection of the state." If it was discretionary or within the power of the attorney general to come into the case if he deemed it necessary, then nobody could throw him out by looking back in the constitution, reading that there is a question whether he shall be necessary, his intervention is necessary or not.

MR. DUVAL
I understand your point and I think it's a good point, but one thing troubles me: If we give him the sole discretion in the event it was a blatant failure to do that, if not in a criminal case but in a civil matter, just a blatant bit, would there be any compulsory procedure to compel the attorney general to take action since it's within his sole discretion to begin with?

MR. STAGG
You raise as many problems with one language as you do with the other. You seek to mandate ...

MR. DUVAL
What way?

MR. STAGG
... him as a citizen, for instance ...

MR. DUVAL
That's right.

MR. STAGG
... to enter a particular suit if he didn't want to do it voluntarily.

13

MR. DUVAL
Say for some reason that wasn't a good reason; he didn't do it.

MR. ANZALONE
What would be wrong with the substitution of the word, "is" for "shall be"?

MR. STAGG
"As is necessary"? That has a pleasant neutral flavor to it.

MR. DUVAL
Yes, I think that's why Mr. Anzalone suggested it.

MR. STAGG
It has a neutral flavor, "as is necessary", then it becomes a question of judgment that could be passed on by a court.

MR. DUVAL
I think that's ...

MR. STAGG
It's permissive but not mandatory.

MR. DUVAL
It's palatable to me.

MR. STAGG
Mr. Anzalone.

MR. DUVAL
Sir? Why don't we, do you-all have any objection to referring to the attorney general as the administrator of the department of justice?

MR. ANZALONE
I have great objection to even mentioning the department of justice in this article, sir.

MR. DUVAL
Other than that, do you have any objection?

MR. STAGG
Other than that, Mrs. Elinson, how was the play?

MR. DUVAL
Does anyone have ...

MR. STAGG
If you really want to put us, so ...

MR. DUVAL
Does anyone have any substantive objections?

MR. ANZALONE
Does anyone have any germane objections?

MR. STAGG
That a boy.

MR. DUVAL
So you like that, huh? Do you think that ...

MR. STAGG
Our absent brother isn't here to object.

MR. ANZALONE
Why do we have to ... why is it inherent in this article that we even mention a department of justice? Could you tell me that?

MR. STAGG
It belongs in the executive branch.

MR. DUVAL
Also the committee passed on the concept that the attorney general would be the department of justice so we're bound by that ruling.

14

MR. ANZALONE
There is nothing that is going to ...

MR. DUVAL
You could submit a minority report, of course.

MR. ANZALONE
Just one, that's all.

MR. DUVAL
I think we have before us now, gentlemen, I'm not sure what the ... yes, I see, we have the proposal which is ...

MR. STAGG
CCRS 38.

MR. DUVAL
That's right.

MR. STAGG
Proposed by Mr. Vick, ...

MR. DUVAL
Mr. Vick.

MR. STAGG
... who is an assistant attorney general.

MR. DUVAL
Now I don't think ...

(End of Side 1)

15

MR. DUVAL
... "prosecute or intervene in any suit or other proceeding it may deem necessary for the protection of the state, its agencies or its citizens. The department of justice shall supervise the district attorneys and shall perform other duties imposed by law."

MR. STAGG
Boy, that is scrawny language but it covers it.

MR. ANZALONE
What are you reading from, Stan?

MR. DUVAL
I'm reading from Section 3, which I think is what deals with the subject matter which this committee is bound to come up with a draft on. Now, this language does not go into the executive boards, it says "direct all legal matters in which the state has an interest." Now, the word "direct" may ...

MR. STAGG
That may have some magnitude, we have here, have in 41, "have charge of all legal matters in which the state has an interest." And I think that, "it shall direct all ... the department of justice shall direct all legal matters." I think that gives us that leeway we were looking for for departments which the legislature may want to invest with a lawyer of their own because of the necessities of some expertise in various fields of the law.

MR. ANZALONE
Actually, I might point out the way 41 reads, 41 certainly implies that these agencies can have their own attorney very clearly, it merely says that they've got ... the attorney general can come in and assert his eminent rights but it doesn't take away the right of the agencies to

have their own attorneys. It merely said he's subject to the attorney general. Yes, sir.

MR. FORBOSTON

This is only one thing that was brought up, I know when this was discussed in the legislature and I don't know whether this is valid or not, but they said that under this provision that they thought that the attorney general could come in if he wanted to take an attorney from some administrative agency, say the highway department or something, and have him go try a case for him or something like that then he could do that or write an opinion or whatever, and there was a suggestion at that time that, too, that all of the attorneys would be in the department of justice as special counsels or whatever and as an administrative agency need an attorney for a particular thing he would assign one to him either for a particular project or for a particular time. But they would all work for him and be paid under ...

MR. STAGG

He could harass those lawyers unless they work for him. If he supervised Phillip Jones, who is the general counsel of the highway department, to pick a name out of the hat, and as his supervisor assigned him to some job of examining the minutes of the lower lafourche levee district, that would be an harassment assignment designed to put Mr. Jones back on the street. And we don't want that to happen, but I don't want there to be a proliferation of lawyers, 70 in number now, to work outside the department of justice as lawyers for various agencies. We ought to be able to come up with language to accomplish the general theory that we've put down as a concept that the lawyers of the state would be in the attorney general's department.

MR. ANZALONE

Mr. Stagg, why pick on the lawyers? If we're going to leave something up to the legislature and the legislature decides that they want an attorney for the cosmetology board, why should we be restrictive in the constitution to say that they can or cannot have it.

MR. STAGG

Mr. Anzalone, I agree that a constitution that we are drawing ought to have in it permissive language or directive language to the legislature to do such things.

16

MR. ANZALONE

Yes, sir.

MR. STAGG

That prevents us frequently from having two men. I agree that "the legislature or as otherwise provided by law," that kind of language is the kind of language that's going to build the legislature rather than to destroy it.

MR. DUVAL

Gentlemen, may I read some other proposed language and sort of ... again I'd like your comments and maybe we, as a point of departure, again I think listening to the discussion may be of some assistance.

MR. STAGG

Would somebody please tell me where Dr. Tarver went?

MR. ?

Do you want him.

MR. STAGG

No, no, I just want to know where he went.

MR. ?

He's upstairs.

MR. DUVAL

He indicated that he had some other things he had to do.

MR. STAGG

Oh, I'm sorry, I just had a question for him.

MR. DUVAL

May I read this language, gentlemen, and then you-all can cut it up if you wish? "The attorney general shall be the administrator of the department of justice and shall have charge of all legal matters in which the state has an interest. All state attorneys are to be a part of the office of the attorney general except as otherwise provided by law. The attorney general shall have the power and authority to institute and prosecute or to intervene in any and all suits or other proceedings, civil or criminal, as is necessary for the assertion or protection of the rights and interests of the state. The attorney general shall exercise supervision over the several district attorneys throughout the state and shall perform all other duties imposed by law."

MR. STAGG

After the words "interests of the state" would you mind interposing the words, "its agencies or its citizens..."

MR. DUVAL

That would be ...

MR. STAGG

... in the draft, because we may have some pollution suits or some consumer protection suits or some citizen type problems that he would then, it's not particularly the interest of state government but of the citizens it is?

MR. DUVAL

Mr. Anzalone.

MR. ANZALONE

Yes, sir. I would propose language basically such as this: "The attorney general shall have the power and authority to appoint, supervise, and prosecute or to intervene in any and all suits or other proceedings, civil or criminal, as is necessary for the assertion or protection of the rights and interests of the state." This gives him the authority as attorney general to ... one thing except. The attorney general is authorized to exercise supervision over all district attorneys, except an executive or administrative agency of the state and the several district attorneys throughout the state." Another change, not authorized to do it when he can fit, because the buck has got to stop somewhere, somebody has got to authorize supervision over somebody. "He shall perform all other duties imposed by law." Which gives the legislature some clear-cut grounds to give him additional duties insofar as his particular office is concerned. The next thing, I'm not sure how

17

MR. ANZALONE (cont'd)

and looking at the thing, he is to exercise supervision over all attorneys representing any executive or administrative agency of the state which attorneys are going to be appointed solely by the legislature. So it takes ... It does not give him the full control over the several ... all of the attorneys that work for the state, but it does give him supervision over them.

MR. DUVAL

Mr. Anzalone, can I ask you a question?

MR. ANZALONE

Yes, sir.

MR. DUVAL

Now do you ... what in there says that those people are going to be appointed by the legislature?

MR. ANZALONE

What?

MR. DUVAL

Yes, when those attorneys are going to be appointed by the legislature?

MR. ANZALONE

The mere fact that they are going to be employed.

MR. DUVAL

Well, what's to prevent that board from just retaining an attorney of its choice?

MR. ANZALONE

The budget.

MR. DUVAL

I mean you're saying that by the legislature appropriating the funds for this will have ... they are not going to appoint them directly but they will control the funds of the agency, is that what you are saying?

MR. ANZALONE

Or I'm going to say that the legislature can take it upon itself to say, for instance if the cosmetology board would come up and say, "We want an attorney" or they were to hire one or something like this, the legislature is going to have absolute control over whether they can do it or not.

MR. DUVAL

In other words, you disagree with the language which I have here, we are basically in complete agreement except for this language. I have "all state attorneys are to be a part of the office of the attorney general except as otherwise provided by law."

MR. ANZALONE

Right.

MR. DUVAL

You would prefer to have the attorney general have supervisory power all attorneys that are retained by state agencies?

MR. ANZALONE

Right.

MR. DUVAL

Not precluding the state agencies from retaining their own attorneys if they can, via the legislature ...

MR. ANZALONE

Right.

MR. DUVAL

... but having the attorney general have ultimate supervision over them.

MR. ANZALONE

Right.

18

MR. DUVAL
I understand. Would anyone like to propose a motion?

MR. ANZALONE
Now, my point for making this statement is simply this, if we get into the question that, say that the executive counsel to the governor, and this is far removed unquestionably, but there is a possibility the executive counsel of the governor were to do something, and I have no idea in the world what it would be, it would do something that would be detrimental to the state, but yet it would be what the governor would want him to do, well this is just a part of this system of checks and balances to have somebody come in and be able to supervise somebody.

MR. DUVAL
The chair would certainly entertain some motion.

MR. STAGG
I would like to see it, I'd like to see it typed up during the morning and presented back this afternoon so we can contrast the two and adopt one or the other.

MR. DUVAL
Alright.

MR. STAGG
Usually they have some mutually exclusive provisions, so ...

MR. STOWALL
If we are going to follow that procedure I would like to ...

MR. DUVAL
Yes, sir. Reverend Stovall.

MR. STOWALL
There's nothing here that says that the attorney general is responsible for enforcing the law of the state.

MR. DUVAL
That ... excuse me, go ahead, sir.

MR. STOWALL
Shouldn't that be included, you know, I's ...

MR. DUVAL
The law ... well, I think that the ... I don't know if that's really his duty or not. Didn't we say that the governor shall have the executive authority?

MR. STOWALL
You don't think the attorney general has any responsibility in this if he is under the executive branch?

MR. STAGG
Well, it's the clear authority of the governor to execute the laws of the state.

MR. DUVAL
I think we've already given that authority to the governor. Now it's a question when you say "enforce the laws," the attorney general is the power we're giving him, I think, basically we discussed, certainly gives him the power to make sure that the law, that he can intervene, it gives him certain implicit powers, although the supreme authority is vested in the governor. I think if you put specific language like "he shall enforce the law" you might be mitigating the powers that we have already given the governor.

MR. ANZALONE
Yes.

MR. STOWALL
Alright let me make another point here that Joe does not include in his statement the language there that the district attorney has to protect, you know, the agencies or the citizens ...

19

MR. DUVAL
The attorney general, you're talking about?

MR. STOWALL
Yes, the attorney general. Now in Tom's language he, you know ...

MR. DUVAL
Right.

MR. STOWALL
I personally feel that there should be something in here that would give the attorney general, you know, not only to represent the state, you know, as such, but also its agencies and its citizens.

MR. DUVAL
Mr. Anzalone, do you have any objections to that basic concept?

MR. ANZALONE
Not at all.

MR. FORGOTSON
Could I just ask one question?

MR. DUVAL
Yes, sir.

MR. FORGOTSON
Just something I thought about. What if a citizen wanted to file suit because of something the state had done to him or if somebody the state was connected and he came in and mandated the attorney general to handle his case for him, a civil suit.

MR. STOWALL
Now, I thought of that also as a possibility. You attorneys will have to answer that.

MR. FORGOTSON
If he's required to protect the citizens' rights, then if I have a right violated ...

MR. DUVAL
You might be having a lawful ... an indigent defenders' panel there, a prosecutor's panel.

MR. FORGOTSON
That's what I'm thinking about.

MR. ANZALONE
Give them something to do.

MR. STOWALL
Something to think about.

MR. DUVAL
Give them a lot to do as a matter of fact. If I may make a suggestion, I think we have two basic proposals and I'd to ... it would be helpful if they were typed up and all of us could look at them. However for the secretary to get them typed up she's going to have to know what they are. I've got something that I'm sure you can't read right here. Mr. Anzalone, do you think you could, are you writing up something for the secretary?

MR. ANZALONE
I'm getting mine now.

MR. STAGG
Judy will do it.

MR. STOWALL
Let me ask a question.

MR. DUVAL
Reverend Stovall.

MR. STOWALL
I feel out of my class here today with the ...

20

MR. DUVAL
Don't, don't, don't. You have two attorneys and a lawyer, Reverend, I'm on your side.

MR. STOWALL
My question is, you know, how can the attorney general protect the citizens' rights without being put in the position that ... what is your name again?

MR. FORGOTSON
C. B.

MR. STOWALL
C. B., yes, that C. B. just mentioned. Now this is my question and I'm not ...

MR. STAGG
Actually he's the lawyer for the state government, the executive agencies of the government, he's not really the lawyer for the man on the street. He will have, he does have and took unto himself, or tried to, the consumer protection business that the governor siphoned off into part of his own office. In the attorney general's office in Shreveport there's a consumer protection division with an office and a staff, so he's actually performing that function in the consumer relations field now, whether that's entirely within the four corners of what we've talked about, it's what attorneys general do. Look in that book called, "The office of the attorney general", there is a section in there on consumer protection. Actually we can find attorneys general all over the country have enormous consumer protection staffs.

MR. DUVAL
Mr. Stagg, are you suggesting that the language that you mentioned might be cumbersome and that the power is implicit?

MR. STAGG
I think the power is implicit in the office.

MR. DUVAL
What we're going to do, gentlemen, if this is satisfactory to the committee, is we're going to have these two basic proposals typed up and we can look at it after they're typed up, is that satisfactory to you-all?

MR. STAGG
Eminent, Mr. Chairman.

MR. DUVAL
Would anyone else like to discuss any other facet of the office of attorney general before we get these two proposals typed up?

MR. STOVALL
I would like to see something in there that the attorney general is responsible to maintain and protect the rights and interests of the people.

MR. FORGOTSON
Reverend Stovall, the state is the people.

MR. STOVALL
The state is the people.

MR. FORGOTSON
And when he protects the interests of the state that is saying the same thing.

MR. STAGG
I think he is right. I think you've got to separate it in your mind, the government and people ...

MR. STOVALL
I realize that.

MR. STAGG
I don't think that's quite right.

21

MR. STOVALL
Except that what you-all are saying doesn't work, you know, take the whole question of civil rights, see. It just doesn't work that way. And I think that the state has a right to protect, in other words if we are going to put in the constitution a bill of rights...

MR. DUVAL
Reverend Stovall, of course that is implicit in the first sentence of his duties here, "The attorney general shall have the authority to institute and prosecute or to intervene in any and all suits or other proceedings, civil or criminal, as is necessary for the assertion or protection of the rights and interests of the state."

MR. FORGOTSON
I think his problem is, he can't intervene to protect one person, but when it's the interest of all of the people then he should intervene, but I don't think he should intervene because one person of the state has a problem.

MR. STOVALL
Yes.

MR. STAGG
I would think, you know ...

MR. STOVALL
Our interpretation of it in general practice is just the opposite, though.

MR. ANZALONE
Stan, I think we do have this point to consider too, Reverend Stovall, is that there are many attorneys available to the citizens of the state of sufficient competence to represent their interests-- for a slight fee, of course. I understand what you're saying but I, Mr. Stagg, you had a comment?

MR. STAGG
Let's place in your mind's eye a contested rate case. Let's not make it the telephone company, because ...

MR. DUVAL
Mr. Dupuy, out of deference to Mr. Dupuy.

MR. STAGG
So we have a regulatory agency suit about Southwestern Electric Power and they're before the public service commission and the attorney general then being the supervisor of all the lawyers for the state has something to do, maybe we'll have to consider what effect that would have in the public service commission when the attorney general will be intervening on both sides of the case, one for the citizens who complain against the rates and one for the commission, so we've got to be very careful about this. And remember that. Now we've got Mr. Anzalone's language ...

MR. STOVALL
Mr. Chairman, I move we defer any further discussion on this until we get these reports from the staff, these copies of proposed legislation.

MR. STAGG
He wants to move on to the next item while these ...

MR. DUVAL
Right, I just...Mr. Anzalone, do you have your language firmed up?

MR. ANZALONE
Yes, sir.

MR. DUVAL
Can you give that to Miss Cooper to type?

MR. ANZALONE
I most certainly will, Miss Cooper.

MR. DUVAL
Gentlemen, I think that we will have something to look at as the attorney general when we get that paper. And that's all we can do with the committee, we can move it ...

MR. STAGG
Mr. Chairman.

MR. DUVAL
Yes, sir, Mr. Stagg.

MR. STAGG
I have a recollection, while July is still here, I have the recollection that we had a letter directed to this committee from Billy Gatz, that had some language in it, and I can't find that damn letter in anything I brought with me. Would you see in talking with Dr. Tarver if such a letter does exist, or am I dreaming it?

MR. DUVAL
It does.

MR. STOVALL
It does, I have that, unfortunately I didn't bring it, I couldn't carry everything.

MR. STAGG
Would you deputize somebody to bring that to me if it can be found expeditiously?

MR. DUVAL
At this time, gentlemen, I think we ...

MR. STAGG
We're on the secretary of state.

MR. DUVAL
That is right.

MR. FORGOTSON
I'll come back if you-all want me to.

MR. DUVAL
I certainly thank you, sir, very much. Appreciate it, C. B.

23

MINUTES

Minutes of the meeting of the Committee on
Executive Department of the Constitutional
Convention of 1973

Held pursuant to notice mailed by the Secretary
of the Convention on June 6, 1973

LSU Law School, Baton Rouge, Louisiana
Thursday, June 14, 1973, 9:00 A.M.
Friday, June 15, 1973, 9:00 A.M.
Saturday, June 16, 1973, 9:00 A.M.

Presiding: Tom Stagg, Chairman of the Committee on
Executive Department

Present:	Absent:
Nack Abraham	Camille F. Gravel, Jr.
Avery C. Alexander	Absent on June 14, 1973
Joseph E. Anzalone, Jr.	
Greg Arnette, Jr.	
Emmett Asseff	
Hilda Brien	
Moise W. Dennerly	
Stanwood R. Duval, Jr.	
Camille F. Gravel, Jr.	
Tom Stagg	
James L. Stovall	
Elmer R. Tapper	

* * *

The Subcommittee on Powers of Governor, Qualifications,
Term of Office, Salaries presented its report. Each section

was thoroughly discussed and the following motions were offered:

Section 1 (A) Mr. Abraham offered the motion to adopt. The staff was directed to clarify the comment. Also, the staff was requested to clarify if the five (5) elective offices are included in the twenty (20) departments.

(B) A substitute motion was offered by Mr. Dennery that section 1 (B) be tabled until the committee reviewed the subcommittee report CC-3. Mr. Duval seconded and the motion was approved.

Reverend Stovall offered a substitute motion to change the language in Section 1 (A) by deleting "as provided by law" on line 13, and on line 12 change "such" to "all".

When asked "Where does the all go?", Mr. Duval answered,

Dr. Asseff offered the substitute motion that on line 12 after "treasurer" include "comptroller, register of land office, commissioner of agriculture, commissioner of insurance, custodian of voting machines..." The motion failed with a vote of two in favor and six against, with Dr. Asseff and Mr. Anzalone voting in favor of the motion. Reverend Stovall offered the motion to close debate and call for the question. The motion carried with a vote of nine in favor and two against the motion with Dr. Asseff and Mr. Duval voting against the motion.

Mr. Dennery offered the substitute motion that on line 6 the word "state" be inserted before "government."

2

The motion carried.

Section 2. Qualifications. Mr. Abraham offered the motion to adopt Section 2. Several motions were offered and withdrawn. Mr. Dennery offered the motion to recess. The motion carried and the committee recessed at 10:00 a.m. The committee reconvened at 10:15 a.m. resuming the discussion of Section 2.

Mr. Anzalone offered the substitute motion that the word "also" on line 8 be deleted and "as an additional qualification" be inserted in its stead. The substitute motion failed with a vote of 8 in favor of the motion and 2 against.

Mr. Abraham offered the substitute motion that "in addition to the above qualifications" be inserted on line 8 before "the attorney general". The substitute motion failed with a vote of 5 in favor and 3 against the motion.

Mr. Dennery offered the motion that the words "shall also" on line 8 be reversed to read "also shall". The motion was adopted with a vote of 7 in favor and 2 against the motion.

A substitute motion was offered by Reverend Stovall that Section B read "The attorney general also shall have

been admitted to the practice of law in this state for at least five years preceding his election." The substitute motion failed with a vote of 3 in favor and 6 against the motion. Dr. Asseff voted against the substitute motion. Mr. Anzalone moved to call the question. The substitute motion carried with a vote of 6 in favor and 3 members abstained. The question was called on the above motion.

3

Mr. Abraham moved that Section 2 (B) be reconsidered to perfect the language. The motion carried unanimously.

Section 3. Elections and Terms. Mr. Abraham offered the motion to adopt Section 3.

Mr. Anzalone offered the substitute motion that on line 34 the word "members" be substituted in lieu of "representatives" and on line 35 "of" be substituted for "in". The substitute motion carried with a vote of 6 in favor and 3 against the motion.

Mr. Dennery offered the substitute motion that on lines 1 and 2 the words "or acting governor" be deleted. The substitute motion carried.

Reverend Stovall offered a motion that on line 1 of page 3 the words "or but for resignation would have" be deleted. The motion carried with a vote of 8 in favor, with Mr. Arnette opposing the motion.

Mr. Arnette offered a substitute motion that lines 3 and 4 read "consecutive terms shall not serve as governor during the next succeeding term." The substitute motion failed with a vote of 3 in favor and 5 opposing.

Mr. Abraham offered the motion to approve Section 3(A) as amended. The motion carried.

Section 3 (B). Mr. Abraham offered the motion to strike "by the election commissioner" on line 6, page 3. The motion carried.

Reverend Alexander offered the motion that on line 5 the word "offices" be changed to read "officers". The motion carried.

* * *
4

Section 5 (C). Mr. Abraham offered the motion to adopt. Mr. Duval offered the substitute motion that the provision read somewhat as follows: "All department heads shall provide the governor with reports and information in writing or otherwise requested by him on any subject relating to their respective departments, excepting matters relating to investigation of the governor's office." The substitute motion carried with a vote of 6 in favor and 2 against. Mr. Dennery and Dr. Asseff opposed the substitute motion.

Section 5 (D). Mr. Abraham offered the motion to

adopt. Mr. Duval offered the substitute motion that the title be changed to "Operating Budget" and there be a section entitled "Capital Budget". Also, insert "annual operating" on line 8 before "budget"; insert "on or before the first day of each annual session" after "legislature" on line 9; and strike "law" on line 9 and insert "statute". The substitute motion carried with a vote of 5 in favor and 3 against the motion. Dr. Asseff opposed the substitute motion.

The staff was directed to develop a Capital Budget provision. That provision is attached hereto and made a part of these minutes.

Section 5 (E). Pardons. Mr. Abraham offered the motion to adopt. Mr. Anzalone offered the substitute motion that the governor shall have the power to grant reprieves after conviction and pardons for all offenses; such authority may in addition be otherwise delegated as provided by statute.

7

The substitute motion carried with a vote of 3 in favor and 1 against the motion.

Mrs. Brien offered the substitute motion that after the word "offenses" on line 23 the words "and may delegate such powers subject to procedures as may be prescribed by statute." be inserted. The substitute motion failed with a vote of 2 in favor and 4 against.

Section 5 (F) and (G). The staff was directed to check the subject matter differences of the Committee on Legislative Powers and Functions against that of the Committee on Executive Department and the section would be discussed at a later time.

Section 5 (H). The committee agreed that the title should be "Appropriation Bills". It was suggested that the word "distinct" on line 32 be stricken and "line" be inserted. It was then decided that the provision would be discussed at a later time.

Reverend Stovall offered the motion to recess. The motion carried. The committee recessed at 5:15 p.m.

The committee reconvened on June 15, 1973, at 9:00 a.m.

Discussion resumed on Pardons. Reverend Stovall offered the motion to delay discussion until the afternoon session when Mr. Gravel would present a suggested provision. Dr. Asseff seconded and the motion carried.

Section 5 (F). Signature on Bills. Mr. Abraham offered the motion to approve.

Mr. Gravel offered the motion that on line 35 the word "hour" be deleted and "time" be inserted; on line

* * *

8

Mr. Duval offered the motion to adopt as amended. The motion was unanimously carried.

Section 2. Secretary of State; Powers. Mr. Duval

offered the motion to adopt. Chairman Staggs suggested that in line 27 and 28 the words "primary and general" be stricken.

Mr. Abraham offered the motion that the word "laws" be deleted in line 31 and "statutes" be inserted. The motion carried.

Mr. Anzalone offered the motion to delete in line 28 the words "administer the", all of line 29 and 30 and "statute" of line 31. The motion failed with a vote of 2 in favor and 6 against the motion. Dr. Asseff and Mr. Anzalone were in favor of the motion.

Mr. Duval offered the motion to adopt as amended. The motion carried with a vote of 6 in favor and Dr. Asseff and Mr. Anzalone opposing the motion.

Section 3. Attorney General; Powers. Mr. Duval offered the motion to adopt. Chairman Staggs offered the substitute motion that the words "may be" be inserted on line 18 after "otherwise" and the word "law" be stricken and "statute" be inserted.

Mr. Gravel offered the motion that the following language be adopted:

"There shall be a department of justice headed by the attorney general who shall be the state's chief legal officer. As may be necessary for the assertion or protection of the rights and interests of the state, the

13

attorney general shall have the authority to:

1. institute, and prosecute or intervene in any legal action or other proceedings, civil or criminal;
2. exercise supervision over the several district attorneys throughout the state, and
3. for cause, supersede any attorney representing the state in any civil or criminal proceeding.

He shall have such other powers and perform such other functions as may be provided by statute."

The motion carried with a vote of 10 in favor, 1 against, and Dr. Asseff abstaining.

Section 4. Treasurer. Mr. Duval offered the motion that the following provision be adopted:

"There shall be a department of treasury which shall be headed by the state treasurer who shall be responsible for the custody, investment, and disbursement of the public funds of the state. He shall report annually to the governor and the legislature one month in advance of the regular session on the financial condition of the state and shall have such other powers and perform such other duties as may be provided by this constitution or by statute." It was requested that the staff add in the Comment that retirement funds are exempt from this provision. The motion was adopted unanimously.

Dr. Asseff offered the motion to recess. The motion

carried. The committee recessed at 5:30 p.m.

The committee reconvened on Saturday, June 16, 1973, at 9:00 a.m.

Mr. Duval offered the motion that the above provision

* 14 *

Section 1 (A). Dr. Asseff offered the motion to adopt. Mr. Gravel offered a substitute motion that on line 13 the word "misdemeanors" be deleted and "malfeasance" be inserted; on line 14 that after the word "corruption", everything be deleted and "or for gross misconduct" be inserted. The substitute motion carried with a vote of 6 in favor with Dr. Asseff and Mrs. Brien opposing the motion.

Section 1 (B). Dr. Asseff offered the motion to adopt. Mr. Gravel offered the substitute motion that the last sentence of Section (B) be deleted. The motion carried unanimously. Other amendments made were as follows: on line 22 insert "in his absence" after "or"; and on line 22 after "justice" strike "of" and insert "designated by".

Decision on Rate Proposal. Mr. Gravel offered the motion to reconsider. The motion carried with a vote of 5 in favor and 2 against. Discussion ensued and the language earlier noted in these minutes was adopted.

Pardons. Mr. Gravel offered the motion to adopt the following language:

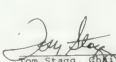
"Except in cases of conviction upon impeachment, the governor may reprieve, may grant commutation of sentence, and may pardon those convicted of offenses against the state and may remit fines and forfeitures imposed for such offenses. Other remedies for those convicted of offenses may be provided by statute". The motion carried with a

21

vote of 6 in favor of the motion and Dr. Asseff abstaining.

A copy of the final proposal submitted by the committee is attached hereto and made a part of these minutes. All other references are also attached and made a part of these minutes.

Mr. Gravel offered the motion to adjourn. There being no further business, the committee adjourned at 8:15 p.m.


Tom Stagg, Chairman of the
Committee on Executive
Department

OFFICIAL TRANSCRIPT
OF THE
CONSTITUTIONAL CONVENTION
STATE OF LOUISIANA
1973

COMMITTEE ON EXECUTIVE DEPARTMENT
MEETING OF JUNE 14, 15, 16, 1973

MR. STAGG
The next question before the house is on Subdivision (E) Pardons.
"The governor shall have the power to grant..."

MR. ALEXANDER
Mr. Chairman.

MR. STAGG
For what purpose does the gentleman seek recognition?

MR. ALEXANDER
Before you move from this point, I would like to move that the question of developing a capital budget would be referred to staff for report tomorrow or Saturday.

MR. STAGG
Alright. The staff is so instructed.
Next item. We are now on Subdivision (E). I shall not ask Mr. Denney to state the reason for his leaving.

MR. DENNEY
It's perfectly all right to state it, Mr. Chairman.

MR. STAGG
I don't want to state it. Thank you anyway.

MR. DENNEY
I invite you to state it under those circumstances.

MR. STAGG
I invite you to do so.

MR. DENNEY
I leave to attend a banquet that's being given in honor of the chairman of the Democratic National Committee.

MR. STOVALL
Let's see if Mr. Stagg has any more questions he'd like to ask.

MR. STAGG
I knew the answer before I asked the question. He told me what he was doing. He shared that information with your chairman.

MR. ALEXANDER
May I be excused at 4:15?

MR. STAGG
Yes, sir. Or at any time there prior to, Rev. Alexander. If you're going to that same dinner, I want to see you in your black tie.

MR. ARNETTE
You can do it on or before.

MR. STAGG
The subcommittee chairman may move the adoption of (E) if he chooses.

MR. ABRAHAM
I so move.

MR. DUVAL
Point of order, Mr. Chairman.

MR. STAGG
Speak.

MR. DUVAL
Has pardons given--wait, just let me see something. I got a little note here. I withdraw my point of order. Nothing, I withdraw it.

MR. GRAVEL
You have the absolute right, Mack, is what Stan wants to tell you.

MR. STAGG
Mrs. Michelli, would you come over here and separate the wheat from the chaff? Do we get minutes and the bill or the bill or what do we get because there's people leaving? I want them to study this stuff over-night and may I say to those of you who are left...

MRS. MICHELLI
I'd be glad to, Mr. Chairman.

MR. STAGG
You got another meeting; you're ain't going to study anything tonight.

7 I'll be up 'til midnight.

MR. STAGG
May I suggest to the other members of the committee that as you leave here today you will have in your possession the committee report of the Tapper, the Abraham and the Duval subcommittee. Would you, for me, please, make such marginal notes and such questions and such things as you--do your homework before we sit down at nine o'clock.

MR. ASSEFF
May I clarify something, Mr. Chairman?

MR. STAGG
Yes, sir.

MR. ASSEFF
I'm tired of people implying something. So far as my being, I'd like to get this clear, on Style and Drafting. I'd be glad for anyone of you to have it, that I am on it because I am representing first, the fourth congressional district and representing the Executive Committee. The Committee on Committees put us here. Now, everything that I have said and have asked you, I have asked at the request of Judge Tate who put it in writing. Of course, this committee is free to draft its proposals as it wishes, but Judge Tate did ask all of us to please inform the committee of the guidelines and to request that they follow them so that.... I may try to get off of that committee. So I just want you to know that I'm trying to do my job.

MR. STAGG
I think you need to stay on the committee, Doctor.

MR. ASSEFF
If you think I like to be here until 12:00 o'clock, why...

MR. STAGG
I know, but we think you need to be on that committee.
We are now on the motion of Mr. Abraham that Subdivision (E) be adopted. "The governor shall have the power to grant reprieves after conviction for all offenses and pardons as provided by law."
Asselt, Anzalone and Brien. Go ahead.

MR. ASSEFF
I have a question. My question is this. Does this mean that the governor will have unlimited power to grant pardons and reprieves? I assume so unless restricted by the legislature.

MR. ABRAHAM
No. The method of his providing pardons will be provided by law.

MR. ASSEFF
But I mean he does have, under this provision unless restricted by the legislature, full authority and you're really abolishing the pardon board as right now provided in the constitution. Am I correct?

MR. ABRAHAM
No.

MR. ANNETTE
Say that again now.

2

MR. STAGG
No, I don't think so, Emmett. That open language...

MR. ASSEFF
Is that later on?

MR. STAGG
That open language only refers to reprieves and pardons as provided by statutes.

MR. ASSEFF
And pardons though. And pardons as provided by law. He has pardon... the reprieves would be all right.

MR. STAGG
Can I ask you this question, Mr. Chairman of the subcommittee? Is it the intention of the subcommittee that the governor's power to grant reprieves and pardons, is that based on statutory material furnished by the legislature? Both of those things?

MR. ABRAHAM
He has unlimited power to grant reprieves and he can only grant pardons as provided by statute.

MR. STAGG
There you go.

MR. ASSEFF
Yes.

MR. ABRAHAM
This is what we're trying to say here. If it don't say that, well then it needs to be changed.

MR. TAPPER
Point of order. Mr. Duval wants to tell you something.

MR. DUVAL
What I'm saying is that the legislature--one thing is when you put this "as provided by law" thing, the legislature can take--he won't have the right one to pardon at all.

MR. TAPPER
Mr. Chairman, another point of order. This was not the intent of this committee because when this committee made its original decision... (END OF SIDE 1 OF TAPE 4)

MR. STAGG
Executive clemency. A motion was offered by Mr. Anzalone that the basic inherent power be with the governor himself to grant reprieves and pardons after conviction. The motion carried. Dr. Asselt voted against the motion. That's from the minutes where we discussed executive clemency to include pardons.

MR. ASSEFF
May I ask him a question, sir?

MR. STAGG
You may.

MR. ASSEFF
Mr. Anzalone, what change is this making in the existing constitutional provision? Now, I not saying--it was my understanding--now I admit I may be wrong, that the pardon board is provided for in the constitution and the governor can pardon only with the approval of the pardon board. Am I correct? I mean I'm just trying to get clear and I'm not questioning your provision. Yes?

MR. ANZALONE
Would you wish me to read the section in the constitution?

MR. ASSEFF
I'd love to have you read it. Yes, sir.

3

MR. ANZALONE
Mr. Chairman?

MR. STAGG
Please.

MR. ANZALONE
"The governor shall have power to grant reprieves for all offenses against the state and may, except in cases of impeachment or treason upon the recommendation in writing of the lieutenant governor, attorney general and presiding judge of the court before which the conviction was had, or any two of them, grant pardons, commute sentences and remit fines and forfeitures. In case of treason he may grant reprieves until the end of the next session of the legislature in which body the power of pardoning is vested."

MR. STAGG
Now, I didn't bring these with me, I don't think. The verbatim transcript of the governor's remarks to our committee, but if I recall what the governor said, he didn't want any part of sitting up at night reading these pardon....

MR. ABRAHAM
Mr. Chairman, may I suggest to this committee that we are not placing the sole function of pardons and reprieves within the office of the governor. We are simply stating that as the office is, it is his inherent right when he so sees fit to do it. If he never sits on a pardon board, that's fine, but if he wakes up one morning and he wants to give somebody a pardon, he doesn't have to ask anybody whether he can do it or not. He has got the constitutional privilege to do it.

MR. DENNEY
Mr. Chairman.

MR. ABRAHAM
And any other provision that can be made or wants to be made can be made.

MR. DENNEY
Mr. Duval...

MR. STAGG
Was that the intention of the subcommittee?

MR. ABRAHAM
That was the intention of that that was voted on at the full committee meeting at the last

MR. DUVAL
I have the governor's remarks merely if you are interested.

MR. STAGG
I am interested.

MR. DUVAL:

Mr. Gravel asked the question, "Governor, do you have a suggestion or recommendation as to what changes, if any, might be made with respect to pardon boards and the governor's role in giving the pardons?" The answer's quite long. Do you-all-I can read it quickly if you wish, Mr. Chairman, I don't want.

MR. STAGG:

Well, honey, sir.

MR. DUVAL:

"No. 1. The governor has no business being part of the pardon. Let me tell you what happens from a practical standpoint. I go home at 11:00 or 11:30 at night and among the things that I have to do is to review fifteen or twenty applications for pardons or paroles which have been approved by the pardon and parole board. Most of the time files are one-fourth inch thick. I usually have to make an arbitrary decision whether the pardon or parole board voted for this, therefore, I just sign them, or I have to sit there and I do review each case or sign and disapprove it. It is a function I don't have the time to do and I don't have the knowledge and I certainly shouldn't make a decision that is that important to the life of one person and to society in general based on reviewing the whole file. The least that a man has

4

MR. DUVAL (cont'd)

an ultimate responsibility to do is to spend a half an hour talking with the fellow because a lot of time he can get his feelings off of people, not all people, but sometimes you can get a feeling as to how sincere he would be. I repeat the governor has no business signing pardons or paroles. It is a function that shouldn't be relegated to him. You should have, in my opinion, a professional board working on a continuing basis with parole officers, probation officers, the knowledge of sociology, psychiatry. It's those involved in the system who themselves will make final decision. If this board ultimately determines that this man should or should not be pardoned, that decision should be final. That's been an unpopular position but now decisions are made by the attorney general, lieutenant governor, the judge who happens to be involved in the person. I don't think the sentencing judge should be involved in the determination of whether a man has an early release. The sentencing judge has had a shot at the fellow when he sentenced him and at that time could determine whether he should be in the penitentiary for ten or fifteen years, so it's inappropriate for a judge who sentenced a man to ten years when he could have given him three in the first instance four years later to have to determine whether or not his sentence should be cut to four years. Besides, I don't think it's the responsibility of the judge and I think we should remove the system from all of that and provide for a board which would come from categories of businessmen, housewives, psychiatrists, sociologists, penologists that would make a decision."

MR. STAGG:

And we are by this provision putting the boogey right back on his back.

Rev. Stovall is recognized and then Mr. Anzalone.

MR. STOVALL:

I think it's a misander...

MR. ANZALONE:

I could not disagree with you more. We are not putting it right back on his back. We are giving...

MR. STAGG:

Just a minute, Joe, we're going to let you....

MR. ANZALONE:

You said "Mr. Anzalone".

MR. STAGG:

I pointed at Rev. Stovall and then Mr. Anzalone.

MR. ANZALONE:

Oh, I'm sorry.

MR. TIGHE:

Now, just wait your turn a minute, please. I think the thing that I'm sitting at, which I'm in agreement with him, is that you're really talking about two different functions as I understand what we are about. One is the normal pardon that comes with the great bulk of people who are convicted. I think that what we're talking about here is the kind of special case and privilege that traditionally has been given to chief executives to be used only in very special cases. As someone had said the other night on our discussion it somewhat corrects the jury system. It's a special kind of privilege that is given to the chief executive of the state to be used only in very rare and special and exceptional cases. So we're talking about two different functions as I understand it and I think we should distinguish this in our thinking and discussion in the future. So really that is a question here of whether or not we want to give to the governor this special privilege to be used on rare occasions in very unusual circumstances.

MR. STAGG:

Mr. Anzalone.

MR. ANZALONE:

Rev. Stovall has very ably said exactly what I wanted to say.

MR. STAGG:

Well, would it perfect the language, Mr. Chairman of the subcommittee, if you put a period after the word "offenses"? The governor shall have the power to grant reprieves after conviction for all offenses. And shall have the right to grant pardons as is provided by law."

MR. ABRAHAM:

No, I think what we're trying to say here, Tom, and I think this language will do it. If we were to say that "The governor shall have the power to grant reprieves and pardons after conviction for all offenses." And what this would do, it says that the governor has the power to grant these, but this doesn't necessarily mandate the governor to have to do all pardons this way, that statutory law could provide that pardons could be granted by some other agency. All we were doing here is saying that the governor does have the power to do this if he sees fit to exercise this power. Isn't that correct, Joe?

MR. ANZALONE:

Yes, sir.

MR. ABRAHAM:

So all we've got to do here is change it and say, "The governor shall have the power to grant reprieves and pardons after conviction for all offenses." And we're not mandating him to do it; we're just simply giving him the power.

REV. STOVALL:

Would you say we should leave off then "pardons are provided"?

MR. ABRAHAM:

Yes, and drop the "pardons as provided by law."

MR. STAGG:

Where in this constitution, Mr. Abraham, are we providing, say, if we wanted it, for a professional pardon board?

MR. ANZALONE:

That's exactly the question I was going to ask.

MR. ABRAHAM:

We don't have to provide in this constitution for that. All we're talking about now is what powers the governor has and we're going to say he does have the power to do this if he wants to exercise his power.

MR. STAGG:

Mr. Duval.

MR. DUVAL:

I'd like to direct a question to Mr. Abraham. In other words, what you're saying is that you have a pardon board because the pardon board is functioning, but if the governor so chooses, regardless of the actions of the pardon board, he can say, "You're pardoned."

MR. ABRAHAM:

Right. Because as I understand it in going back to the minutes and going back to our work papers we said that the governor should retain the power to grant reprieves and pardons. The governor should not retain the power to grant commutations. See! And we considered the following language: "The governor shall have the power to grant reprieves and pardons after conviction for all offenses." And we got off on the subject of this somebody else handling the pardons and, really, this is not what we're really trying to do here is decide who should handle the pardons.

MR. STOVALL:

Question.

6

MR. DUVAL:

One other question, sir, Mr. Abraham, do you think by this language that you might prohibit the creation of a pardon board and that its function would be duplicative? In other words, you're giving the governor the right to pardon but this would prohibit this might--would this prohibit the creation of a pardon board?

MR. ABRAHAM:

No, I don't think that it would because you could have--powers can be delegated to more than one person or more than one body. We're saying the governor does have this power, but it might be in addition to other people, too.

Hub?

MR. DUVAL:

Unless the constitution says otherwise.

MR. ABRAHAM:

Well, the constitution does not deny the power to anyone else.

DUVAL:

No, it gives it to the governor.

MR. ABRAHAM:

It says he shall have the right. Doesn't mean that he is the only one who has the right.

MR. STOWALL
It's your understanding that through statutory law that a board of pardon will be established and we'll give it very definitely the day by day responsibility.

MR. DUVAL
May be his understanding, but it doesn't say that.

?
Doesn't say that.

MR. STOWALL
Well, is there some other place where the matter of a board of pardons will come?

?
No.

MR. STAGG
Could I--I wish I knew more about the subject.

MR. ANZALONE
Mr. Chairman, I really don't understand the discussion. We decided, the full committee, that the governor was to be the last--the buck stops here, so to speak, and he was going to have the power to pardon and grant reprieves. We have given him the power to pardon and grant reprieves. Now, I--I can't see anything...

MR. STAGG
My question, Joe, is are we going far enough?

MR. ANZALONE
Do you want to say, "and grant the legislature authority to give the power to somebody else?" That's fine.

MR. STAGG
"The legislature shall provide for the recommendation of pardons as provided by statutes."

MR. ABRAHAM
I think when you do that it still means it's got to go back and be reviewed by the governor.

?
Wouldn't make any difference.

?
8

MR. DUVAL
Yes, but he should have some forum where he gets information.

MR. STAGG
I agree.

MR. ABRAHAM
Well, he does that or he can do that, but he's going to grant a reprieve, really, without any forum as such other than talking to people. I don't think this would preclude a pardon board or any other thing you wanted to set up. The constitution now provides the composition of the pardon board and all we're doing here, we're taking this out of the constitution.

MR. STAGG
May I suggest to the six members of the committee who are still here...

?
Absence of a quorum?

MR. STAGG
No. That this committee has a resident pardon expert who has gone to the black tie dinner in New Orleans also, Mr. Cravel, and perhaps he could shed some wisdom on this that most of us who are here apparently do lack.

MR. ABRAHAM
No, I think the point is is whether saying it this way denies or prevents a pardon board being created elsewhere.

MR. STAGG
I'm not fusing about that, pardner. I think I understand with Joe's explanation and with yours, but I think the provision may be incomplete in that if the governor is going to grant or has the power to grant the pardons, where is the machinery on which he would depend? He's not going to spend thirty minutes with each of these guys. He doesn't want to have to review a quarter inch thick file up until midnight every night during pardon season. He just doesn't want to have to do that and I don't blame him; I don't blame the lieutenant governor for saying, "My God, I wish I didn't have to study pardons." He said so in just those words. The attorney general said he wished he didn't have to mess with pardons. He said it to us in his...

MR. ABRAHAM
Well, Tom, I think all of these...

MR. STAGG
...talk this before this committee.

MR. ABRAHAM
I think that all that needs to be done there is the governor to have a bill passed that's creating the pardon board the way he wants it set up and he gets it out of his hair and the legislature passes...

MR. STAGG
Then shouldn't we say so?

MR. DUVAL
Yes.

MR. ABRAHAM
No, I don't think we need to burden the constitution with that.

MR. STAGG
Oh, I couldn't agree less.

MR. DUVAL
That's the point. I think we should.

MR. ABRAHAM
Well, what would you say in the constitution, Stan?

MR. STAGG
He just said it.

MR. ANZALONE
Mr. Chairman, may I propose language? "The governor shall have the power to grant reprieves after conviction and pardons for all offenses; such authority may be vested in other authorities as provided by law."

?
Mr. Chairman, point of order.
Point of order is that there is an absence of a quorum.

MR. ASSEFF
That's right and under the rules we may not take any definitive action.

MR. STAGG
Oh, brother.

MR. ASSEFF
I'm sorry. I have nothing--I didn't introduce it.

MR. ABRAHAM
Brother Stovall hasn't left, has he?

MR. ASSEFF
Unless there's seven here, we cannot under Mr. Flory's amendment.

MR. ABRAHAM
Where did Greg go and where did Stovall go?

MR. ASSEFF
We can discuss these things, take tentative action.

?
They left.

?
Did they all leave? I was hoping the sergeant-at-arms could maybe round up one more so we can take some action on this.

?
See if Stovall's out there, Shorty, please.

MR. ASSEFF
The rules specifically say that any action taken may be challenged on the floor. I would suggest that we continue to discuss and let's say it's tentative, Mr. Chairman, and approve it tomorrow.

?
I don't object to that.

MR. ASSEFF
I mean I don't object to it. I mean I'm raising it only to keep us from having it challenged on the floor.

?
Let's see if we can round somebody up here.

MR. ASSEFF
I mean let's go make tentative decisions and confirm them tomorrow.

MR. STAGG
Well, I think the discussion is delicate because I don't know how the governor can do what we are empowering him to do without some other machines...

MR. DUVAL
Well, let's use the Anzalone language then which infers that there shall be some other agency to grant these pardons.

MR. STAGG
That would please the hell out of me if Mr. Anzalone would settle down and go to work.

MR. DUVAL
Joe, let's go. Sit down, Joe. Let's go. What you got, son?

1
1 Let's have something here.

MR. STAGG
Mr. Anzalone, could you read your motion again?

MR. ABRAHAM
Joe, what did you have there? What language did you have?

MR. ANZALONE
"The governor shall have the power to grant reprieves after conviction and pardons for all offenses; such authority may be vested in other authorities as provided by law." And the word "the other authorities" is bad. I don't know what else we could put in there, but that ain't what I want to use.

1
"Bodies"?

MR. STAGG
"Agency"

MR. ABRAHAM
"Such other manner as provided by law."

MR. DUVAL
"Such authority may be". Yes, that's good.

MR. ABRAHAM
"Such authority may be granted".

MR. STAGG
Mrs. Brien, you sought recognition?

MRS. BRIEN
Yes. Well, if we're staying with the governor now, if we say..

MR. STAGG
The governor retains the power to grant it, but..

MRS. BRIEN
Okay.

MR. STAGG
We're trying to figure out a machinery to get the grant to him.

1
"Bodies"?

MRS. BRIEN
If we say "may delegate such powers subject to such procedures as may be prescribed by law." Now couldn't "as may be prescribed by law" and if we get a pardon board, they can, you know. So we really are talking about something what is not there yet.

MR. ANZALONE
Mr. Chairman, I believe I've come up with something, made my day.

1
The old sow has found an acorn.

MR. ANZALONE
"The governor shall have power to grant reprieves after conviction and pardons for all offenses; such authority may be otherwise delegated as provided by law."

1
That seems to be sufficiently ambiguous.

MR. DUVAL
Now does that mean that they can otherwise delegate it away from the governor?

10

1
S1, they do. That's just about right. That's what it say.

MR. ANZALONE
That ain't what I wanted to say either.

MR. STAGG
Mrs. Brien, would you continue?

MRS. BRIEN
Can I make that a substitute motion?

MR. STAGG
Mrs. Brien, would you read your language again, please, slowly?

MRS. BRIEN
"The governor shall have power to grant reprieves after conviction for all offenses."

MR. STAGG
That's what we've got here.

MRS. BRIEN
Okay. "Or may delegate such powers subject to such procedures as may be prescribed by law."

MR. STAGG
"And may delegate such powers".
And go slowly.

MRS. BRIEN
"Subject to such procedures."

MR. STAGG
"And delegate such powers subject.."

MRS. BRIEN
"To such procedures.."

MR. STAGG
"Such procedures."

MRS. BRIEN
"As may be prescribed by law".

MR. STAGG
"By statute."

MRS. BRIEN
"By statute."

1
That's it.

MR. ANZALONE
Mr. Chairman, is my motion still on the floor?

MR. STAGG
Mrs. Brien has offered a substitute. What have you got?

MR. ANZALONE
Some more language.

1
He's reading it from his tie. I don't know.

MR. STAGG
Dr. Asseff is recognized.

MR. ASSEFF
Mr. Chairman, since everybody is so anxious to save words and since we obviously are leaving it all to the legislature why don't we conveniently just leave it out and forget it?

1
Please, Dr. Asseff.

11

MR. ASSEFF
We are leaving it to the legislature.

MR. ANZALONE
Mr. Chairman, may I try one more time and then I'll quit?

MR. ABRAHAM
He wants the governor to retain that.

MR. ANZALONE
"The governor shall have the power to grant reprieves after conviction and pardons for all offenses; such authority may in addition be otherwise delegated as provided by law."

MR. STAGG
"Such authority" what?

MR. ANZALONE
"May in addition be otherwise delegated as provided by law."

1
That don't mean in subtraction, that means in addition to.

MR. STAGG
Well, we have a substitute motion by Mrs. Brien that states, "The governor shall have the power to grant reprieves and pardons after conviction and may delegate such powers subject to such procedures as may be prescribed by statute." I don't think that's too much different from what Mr. Anzalone said.

MR. ABRAHAM
I don't think it is either.

MR. STOVALL
The only difference is "in addition".

MR. DUVAL
May I ask Mrs. Brien a question, Mr. Chairman?

MR. STAGG
Why not?

MR. DUVAL
Mrs. Brien, do you intend by your language to have the governor retain this power but to allow him to delegate the power so that another forum could make recommendations to the governor or to grant pardons themselves?

MRS. BRIEN
Yes..

MR. DUVAL
And do you think that your language might--what in your language guarantees the governor that right? In other words, to allow the legislature...

MR. STOVALL
If she had the words "in addition" would that...

MR. DUVAL
Well, Mr. Anzalone has the words "in addition." I think you-all are saying the same thing really. You're intending the same things.

MR. STOVALL
You intend the same thing and I think that's the intent of this committee.

?
That is the intent of this committee.

MR. ABRAHAM
And is ambiguous in saying that he can delegate provided that the statutes say that he can delegate, you see?

12

?
Mr. Chairman.

MR. ANZALONE
The only problem with Mrs. Brien's motion, as I see it, is that she has granted him the power to delegate this to somebody else and it was not the intent of my original motion that was brought before this full committee to give him the authority to delegate this power to somebody else.

MR. BRIEN
But who provides for a pardon board?

?
The legislature.

?
I think you-all are basically saying the same thing.

MR. ANZALONE
I want him to have it and if the legislature wants to give it to anybody else, that's fine.

?
But he still keeps it.

MR. ANZALONE
And he can't give it away.

?
But the legislature can create a board to do it.

MR. ANZALONE
That's why I say "such authority may in addition be otherwise delegated as provided by law." And I urge the rejection of the substitute motion.

?
Can I ask a question of Mrs. Brien, Mr. Chairman?

MR. STAGG
Yes.

?
Mrs. Brien, do you think Mr. Anzalone's language accomplishes what you want?

MRS. BRIEN
It does just about, yes. I don't know; there's some hang-up in there, I don't get that.

MR. ABRAHAM
Read it again.

MRS. BRIEN
Read it again.

MR. ABRAHAM
Read that last part "in addition".

MR. ANZALONE
"Such authority may in addition be otherwise delegated as provided by law."

MR. STAGG
"By statute."

MR. ANZALONE
"By statute."

MR. ABRAHAM
"Authority may in addition be granted", you say?

MRS. BRIEN
"Delegated."

MR. ANZALONE
"Otherwise delegated."

?
"Delegated as otherwise..."

MRS. BRIEN
"Delegate such powers such as I think that it should be in there..."

MR. STOVALL
Well, is Mrs. Brien's a substitute motion at the present time?

MR. STAGG
Yes. Shall we vote on the substitute motion?

MRS. BRIEN
Read it again? ...

MR. STOVALL
Yes, read both of them and let's see.

MR. STAGG
Right. Mrs. Brien said "The governor shall have the power to grant reprieves and pardons after conviction for all offenses and may delegate such powers subject to such procedures as may be prescribed by statute."
Joe Anzalone said that "The governor shall have the power to grant reprieves after conviction and pardons for all offenses; such authority may in addition be otherwise delegated as may be prescribed by statute."

MR. STOVALL
I think the point is--the difference is that you're saying that the governor has the right to delegate that power and what Joe is saying is that it would be done by the legislature.

MR. ABRAHAM
Mrs. Brien, can I say you're giving--you're allowing the governor to give the ball away completely and Mr. Anzalone is allowing somebody else to play the game and make the decision but with the governor retaining the right to make the ultimate decision if he deems it necessary.

MRS. BRIEN
Mine has that, too.

MR. ANZALONE
No, you see...

MRS. BRIEN
It has "be prescribed by statute".

MR. ANZALONE
No, ma'am, you're saying that the governor may delegate the power of pardon in granting reprieves to anybody that he wants to and I don't want that. I want it to be given to the governor solely by himself and nobody else has it because this is going to be a once in a lifetime extreme provision that he would even do it and I don't want him giving it to the chairman of the Wildlife and Fisheries Committee or somebody that works over at the Highway Department. I want him to have it. He's the governor and if he's scared to get burnt, stay out the kitchen.

MR. ABRAHAM
You're allowing him to relinquish that authority completely in your language. Now is that what you intend to do? Do you want him to relinquish that authority, be able to relinquish that authority completely? You do want him to be able to relinquish that authority?
All right. Now I understand the two motions I'm ready to vote.

MR. STAGG
All in favor of the substitute motion signify by raising your hand. Opposed..

?
Which one we voting on first?

14

MR. ANZALONE
Hers, then mine.

MR. STAGG
Brien's.

?
Brien's?

MR. STAGG
Alright. Those in favor of the Brien hold your hand up. Two. Opposed, three, four. Those in favor of the Anzalone substitute, raise your hand. Opposed. Motion carries.

MR. ANZALONE
You know it does.

MR. STAGG
Without me voting.

MR. STOVALL
His resolution was presented by the Mafia. He had to get it through.

MR. STAGG
Quorum back.

MRS. BRIEN
You should have come one minute sooner.

MR. ABRAHAM
Read that back to me, Jon, so I can write it down.

MRS. BRIEN
One minute sooner, one second sooner. Couldn't we do that over?

*
You can make a motion to reconsider.

MR. STAGG
Now, you know what happened?

MRS. BRIEN
Yes. I make a motion to reconsider.

MR. STAGG
Mr. -Rev. Stovall asked to be excused to make a telephone call and now we are without a quorum again because Dr. Asseff is leaving.

MR. ASSEFF
Well, I'll be back before you vote. I mean, I'm not trying to prevent a quorum.

MR. STAGG
We're not going to vote.

MR. ASSEFF
Well, just a minute and I'll be back. Thank you.

MR. STAGG
We're going to stand at ease for five minutes so I can talk to Mr. Tapper.

15

MR. STAGG
Alright, what he wanted to do was to make it absolutely clear that in addition that the legislature could provide for him to be able to delegate that power as they would provide for it in a statute. In other words if the statute came up with a professional pardon board that it then would be constitutional for the legislature to do it because it was an additional power beyond that which the governor, if he wanted ...

MR. GRAVEL
It doesn't take away though from the governor ...

MR. STAGG
That's ... that was his point exactly. That it was in addition to the governor's power to grant pardons and reprieves after convictions.

MR. GRAVEL
That's right, sir.

MR. STAGG
That's right, Mr. Reporter? Is that what you heard?

MR. ?
The way I have it written, Tom, is in a much shorter version than what you have.

MR. ASSEFF
That is a point of order, Mr. Chairman.

MR. STAGG
Yes, sir.

MR. ASSEFF
I simply suggest to avoid confusion that once the committee has acted, I have no objections if someone wants to make some changes. But I feel that that individual should bring it back to the committee for approval, otherwise we're going to be very much confused.

MR. STAGG
You're right.

MR. GRAVEL
But has the language, though, been finally approved on this particular article?

MR. ASSEFF
Yes, sir.

MR. STAGG
Yes, sir, it has.

MR. GRAVEL
But it's always ...

MR. STAGG
Now, Mr. Gravel, let me restate the position of, I think the committee's stand on this is that any member of the committee prior to final adoption

is free to move to reconsider the language and the vote by which a provision was adopted. And I believe that that should be our stance up until we give our final report.

Yes, sir, you seek recognition for what purpose?

MR. ASSETTE

Yes, Mr. Chairman, since this committee, this is our last committee meeting supposedly before July 5th and it would be really helpful if the staff could get us the proposals that we adopt, you know, at the next day or the next evening so we can look ... we could kind of review them maybe after we complete our work if we have time.

MR. STAGG

Alright, sir, thank you. Mr. Gravel is recognized.

16

MR. GRAVEL

I think that while we're talking about this, I think that the language ought to make it very clear. And it seems to me that it would make it very clear that we are authorizing supplementary action by the legislature, which I think is good, but it occurs to me that this may have been discussed that we are overlooking within the power that should be granted to the governor is the power to grant commutations and to remit fines and forfeitures which are within to some extent the concept of pardoning and reprieve and I would like to see one other thing that I think is important and it's not in our present law either constitutionally, statutorily or as far as I know under the present law of Louisiana. Now whether you want to go into that it's such a rarely used function by the governor, yet it does have this built-in problem as to when a reprieve expires, if the governor doesn't fix the reprieve for a definite term. And I think you've got those concepts that need to be built-in into any article that relates to pardon. The question of commutation, the remission of fines and forfeitures and when a reprieve will expire.

MR. STAGG

Well, now Mr. Gravel, would you ... would there be ... can we have colloquy between you and the subcommittee chairman as to why they adopted the original language as they did leaving out the principle of commutation and reprieve, which isn't in here ...

MR. ?

Well, our concept on Section 12 stated the governor should not retain the power to grant commutation.

MR. STAGG

That was correct.

MR. ?

We're working from the research staff's information on that.

MR. GRAVEL

But if you give him the power to pardon you've got to give him the power to commute. The great has got to include the less. In other words what you're saying then is to the governor, "Look, you've got to pardon," when he may say, "Well, I'm willing to commute the sentence," say that parole eligibility, for example, which is tremendously important, and that's when the governor I think probably acts the most responsibly, is when he will approve the commutation of sentence but still have some restraint, you know, on the person who is getting the relief.

MR. ?

Well, now this is different from the concept we adopted at the last meeting and why don't we go ahead then and reconsider this thing later on?

MR. STAGG

Alright now, Mr. Gravel, I will point out that at the meeting when these concepts were discussed the motion was offered by Mr. Anselmo that the basic inherent power be with the governor himself to grant reprieves and pardons after conviction. The motion carried, and that was under Section 12, I think of the work papers on page 12. The language that we were considering yesterday perfectly tracks the concept that we discussed in committee meeting on this subject. Did you write down the language that was read in the beginning, Mr. Gravel?

MR. GRAVEL

No, sir.

MR. STAGG

About ...

MR. GRAVEL

Would you read it again, please?

17

MR. STAGG

It tracks the first sentence down to "offenses" with a slight change. "The governor shall have power to grant reprieves and pardons after conviction for all offenses; in addition such authority may be otherwise delegated as may be prescribed by statute."

MR. ARNETTE
Tom, after that Joe came back and shortened it to say, "may be otherwise provided by statute." You see?

MR. DENNIERY
I don't think that's right.

MR. STAGG
He wanted that word, "in addition" in there ...

MR. ARNETTE
Yes, he said "in addition", but all I'm saying is, Tom, Joe came back and said "in addition such authority may be otherwise provided by statute," and that's what Louis was asking as to which language is correct.

MRS. BRIEN
I didn't get "and delegate such powers to" ...

MR. GRAVEL
Well, what you're saying in addition that the governor may delegate that, is that correct? We're not talking about the legislature being able to.

MR. STAGG
Well, it said, it means that otherwise by statute the legislature can add to those ...

MR. GRAVEL
Well, is it by statute authorizing the governor to delegate this authority, is it by statute saying that the legislature may determine statutorily how pardons otherwise may be granted?

MR. ABRAHAM
No, the intent is that the legislature will be able to delegate if it wanted to create a pardon board or something like that could delegate this authority to the ... I mean it could provide ...

MR. GRAVEL
Speaking of delegation there, Mack, means that is the ... are you giving ... are you really talking about delegation, because if the power is constitutionally within the governor then are you saying that the legislature may authorize him to delegate his power to somebody else or do you really mean something besides delegation in saying this?

MR. ABRAHAM
The intent was that the legislature would be able to authorize other people to grant ...

MR. GRAVEL
That's not delegation then.

MR. ABRAHAM
Well, that's why I say there was no word, "delegation" mentioned in here.

MR. GRAVEL
Yes.

MR. ABRAHAM
He says, "in addition such authority may be otherwise provided by statute." And that was the language that Joe finally came up with and is that the way you have it?

MR. ?
That's the way it's written here.

MR. ABRAHAM
Which is different from the way Tom had read it.

18

MR. GRAVEL
I think that's our ...

MR. ABRAHAM
That's what Joe was trying to say and he did edit the language at some time or other

MR. STAGG
And now would we please direct our attention at the language that's before us and, Mr. Gravel, it's on that three lines of typing to your left there. Now, beginning with that as a beginning point would you, would the committee be open for suggested protecting amendments as in a motion to reconsider?

MR. ABRAHAM
I would move that we reconsider if you need that motion now.

MR. ?
To legalize what we're doing?

MR. ?
I second the motion.

MR. STAGG
It's been moved and seconded that the language that we adopted be reconsidered, all in favor raise your hand; opposed. Alright, now let me, now, gentlemen, let me attempt ... would you all look up and stop thinking for a second and listen, or listen while thinking. It's a quarter after nine on Friday, we have got to be through with a mountain of work and we must keep on the track and if I ... and I didn't bring my

stopwatch, I didn't bring all these other accoutrements of speed, but please know that we've got a more than a day and a half to work to do, and we've got to get it done. So please, with that in mind would we speed up the process and if you have a protecting amendment, Mr. Gravel, the chair would welcome it.

MR. GRAVEL
I would like very much to have the opportunity, Mr. Chairman, not to delay the progress of the meeting, to present when we come back after the noon recess, just a revamp of the provision on pardon, embodying a couple of concepts that I would like to see considered by the committee.

MR. STAGG
I think the committee would welcome your thinking on it because of all the committee members I think you've had a greater amount of practice and experience.

MR. GRAVEL
Most of my clients are interested in this, Mr. Chairman.

MR. STAGG
Mr. Gravel, ...

MR. GRAVEL
Most of my more reputable clients I might add.

MR. STAGG
Mr. Gravel, the good part of this committee is that we represent quite a cross section of thinking and we have some people on this committee who are experts in the scriptures and ...

MR. GRAVEL
And I represent the bishop, too.

MR. STAGG
I understand that, and I wanted it clearly known that your clientele runs the gamut between the pope in Rome and the catpaw down there in the parish jail.

MR. STOWALL
Mr. Chairman, he has such an intense interest in this, I wonder if he might not have a very personal concern about this.

MR. STAGG
Well, they haven't caught him yet ...

MR. GRAVEL
It's all a concern of my republican friend.

19

MR. STAGG
Reverend, they haven't caught him yet, and the United States district attorney is not pursuing Mr. Gravel to my knowledge.

MR. STOWALL
Mr. Chairman, I move we delay discussion of this until after the noon hour when Mr. Gravel might present his proposed suggestions.

MR. STAGG
Without objection, it's so ordered.

20

MR. STAGG
Would the subcommittee chairman take up the powers of the attorney general?

MR. DUVAL
Yes, I sure will. "The Attorney General. The Department of Justice shall be headed by the attorney general. All state attorneys are to be a part of the office of the attorney general except as otherwise provided by ..."

MR. STAGG
"As otherwise may be provided by statute."

MR. DUVAL
"By statute. The attorney general shall have the power and authority to institute and prosecute or to intervene in any and all suits or other proceedings, civil or criminal, as is necessary for the ascertaining or protection of the rights and interests of the state. The attorney general shall exercise supervision over the several district attorneys throughout the state and shall perform such other functions as may be provided by statute."

MR. GRAVEL
Question.

MR. DUVAL
Yes, sir.

MR. GRAVEL
Aren't you in effect giving to the attorney general by this article the authority to supersede the district attorneys?

MR. DUVAL
I might point out, Mr. Gravel, that in the--and I'd like to find it first, in Article VII of the present constitution I'd like to read some language there, if I can find it.

MR. GRAVEL
I think I know what you're talking about though, I believe, but the interpretation of that article has, in effect, said that the attorney general and the district attorney--that the attorney general can't supersede the district attorneys. Now, all I want to know is--all I want everybody to understand is what we're doing here. It seems to me that here we are, in effect, saying that the attorney general shall have really the authority to actually supersede the district attorneys.

MR. DUVAL
That was discussed.

MR. STAGG
Mr. Gravel, I'll point out to you on page nineteen of the minutes of the meeting, a motion was offered by Mr. Arnette that there should be some grounds for the attorney general to supersede the district attorneys. The motion carried with a vote of six "for", four "against".

MR. GRAVEL
Well, where are the grounds?

MR. STAGG
You can be recognized. You're recognized.

MR. ASSEFF
Did you, you recall, Mr. Chairman, ask the attorney general, at least I did, and he said he would do it to give us specific instances, in that I would not go along with a vague provision but that I would consider very seriously specific situations in which he could intervene. Did you get anything of that nature, Mr. Duval?

MR. DUVAL
No, sir.

MR. ASSEFF
I know I did.

21

MR. DUVAL
I'd like to point this out that in the paragraph which says, "the attorney general shall have the power and authority to institute and prosecute or intervene in any and all suits or proceedings, civil or criminal." That in itself basically implies the inherent right to supersede.

MR. GRAVEL
That's what I'm talking about.

MR. STAGG
That is correct.

MR. GRAVEL
That's exactly what I'm talking about.

MR. DUVAL
And that language, by the way, is in our present constitution but the supreme court has ruled that it doesn't say what it means.

MR. STAGG
In a very old law... we're talking Boliver versus Kemp. We've been all through this. We've plowed this ground several times before and we're willing to plow it again because we're on final action.

MR. GRAVEL
And it's very important too that we understand what we're doing here. I'm not taking a position just yet, but I have some real qualms about this language.

?
I understand it too.

MR. ASSEFF
May I ask, I'd like Mr. Duval to clarify what he said the supreme court has ruled because I didn't hear him.

MR. DUVAL
Well, it's my understanding and I'm sure some--that in the Kemp case the supreme court said that the, as I understand, the attorney general did not have the power to supersede under the constitution and it uses the very same language here.

MR. ASSEFF
That's what I thought.

MR. DUVAL
But it was the intention of this committee, as I understood it, to give the attorney general that power and to overrule the Boliver--the Kemp case.

MR. ASSEFF
Do you think this does it?

MR. DUVAL
Yes, sir, I think it does very clearly--does it. If you give him the power to intervene in any proceeding, that's pretty clear...

MR. GRAVEL
But more than that when you give him the power and authority to prosecute a criminal case, then it's very clear that he can go in and act where a district attorney does not.

MR. DUVAL
Now whether this is good or not, that's the question.

MR. ASSEFF
What's the present language, Mr. Duval?

MR. DUVAL
I'm trying to find it, Dr. Asseff.

MR. ASSEFF
I'd appreciate it.

22

MR. STAGG
It's in Article VII under Judiciary, Section ...

MR. DUVAL
Yes.

MR. STAGG
Fifty-five and fifty-six is what I think it is.

MR. DUVAL
Oh, yes, if I can read this to the committee. Now there may be an amended version but "the attorney general and the assistant shall be learned in the law and shall have actually resided and practiced law as duly licensed attorneys in the state for at least five years preceding their election or appointment. They or one of them shall attend to and have charge of all legal matters in which the state has an interest and in which the state is a party with power and authority to institute and prosecute or to intervene in any and all suits or other proceedings, civil or criminal, as they may deem necessary for the assertion or protection of the rights and interests of the state. They shall exercise supervision over the several district attorneys throughout the state and perform all the duties imposed on them by law."

MR. ASSEFF
Isn't that basically the same?

MR. DUVAL
It's very basically the same. Yes, sir.

MR. STAGG
That's why we did it because it's...

MR. ASSEFF
Well, that means we haven't changed anything, isn't it?

MR. DUVAL
Unless the comment...

MR. ASSEFF
You said we were overruling the Kemp case.

MR. DUVAL
The comment was to include the fact that it was, if adopted, it was the convention's intention to overrule the Kemp case.

MR. ASSEFF
Well, does this overrule? I didn't think it did. That's why I'm trying to get it clear.

MR. DUVAL
It's basically the same.

MR. ASSEFF
In your opinion, of course.

MR. DUVAL
It's basically the same language, but in my opinion, of course, we think the Kemp case that this language as used is wrong.

MR. ASSEFF
Well, just let me say this. It was my understanding, and I could be wrong, you know, I've been wrong many times, that the supreme court has ruled that if, (this is an old case), that if we repeated the language, you understand, as it is and it's been interpreted by the court that we are confirming the interpretation.

?
Absolutely.

23

MR. DUVAL
That's a valid point.

MR. ASSEFF
And I only leave it like that because I don't want him to intervene but that's what I'm told--understand--and I checked that point.

MR. DUVAL
Now, whether or not this convention can by comment say it was the intention of this language to overrule it is something that...

MR. STAGG The way you overrule Kemp against Stanley is to say "the attorney general shall have the power to supersede anyone of the several district attorneys throughout the state."

7 "For cause."

MR. STAGG No, just "he shall have the power to supersede" and that overrules Kemp against Stanley.

MR. GRAVEL Or you could say "the attorney general shall exercise supervision." Let me ask one other question before we kick it all around because I think it'll work out too. What is the meaning of the wording here "all state attorneys"?

MR. DUVAL The purpose and intent of the subcommittee was the basic premise that all persons representing any instrumentality of the state, any agency, board, et cetera, would be a part of the attorney general's office unless by statute it was otherwise provided. It would be part of the attorney general's office.

MR. GRAVEL You mean if the Department of Revenue has an attorney, Civil Service has an attorney..

MR. DUVAL We say, "unless otherwise provided by statute."

MR. GRAVEL I understand.

MR. DUVAL Now, if the statutes don't provide for an attorney--special attorney for a specific agency--then the attorney general's office would have suspicions--legal suspicions over that particular agency.

MR. ABRAHAM Question.

MR. DUVAL Yes.

MR. ABRAHAM Stan, in our discussion, too, I think the comment was made that even though a particular agency may be hiring an attorney, unless it was specifically stated this attorney did not report to the attorney general that the attorney general would have some sort of oversight over his activities?

MR. DUVAL Wait a minute.

MR. ABRAHAM I remember that discussion being held.

MR. DUVAL We're just giving the--what this does is give the legislature the authority to vest a particular agency with an attorney and if they do,

24

MR. DUVAL then he's not part of the attorney general's office.

MR. STAGG There are some seventy attorneys serving in boards, agencies--the cosmetology board has a lawyer, the Highway Department has a bunch of them that are experts in expropriation, the Treasury Department has some lawyers who are expert in collecting taxes and examining your state tax returns. All of these--there's a fleet of lawyers all over the state government. The purpose of the subcommittee was that the lawyers of this state shall serve in the Department of Justice unless otherwise provided by statute.

MR. GRAVEL I think that's a completely wrong concept, Mr. Chairman.

MR. DUVAL I might add it is the concept that this committee adopted.

MR. STAGG This committee did adopt the concept.

MR. GRAVEL You mean a subcommittee.

MR. STAGG The whole committee adopted this concept we...

MR. GRAVEL I very well--I must have been absent.

MR. STAGG You might have been.

MR. DUVAL The minutes reflect you were absent.

MR. GRAVEL No, I wasn't here at adopting that. I guarantee you I wasn't.

MR. STAGG Mr. Gravel, you win a few each day and you lose a few each day. You may lose this one.

MR. GRAVEL I may lose this one temporarily.

7 For sixty minutes.

MR. DESHOTELS You got Gravel as saying "a church ain't over until the song stops."

MR. GRAVEL You've got--you're putting everybody that's..

MR. STAGG Except the governor's executive counsel...

MR. GRAVEL You don't even have that in here. How about the governor's executive secretary who's an attorney?

MR. STAGG He's the executive secretary; he's not his lawyer.

MR. GRAVEL Was I here?

MR. ASSEFF That is how the provision was placed in here.

MR. GRAVEL This has been debated and passed on. It's not subject to review.

25

MR. DUVAL Oh, it's certainly subject to review.

MR. GRAVEL But I would move to delete from Section 3, the provision that "all state attorneys are to be a part of the office of the attorney general except as otherwise provided by law." I'll say as much as I can very quickly on it. We're talking about--let's don't confuse the departments of government with the Department of Justice. Insofar as there are attorneys that are working with the attorney general and for him and through him to administer justice in the state of Louisiana, then I think that those attorneys should be under the department, but you're letting the attorney general's office reach out into all other departments of government and exercise supervision and control over some of the key people in those departments.

MR. ABRAHAM What's wrong with that, Camille?

MR. GRAVEL Because the same thing would be wrong to have the Department of Revenue exercise some jurisdictional control within the functions and the operations of the Department of Justice. I mean, then you've got an interrelationship between the departments that to me is unrealistic. The Department of Justice, over which the attorney general, of course, is the principal officer, should have jurisdiction in my judgment over the functions of his office, the affairs that are primarily--I didn't hear you. Speak a little louder.

7 I'm sorry.

MR. GRAVEL I really didn't hear you.

7 Well, would you stop speaking while I'm interrupting you?

MR. GRAVEL Yes.

7 I'm sorry.

MR. GRAVEL All I'm saying is that the functions of the attorney general, primarily those that relate to specific functions of his office, assigned to him by law and the functions that he exercises supervisory over the district attorneys all relate to the concept of a Department of Justice. Just the fact that a person is a lawyer involved in government should not, in my judgment, bring him within the scope and authority of the attorney general and that's what I think this article does.

MR. ABRAHAM I don't think that's the intent of it, is it?

MR. GRAVEL Well, that's what it does. It says, "All state attorneys are to be a part of the office of the attorney general." We're talking about the attorneys for the Highway Department that handle land acquisition cases, for example.

MR. DUVAL
Now I ask Mr. Gravel a question? Mr. Gravel, don't you think...

MR. STAGG
If he'll yield.

MR. GRAVEL
Yes, I yield.

MR. DUVAL
Isn't you think that, and of course I want--as chairman of the committee I'm not necessarily tied to all the language, but I wanted to ask you a question. He said that that by the provision "as may be provided by statute" when the legislature passes an act saying "the

26

MR. DUVAL (cont'd)
Department or Highways shall have, you know, the power to retain an attorney", then this wouldn't be a problem?

MR. GRAVEL
No, I think the legislature would have to say, "and these officers specifically shall not be covered by the provisions of the constitution."

MR. DUVAL
You think they would have to be specific?

MR. GRAVEL
Oh, yes. I'm on the Board of Tax Appeals; I'm an attorney; you're putting me under the jurisdiction by this language...

MR. STAGG
You're not serving on that as lawyer for the Board of Tax Appeals. You are serving as a member. That's different.

MR. GRAVEL
Alright. Well, we've got a lawyer that works for the Board of Tax Appeals.

MR. STAGG
Then he's going to work for the attorney general.

MR. GRAVEL
Well, no...

MR. DUVAL
"Unless otherwise provided by statute".

MR. GRAVEL
Well, we've got a part-time lawyer that works for them. Now you say he works for the attorney general, so the attorney general tells him what to do and not the Board of Tax Appeal.

MR. DENNERY
Point of order, Mr. Chairman, I think that the concept that was adopted as I look at the minutes is not quite as strong as the language that's in here. The motion that I offered was that the attorney general be in charge of state legal matters unless otherwise prescribed in the constitution. Mr. Duval suggested that we amend it to read "except as otherwise provided by law." That was what was adopted. Now I don't believe that that was intended. It is not my recollection at any rate, that it was intended to mean that every attorney working for the state of Louisiana would be in the office of the attorney general unless specifically otherwise provided. I think it meant that the attorney general was in general charge of all legal matters unless otherwise provided which I think is a sound concept.

MR. DUVAL
That was my understanding.

MR. DENNERY
But I don't believe that that goes as far as the language...

MR. GRAVEL
You take in the Department of Revenue, for example, Joe Traigle's got two lawyers. Who are they subservient to? Do they follow his direction or do they follow the direction of the attorney general in case of some kind of conflict?

MR. DENNERY
Mr. Gravel, it now stands under the...

MR. STAGG
Mr. Anzalone is recognized.

MR. ANZALONE
...1921 Constitution which we are attempting to change, they or one of them shall attend to and have charge of all legal matters in which the state has an interest or to which the state is a party. Now if this came down to a constitutional question at the present time

27

MR. ANZALONE (cont'd)
whether the attorney general could walk over to the Department of Revenue and say, "The state is a party to this lawsuit. I am going to take com-

rol of it." There is a serious question but that he could do it at the present time. This is what we want to eliminate and the only way that we can eliminate it is by saying that the law can provide that each and every attorney working in each and every part of this state cannot by the statutes be under the whims of the attorney general.

MR. DESHOTELS
Say that again. Say that last again. That's a brilliant argument.

MR. ANZALONE
That's right. I most certainly am and I'm saying that this language does it. The 1921 Constitution gives him the right...

MR. GRAVEL
I understand that.

MR. ANZALONE
They, or one of them, "shall attend to and have charge of all legal matters in which the state has an interest or to which the state is a party." Now the question is in how are we going to remove this language from the 1921 Constitution and put it into this one?

MR. STAGG
Well, we did it by saying "as may be otherwise prescribed by statute."

MR. GRAVEL
You've done it perfectly, in my judgment, if you eliminate that one sentence. "The attorney general shall have the power and authority to institute and prosecute or to intervene in any and all suits or other proceedings civil or criminal as is necessary for the assertion or protection of the rights and interests of the state." You've made him the key man in the Department of Justice with the right to protect the interest of the state in any litigation, in any matter that comes up where there's a controversy, where there's a court proceeding. Now, I don't think you'll intend to say that he's got supervision and control and direction and authority over every lawyer who works for every department in the state.

MR. STAGG
Mr. you're next, Mac, whenever I can get this over with.

MR. ANZALONE
If we leave this sentence out and put what you're talking about in there and you are, or somebody else is, retained to represent an agency of the state, he has the power and authority to institute and prosecute or to intervene in it. We have got to give you some protection to do it the way you want to do it rather than letting him do it and this is why we put this line in here.

MR. STAGG
Mr. Abraham is recognized.

MR. ABRAHAM
Well, this is the question I was going to ask Camille. If you deleted that sentence "All state attorneys will be a part of the office", and so forth, then wouldn't this other sentence give the attorney general the power to intervene in any suit? Say that the Department of Revenue has hired an attorney, does not the attorney general have the right to come in and say that "You're not doing the job right; I want to intervene in this suit"?

MR. DENNERY
That's exactly what he did in the McIlhenny case.

MR. GRAVEL
He could do that. That's fine but I don't think you need that sentence to give him that authority at all.

MR. ABRAHAM
Well, that's what I'm saying. If you eliminated this sentence, that he would still have the authority to intervene.

28

MR. GRAVEL
Right. Not only that, in any matter, generally speaking, that would involve, let's say, the department as such, the attorney general will handle and should do it under this language, the interests of the state. You know, if there is any policy matter that involves the whole state where--let me give you, perhaps, an illustration. Let's say that a suit is brought against the Department of Revenue to invalidate that law that permitted an income tax deduction for children who went to non-public schools. Well, the attorney general defends that, of course, for the Department of Revenue because it's not an internal Department of Revenue legal matter that's involved; it's a matter involving the interests of the state. And all I'm saying is that the language without this particular sentence is adequate and sufficient to permit the attorney general to act in the interest of the state for all the departments without being involved in the internal legal matters within these several departments.

MR. STAGG
Mr. Anseff is recognized. Dr. Anseff is recognized. Dr. Anseff.

MR. ASSEFF
What is the--I don't quite understand the purpose of the sentence. "All state attorneys are to be a part of the office of the attorney general." Is that--do you mean by that is that--is the purpose to save attorneys or is it the purpose to give the attorney general supervision or what? Will they remain in the Department of Highways?

MR. DUVAL
I think the basic purpose is to set up an orderly legal structure so that maybe you don't have an attorney for every little board, agency...

MR. ASSEFF
Do you mean then that what they really would be would be members of the attorney general's office?

MR. DUVAL
That's right. That's right.

MR. ASSEFF
Well, I don't construe it that way.

MR. STAGG
The attorney general can have, if this motion--if this became a part of the constitution I can perceive that the attorney general would have a Highway Division, a Revenue Division or Taxation Division, that the attorneys for the attorney general serving in the Revenue Division would have offices in the Revenue Department, that those serving the Highway Department would have offices in the Highway Department, that they would be members of the attorney--paid through the attorney general's budget; there would be some control over the number of lawyers employed by the state of Louisiana.

MR. ASSEFF
That's--Mr. Duval?

MR. DUVAL
Sir?

MR. ASSEFF
Do you--again, does this mean that we're going to save money for the state of Louisiana? Is that the purpose?

MR. DUVAL
I have absolutely no idea.

MR. ASSEFF
I mean, would they be better specialists in the department--in the attorney general's office than in the Highway Department?

MR. DUVAL
What it does in my opinion...

29

MR. ASSEFF
Well, I mean I'm asking your opinion.

MR. DUVAL
What it does is to say that all attorneys representing any state agency will be a part of the attorney general's office unless otherwise provided for by statute, unless a statute specifically says that "this attorney for the Highway Board will be a separate and distinct entity."

MR. STAGG
Mr. Tapper is recognized.

MR. DUVAL
That's my basic understanding.

MR. TAPPER
In connection with the--I think we have a difference of opinion as to what this provision actually does, but in connection with it initially I was sort of half-way in favor of putting all of these under the Department of Justice. However it brings to mind the manner in which the district attorneys now have jurisdiction over all legal matters pertaining to all bodies within their particular parish or district and this, I think, has not worked to the best interest of the people because what's happened over the years is the district attorney being the legal advisor of the different departments and boards within a district has become the supreme power in most of these districts..

MR. STAGG
Is that true in the case of the district where you live?

MR. TAPPER
If we're going to do the same thing with the attorney general's office, I think we're heading in the wrong direction and we say end up with a czar.

MR. DUVAL
Just one point to direct to Mr. Tapper. We do give the legislature the right to overcome this constitutional structure.

MR. TAPPER
We have a difference of opinion as to what it's actually doing.

MR. STAGG
Speaker listed is Anzalone and...

MR. GRAVEL
Question.

MR. STAGG
Question for the speaker? You have a question of Mr. Tapper?

MR. GRAVEL
Well, if Mr. Duval is still...

MR. STAGG
Mr. Tapper has the floor now.

MR. TAPPER
I still have the floor. There's one other point I want to bring out which was in the constitution of 1921 and it hasn't been included here now. The only thing you're giving the attorney general the authority to do is to get involved in suits and proceedings that are civil or criminal which the state has an interest or a right in. There's a provision that was left out and that is that I think under this Section 3, you do not give him the authority to advise the different departments of state or the right of the different departments to require advice of

30

MR. TAPPER
him like giving him legal

MR. STAGG
That's not in the present constitution either, is it?

MR. DESHOTELS
No, but it's a good point.

MR. TAPPER
If it isn't, we should have it anyway.

MR. STAGG
It isn't in there.

MR. TAPPER
Yes, it is. It says they have charge of all legal matters in which the state has an interest or legal matters--not just lawsuits and proceedings, you see? And I think under that provision is where the authority and also the responsibility of writing opinions and giving advice comes.

MR. GRAVEL
Question, Mr. Tapper. You're suggesting that there be some provision in the constitution that would make the attorney general the legal advisor to all departments of the executive branch of government or even to the legislature, for that matter. It's the judiciary, much as the district attorney is with respect to local government.

MR. TAPPER
Correct, because let's assume a department writes him a letter and says "We have this particular problem, what do you think about it?" He just stands around and says he's embarrassed but he can't have any authority or responsibility under the constitution to do it."

MR. GRAVEL
One further question. Do you know whether or not the committee that considered this went into the practical situation involving the--well, involving the fact that most of the attorneys working for the state are in the classified service whereas none of the attorney general's attorneys are classified?

MR. TAPPER
I don't know whether or not. I think we discussed it in the full meeting.

MR. DENNERY
Only one is unclassified; all the others are classified. I should think that if you're going to go along with this sentence that you would have to put some language in there that would make these classified, otherwise, as I remember Canille's argument before would bear great weight--in other words Mr. Stagg suggested that the attorney general would have an office devoted to highway affairs and another section devoted to revenue and so forth, and every time you had a new attorney general, you'd get rid of all of those guys and bring in some new ones who wouldn't know anything about those affairs. As it presently stands, you have career people in these various departments who have been in charge of highway appropriation suits and collections of--in the Department of Revenue and so forth.

?

Welfare.

MR. DESHOTELS
Would the gentleman yield to a question?

MR. DENNERY
I think you would have to do something along those lines.
Yes, sir.

31

MR. DESHOTELS
How did the Department of Highways get the attorneys that work for them?

MR. DENNERY
How did it get them?

MR. DESHOTELS
Who did you vote for for governor?

MR. DENNERY
You want to know who appointed him?

MR. DESHOTELS
If you don't think I blew it. I voted for Edwards.

MR. DENNERY
You want to know who appointed him or by what authority?

MR. DESHOTELS
Yes. How do they get there? How do they get a job at a desk and a secretary and all of this kind of stuff?

MR. DENNERY
They get appointed by the chief counsel for the Highway Department.

MR. DESHOTELS
They're part of the Highway Department?

MR. DENNERY
Oh, yes.

MR. DESHOTELS
Are they a part of the attorney general's staff?

MR. DENNERY
No.

MR. DESHOTELS
Could they possibly be under the attorney general's staff looking at the 1921 Constitution?

MR. DENNERY
No, I don't think so.

MR. DESHOTELS
Why?

MR. DENNERY
Well, I guess they could be, yes.

MR. DESHOTELS
"They, or one of them, shall attend to and have charge of all legal matters in which the state has an interest."

MR. DENNERY
That apparently is a provision which has been honored more in breach than in observance.

MR. DESHOTELS
I think so, but however I do believe it is.

MR. GRAVEL
... and then if somebody decides to observe rather than to breach what are you going to do about it?

MR. DENNERY
Now wait a minute. I think though, to answer your specific question, as I recall it, the provisions of the Highway Department in the constitution permit them to have a staff of attorneys. I'm not sure about that now.

MR. DESHOTELS
What about the Board of Cosmology?

32

MR. DENNERY
I think that's probably as a result of the civil service provision which says that every board, every fiscal executive officer and every department--every principal executive department, every board or commission would have the right of one unclassified attorney.

MR. DESHOTELS
It's in the constitution, isn't it?

MR. DENNERY
Yes.

?
Question.

MR. DUVAL
I, on behalf of our subcommittee, will entertain any language that would perfect this giving forth the same identical concept that we are trying to transmit here if someone's got some better language.

?
May I ask a question? Throw out something that Mr. Tapper raised. It might be a good point, but then we get back into the point raised by Mr. Gravel and I don't think if we put "the Department of Justice shall be headed by the attorney general and he shall be the chief legal advisor for all state agencies." Now, when he's the chief legal advisor for all state agencies, what does that mean? Is that..

MR. GRAVEL
I think that means he'd do substantially what he's doing now. He gives an opinion.

?
That does not, you don't think, do violence to what you're saying?

MR. STAGG
The old constitution said what Mr. Denney read when it says that if we had in line 8 this language added to it: "The attorney general shall attend to and have charge of all legal matters in which the state has an interest or of which the state is a party with the power and authority to institute and prosecute or to intervene", we would go back to the old language under which language the present attorney general and those of the past have written opinions and advised state bodies without limit or without hindrance and where is it in the law--you smarter lawyers, where is it in the law that there--there's something in the law that says that "when a state official acts under the imprimatur of an attorney general's opinion that they are held not to be blamed for what might occur." There's something in the law that says that.

MR. DENNERY
Yes, there is. I think it's probably in the opinion of the attorney general.

MR. STAGG
Okay. Research Staff, where are you? Joe, you've been hanging in here all by yourself today.

MR. DUVAL
Just so we can start doing...

MR. STAGG
... go find out how the attorney general gets to do all that, please, sir, and what reliance is being able to be placed upon his opinions by members of state government, please, sir.

MR. GRAVEL
They're under certain statutes like "Duty to render special services to state boards" as of Statute 42:265; Opinions of the attorney general, 49:251. Look under, if you have the constitution, Article VII, Section 56.

?
References.

MR. GRAVEL
There's some statutes, you know?

33

MR. STAGG
What are the numbers? 56..

MR. GRAVEL
Well, look at Article VII, Section 56 of the constitution. There are a number of references there as to what he should do. Article VII, Section 56, and there are probably some others too.

MR. STAGG
Give the statutory references again, Camille.

MR. GRAVEL
Well, wait a minute. 49:251, 42:265, 13:5036. Those three ought to pretty well..

?
What was that first one?

MR. GRAVEL
42, well, 49:251, 42:265..

?
I have the rest.

MR. GRAVEL
Okay.
Mr. Chairman, I want to move that we delete that sentence beginning on line 16 with the word "all" and ending on line 18 with the word "law". Now, we might decide to do a lot of other things, but that particular sentence, in my judgment, should not be in the constitution. I might say I do think Mr. Tapper has a good point that we ought to clearly state in the constitution as to what the attorney general shall do as legal advisor to various departments, boards and agencies, but we'll get to that later, but I do want to move to delete that sentence.

MR. STAGG
Mr. Chairman, I mean Mr. Gravel has moved that the matter extending from line 16 to line 18 be eliminated. Is there discussion? Any further discussion, there's been plenty of discussion?
Hearing none, are you ready to vote?

MR. DUVAL
No, sir, we are not. There is some discussion.
Mr. Camille, if you take that sentence out and you leave the remainder of this in for the present time and it says, "The attorney general shall have the power and authority to institute and prosecute or to intervene in any and all suits or other proceedings, civil or criminal, as is necessary for the assertion or protection of the rights and interests of this state", if this guy just got ready to, don't you think that he could overtake any legal department in the state?

MR. GRAVEL
Well, what I want him to be able to do, very frankly, is that if Joe Traigle's attorneys are not doing their job and....(END OF SIDE 1 OF TAPE) ...is what you want to do. I think it definitely does. I believe that it does.

MR. DENNERY
I would add the word "necessary" in there, Joe.

MR. GRAVEL
I would add also a provision consistent with the thought expressed by Mr. Tapper that the attorney general be made the legal advisor, constitutionally designated the legal advisor. I'm not trying to take anything necessarily away from what the attorney general ought to do, but I think the only time that he should come into the internal matters of these departments is when there's been a breakdown of the machinery, the legal machinery, that's set up in the department....

MR. ABRAHAM
Question.

34

MR. GRAVEL
Because it's unjust to let that situation ...

MR. STAGG
What you want is the status quo. You're recognized for a question.

MR. ABRAHAM
Camille, if you were to take out this sentence that you're recommending and if you were to say that "He shall have charge of all legal matters in which the state has an interest and shall have the power and authority to institute and prosecute" and so forth, would that cover what you're trying to say?

MR. GRAVEL
I think it really does. If it wasn't for the Kemp case, I wouldn't have any problem with this language at all. And I'd like to get away from the Kemp case. I think it was a political decision. I think it was wrong. I think it was a misinterpretation of the clear, explicit language that's in this constitution. The language in the old constitution doesn't bother me.

MR. STAGG
It was a purely political...there's no question about that.

MR. ANZALONE
The language in the old constitution is very clear. It was just a bad decision.

MR. GRAVEL
That's correct. That's exactly what I'm saying.

?
Just the way ... said, it was a hundred percent clear.

MR. GRAVEL
It is.

?
But we have to change it somewhat.

MR. GRAVEL
He does make an excellent point there.

?
That's a very excellent point.

?
We want to do away with Boliver versus Kemp?

?
No.

?
Stanley.

MR. STAGG
Kemp versus Stanley. 15, Southern second, page 1.

?
How clearer can something be when you give him the right to intervene and all?

MR. GRAVEL
We could say "the attorney general shall exercise supervision, control and direction," to put something else in to indicate that we wanted to make this as strong as words can permit it to be made and darn-well argue to the court and in our comments say....

?
Put it in the comments.

MR. GRAVEL
That it's--the purpose--

?
That's right.

35

MR. GRAVEL
...the purpose of this to overrule the Kemp case.

?
I think that would...

MR. TAPPER
You want to put the word "supersede" in there?--"Shall have the right to supersede"?

MR. GRAVEL
Well, I think if you do, you're going to have a real hue and cry from the district attorneys...

MR. STAGG
Good.

?
That will be heard all over the nation.

MR. STAGG
Good.

MR. GRAVEL
I have no problem with putting "supersede" in there because I don't believe that there's any question but that...

MR. TAPPER
Well, we're playing with words and if that's what you want, then let's do it, if that's what you want....

MR. GRAVEL
There is one...

MR. TAPPER
Be able to do what I had said.

MR. GRAVEL
There's one problem. You know, this knife can cut both ways. You get an unscrupulous attorney general he can go in and really...

?
Have a reign of terror there.

MR. GRAVEL
Yes. Have a reign of terror and really do things that he shouldn't do.

MR. ABRAHAM
Now, when we say "supersede", does that mean that, you know it means so many different things. Does it mean only in legal proceedings or what if the attorney general...

MR. GRAVEL
How about giving him the authority to come in and supersede a district attorney when authorized to do so by the supreme court? Some...

MR. STAGG
Now, you have set up a whole other ball of wax.

MR. GRAVEL
Well, all I'm trying to do is get away from the fear that I think many of us might have in that an unscrupulous attorney general could come in and just take over and prosecute, but, heck, that's true of a district attorney too. I mean...

MR. DENNERY
Well, that's what Mr. Kemp said that Mr. Stanley was doing and Mr. Kemp successfully defeated him so there obviously is a method of preventing it if you have one who is truly unscrupulous. If you use the word "necessary" as it is already in here...

MR. ABRAHAM
"And shall supersede the several district attorneys as is necessary

36

?
for the protection and rights and interest of the state, that, you know...

MR. TAPPER
Who's going to interpret the word "necessary"...

MR. STAGG
The courts are going to interpret any of this, Tapper, you know that.

MR. TAPPER
I mean, the issue is whether it's necessary or not.

MR. STAGG
I think we ought to expressly state in the comments that the provisions of this article are intended to overrule Kemp against Stanley and then bring up some language that will do it.

?
That's right.

MR. GRAVEL
Why don't we say in line 21, "The attorney general shall exercise supervision, direction and control over the several district attorneys throughout the state," and then in the comment just say, "This provision was inserted in order to make it clear that the convention didn't agree with the interpretation of the article in the..."

MR. DUVAL
Is the word "control" perhaps--maybe it is a bad connotation.

MR. GRAVEL
Well, maybe so. What can we put in there that will add to this to...

MR. STAGG
What are your words?

MR. GRAVEL
I said "The attorney general shall exercise supervision, direction and control". I like the word "control" there, Stan, on...

MR. TAPPER
Well, you're not then taking away the authority that the district attorneys may have.

MR. STAGG
Oh, that's good.

MR. GRAVEL
How about saying, "The attorney general shall exercise supervision over and may in the best interest of the state (or something along that line) supersede". No, that's not going to get it.

MR. DUVAL
We did haggle over this and the Kemp case is a real problem there. I think the--that's what we have to overcome because it is a bad law. If it wouldn't be for the case, we could--we'd be in good shape.

MR. ABRAHAM
Well, when you say "supervision and direction", "direction" to me means that he is able to tell that person to do this or that.

MR. DUVAL
We just need something to our comment can overrule--can say our intention is to overrule the Kemp case. That's what we need.

MR. ABRAHAM
Wouldn't just simply saying "direction", "supervision and direction"?

MR. GRAVEL
Because that imposes a duty on him when we say "he shall exercise direction". That means--that imposes a duty on him that...

MR. DENNERY
Can't you add between 22 and 23 the phrase "including the authority to supersede any attorney representing the state"?

37

MR. ARNETTE?
Or any of its political subdivisions.

MR. DENNERY
Well, no, because what you're talking about is the district attorney represents the state.

MR. ARNETTE
Yes.

MR. DENNERY
When he files suit. When he prosecutes.

MR. ARNETTE
When he prosecutes, now, I don't know if you only want to leave it to the criminal law.

MR. DENNERY
You're not giving him the right to supersede a parish attorney or a city attorney; you're only giving him the right to supersede the district attorney. Is that not correct?

MR. ARNETTE
Yes, but like the district attorney would represent the police jury, the school board.

MR. DENNERY
Well, those are state agencies.

MR. ARNETTE
Well, I don't know. They are actually subdivisions of the state.

MR. STAGG
This is overruling Kemp against Stanley emphatically "including the authority to supersede any attorney representing the state." If that doesn't overrule Kemp against Stanley, grits are not groceries.

MR. DENNERY
Well, it seems to me that you want to go anyway beyond the district attorneys. The language of the Kemp case could apply to other attorneys and if we restrict in our language the district attorneys, we haven't really gained what we want to gain. In other words, under Kemp versus Stanley it's quite possible that Traigle could argue that the attorney general could come in and supersede his attorneys. I think we ought to put it in the second, in the previous clause rather than the district attorney's clause.

MR. ARNETTE
Do you think that would do it, Camille? Would you delete the last three lines or also keep that language?

MR. DENNERY
No, I think I would leave it.

MR. ARNETTE
Suppose you inserted the language that Tom has up here and say "The attorney general shall exercise supervision of the several district attorneys throughout the state"?

7
He wants to put it after line 22.

MR. DENNERY
I want to put it before "The attorney general" sentence--I mean before the district attorney sentence.

38

MR. DENNERY (cont'd)
I want it to apply to any attorney.

MR. ARNETTE
Well, what I was going to say though "and shall perform such functions by statute including the authority"--No, that doesn't work.

MR. DUVAL
We've never voted on Mr. Gravel's original motion.

MR. DENNERY
Mr. Chairman, may I make a motion now.

MR. STAGG
We've got to dispose of Mr. Gravel's motion.

MR. DENNERY
What is the question on Mr. Gravel's motion?

MR. ARNETTE
Moise, if you put a comma where it says "state" on line 22 instead of the period and

MR. DENNERY
Well, that's my language, Greg.

MR. DUVAL
Could we preterm Mr. Gravel's--if we could consider Mr. Gravel's vote on the other.

MR. GRAVEL
I withdraw my motion for the time being.

MR. DENNERY
Have we adopted the first motion you made?

MR. DUVAL
No, I'll just leave this out. I think the article, I can read the article as I think I understand what we want and I'll just leave the language out and then we can discuss that issue after this. Is that all right? "The Department of Justice shall be headed by the attorney general." Now, here should we put "and he shall be the chief legal advisor for all state agencies"?

MR. GRAVEL
Yes.

MR. DUVAL
Okay. "The attorney general shall have the power and authority to institute and prosecute or to intervene in any and all suits or other proceedings civil or criminal as is necessary for assertion or protection of the rights and interests of the state including the authority to supersede any attorney representing the state. The attorney general shall exercise supervision over the several district attorneys throughout the state and shall perform such other functions as may be provided by statute."

MR. STAGG
I don't think that's going to get it because you put the right to supersede any attorney representing the state and then a judge in a court who read the next line saying "the attorney general shall exercise supervision over the several district attorneys", any judge making an interpretation of the language of that article would say, "You meant supersede everybody else, but in the next line you said he shall only exercise supervision over district attorneys and on one hand you give it and the other hand you take it away."

MR. DUVAL
Mr. Chairman, would this be all right. "Interest of the state", pick up "Interest of the state including the authority to supersede any attorney representing the state and shall perform such other functions as provided by law", deleting lines 23 and 24 with the exception of "and shall".

39

MR. TAPPER
You leaving the district attorney out?

MR. DUVAL
No, I'm saying it's included in Mr. Dennery's language.

MR. TAPPER
All attorneys?

MR. DUVAL
Yes.

MR. DENNERY
No, I think I would rather put the language in lines 23 and 24

up at the beginning of that sentence so it would clearly include it so that it would read, "The attorney general shall exercise supervision over the several district attorneys throughout the state, shall have the power and authority to institute and prosecute," and so forth.

MR. DUVAL
And then place your language and then put your "provide"...

MR. DENNERY
And then put "and shall perform such other functions as may be provided by statutes."

MR. DUVAL
That's fine. That's fine.

MR. GRAVEL
Could we get that dictated so we can get it read out...

? Yes.

MR. DENNERY
May I ask a question before we do that? Did you all decide that you don't have to create the departments in the constitution?

MR. DUVAL
No, not the main ones.

MR. DENNERY
I mean, you say in here, "the Department of Justice"...

? Yes.

MR. DENNERY
Well, where is the Department of Justice?

? That's a good question.

MR. DENNERY
Why don't you say and also in the previous one, "There shall be a Department of State which shall be headed by the Secretary of State" and "There shall be a Department of Justice It seems to me that's what we ought to do.

MR. STAGG
Would you make a special note of what he just said?

? Yes. The only ones we specifically provided for are the elected officials.

UNINTELLIGIBLE

MR. DUVAL
"There shall be a Department of Justice which shall be headed...."
In other words, where is the Department of Justice? Where was it created?

40

MR. STAGG
Mr. Dennery, you wouldn't agree to say "including the authority to supersede any district attorney or other attorney representing the state"?

MR. DENNERY
Well, I was going to get the same result in another fashion, but I don't care.

MR. GRAVEL
Let's say this. Maybe we're all on the same branch. "He shall have the power and authority to (1) supersede any attorney representing the state, (2) institute and prosecute, or (3) intervene in any and all suits and other proceedings, civil or criminal, for the assertion or protection of the rights and interests of the state."

MR. DENNERY
I prefer "as may be necessary". I think we have to have the "necessary" in there

MR. GRAVEL
I think we could put that at the beginning of the sentence. "As may be necessary for the assertion or protection of the rights or interests of the state he shall have the power and authority to: (1), (2), (3)."

MR. DENNERY
Well, why don't you include this one... "and (4) exercise supervision over the several district attorneys throughout the state"? In other words, I was trying to include that in the same general sentence to avoid what was Tom's problem. And if you don't put "superceding power" within the same sentence as the district attorneys you're going to get another interpretation.

MR. GRAVEL
All right. That would be the fourth thing and then we would end it by "and such other functions as provided by statute. It started off by saying this. Wait let me see if we can--try this, Mr. Chairman.

MR. STAGG
All right.

MR. DENNERY
Better say the attorney general of the state.

MR. GRAVEL
Well, it says "it shall be headed by the attorney general."

MR. DENNERY
Yes, I know, but you're starting "There is hereby created"...

MR. DUVAL
There shall be a Department of Justice which shall...

MR. GRAVEL
"As shall be necessary for the assertion or protection of the rights and interests of the state the attorney general shall have the power and authority to: (1) supersede any attorney representing the state; (2) institute and prosecute or intervene in any and all suits or other proceedings, civil or criminal, and (3) exercise supervision, direction and control over the several district attorneys throughout the state."

MR. DUVAL
Mr. Gravel, could you put that No. 1 in No. 3? Would that clear up any possible interpretation?

MR. GRAVEL
Well, we could rearrange; that'd be no problem. Then "(.) He shall perform such other functions as provided by statute."

41

MR. TAPPER
Let me ask you one other thing before we go on. talking about suits, "institute and prosecute or intervene in any and all suits", do you have any problem with that word "suits"? Or let's say in the case of like a mandamus.

MR. DUVAL
"Other proceedings."

MR. TAPPER
It doesn't say that.

MR. DUVAL
Yes, he read that--"all suits or other proceedings."

MR. GRAVEL
Right. The preamble of that sentence, or the preliminary part of that sentence, would be "As may be necessary for the assertion or protection of the rights and interests of the state."

MR. TAPPER
Okay.

MR. GRAVEL
"As may be necessary for the assertion or protection of the rights and interests of the state, the attorney general shall have the power and authority", then you want to put "(1) to exercise supervision, direction and control over..."

MR. DUVAL
Right.

MR. GRAVEL
Yes.

MR. DUVAL
No. 1 would be...

MR. GRAVEL
No. 3 would be No. 1.

MR. DUVAL
Right.

MR. STAGG
Mr. Gravel?

MR. GRAVEL
Yes, sir.

MR. STAGG
Why couldn't you say "the authority to supersede any district attorney or other attorney representing the state."

MR. GRAVEL
I think you say it when you say "supersede any attorney representing the state."

MR. STAGG
Well...

MR. GRAVEL
The district attorney always represents the state.

MR. STAGG
But you don't say it down here. I think you--when you put--add this language with respect to the district attorney, then you could eliminate No. 1.

MR. GRAVEL
No, eliminate No. 3.

MR. DUVAL
Well, it's now No. 1.

42

MR. DUVAL (cont'd)
"Supersede any attorney representing the state in any civil or criminal proceeding."

MR. GRAVEL
Of course, you're doing two different things. One place you give him the authority to displace someone and then in the other instance you're saying that he--really, I think it should go first "shall have the authority to institute and prosecute or to intervene in any and all suits or other proceedings." This doesn't necessarily mean that he's superseding anybody. He may just--

MR. DESHOTELS
Mr. Gravel, don't you think that if he says, "If you don't do it, I'll supersede you," that that will take care of the other two things?

MR. GRAVEL
Yes, but there are many times when he'd want to come in and say, "Look, I want to come in and intervene and work with you; I want to come in and associate"...

MR. DESHOTELS
"And if you don't let me, I'll just put one of my men in your place so you can come in and do all you want to, Chief."

MR. GRAVEL
Yes, but he's not necessarily having any problem with this district attorney at this time.

MR. DESHOTELS
No, but what I'm saying is that if he can supersede, we are giving him the absolute, final power over legal matters in the state to supersede somebody which we're only going to give him the reason to do it for cause, so why should we also introduce in there a problem of saying that he can't, at his own whim, institute and prosecute because what we actually want to tell him to do is that he is able to supersede somebody only if he wants to and only for cause.

MR. STAGG
Who brought up this "cause" bit?

MR. DENNERY
Well, we've got "necessary" in there somewhere.

MR. STAGG
All right, where is "necessary" in this.

MR. DENNERY
"As may be necessary for the protection..."

MR. STAGG
Oh, "as may be necessary for the assertion or protection of the rights or interests of the state, the district attorney may supersede the attorney general may supersede..."

MR. GRAVEL
"Any attorney".

MR. STAGG
"Any attorney representing the state in any civil or criminal proceeding," and then if you left off this "exercise supervision, direction and control over the several district attorneys", then this would be the operational language and the court would have to interpret that any attorney representing the state includes district attorneys then, particularly if in our comment we say this is made specifically to overrule Kemp against Stanley.

MR. GRAVEL
If he can supersede then...

43

MR. STAGG
That's what the court hung up on in Kemp against Stanley. I'll be with you in just a minute.

The court hung up on the fact that the language said "supervise" not "supersede" and the whole Kemp against Stanley turned on the fact that the word "supersede" did not appear in the constitution.

MR. ANZALONE
Do we in addition--do we in addition to giving the attorney general the final say--no over legal matters in this state also want to invest him with the power at his discretion to institute and prosecute any legal action whatsoever?

MR. STAGG
He's got it now.

MR.. ANZALONE
Do we want to have him keep it?

MR. STAGG
I think it's all right.

MR. ANZALONE
It's all right simply because nobody has tried to do it otherwise.

MR. GRAVEL
If the staff has got this language down, I don't think we can work it from the blackboard too well, maybe we could get a copy of this as a working--

MR. STAGG
Mr. Asseff has a comment he'd like to make.

MR. ASSEFF
Well, I wanted it to say first what he said to have it typed and too, if we're going to adopt that type of language, we might as well abolish all of the attorneys, the district attorneys and put it all in the attorney general's office and let him assign. I mean, that's what we've done. I mean I cannot support giving such broad authority to anybody and that's pretty darn broad.

MR. ANZALONE
Sure it is.

MR. ASSEFF
I mean that's my objection, I mean...

MR. ANZALONE
I guess you're saying this that you have no recourse in the courts.

MR. ASSEFF
Sir?

MR. ANZALONE
What you're saying is that we're giving him blanket authority and we have no recourse in the courts to stop him from doing it if he wants an illegitimate take-over of power.

MR. ASSEFF
I see no reason to have anything else. I just said if we're going to do this, to create the Department of Justice, forget the district attorneys, forget the others and let him appoint them, let him assign them.

MR. ANZALONE
That's what we're doing.

MR. ASSEFF
Because that's what he can--I'm not saying he will do it, I'm simply saying that he can do it.

44

MR. ANZALONE
No question about that.

MR. ASSEFF
And I'm very scared of that type of thing. I mean I agree with Mr. Gravel's original motion to strike that.

MR. ANZALONE
"Supervise" doesn't mean anything. What is he going to do?

MR. ASSEFF
Now, that I agree with. I don't mind if the attorney general will give us, as I requested which he did not, specific reasons. I don't mean vague, I can't go along with anything general, but specific reasons that he can state for superseding, then I think the situation is different, but that's blanket authority; that's blanket authority

MR. GRAVEL
Dr. Asseff, I just don't want you to think that because I engineered some of this language that I'm agreeing necessarily...

MR. ASSEFF
No, sir.

MR. GRAVEL
...that he ought to have the authority to supersede.

MR. ASSEFF
I agree with your deletion of the three sentences. I don't mind, as I said, Mr. Gravel, if the attorney general promised to do it, if he would give specific reasons, and I know there could be, under which he would supersede, but I oppose blanket authority of that size. In fact, I may know what Mr. Edwards will do or Mr. Guate will do, I don't know what their successors will do. It's that simple. I wish we would ask the attorney general to...

MR. STAGG
Mr--, please, we sent to the files...

MR. ASSEFF
Sir?

MR. STAGG
We sent to the files upstairs and found in C. C. R.S. 38 a proposal prepared by Kendall Vick, a delegate to the convention who is a member of the attorney general's staff and I'd like to have, during the course

of the evening, this proposal also to be duplicated for each member of the committee.

7 How about reading it to us, Mr. Chairman?

MR. STAGG
In the section that matters he says--let me run through those things that count, "He shall be the legal officer of the state and director of the Department of Justice. No person shall be eligible for election to the office unless he is a qualified elector of the state and has practiced law or served as judge in a court of record in this state for a combined total of at least five years. The attorney general shall appoint a first and a second assistant attorney general and other assistants necessary to perform the work. First and second assistants shall possess the qualifications and in a vacancy the first assistant shall assume the office for the remainder of the term."

Section 3, (and it's not but about eight lines long, six lines long) The Department of Justice shall direct all legal matters in which the state has an interest. It may institute and prosecute or intervene in any suit or other proceedings it may deem necessary for the protection of the state, its agencies or its citizens. The Department of Justice shall supervise the district attorneys and shall perform the other duties imposed by law."

MR. GRAVEL
That doesn't take care of Kemp versus Stanley.

7 It says the same thing as the constitution.

45

7take care of the state of Louisiana, Guste versus the Louisiana Board of Highways.

MR. ANZALONE
Mr. Chairman, I'd like to raise a question.

MR. STAGG
Well, I would like also to direct the staff to reproduce this just for our record for tomorrow.

MR. GRAVEL
Read that ... that we have on the blackboard now. Would that be a big problem? This is a working paper.

MR. ANZALONE
This question I would like to raise is a point of order or information. Has this committee ever voted on the concept? Do we want the attorney general to be able to supersede the district attorneys. Do we want him to come in or don't we? It's just that simple.

7 I think we'd better make up our minds.

MR. ASSEFF
I don't think we did...

MR. ANZALONE
I don't think we ever decided specifically...

MR. ASSEFF
I did ask him what I said I did.

MR. ANZALONE
Now, if we don't, then we can use the language that's presently--that we presently have. If we do, then we're going to have to adopt something like this.

MR. ASSEFF
I don't believe we did.

MR. STOVALL
We say here "tentative, nonbinding Section 30."

MR. ABRAHAM
Section 30 of the concept says "the attorney general is to supersede district attorneys in certain instances."

7 See, "in certain instances" makes it--makes the concept somewhat vague.

MR. STAGG
Everybody knows there was an article in the New Orleans States Item, a series of articles on the powerhouses of Jefferson Parish. The Four Kings they called the series of articles. In the one on John Mamouides (is that how you say it?)

7 Mamouides.

MR. STAGG
Mamouides. In the article on John Mamouides it pointed out in passing how district attorneys become powerhouses in parish government by saying

MR. STAGG (cont'd)

who shall be prosecuted and who shall not and in most cases it's their word as to who goes to jail and who does not and that from such a base any district attorney worthy of his salt who wants to be the king of the parish can cover a period of years get to be the king. And if a district attorney becomes possessed of that ambition, where is he to be stopped in case he really wants to roughshod over people, individuals? Where does he get stopped? Who stops him?

MR. GRAVEL
Same place that Garrison got stopped, in the courts. It's the only place. That's the only recourse that you've got.

7 Where does the attorney general get stopped if we make him a powerhouse?

UNINTELLIGIBLE

MR. STAGG
That's what we debating. That's some severe constitutional ideas we're putting down here today.

MR. GRAVEL
You are dealing with a different problem though when you talk about the attorney general vis-a-vis the district attorneys. You know, you're dealing with a different situation. Who's going to stop the unscrupulous attorney general? The last time I remember a special prosecutor doing much, he came to Rapides Parish and filed two hundred and fifty-three bills of information and never tried one. Never tried a single one.

7 Who's that? Who's that, a district attorney?

MR. GRAVEL
Yes.

MR. TAPPER
You said, Camille, you would fight them in the courts. Ask Clay Shaw about that. He went broke doing that.

MR. GRAVEL
I understand that, but at least he had recourse in the courts.

MR. TAPPER
Yes, they did it to me one time and it cost me pretty good penny.

MR. GRAVEL
But you're not going to keep the district attorney--no matter what we try to do in this constitution you're certainly not going to keep the district attorney from being the man in his district who's going to have the ultimate authority to determine who shall be prosecuted. Now...

MR. TAPPER
Doesn't the district attorney have the right to object and to take the attorney general into court to determine whether or not the attorney general should supersede?

MR. GRAVEL
Not if we constitutionally give him the authority to do it.

MR. DENNERY
Camille, if you say do it only when it is necessary.....
.....just walking in here.

MR. GRAVEL
We got that preliminary language...

MR. DUVAL
He's doing it for purely political reasons. There's no merit to what he's doing.

MR. GRAVEL
In other words you're saying that the district attorney could then

MR. DENNERY
And give the ball to the judge.

MR. GRAVEL

7 go into court and say, "This isn't in the best interest of the state."

MR. TAPPER
In other words, have--and the attorney general and the district attorneys battle it out in the courts and we, as an innocent citizen...

MR. DESHOTELS
And give the ball to the judge.

MR. GRAVEL
That's why I wanted to give a little more thought to that preliminary, modifying language.

MR. DENNERY
Well, if you look at this Highway Department case and I don't know whether they've taken writs on it or not, frankly, I think they probably did.

MR. GRAVEL
Settlement of the Chris Faser deal?

MR. DENNERY
Yes, but the languagethe mere fact that the attorney

general disagreed with counsel retained by the Department of Highways didn't warrant an intervention by the attorney general, so this blocks a lot of the strength to allow it.

MR. GRAVEL
What was the authority on that

UNINTELLIGIBLE

MR. GRAVEL
Let's start spelling "supersede" right.

MR. ASSEFF
Yes, by putting an "s" instead of a "c", if you don't mind.

MR. GRAVEL
We're going to be dealing with it a couple of days, it looks like.

UNINTELLIGIBLE

MRS. BRIEN
I wish we'd leave it for tomorrow and go on the other one... I say leave it for tomorrow. Don't get nothing out today.

?
Chairman, how late are we going to work today?

MR. STAGG
Sir?

?
How late do you anticipate working today?

MR. STAGG
I would hope that we would finish the attorney general article so that we could start, but we're not going to be able to finish it so the next one is the treasurer and then the public service commission and the board of ethics and dual office holding.

48

?
I think we're all trying to accomplish the same thing. I really do.

MR. GRAVEL
If there's a better way to do it, I'm perfectly willing to go along with it, but I think we ought to....

?
I don't know if that quite solves the problem but....

?
It's better than nothing.

MR. GRAVEL
I think it does.

?
It says, "Thou shall not steal or you go to hell", but that don't give nobody his money back.

MR. GRAVEL
Well, we would adopt that, but I'd like to just make sure that everybody understands I'm perfectly willing to work with other members of the committee to come up with some language....

?
I agree that...

MR. GRAVEL
...something that we can do to eliminate the fear that some of you have.

?
Let's move off this. We're going to be back here the 29th, so let's move off this and get on something else.

MR. ALEXANDER
Pardon me, Mr. Gravel.

MR. GRAVEL
Yes, sir.

?
You have to accept the vote of the committee.

MR. ALEXANDER
Mr. Gravel, in New Orleans the city councilmen must reappointment at a given time; if they don't, their salaries are cut off. Maybe....

?
You really hit them where it hurts, huh, Reverend?

MR. GRAVEL
Well, that's what we do, supposedly, with judges now, but nobody--no lawyer has got the gall to go raise one because the judge doesn't decide the case.

?
I dictated one one time.

MR. GRAVEL
I've thought about them. Well, we're going to take up "pardons" next? Wasn't that on the agenda?

MR. STAGG
Yes, sir.

MR. GRAVEL
Mr. Chairman?

MR. STAGG
What does the document look like?

49

MR. GRAVEL
It's a (B) document with one small paragraph.

MR. STAGG
Alright.

MR. GRAVEL
Reading as follows: "Except in cases of conviction upon impeachment or for treason (Oh, here's several of them if anybody doesn't have one).

?
Yes. I don't have one.

MR. GRAVEL
Anybody else need one?

?
Yes.

MR. GRAVEL
"Except in cases of conviction upon impeachment or for treason, the governor may relieve, may grant commutation of sentence, and may pardon those convicted of offenses against the state and may remit fines and forfeitures imposed for such offenses." And I would add to that language this sentence. "Other remedies for those convicted of offenses may be provided by statute."

?
What was that last line?

MR. STAGG
We'll have to write it down because it's not on there. Everybody write it down as he dictates it.

MR. GRAVEL
"Other remedies for those convicted of offenses may be...

MR. STAGG
Slower; slower.

MR. GRAVEL
"Other remedies for those convicted of offenses may be provided by statute."

MR. STAGG
Mr. Anzalone, do you and Mr. Duval have the added language?

MR. ANZALONE
Yes, sir.

MR. STAGG
You better have.

MR. ANZALONE
Yes, sir.

MR. STAGG
Mr. Gravel.

MR. GRAVEL
Yes, sir.

MR. STAGG
In your added sentence, "Other remedies for those convicted of offenses may be provided by statutes", what do you intend for that to include?

MR. GRAVEL
Primarily, parole, suspensions and probations.

50

MR. STAGG
Alright now what's out?

MR. GRAVEL
Parole...

MR. ABRAHAM
Mr. Chairman.

MR. STAGG
Alright. Yes, sir, Mr. Abraham.

MR. ABRAHAM
I thought we had already approved this thing on pardons before.
Are we reconsidering it now?

MR. STAGG
I didn't know...

7
We hadn't acted on it. We skipped it.

7
Well, I got an okay by mine. Did we approve it?

MR. ABRAHAM
I've got revisions on mine, language right here.

MR. STAGG
What page are you on, Mack?

MR. ABRAHAM
I'm on the original....

MR. STAGG
What page?

MR. ABRAHAM
...thing. Page 6 of the original subcommittee report.

7
CC 1.

MR. GRAVEL
I made the statement while we were discussing it before noon that I wanted to have, at least through the noon hour, to prepare some language.

7
That's right. You did make that request.

MR. STAGG
Well, this is the first day and you were not here and the language that was adopted was, "The governor shall have power to grant reprieves and pardons after convictions for all offenses. Such authority may, in addition, be otherwise delegated as may be provided by statute."

MR. GRAVEL
I believe that the position was that I asked for permission for us to reconsider that and then was granted permission and authorized to prepare something.

MR. ASSEFF
You did. You asked and we granted it.

7
Sir?

UNINTELLIGIBLE

MR. GRAVEL
Let me explain what I mean by this and why I couch this in this language. There are certain post-conviction procedures that I think should come within the authority of, primarily, of the chief executive

51

MR. GRAVEL (cont'd)
and those are the ones that have been set forth in the typewritten portion of this little memorandum or note that each of you has. Now, there are other procedures, post-conviction, that really address themselves to other people. For example, the parole concept should, in my judgment, address itself to a parole board set up by statute. The concept of suspension of sentence or probation are matters that may or may not, as authorized by statute, come within the purview and jurisdiction of the sentencing judge, so with that the judiciary involved in some procedures after conviction, we've got special parole boards in some procedures after conviction and then some area in which the chief executive as the chief executive should exercise his authority.

MR. STAGG
Would your language be clearer if it said, "Other remedies such as parole and probations?"

MR. GRAVEL
We could even specifically say...

MR. STAGG
"Other remedies for those convicted such as parole, probation..."

MR. GRAVEL
Well, I'd say, "including parole, probation and other remedies for those convicted of offenses may be provided by statute."

MR. STAGG
Well now, where do we--where do we stand, gentlemen? I'm the chair.

7
We need a motion to reconsider.

MR. GRAVEL
I think we did that this morning now.

MR. ASSEFF
We did.

MR. GRAVEL
I don't know.

7
What's that? Where are we?

MR. ABRAHAM
I wouldn't argue with anything right now.

MR. STAGG
What, Mack?

MR. ABRAHAM
I said I wouldn't argue with anybody on anything right now.

MR. STOVALL
I think this committee granted to Mr. Gravel the right to propose this. That's what this committee did.

MR. ASSEFF
I agree.

MR. STOVALL
This committee requested that Mr. Gravel submit this language to it.

MR. ASSEFF
That's right. Mr. Gravel asked and we granted the request.

MR. STOVALL
That's specifically what the committee did.

7
Okay.

7
That was yesterday, not today.

52

7
Okay.

7
What happened Thursday?

7
You weren't here.

7
That was a lost day.

7
But we did do that and I think it's mostly in order.

MR. ASSEFF
We did.

7
Okay. You directed him to prepare this language.

7
That's exactly right.

MR. STAGG
Alright, Mr. Gravel. Everybody concedes that you're somewhat in order, but I wonder where we lost our ideas and dreams and hopes that we'd get a professional pardon board with penologists and people learned in that field to relieve the governor and the other people of having to do any of this and damn, we don't have nothing.

MR. GRAVEL
I think we do. I think though that to solve that problem, Mr. Chairman, that we have to by statute create and authorize the kind of parole board that can address itself to the rehabilitation problems of the persons who have been convicted. And that's where I think a lot of times, and I've mentioned this before at this committee meeting, that we don't stop and think about the kind of relief that we're talking about. When we're really talking about doing something for the prisoner to get him released and get him out of the institution, primarily we're talking about parole. Pardon and commutation are concepts that generally come much later after the sentence or the term has actually been served or the time has expired during which the term would have been served, if he's out on parole. And the problem that we've had I think in this state is too many parole-type applications have been made for pardon or commutation of sentence to the pardon board when they should have been addressed to the parole board.

MR. STAGG
Mr. Gravel, would you yield to Dr. Asseff?

MR. GRAVEL
Yes.

MR. ASSEFF
Mr. Gravel, isn't it true that this gives full and complete power to the governor in the particular areas that you have stated?

MR. GRAVEL
Correct and the ones that

MR. ASSEFF
Thank you.

MR. GRAVEL
That's correct.

MR. STAGG
Any other comments or questions for Mr. Gravel?

I have a question. Do you think that language of "other remedies for those convicted of offenses may be provided by statute", is sufficient language to provide for the board, parole board or pardon board or whatever--what we were trying to retain here, as I understand it, was that he does have this final power in cases not exercised elsewhere. You see? And I think that's the only thing we were trying to say that.

53

(cont'd)
he does have the power to do these things, but in no way did we want to indicate with the language that he was the only one that would be doing these things. We do want these things to be done by this professional board or whatever it may be.

MR. GRAVEL
Well then, I think it would be very simple to say that the legislature may provide by statute for a pardon and parole board that may, and then list the things that could be done by that board, that may also exercise these functions and, in addition, may grant paroles and suspend sentences. That's what you want to do.

You say--well, if you use the words, "instead of other remedies," and so forth, if you say, "Such authority may be otherwise provided by statute." Would that take care of it? If we say that this authority can be given to someone else. Does that leave the door open

Well, could I say a couple of things while he's thinking?

MR. STAGG
Yes. Well, I want to hand this to Mr. Gravel, but I don't know that he ever had our original language that we adopted presented to him in typing where it says, "The governor shall have power to grant reprieves after conviction and pardons for all offenses. In addition, such authority may be otherwise provided by statute."

MR. GRAVEL
We could say that right here.

Okay.

MR. GRAVEL
In addition such authority and other remedies for those convicted of offenses may be provided by statute." Let me put it down here.

Okay.

MR. ARNETTE
Does anybody have the floor now?

MR. STAGG
Yes, Mr. Arnette.

MR. ARNETTE
It's me?

MR. STAGG
You.

MR. ARNETTE
Okay. Well, Camille, I like your language because, first of all, it includes commutation in here besides, and I think there ought to be a power--the governor ought to have the power to commute sentences and I just generally like the way it's written instead of the way the other one's written. Now, this doesn't preclude any professional board or anything like that. It just says the ultimate power is in the governor. The governor may do it in any way he sees fit. If he says, "I'll let a professional pardon board do it", then that's up to him.

MR. GRAVEL
That's right.

MR. ARNETTE
So I think this is all right in that respect. The only thing that I would quibble with is, is there any reason for having "or for treason" in there?

54

MR. GRAVEL
You mean let that be a crime also for which the governor can ...

MR. ABRAHAM
What about impeachment?

MR. ARNETTE
Well, impeachment's something different though. Impeachment--

you know, you're getting into a superlative there because you're convicted not just by a court, but you're convicted by the entire legislature.

MR. GRAVEL
Plus the fact that generally that involves a political situation and the governor ought not really do much, you know, and then you're only really, generally talking about removing the person from office so...

MR. ARNETTE
You see, if the governor could just overrule the entire legislature...

MR. ABRAHAM
Then he could restore that person to office.

MR. GRAVEL
I think you're right though about eliminating the treason.

MR. ARNETTE
I don't think there's any reason for having "or for treason" and I'd like for you to accept that amendment and I'll vote for it.

MR. GRAVEL
Alright. Let me just make--just throw this out as a suggestion and as an additional provision. "In addition such authority and other remedies for those convicted of offenses may be provided by statute." In other words, what you'd be doing now, just keep this in mind, is you'd be authorizing the legislature to provide by simple statute for pardoning offenses and granting commutations. I always look at...

I don't think we ought to do that.

MR. GRAVEL
I think that the idea of pardoning someone or commuting that person's sentence should be left up to the governor. Now, there's nothing under the sun under this language to keep--to prevent the governor from exercising that privilege in such a way as he may set forth by executive order or in any other manner that he may determine. I think what is important, of course, is that we've got to give to the legislature the authority to deal in other areas such as parole, suspension of sentence and probation.

Why don't you just say the way you originally stated it? "Other offenses for those convicted of offense."

MR. ABRAHAM
Why should not a statute provide for this professional board? If they can parole, why can't they also pardon? Why can't they also commute sentences? Why can't they remit fines and forfeitures?

MR. ABRAHAM
We're going to retain the ultimate right of the governor to be able to do so.

MR. GRAVEL
That's ideal if it's done the right way. If it's not done the right way, you can have a situation where it would be very easy to...

MR. ABRAHAM
Well, this is ideal if the governor acts in the right way, too, but it is not

MR. ARNETTE
May I seek recognition?

MR. STAGG
You got it.

55

MR. ARNETTE
Okay. Well, what it says here, the way it's stated is the governor has got the exclusive right to commute, pardon and reprieve and I think that's right. Now, other remedies like paroles, suspension, probation, things like that ought to be provided by statute, but I don't think anybody else ought to have the right to pardon anybody and I think it ought to be ultimately up to only the governor and that's the way it's written now. It says "other remedies"...

Correct.

MR. ARNETTE
...so it can't be the remedies above, it has to be other remedies such as parole.

I have a question of Mr. Arnette, please.

MR. STAGG
Yes.

MR. ABRAHAM
Then why burden the governor with commutation and the right to remit fine and forfeitures? Let's go back to the language where he has--where we gave him the right to reprieve and pardon.

MR. ARNETTE
I think he ought to have the right of commutation also.

MR. GRAVEL
Well, I don't think it's a question of burden, it's a question that the ultimate responsibility to do these things ought to rest with the chief executive.

MR. ABRAHAM
Well, may I ask this: What's the difference between a commutation of sentence and a parole?

MR. ARNETTE
Well, a parole you get to check in all the time. A commutation, your sentence is ended. It's over. You see a parole, you can be subject to be sent back for that same offense.

MR. ABRAHAM
Alright now, what is a pardon, if a person is in prison?

MR. ARNETTE
A pardon, it just completely...

MR. ABRAHAM
A person is in prison and he's been pardoned by the governor?

MR. ARNETTE
It's like he never committed the crime.

MR. ABRAHAM
He gets out of prison, does he not?

MR. ARNETTE
He gets out of prison as though he never committed a crime.

MR. ABRAHAM
So his sentence is commuted, is it not?

MR. GRAVEL
No, there's no sentence. It's just like there was never any sentence at all.

MR. ARNETTE
It's just like he never got convicted.

56

MR. ABRAHAM
But anyway he's out of prison.

MR. ARNETTE
Sure.

MR. ABRAHAM
Well, all right, now what's the difference between that, say, and the commutation of sentences as far as...

MR. ARNETTE
Because there are certain difference from the sanctions besides just prison. Say, if you get your sentence commuted, you still cannot vote if you have been convicted or pardoned; you can't hold public office and all these things.

MR. ABRAHAM
Well, may I point out that in our concept here we said that the governor should not retain the power to grant commutations?

MR. GRAVEL
Let me explain to you what I think--what the differences are and I think it would make sense to have this kind of debate. Parole means that the person is released from the institution in which he's an inmate, but he still theoretically belongs to the institution because he's only out on good behavior. If he violates the conditions of his parole, if he doesn't do the things that he's supposed to do, then back he goes, more or less, automatically, so he still belongs to the institution. Commutation is just another way of--it's a mild- or quasi-pardon to the extent that it reduces the sentence. Commutation doesn't necessarily mean that a person gets released from an institution. A person may be in an institution under a ten year sentence and the governor may commute the sentence to five years after he's been there just six months, so it's really giving him some kind of relief but not necessarily going all the way. Pardon is complete remission of the offense and whitewashing it for all practical purposes.

MR. STAGG
Allows him to vote again and all those good things, restores his civil rights.

MR. ABRAHAM
Well, how about deleting the remitting of fine and forfeitures?

MR. GRAVEL
Well, the remission of fines and forfeitures is just another way of completely undoing what has been done when there has been no incarceration involved and there's been some money payment made.

MR. ABRAHAM
Well, should we burden the governor with that type of thing?

MR. GRAVEL
I don't think that that's a burden at all to the governor because that comes up so seldom, but the idea behind it, I would think, is

because sometimes when the governor is actually trying to do something for a person who has been convicted, that person may have been sentenced to imprisonment and also fined at the same time and in order, maybe, to completely wash out the obligation the person owes from a conviction, element of the pardon. Now, don't get me wrong, this is something that permits him to resist some fines and that is the only thing that has been imposed.

MR. ARNETTE
Well, say somebody didn't pay their income tax and they get fined ten thousand dollars or, you know, they had so many offenses that they got way up there and it was a ten thousand dollar thing. Okay, the governor, say, he finds out that this guy was wrongfully committed, wrongfully convicted for some reason because some ~~corruption~~ ~~corruption~~ came out at the trial or something like this and he just said, "Look, you know I'll pay you back the money you paid in the fine."

57

MR. ABRAHAM
I would go back to my original question then. What's wrong with saying then, "In addition such authority or other remedies for those convicted of offenses may be provided by statute?"

MR. GRAVEL
The only thing about it is that it's a two-edged sword; it can be a very loosely drawn statute that would permit persons to be pardoned without any concurrence of any kind by the governor. In a way that maybe you wouldn't want. In other words, the legislature could make it--I don't think they would, don't get me wrong, but it would make it relatively easy.

MR. ABRAHAM
Well, the intent is for the legislature to set up this board that...

MR. GRAVEL
I know, but you're now saying what the legislature is going to do. Suppose the legislature passed an act saying that the warden of the penitentiary is hereby authorized to pardon anybody that he wants to. Depends on what the legislature does.

MR. STAGG
Mr. Arnette.

MR. ARNETTE
The problem I think you've got here when you do that, Mack, is that you might have a board set up of professional people, say, that could do--could pardon, who are not subject to any political pressure whatsoever and there might be great reasons for not having someone pardoned and this board does it and, you know, nobody can do anything against this particular board and that's why it ought to be the governor's decision because he's in a political position and if he makes bad decisions, he's responsible for them and that's why it ought to be the governor or someone like the governor, but I think the governor is the proper person.

MR. ABRAHAM
Well, what are we doing here that's any different, say, than what the present constitution provides for?

MR. GRAVEL
You're eliminating the lieutenant governor and the attorney general from the pardoning process.

MR. ABRAHAM
Putting it all on the governor.

MR. GRAVEL
Correct. In other words not requiring the recommendation of the attorney general and the lieutenant governor. The ideal thing, let's face it, would be for a governor to say, "Well, before I pardon anybody, I'm going to have the recommendation of this board or this group that I appoint whom I have confidence in that will give these cases the kind of study and analysis and give me the kind of recommendation on which I can act."

MR. ABRAHAM
Okay, we're leaving it open then as to who will make the recommendation to the governor. That's what we're really doing.

MR. STAGG
If any.

MR. ABRAHAM
If he wants someone--a professional board to make these recommendations to him, then statute--he might provide such a thing by statute, executive order or whatever he wants. Okay, I'll buy it.

MR. GRAVEL
I move the adoption of the proposed language...

58

[1115]

1 Would you please read it?

MR. STAGG
And when you have read it, furnish it to the staff.

MR. GRAVEL
Except in cases of conviction upon impeachment, the governor may
reprieve, may grant commutation of sentence and may pardon those con-
victed of offenses against the state and may remit fines and forfeitures
imposed for such offenses. In addition such authority and other remedies
for those convicted of offenses may be provided by statute."

2 Could you simplify that last sentence? I thought you said you
didn't want to give

3 "Other remedies for the conviction..."

MR. GRAVEL
That's what I would prefer. "Other remedies for those convicted
of offenses may be provided by statute."

4 Okay, that's what I thought you'd get.

MR. GRAVEL
That's the original one. That's the way I'd rather have it.

5 Good.

MRS. BRIEN
You left out "in addition".

MR. GRAVEL
Yes. Right.

6 That seems all right.

MR. STAGG
You furnished the language. Whoever has the language perfected will
please furnish it to the staff.

MR. GRAVEL
Just like I had it except striking out "or for treason".

7 You put "impeachment."

MR. GRAVEL
Right.

MR. STAGG
You've heard the motion by the gentleman from Upper Rapides. Those
who are in favor of the motion, please signify by raising your hand. I
see one, two, three, four, five, six. Opposed?

MR. ASSEFF
I abstain.

MR. STAGG
And one abstention. The motion is adopted. The chair will entertain
a motion to adjourn.

MR. GRAVEL
I move to adjourn to a time fixed by the chairman.

MR. STAGG
The chairman, for the benefit of those members of the committee who
stuck out to the live-long deadly end...

MR. ABSETTE
Do we get overtime for this?

59

MR. STAGG
I'm going to give you some of it back. I'm going to ask for
permission for this committee to meet beginning at 12:00 noon on
Friday, June the 29th, on Saturday, June the 30th and Sunday, July
the 1st, from one to nine. If Sunday meeting is not necessary, it
will be cancelled.

8 Now, wait, I didn't understand what you said.

MR. STAGG
It will be the chair's intention to ask the chairman of the
convention for leave to meet beginning at 12:00 noon on June 29th,
on Saturday, June 30th...

9 What time on Saturday?

MR. STAGG
Nine o'clock. And on Sunday, July 1, from one to nine p.m., if
necessary.

10 Okay. Would you change that first one on Saturday--on Friday at
one o'clock so that we can eat lunch first?

MR. STAGG
I want you to eat lunch before you come.

11 Before twelve?

MR. STAGG
Yes. I want to mess up your lunch hour.

12 Man, you are really messing me up.

13 Going to mess up my day. Why are we meeting earlier on Saturday?

MR. STAGG
One to nine p.m.

14 Tom, why not meet early on Friday? Tom, what's wrong with...

MR. STAGG
We've got people that want to go to church.

MR. ASSEFF
I abstain.

MRS. BRIEN
I can't come on Friday. I could come Thursday.

END OF TAPE

60

SUBCOMMITTEE ON POWERS OF GOVERNOR,
QUALIFICATIONS, TERM OF OFFICE, SALARIES
(For consideration on June 14,13,16, 1973)

CC-1

- 1 Constitutional Convention of Louisiana of 1973
- 2 SUBCOMMITTEE PROPOSAL NUMBER
- 3 Introduced by Mack Abraham on behalf of the Subcommittee on
- 4 Powers of Governor
- 5 A PROPOSAL
- 6 Making provisions for the executive branch of ^[state] government
- 7 and necessary provisions with respect thereto.
- 8 PROPOSED SECTIONS:
- 9 Article , Section 1. Composition
- 10 (A) The executive branch shall consist of a governor,
- 11 lieutenant governor, secretary of state, attorney
- 12 general, treasurer, and ^{all} ~~[such]~~ other executive offices,
- 13 agencies, and instrumentalities ~~as provided by law.~~
- 14 (B) All offices, agencies, and instrumentalities
- 15 of the executive branch of state government and their
- 16 respective functions, powers, and duties, except for the
- 17 office of governor and lieutenant governor, shall be
- 18 allocated by ^{statute} ~~law~~ according to function, among and within
- 19 not more than twenty departments.
- 20
- 21 Source: La. Const. Art. V, §1; Art. VII, §55 (1921).
- 22
- 23 Comment: Paragraph (A) reduces the number of statewide
- 24 elective offices by deleting from the source provision
- 25 the offices of Comptroller, Register of the Land Office,
- 26 Commissioner of Agriculture, Commissioner of Insurance,
- 27 and Custodian of Voting Machines.

28 Paragraph (B) is new. Establishes a maximum number
29 of departments in the executive branch. The principle
30 criterion in meeting this requirement shall be grouping
31 according to function.

32
33 Section 2. Qualifications

34 (A) To be eligible for the office of governor,
35 lieutenant governor, secretary of state, attorney general,

1 or treasurer a person must have attained the age of
2 twenty-five years by the date of his election and be
3 a citizen of the United States and of this state for at
4 least the five years immediately preceding the date of
5 his election. He shall hold no other public office,
6 except by virtue of his office, during the term for which
7 he is elected.

8 [also]
9 (B) The attorney general shall ~~also~~ have practiced
10 law or served as a judge of a court of record in this
11 state for a combined total of at least five years
12 preceding his election.

13 Source: La. Const. Art. V, §3; Art. VII, §56 (1921).

14
15 Comment: Paragraph (A) lowers the minimum age for eligibility
16 to the offices of governor and lieutenant governor from
17 30 years of age to 25 years. Lowes the period of
18 citizenship preceding election from 10 years to 5 years.
19 Changes source provision prohibiting dual office-holding
20 under the United States, by extending prohibition to any
21 office except that held ex officio.

22 Paragraph (B) revises present provision by deleting
23 requirement that Attorney General shall be learned in
24 the law. Under the present constitution the attorney
25 general shall have practiced law for at least five years
26 preceding his election. The revision includes service as
27 a judge of a court of record as fulfilling the five-year
28 experience requirement for the attorney general.

29
30 Section 3. Elections and Terms

31 (A) The governor, lieutenant governor, secretary of
32 state, attorney general, and treasurer shall be elected
33 each for a term of four years by the electors of the members
34 state, at the time and place of voting for ~~representatives~~
35 of ~~the~~ legislature. A person who has ~~ex-but for~~

* * *
DRAFT PROVISIONS SUBMITTED BY SUBCOMMITTEE ON
POWERS OF EXECUTIVE OFFICIALS, MEMBERS
AND COMMISSIONS, DUAL OFFICE-HOLDING, CODE OF ETHICS

(For consideration on June 14, 15, 16, 1973)

CC-2

1 Constitutional Convention of Louisiana of 1973

2 SUBCOMMITTEE PROPOSAL NUMBER

3 Introduced by Stan Duval on behalf of the Subcommittee on
4 Powers of Other Elective Officials, Boards, and
5 Commissions, and Code of Ethics

6 A-PROPOSAL

7 Making provisions for the executive branch of government and
8 necessary provisions with respect thereto.

9 PROPOSED SECTIONS:

10 Article , Section 1. Lieutenant Governor; Powers.

11 The lieutenant governor shall serve as ex officio
12 member on every statutory committee, board, and
13 commission on which the governor serves, exercise the
14 powers delegated to him by the governor, and perform
15 such other executive functions as provided by law.

16
17 Source: New

18
19 Comment: Removes lieutenant governor as presiding officer
20 of the Senate and vests him with that executive
21 authority delegated by the governor, or provided by
22 law.

23
24 Section 2. Secretary of State; Powers

25 The department of state shall be headed by the
26 secretary of state, who shall serve as the chief
27 elections officer and administer the primary and
28 general election laws at the state level; administer the
29 laws relative to voting machines or other voting devices
30 as now or hereafter provided by this constitution or by
31 law; administer the state corporation and trade mark laws;
32 serve as Keeper of the Great Seal of the State of
33 Louisiana and attest therewith all official laws, docu-
34 ments, proclamations, and commissions; administer and
35 preserve the official archives and records of the state;

2

1 promulgate, publish, and retain the originals of all
2 laws enacted by the legislature; countersign all commis-
3 sions and keep an official registry of same; administer
4 oaths; and perform such other functions as provided by
5 law.

6
7 Source: New

8
9 Comment: Duties of the secretary of state are set forth in
10 various provisions of the present constitution. This
11 provision sets forth his duties, and creates a depart-
12 ment of state, headed by the secretary of state.

13
14 Section 3. Attorney General; Powers

[1117]

The Department of justice shall be headed by the attorney general. All state attorneys are to be a part of the office of the attorney general, except as otherwise provided by law. The attorney general shall have the power and authority to institute and prosecute or to intervene in any and all suits or other proceedings, civil or criminal, as is necessary for the assertion or protection of the rights and interests of the state. The attorney general shall exercise supervision over the several district attorneys throughout the state, and shall perform such other functions as provided by law.

Source: La. Const. Art. VII, §555, 56 (1921).

Comment: Duties of the attorney general unchanged from source provision. Creates the department of justice headed by the attorney general. Adds provision that all state attorneys are part of the office of attorney general, unless otherwise provided by law.

MINUTES

Minutes of the meeting of the Committee on
Executive Department of the Constitutional
Convention of 1973

Held pursuant to notice mailed by the Secretary
of the Convention on June 18, 1973

LSU Law School, Baton Rouge, Louisiana

Friday, June 29, 1973, 12:00 Noon

Saturday, June 30, 1973, 9:00 a.m.

Sunday, July 1, 1973, 1:00 a.m. *

Presiding: Tom Stagg, Chairman of the Committee on
Executive Department

Present

Mack Abraham
Avery C. Alexander
Joseph E. Anzalone, Jr.
Greg Arnette, Jr.
Emmett Asseff
Hilda Brien
Noise W. Denberry
Stanwood R. Duval, Jr.
Camille F. Gravel, Jr.
Tom Stagg
James L. Stovall
Elmer R. Tapper

Absent

James L. Stovall, on
Sunday, July 1, 1973

* * *

Section 6. First Assistants. Mr. Gravel offered the motion to adopt the provision as it is written in the second draft.

Mr. Anzalone offered a substitute motion that the provision include any statewide elected officials. After discussion, Mr. Anzalone withdrew his substitute motion.

The original motion offered by Mr. Gravel was approved with Mr. Anzalone and Dr. Asseff abstaining.

Section 20. Determination of Disability. Mr. Denberry offered the motion to adopt the provision in the second draft.

Mr. Gravel offered the substitute motion that on line 12 the words "for just cause" be inserted after "whenever", and on line 32 the words "two-thirds" be omitted and the word "majority" be inserted.

Chairman Stagg recommended that all words in brackets be included in Section 20.

Mr. Gravel withdrew the first part of his substitute motion and added to his previous substitute motion that on line 13, page 14, the word "such" be included after "other".

Mr. Denberry offered an amendment to the substitute motion to add "such" in lieu of "the" when referring to elected officials, and to also include this amendment for lines 13, 17, 22, 23, 30, and 34. Mr. Gravel accepted the amendment.

Dr. Asseff offered the motion to adopt his proposal on Determination of Disability. After discussion, the staff was directed to prepare a new concept. Dr. Asseff withdrew his motion.

* * *
Page 2

Mr. Arnette offered the substitute motion that on line 21 after the word "for" the words "the following actions during his term of office" be inserted. Mr. Gravel offered the amendment to omit "incompetence and corruption". The amendment was accepted. The substitute motion failed with a vote of three (3) in favor and five (5) against.

Mr. Gravel offered a substitute motion that the following language be adopted:

"Any state and district official, whether elected or appointed, shall be liable to impeachment for commission or conviction of felonies or malfeasance during his term of office, or for gross misconduct." The motion carried.

Mr. Denberry offered the motion that in Section 24(B), delete everything after the period on lines 27 and 28 and all before the period on line 29. Also, on line 31, the word "judgment of" be deleted and on line 26, after the word "and" the words "a vote of" be inserted. There being no objection, the chair so ordered the above amendments.

Mrs. Brien submitted a proposal and moved for its adoption. Mr. Anzalone and Mr. Arnette offered amendments to the motion and Mrs. Brien accepted the amendments. The motion carried unanimously.

Section 5(E). Mr. Duval offered the motion that lines 15 and 16 be deleted and the following words be inserted: "The legislature may provide additional methods

whereby persons convicted of offenses may be pardoned or

Page 11

granted commutation of sentence. Other postconviction sentences also may be provided by statute."

Mrs. Brien submitted copies of language to the committee on pardons and moved for its adoption. The substitute motion failed with a vote of one (1) in favor and seven (7) against it.

Mr. Arnette offered a substitute motion that lines 15 and 16 be deleted. The substitute motion failed with a vote of two (2) in favor and five (5) against.

Mr. Abraham offered a substitute motion that on lines 15 and 16, language be adopted to provide for the legislature providing additional methods for the foregoing and other postconviction remedies. The substitute motion carried unanimously.

Mr. Tapper offered the motion that in Section 3, on line 7, after the word "elected", the word "statewide" be inserted. Also, on line 8, strike the word "each" and on line 7, after the word "shall", the word "each" be inserted. The motion carried unanimously.

Mr. Tapper offered the motion to adopt the Article as amended. Mr. Gravel seconded the motion.

Mr. Duval offered the substitute motion that Section 5 (B), on page 5, be reconsidered. The substitute motion carried with a vote of nine (9) in favor and one (1) against.

Mr. Duval offered the motion to delete everything in the above Section except line item vetoes.

Mr. Abraham offered the substitute motion to delete line 8 and insert "use other means as may be" in its stead.

* Page 12 *

CONSTITUTIONAL CONVENTION

OF THE
STATE OF LOUISIANA
1973

COMMITTEE ON EXECUTIVE DEPARTMENT

MEETING OF JUNE 30, 1973

MR. STAGG

Gentlemen, the motion before the house is the Brien resolution as amended. If there are no further questions and no more discussion, the previous question has been called. All in favor of the previous question put your hand in the air; opposed. The previous question is called. The vote shall occur on the resolution of the lady from lower Terrebonne. All in favor of the resolution raise your hand; opposed. The resolution is adopted unanimously. Mr. Duval, what is your next matter?

MR. DUVAL

My next matter is 5 (E) on page 4.

MR. ?

Hey, Hilda, why didn't you blossom forth a little earlier? Maybe we could have gotten rid of all of this stuff the first week we met.

MR. ?

She's been trying for two months to get a word in edgewise and you-all wouldn't let her.

MR. STAGG

What is the subject matter?

MRS. BRIEN

I told you I'm taking it all in and I'm going to leave it all alone.

MR. DUVAL

The subject matter deals, with pardons, commutations...

MR. STAGG

Mr. ... may I have the delegate point out that the capital outlay budget that we adopted yesterday bears F as a designation and this one will bear ...

MR. DUVAL

This will bear F, the capital outlay will bear E, is that correct, Mr. Chairman?

MR. STAGG

The capital outlay is E, the pardon and provisions is now Subdivision F.

MR. ?

Yes, sir.

MR. DENNERY

E, is no longer capital outlay it is just capital budget.

MR. STAGG

Capital budget, you're right.

MR. DUVAL

Let me see if I can present my problem here. The last sentence, "other remedies for those convicted of offenses may be provided by statute." I think that's vague, I don't know what ... it may prevent any pardon or any board set up to handle pardons. I think the governor should retain the right to pardon at all times, but I think additionally, additionally the legislature could create a board which would deal with pardons, as we've talked about a professional board. And I think this language is vague, I had suggested, I had basically a suggestion that this language is not, and I think Mr. Gravel had wanted to reconsider this also. I don't know for what reason.

MR. GRAVEL

We handled your objection by saying, "these remedies as well as others of those convicted of offenses may be provided by statute." ...

MR. GRAVEL (cont'd)

"These and other remedies of those convicted of offenses may also be provided by statute."

MR. DUVAL

The language that I had and if you may have objection with it, but, because I just wrote it.

MR. GRAVEL

Alright.

MR. DUVAL

But it has, "in addition the legislature may create other instrumentalities providing for remedies relating to pardons and for those convicted of offenses against the state." What I'm saying is, in other words, is there ... as I understand the governor's comments he would have liked to be able to delegate the ability to pardon to someone else on ... I think he should retain the ultimate ability to pardon, but I don't see any reason why there couldn't be a professional pardon board. And I just wanted to make it specific. In addition to the great problem I had to the vagueness of this language.

MR. GRAVEL

I think it is vague. I think we all want to say the same thing, I believe. What we want to say is that not only the governor may grant pardons and commutation of sentences but that the legislature may provide for others to afford similar and additional remedies for those convicted of offenses.

MR. DUVAL

That's precisely what I want to say.

MR. ?

Yes.

MR. STOVALL

Why don't you ...

MR. GRAVEL

You can say it that way, I believe.

MR. ARNETTE

Mr. Chairman, could I ask a question?

MR. STAGG

Yes.

MR. ARNETTE

Well, Stan, as I understand, it has been pointed out by Emmett for at least a hundred and fifty times that whatever is not prevented is permitted, so would it not be just enough to just delete lines 15 and 16?

MR. DUVAL

That would be ...

MR. ARNETTE
And that would solve our whole problem and we wouldn't have to worry about putting it in there because it's already permitted.

MR. DUVAL
Well, I don't know, I don't know because it says "the governor shall" and that might ...

MR. ARNETTE
It says "may". "May". "The governor may."

MR. DUVAL
Yea, that might do it then.

MR. ARNETTE
And see, "the governor may reprieve and commute and ..."

MR. GRAVEL
Oh, no, but "except as otherwise provided by law the governor may."

MR. STAGG
Mrs. Brien, do you have hand them to me, please.

2

MR. ARNETTE
Well, I think the governor is the only one who ought to be able to have the final say on reprieves and commutations and pardons.

MR. DUVAL
Yea, but when you ...

MR. ARNETTE
Of course, he can delegate it to a board to recommend stuff but he's going to always have the final say, right?

MR. STAGG
Mr. Duval.

MR. ARNETTE
Isn't that what you anticipate?

MR. DUVAL
No, I anticipated the board could handle it if the governor ...

MR. ARNETTE
.... gave it the power.

MR. DUVAL
That's right.

MR. ARNETTE
But he's got the ultimate power to say this board can handle it.

MR. DUVAL
That's right, but when you get to the commutation of sentence it's another thing so I don't think the governor should have to fool with that. And I think that a board could handle that.

MR. ARNETTE
Well, in that case I'd seek the floor, Mr. Chairman.

MR. ?
Stan, why don't you just say that?

MR. DUVAL
Well that's what Mr. ... basically what Mr. Gravel is saying, "the legislature may provide other means for reprieves, commutations of sentences and pardons", he's saying something like that.

MR. ARNETTE
I'd like the floor, Mr. Chairman.

MR. STAGG
Mrs. Brien is first for the floor and Mrs. Brien has a substitute motion. Would you read your substitute motion? Shortly, would you pass it out, please? Read it, Mrs. Brien.

MRS. BRIEN
It says "The governor shall have power to grant reprieves and pardons for all offenses after conviction. The governor shall be vested with authority to delegate such power subject to such procedures as may be prescribed by statute." That means ...

MR. STAGG
Would you accept an amendment that at the beginning of that to say, "except in cases of conviction upon impeachment, the governor shall have the power?"

MR. BRIEN
Yea, I sure do.

MR. STAGG
Mrs. Brien has accepted an amendment to her language to say "except" ... gentlemen, let me have your attention, please. On line 13 of the Brien substitute, "except in cases of conviction upon impeachment, the governor shall." Would you add that language in your copy, please? You're not adding, it Mr. Arnette, you're talking to Mr. Duval. Mrs.

Brien moves the adoption of the substitute motion, as amended; is there discussion?

MR. ARNETTE
I want the floor.

MR. ?
Objection.

MR. STAGG
Mr. Gravel then Mr. Anzalone.

MR. GRAVEL
I'm trying to do what Mr. Duval has asked me to do and that is to work up some language and it'll take me a moment to do.

MR. STAGG
Well, if the substitute is passed, Mr. Gravel, we'll give you time.

MR. GRAVEL
Go right ahead.

MR. ?
Mr. Chairman, the question again.

MR. GRAVEL
I'll quit doing what Mr. Duval asks me to do.

MR. ARNETTE
Where do I appear on the list, Mr. Chariman.

MR. STAGG
Right after Mrs. Brien.

MR. ARNETTE
Well, then I have the floor now, right?

MR. STAGG
If Mrs. Brien has ... if there are no questions, yes, you have the floor and Mr. Anzalone follows you.

MR. ARNETTE
Okay. Well I see nothing wrong with the language we've got in here already except, with exception of lines 15 and 16, which I don't think is needed.

MR. STAGG
Is that in the old one or the substitute?

MR. ARNETTE
In the old one.

MR. STAGG
Well the ...

MR. STOVALL
May I ask, may I ask him a question?

MR. ARNETTE
I think the old one is completely alright because it gives the right to the governor that he may do this and he has the ultimate right. Now, what makes him ...

MR. STAGG
Mr. Arnette.

MR. ARNETTE
... who gives him recommendations.

MR. STAGG
Mr. Arnette. The discussion is on the substitute movement.

MR. ARNETTE
And I am arguing against it.

MR. STAGG
Oh, alright then, I'm sorry.

4

MR. ARNETTE
I'm arguing in favor of the old and against the new.

MR. STAGG
Alright, Mr. Arnette.

MR. ARNETTE
Being the liberal person I am charged with the ...

MR. STAGG
Mr. Anzalone is next. Continue, Mr. Arnette.

MR. ARNETTE
Well, I think the ...

MR. ?
A liberal republican?

MR. ARNETTE
I think the old language is correct in that it gives the governor the power to reprieve, commute and pardon, and he has the ultimate power, now whether there are recommendations made to him or not I think is up to him, and I think that's the way it should be. And if he wants to delegate this authority then he may do it by saying, "Okay, I'll disapprove everything that this parole board, I mean this pardon board comes up with." But I think it ought to ultimately remain with him. Now as for lines 15 and 16, I think it ought to be deleted because the legislature can do anything that's not prohibited, and we're not prohibiting parole boards or any, or suspension of sentence or anything like this. But I think we ought to just delete lines 15 and 16 off the old one and accept the old one as it's written.

MR. STAGG
And Mr. Anzalone is recognized and then Mr. Gravel.

MR. ANZALONE
Have you got it written?

MR. GRAVEL
Yes, I had something ...

MR. STAGG
Mr. Anzalone, do you yield to Mr. Gravel?

MR. ANZALONE
Yes.

MR. GRAVEL
Something that I think might cover the whole span of objections. Deleting lines 15 and 16, then inserting and leaving the other language as it is.

MR. ANZALONE
Is this a substitute for the substitute?

MR. DUVAL
I may withdraw the motion that I made and substitute this language if it's ... he could suggest that to me.

MR. GRAVEL
I think we're doing what everybody would want to do; if we would delete, at least momentarily, lines 15 and 16 and let the rest of the article read as follows: "The legislature may provide additional methods whereby persons convicted of offenses may be pardoned or granted commutation of sentence. Other postconviction remedies also may be provided by statute." Now if that don't cover the waterfront, I just don't know what does.

MR. STAGG
Read it slowly, Mr. Gravel.

MR. GRAVEL
"The legislature may provide additional methods whereby persons convicted of offenses ...

MR. STAGG
Slow down.

MR. GRAVEL
"The legislature may provide additional methods whereby persons convicted of offenses may be pardoned or granted commutation of sentence." This gets to what the governor normally does.

MR. STAGG
Alright, sir, continue.

MR. GRAVEL
"Other postconviction remedies also may be provided by statute."

MR. ARNETTE
What's the significance of that last sentence?

MR. DUVAL
Parole, etc. ...

MR. STAGG
Then that gets you the professional pardon board type language that Mr. Duval was looking for.

MR. GRAVEL
Yes. It could.

MR. DUVAL
Yes, it could. I would accept that in lieu of the motion that I made.

MR. STAGG
Alright, now, Mr. Arnette, no, Mr. Anzalone, you yielded to Mr. Gravel, do you wish the floor back? No, Mr. Arnette had his hand in the air.

MR. ARNETTE
Well, in other words, what you're doing, Camille, is you're giving the right to the legislature to pardon and commute, is that correct?

MR. GRAVEL
That's correct, to provide for pardon and commuting, in other words you've got the inherent power in the governor as the chief executive if he wants to exercise it, you've also given the legislature authority to create a professional board that could do exactly the same thing.

MR. ARNETTE
So in other words, to accomplish the same thing in line 11 you could say the governor or the legislature may reprieve, grant commutation of sentence or may pardon.

MR. GRAVEL
No, because it wouldn't be self-executing, and I think the legislature has got to provide the machinery by statute under which it will, if it decides to do it, it will permit someone to be pardoned other than by the governor.

MR. DUVAL
But with the governor retaining these ...

MR. GRAVEL
That's correct.

MR. ARNETTE
Well then I don't like the proposal by Camille because I don't think anyone besides the governor ought to have the right to grant pardons or commutations. I think that's a sovereign authority type area and we've already decided the only person that should have the ultimate decision would be the governor. And I don't think we ought to give it to a board or anything like this. I think the governor ought to be the only one.

MR. STAGG
Reverend Alexander comes first. Reverend Alexander.

MR. ALEXANDER
My question was along the same lines, to whom would this authority be delegated; is the reference to the lieutenant governor or some professional board, Mr. Gravel?

MR. GRAVEL
I don't know.

MR. ALEXANDER
I'm speaking about B now.

MR. GRAVEL
I don't know, Reverend, who would be involved. In other words, I would be opposed to the idea of the governor, any governor, being able to delegate and completely free himself from the pardoning's authority. Some governor may get in there and throw up his hands and say, "Well look, I'm going to just push that off to some other board or some individual." The way this ... Mrs. Brien's resolution reads, he could delegate it to the warden of the penitentiary.

MRS. BRIEN
No.

MR. GRAVEL
Yes, ma'am.

MR. BRIEN
No.

MR. ?
Doesn't he say where it reads here?

MR. ?
Struck a nerve.

MR. ARNETTE
Well, the way your's reads the legislature could give it to the dogcatcher and get things buried.

MR. ?
It takes more than one person to ...

MRS. BRIEN
It's supposed to be a board of pardons but it would have to be created, I don't know who said.

MR. GRAVEL
That's not what you said, Mrs. Brien.

MRS. BRIEN
But I wanted a board of pardons.

MR. STAGG
Be in order, gentlemen.

MRS. BRIEN
Now you can put that in ... I want it, that it be a board where he can delegate it to?

MR. GRAVEL
That may be what you want but that's not what you're saying.
You're saying ...

MRS. BRIEN
Well, can't it be created through ...

MR. GRAVEL
I think the governor ...

MR. STAGG
Reverend Alexander has the floor.

MR. ALEXANDER
Since I have the floor, on line 16, do you have any objection to adding the words after "powers", "a professional board or commission"?

7

MR. GRAVEL
Well, then we go into the question of writing into the constitution what you mean by the professional board and commission, the same problem I had. Now what Mrs. Brien has there, says the governor may delegate the authority; let me read it, the governor has that authority right now by using the language that Greg suggested should be retained. In other words, if he's got the power to pardon, he can exercise that power on any basis that he wants to. He doesn't need a provision in the statutes saying that he shall delegate this authority to some board, he can by executive order create that board and say, "I'm not going to act except upon the recommendation of the board." He's got that inherent authority within the language that we already have.

MR. ARNETTE
That's right.

MR. GRAVEL
This doesn't add anything, in my judgment, Mrs. Brien's proposal doesn't add anything to what's already in the constitution.

MR. STAGG
Mr. Denberry. Mr. Tapper. I mean.

MRS. BRIEN
All I move that the governor can delegate it to ...

MR. TAPPER
I want to speak ...

MR. GRAVEL
He's got that authority.

MR. TAPPER
I can't speak until they settle this question.

MR. GRAVEL
But he doesn't have to act unless some board that he has set up, if that's what he wants to do. I'm not going to discuss it any further.

MR. ?
Mr. Chairman, do I understand it ...

MR. TAPPER
First of all, I want to speak in favor of Mr. Gravel's ...

MR. STAGG
If you'll put your paper down so that I'm not confused about what you're reading, or speaking about.

MR. TAPPER
Well, what I'm reading has a lot to do with what I'm going to say.

MR. STAGG
Good.

MR. TAPPER
Now we could just do like they did in Alabama and sterilize everybody, because Alabama sterilized 82 in one year, however that's not what my suggestion is, my suggestion is that we go along with Mr. Gravel's substitute motion because, of course as somebody said, "Well, you could ... the legislature could go ahead and put the dogcatcher of some parish in as the authority."

MR. STAGG
You're in support of the ...

MR. TAPPER
Well, that's very true, they could make the dogcatcher of someplace else something else, too. By the same token this article that we adopted on disabilities, I think might end up with the same result. However this will give another avenue for pardons and commutations; if the governor

feels like he doesn't want to get involved in this he doesn't have to. There could be another means by which this could be done. You may have a governor who doesn't want to get involved in it.

8

MR. STAGG
Mr. Denberry.

MR. DENBERRY
I was going to ask Mr. Gravel a question. In his proposal he omitted the right of the legislature to provide additional methods to either reprieve or remit fines and forfeitures, and I wondered if that was purposely omitted or whether he ... well, may I then suggest that we could shorten this whole thing by merely saying that, "except in cases of conviction upon impeachment the governor may, and the legislature may provide additional methods to reprieve, grant commutation of sentence, pardon those convicted of offenses against the state and remit fines and forfeitures ...

MR. GRAVEL
Well, we could just add instead of lines 15 and 16, say "The legislature may provide additional methods whereby such postconviction remedies may be ... such postconviction remedies and others may be afforded the person that is convicted." I have no objection to including the idea of reprieve in there or the remission of fines and forfeitures.

MR. STAGG
Alright, gentlemen, the chair feels that the discussion has been extended and we're going to vote first on the substitute by Mrs. Brien and then we're going to vote, if that fails, on the motion as Mr. Duval has amended. The vote shall first occur on the motion to substitute by Mrs. Brien; all in favor of the Brien substitute, raise your hand, all opposed, the Brien substitute failed. We now vote on the motion ... we'll vote on the motion by Mr. Duval as amended by Mr. Gravel.

MR. DENBERRY
I would like to hear that motion read, please.

MR. STAGG
Mr. Arnette, for what purpose do you seek recognition?

MR. ARNETTE
I seek to offer a substitute motion.

MR. ?
Do you withdraw it?

MR. ?
You'd better, man, let's proceed.

MR. ?
Let's go.

MR. ARNETTE
Do I have the floor?

MR. STAGG
It's going to be disposed of with alacrity.

MR. ARNETTE
It may be disposed of in great haste because it has already been argued back and forth so I don't figure there'll be much more debate on it.

MR. STAGG
Fine, with that in mind read it, please.

MR. ARNETTE
It is Section E adding the old material, deleting lines 15 and 16.

MR. ?
I'll go along with deleting them.

MR. DENBERRY
Question, Mr. ...

9

MR. STAGG
You called for the question?

MR. DENBERRY
I call for the previous question, unless ...

MR. TAPPER
I had my hand in the air before you.

MR. DENBERRY
Mr. Honorable Tapper has something to say.

MR. TAPPER
Well, I just want to make one observation, I think Mr. Arnette is basing his proposal on an opinion that we've given that there would be in this constitution a provision which would say that anything that is not prohibited can be done by the legislature ...

MR. ARNETTE
That is exactly right.

MR. TAPPER
... we do not know whether that will be there, therefore we, and we don't know whether that will be interpreted by the courts to mean what we think it will mean. Therefore we need this language in here.

MR. STAGG
Alright. The question has been called on the Arnette substitute; all in favor raise your hand, opposed, Arnette substitute fails. The vote shall now occur ...

MR. ABRAHAM
I have a substitute motion.

MR. STAGG
Yes, sir, what is your substitute?

MR. ABRAHAM
Well, in the interest of brevity all I've said was delete lines 15 and 16 and just say "In addition the legislature may provide additional methods for providing the above remedies."

MR. GRAVEL
Well, there are additional remedies, too.

MR. ABRAHAM
I'm going to provide for the above.

MR. ?
Well, you leave out ...

MR. ?
No other remedies.

MR. ?
.... parole again.

MR. ?
That's right.

MR. ?
No, you don't leave it out because you haven't prohibited it.

MR. ABRAHAM
I'm saying the legislature shall provide additional methods for providing the above remedies, all the remedies above.

MR. ?
Yea, but if you're saying ...

MR. ABRAHAM
Pardon, commutation, everything.

10

MR. ?
.... is prohibited, if you follow Tapper's reasoning.

MR. TAPPER
That wasn't a reason ...

MR. STAGG
The vote shall occur on the Abraham substitute ...

MR. DENNERY
I have a question of Mr. Abraham. Are you suggesting then that the legislature may only provide other additional methods for the same relief?

MR. ABRAHAM
Yea, they will provide additional methods for the same relief above.

MR. DENNERY
Do you object to permitting the legislature to provide other remedies as well?

MR. ABRAHAM
Other remedies as well?

MR. DENNERY
Yes.

MR. ABRAHAM
No, I don't ...

MR. GRAVEL
Why don't you put "and other postconviction remedies?"

MR. ABRAHAM
Well that's alright. I'm just trying to shorten the language, that's all.

MR. GRAVEL
Read what you have there.

MR. ABRAHAM
"In addition the legislature may provide additional methods for providing the above remedies."

MR. GRAVEL
"For providing the foregoing and other postconviction remedies."

MR. ABRAHAM
"For providing the foregoing and other postconviction remedies." Alright.

MR. GRAVEL
Do you take that ... except that strand, where it's your ...

MR. ABRAHAM
Yea.

MR. ?
What was that?

MR. STAGG
You had better believe; what was that, you're complaining, huh?

MR. ?
Read that again.

MR. ?
I tried to tell him to be quiet.

MR. ?
No, you're from north Louisiana, I'm a New Orleans born and bred, you're the cotton-picking idiot.

MR. ABRAHAM
Just say, "In addition the legislature may provide additional methods for providing the foregoing and other postconviction remedies."

11

MINUTES

Minutes of the meeting of the Executive Department
Committee of the Constitutional Convention of 1973

Held pursuant to notice given by the Secretary in
accordance with the rules of the Convention
State Capitol, Baton Rouge, Louisiana
Thursday, October 4, 1973, 9:00 a.m.

Presiding: Tom Stagg, Chairman of the Executive Department
Committee

Present:

Absent:

Abraham
Alexander
Anzalone
Arnette
Asseff
Brien
Dennery
Duval
Gravel
Stagg
Stovall
Tapper

* * *

The minutes were approved with amendments.

Mr. Dennery offered the motion that Delegate Proposal No. 11 by Delegate Duval be reported unfavorably. The motion carried unanimously.

Mr. Dennery offered the motion that Chairman Stagg discuss with the Clerk of the Convention that corrections are needed on Committee Proposal No. 5 (reprinted as engrossed). The motion carried unanimously.

Mr. Kendell Vick spoke to the committee and urged that Delegate Proposal No. 96 be reported favorably. It was

the consensus of the committee that those proposals dealing with the attorney general be discussed at this time. After discussion, Mr. Denberry offered the motion that Delegate Proposal No. 67 be reported favorably. The motion carried unanimously. The following is a list of the roll call vote:

<u>Yeas</u>	<u>Nays</u>
Abraham	
Alexander	
Anzalone	
Arnette	
Brien	
Denberry	
Duval	
Stagg	

Dr. Asseff was not in the room during the roll call vote.

Mr. Abraham offered the motion that Delegate Proposal No. 71 be reported favorably. Mr. Denberry asked to hear from Mr. Vick on his suggestions concerning the attorney general. Mr. Vick stated that he would prefer to see the powers and duties of the attorney general in the executive article.

2

Reverend Alexander moved the previous question on the Abraham motion. The motion carried with a vote of 8 yeas, 1 nay, and 2 abstentions. The following is a list of the roll call vote:

<u>Yeas</u>	<u>Nays</u>	<u>Abstentions</u>
Abraham	Asseff	Arnette
Alexander		Denberry
Anzalone		
Brien		
Duval		
Gravel		
Stagg		
Stovall		

Mr. Arnette offered the motion that Delegate Proposal No. 72 by Delegate Abraham be reported favorably. The motion carried with a vote of 9 yeas, 1 nay, and 1 abstention. The following is a list of the roll call vote:

<u>Yeas</u>	<u>Nays</u>	<u>Abstentions</u>
Abraham	Asseff	Arnette
Alexander		
Anzalone		
Stovall		
Brien		
Denberry		
Duval		
Gravel		
Stagg		

Mr. Arnette offered the motion that Delegate Proposal No. 96 by Delegates Vick, Abraham, et al., be reported without action.

Mr. Gravel offered the substitute motion that Delegate Proposal No. 96 be reported with amendments. The substitute motion failed with a vote of 4 yeas, 5 nays, and 1 abstention. The following is a list of the roll call vote:

3

<u>Yeas</u>	<u>Nays</u>	<u>Abstentions</u>
Abraham	Anzalone	Denberry
Alexander	Arnette	
Gravel	Asseff	
Stovall	Duval	
	Stagg	

The vote was called on the Arnette motion. The following is a list of the roll call vote. The motion carried with a vote of 6 yeas, 3 nays, and 1 abstention.

<u>Yeas</u>	<u>Nays</u>	<u>Abstentions</u>
Abraham	Alexander	Denberry
Anzalone	Arnette	
Arnette	Gravel	
Asseff	Stovall	
Duval		
Stagg		

Dr. Asseff offered the motion that Delegate Proposal No. 23, by Delegate Abraham, be reported favorably. The motion carried with a vote of 8 yeas and 1 nay. The following is a list of the roll call vote:

<u>Yeas</u>	<u>Nays</u>	<u>Abstentions</u>
Abraham	Duval	
Alexander		
Anzalone		
Arnette		
Asseff		
Denberry		
Stagg		
Stovall		

Reverend Stovall offered the motion that Delegate Proposal No. 64, by Delegate Toca, be reported without action. Mr. Duval offered the substitute motion that the proposal be reported unfavorably. The substitute motion carried with a vote of 5 yeas, 3 nays, and 1 abstention. The following is a list of the roll call vote:

4

MINUTES

Minutes of the Committee on Local and Regional Government of the Constitutional Convention of 1973

Held pursuant to notice mailed by the Secretary of the Convention on June 7, 1973

Conservation Auditorium, Natural Resources

Building, Baton Rouge, Louisiana

Friday, June 15, 1973, 1:00 p.m.

Saturday, June 16, 1973, 9:00 a.m.

* * *

(c) A home rule charter shall be adopted when approved by a majority of the electors voting on the charter proposal at an election called for that purpose.

(d) A home rule charter, or any amendment thereto, adopted pursuant to the provisions of this Section, shall provide for the structure, organization, powers, and functions for the government of the local government, which may include the exercise and performance of any power and function necessary, requisite, or proper for the management of its affairs, not denied by general law or this constitution; provided, however, the legislature shall not pass any law the effect of which changes, modifies, or affects the

structure, organization and/or the particular distribution and redistribution of the powers and functions of any local governmental subdivision which operates under a home rule charter.

Mr. Burson offered a motion to adopt Section 6 as amended which reads as follows:

Section 6. (A) The plans of government and home rule charters of the parishes of East Baton Rouge, Jefferson, and Iberville and of the cities of New Orleans, Baton Rouge, and Shreveport shall remain in effect, but may be amended, modified, or repealed as provided therein. Each of them shall retain the authority, powers, rights, privileges, and immunities granted by its charter. Each shall be subject to the duties imposed by the applicable constitutional provisions under which its plan or charter was adopted. Each of them also shall enjoy such additional powers and functions as are granted to local governmental subdivisions by provisions of this constitution, including Sections 7 and 9 of this Article, unless the exercise of such powers and functions is prohibited by its charter.

(B) Every other home rule charter adopted or authorized when this constitution is adopted shall remain in effect and may be amended, modified, or repealed as provided in the charter.

The motion carried without objection.

The committee recessed at 5:00 p.m. until the next morning at 10:00 a.m.

Saturday, June 16, 1973, 10:00 a.m.

Presiding: Chalin O. Perez, Chairman of the Committee on Local and Parochial Government.

Chairman Perez called the meeting to order and the minutes of June first and second were approved.

Mrs. Zervigon offered a motion to adopt Section 9 to read as follows:

"No law requiring an increase in expenditures from funds of a political subdivision, shall have effect until approved by ordinance enacted by the governing authority of the political subdivision affected thereby, or until the legislature appropriates funds to the affected political subdivision for that purpose and only to the extent and amount that such funds are provided.

However, Mr. Reeves offered a substitute motion to delete Section 9 as reported by the Subcommittee and insert in lieu thereof the following proposal:

"No law requiring an increase in expenditures from funds of a political subdivision, except laws providing for wages, hours, working conditions, pension and retirement benefits, sick leave and other laws affecting political subdivision employees engaged in hazardous occupations, namely firemen and policemen, shall have effect until approved by ordinance enacted by the governing authority of the political subdivision affected thereby, or until the legislature appropriates funds to the affected political subdivision for that purpose and only to the extent and amount that such funds are provided."

After considerable discussion, Mayor Heine discussed the possibility of establishing a municipal board of review, composed of seven to nine members to be appointed by the legislature, to act as a source of redress when employees fail to receive results from the local officials. Mr. Kean then offered a motion that the committee defer action on Section 9 to enable the Subcommittee on General Provisions, and the staff working with Mayor Heine, to draft a provision

considering all points brought before the committee. 2

Roll call was taken on Mr. Perez's motion.

Yeas: 1. Jackson Burson

Joseph Conino

Johnny Jackson

R. Gordon Kean

Ethan Chatelain

Mayor Pete Heine

Joseph Giarrusso, Sr.

George Dewey Hayes

Walter Lanier, Jr.

Dorothy Mae Taylor

Joseph Toomy

Frank Ullio

Mary Zervigon

Nays: Terry Reeves

Harvey Canoy, Jr.

Edward D'Gerolamo

V. C. Shannon

J. E. Stephenson

There being 13 yeas and 5 nays, the motion carried.

Mr. Lanier submitted an alternate proposal for Section 12, which reads as follows:

(A) Any local governmental subdivision may consolidate and merge into itself any special district or public agency, except school districts, situated and having jurisdiction entirely within the boundaries of such local governmental subdivision. Upon such merger or consolidation the local governmental subdivision shall succeed to and be vested with all of the rights, revenues, resources, jurisdiction, authority, and powers of such special district or public agency. No such action shall take effect unless a majority of the electors in such special district and a majority of the electors in the political subdivision assuming the debt who vote in an election held for that purpose vote in favor thereof and such action is approved by the legislature.

(B) If the special district or public agency which is abolished has any outstanding indebtedness, the authority provided for by this Section shall not be exercised unless provision is made for the assumption of such indebtedness by the governing authority or authorities of the local governmental subdivisions involved.

Mr. Burson offered an amendment to delete the phrase "and such action is approved by the legislature" at the end of paragraph (A). The amendment carried without objection.

The alternate proposal was adopted as Section 12 without objection.

Mr. Burson offered a motion to adopt Section 13 with the suggested amendments by the chairman which reads as follows:

The electors of each local governmental subdivision shall have the exclusive right to elect the members of their governing authority and, if a plan, or form of government, or home rule charter so provides, their chief executive officer at elections held in accordance with the election laws of the state. Such officials shall not be subject to removal by the legislature. The salaries of these officials shall not be reduced during the term for which they are elected.

The motion carried without objection.

A motion was then offered by Mr. Burson for the adoption of Section 23, as amended by the chairman, which reads as follows:

Except as provided in this constitution, the legislature may classify parishes or municipalities according to population or on any other reasonable basis related to the purpose of this classification, and legislation may be limited in its effect to any of such class or classes; but, no statute which is applicable to fewer than six parishes or municipalities shall become operative in any such parish or municipality until approved by ordinance enacted by the governing authority of the political subdivisions affected thereby.

However, Mr. Hayes offered a substitute motion to delete the phrase beginning with "but, no statute which is applicable... affected thereby." A roll call vote was taken on the substitute motion:

Yeas: Johnny Jackson
George Dewey Hayes
Dorothy Mae Taylor

Nays: I. Jackson Burson
Joseph Conino
R. Gordon Kean
Harvey W. Cannon, Jr.
Ethan Chatelain
Mayor Pete Heine
Edward D'Gerolamo
Joseph Giarrusso, Sr.
Walter Lanier, Jr.
J. E. Stephenson
Joseph Toomy
Frank Ullo
Mary Zervigon

There being 13 nays and 3 yeas, the motion failed to carry.

Mr. Jackson then offered a substitute motion to delete

7

the words "fewer than six". A roll call vote was taken:

Yeas: Johnny Jackson
R. Gordon Kean
Ethan Chatelain
Mayor Heine
George Dewey Hayes
Walter Lanier, Jr.
Mary Zervigon

Nays: I. Jackson Burson
Joseph Conino
Terry Reeves
Harvey Cannon, Jr.
Edward D'Gerolamo
Joseph Giarrusso, Sr.
J. E. Stephenson
Joseph Toomy
Frank Ullo

There being 9 yeas, 7 yeas and 1 abstention from Mrs. Taylor, the motion was defeated.

The original motion by Mr. Burson carried unanimously.

Mr. Burson then offered a motion to adopt the first sentence of Section 25, which reads as follows:

The provisions of this constitution shall be paramount and neither the legislature, nor any political subdivision, shall enact any laws or ordinances in conflict therewith.

The motion carried unanimously.

A motion was then offered by Mr. Burson to adopt the first sentence of Section 26 as amended by the chairman which reads as follows:

Any political subdivision may exercise and perform any of its authorized powers and functions including the financing thereof, jointly or in cooperation with one or more political subdivisions, either within or without the state, except as the legislature shall provide otherwise by law.

The motion carried without objection.

After considerable discussion, Mr. D'Gerolamo offered a motion that the first sentence of Section 26 become the entire Section 26. There were no objections to this motion.

Mrs. Zervigon suggested that the second sentence of Section 26 be referred back to the Subcommittee on General Provisions for further study.

Mr. Chatelain offered a motion to adopt the definitions submitted for local governmental subdivision, municipality,

8

political subdivision, governing authority, and general law. The motion carried without objection.

Mr. Chatelain then offered an amendment to Section 8 previously adopted. The amendment included the insertion of a new paragraph (D), which reads as follows:

(D) Two or more local governmental subdivisions situated within the boundaries of one parish may avail themselves of the provisions of this Section, provided that a majority of the electors who vote in each local governmental subdivision, in an election held for that purpose, vote in favor thereof. The legislature shall provide for the method of appointment or election of a commission to prepare and propose a charter, provided, however, that at least one member of the commission shall be elected or appointed from each such local governmental subdivision. The legislature shall provide the method by which the electors of more than one local governmental subdivision within the boundaries of one parish may petition for an election for such purpose.

The motion carried without objection.

Mr. Hayes submitted a proposal which reads as follows:

When a majority of the electors of an unincorporated settlement in any parish operating under a home rule charter or a home rule plan of government sign and present to the governor a petition and meet other necessary requirements as set forth under the general laws providing for the incorporation of cities, towns, and villages, such cities, towns, and villages may be incorporated.

Mr. Kean offered an amendment to change the word "majority" to "two-thirds". A roll call vote was taken:

Yeas: I. Jackson Burson
Joseph Conino
Terry Reeves
Gordon Kean
Mayor Heine
Edward D'Gerolamo
Joseph Giarrusso, Sr.
V. C. Shannon
Joseph Toomy
Mary Zervigon

Nays: Johnny Jackson
Harvey Cannon, Jr.
Ethan Chatelain
George Dewey Hayes
Walter Lanier, Jr.
J. E. Stephenson
Dorothy Mae Taylor
Frank Ullo

There being 10 yeas and 8 nays, the motion carried.

Mr. Kean offered an amendment to insert the words "or

9

city" after the word "parish". A roll call vote was taken:

Yeas: R. Gordon Kean
Joseph Giarrusso, Sr.
George Dewey Hayes

Nays: I. Jackson Burson
Joseph Conino
Johnny Jackson
Terry Reeves
Harvey Cannon, Jr.
Ethan Chatelain
Mayor Heine
Edward D'Gerolamo
Walter Lanier, Jr.
V. C. Shannon
J. E. Stephenson
Dorothy Mae Taylor
Joseph Toomy
Frank Ullo
Mary Zervigon

There being 15 nays and 3 yeas, the motion was defeated.

Mr. Kean offered an amendment to insert at the end of the proposal:

provided, however, no such newly incorporated area shall include any property previously included in any industrial area or district.

Mr. Hayes accepted Mr. Kean's amendment.

After discussion, Mr. D'Gerolamo moved that the matter be tabled, and a roll call vote was taken:

Yeas: Joseph Conino
R. Gordon Kean
Mayor Pete Heine
Edward D'Gerolamo
Joseph Giarrusso, Sr.
Walter Lanier, Jr.
Joseph Toomy
Mary Zervigon

Nays: I. Jackson Burson
Johnny Jackson
Terry Reeves
Harvey Cannon, Jr.
Ethan Chatelain
George Dewey Hayes
V. C. Shannon
J. E. Stephenson
Dorothy Mae Taylor
Frank Ullo

There being 10 nays and 8 yeas, the motion failed.

Mr. Jackson offered a motion to adopt Mr. Hayes' amendment, and a roll call vote was taken on the motion.

Yeas: I. Jackson Burson	Nays: Joseph Conino
Johnny Jackson	R. Gordon Kean
Terry Reeves	Mayor Pete Hein
Harvey Cannon, Jr.	Edward D'Gerolamo

10

Roll call (continued)

Yeas: Ethan Chatelain	Nays: Joseph Giarrusso, Sr.
George Dewey Hayes	Walter Lanier, Jr.
V. C. Shannon	Joseph Toomy
J. E. Stephenson	Mary Zervigon
Dorothy Mae Taylor	
Frank Ullo	

There being 10 yeas and 8 nays, the motion carried.

Mr. Burson offered a motion to adopt Section 7(B) and have it placed in the appropriate article. The section reads as follows:

Local governmental subdivisions do not have the power (1) to incur debt payable from ad valorem tax receipts maturing more than forty years from the time it is incurred; (2) to define and provide for the punishment of a felony; or (3) to enact private or civil ordinances governing civil relationships.

There were no objections to this motion.

Paragraphs (C) and (D) of Section 7, were referred to the Subcommittee on Finance for further consideration.

A motion was then offered by Mr. Burson to adopt Paragraph (F) of Section 7, which reads as follows:

Powers and functions of any local governmental subdivision shall be construed liberally in favor of such local governmental subdivision.

The motion carried without objection.

Mr. Reeves offered a motion to adopt Section 14.1 as proposed by the chairman which reads as follows:

Vacancies occasioned by death, resignation or otherwise in the office of sheriff, assessor, clerk of a district court, or coroner shall be filled by appointment by the governing authority of the parish at the time and in the manner provided in Paragraphs (B) and (C) of Section 14 of this Article.

However, Mr. Lanier offered a suggestion that this article be deleted and adoption of the article by the Judiciary Committee be established. A roll call vote was taken on

11

Mr. Reeves' original motion. The motion carried with 17 yeas and 1 nay from Mr. Lanier.

Mr. Toomy offered a motion to insert Section 14.1 as Paragraph (F) of Section 14, and change the present (F) to (G). The motion carried without objection.

Mr. Giarrusso then offered a motion to insert the word "state" between the words "any" and "court" of Paragraph (G). The motion carried without objection.

Mr. Toomy offered a motion to delete the phrase "or chief executive officer of any political subdivision" in Paragraph (A) of Section 14. There were no objections to this motion.

Mr. Kean wished to serve notice to reconsider the Hayes' proposal at a later time.

The committee then discussed the proposal relative to levee districts. They amended and adopted the articles as shown on the attachment.

Mr. Reeves advised the committee that the Subcommittee on Special Districts; Transportation, Ports, and Harbors, will meet on Friday, June 22, 1973, at 10:00 a.m., and Saturday, June 23, 1973, at 9:00 a.m.

Mr. Burson stated that the General Provisions and the Finance Subcommittee will meet on Saturday, June 23, 1973, at 9:00 a.m.

It was also decided that the full committee would meet on Thursday, June 28, 1973, at 10:00 a.m.; Friday, June 29, 1973, at 9:00 a.m.; and Saturday, June 30, 1973, at 9:00 a.m.

The committee adjourned at 5:30 p.m.

Chas. O. Perez
Chas. O. Perez, Chairman

P. Gordon Kean
P. Gordon Kean, Secretary

Subcommittee on Finance

Committee Room 205
State Capitol

Friday, April 27, 1973

Presiding: I. Jackson Burson, chairman, Subcommittee

Drafting General Provisions

The subcommittee discussed in detail the drafts the staff prepared from the previous meetings of this subcommittee. Mr. Lanier submitted a proposal on the powers and limitations on local governmental units, and considerable discussion ensued concerning this matter. Mr. Burson questioned the feasibility of having a supremacy clause in this proposal, and there was discussion relative to a certificate of bonded indebtedness.

Mr. Kean offered a motion to approve Section D of Mr. Lanier's proposal concerning the issuance of negotiable bonds, imposing new taxes, or increasing existing taxes by units of local government. His motion was included approval of Section E stating that the legislature may provide specifically by law for the exclusive exercise by the state of any power or function of a local unit of government.

The committee then discussed the draft of the General Provisions, and the Finance Subcommittee will meet on Saturday, June 23, 1973, at 9:00 a.m.

[1128]

10 enact private or civil laws governing civil relation-
11 ships.

12 C. Parishes, municipalities, or other units of local
13 government shall have only the power that the legislature
14 may provide by law to levy and collect occupational license
15 taxes upon or measured by income or earnings.

16 D. The legislature may not deny or limit the power of
17 parishes, municipalities, or other units of local government
18 (1) to make local improvements by special assessment and
19 to exercise this power jointly with other parishes and
20 municipalities, and other classes of units of local
21 government having that power on the effective date of this
22 constitution unless that power is subsequently denied by
23 law to any such other units of local government; or (2)
24 to levy or impose additional taxes upon areas within
25 their boundaries in the manner provided by law for the
26 provision of special services to those areas and for the
27 payment of debt incurred in order to provide those special
28 services.

29
30 7

1 E. The legislature shall not pass any law which shall
2 change, modify, or affect the structure and/or organization
3 and/or the particular distribution and redistribution of
4 the powers and functions of any parish, municipality, or
5 other unit of local government which has heretofore or
6 hereafter adopted a home rule charter.

7 F. Powers and functions of parishes, municipalities,
8 or other units of local government shall be construed
9 liberally in favor of said parishes, municipalities, or
10 other units of local government.

11 Reported favorably.

12
13
14 Source: Ill. Const. Art. VII, §56(a), 6(d), 6(e), 6(f),
15 6(m) (1970); and Model State Constitution, Sixth Edition
16 (Revised) Art. VIII, §8.02 (1968).

17 Comment: (a) The provisions in this section grant broad
18 powers of local self-government to parishes, municipalities
19 and other units of local government. The grant of powers
20 is accomplished in two ways. In paragraph A these units
21 of local government are given general authority to
22 exercise any power and perform any function relating to
23 their government and affairs. Second, four important
24 powers--to regulate, to license, to tax, and to incur
25 indebtedness--are enumerated in the powers given to these
26 units of local government.

28 (b) This broad grant of powers is subject to restric-
29 tions set forth in paragraph B relating to local debt.

30 8

1 defining and providing for punishment of a felony and
2 private or civil laws governing civil relationships.

3
4 Article ____, Section ____. Home rule charter

5 Section 8. A. The electors of any parish, munic-
6 ipality, or other unit of local government authorized by
7 law to perform general governmental functions may draft,
8 adopt, or amend a charter of government to be known as a
9 home rule charter in accordance with the provisions of this
10 section. The governing authority of any such parish,
11 municipality, or other unit of local government may appoint
12 a commission to prepare and propose a charter, or may call
13 an election for the purpose of electing such a commission
14 in accordance with the primary and general election laws
15 of the state. The legislature shall provide by general
16 law for the implementation of this section.

17 B. The governing authority of any such parish,
18 municipality, or other unit of local government shall call
19 an election for the purpose of electing a commission to
20 prepare and propose a charter or alternate charter when it
21 is presented with a petition signed by not less than twenty
22 percent of the qualified electors who live within the
23 boundaries of the affected parish, municipality, or other
24 unit of local government as certified by the registrar of
25 voters. A home rule charter shall be adopted when approved
26 by a majority of the qualified electors voting on the
27 charter proposal at an election to be called and held in
28 accordance with the general election laws of this state.

29 * * *

30 9

DRAFT "A" OF GENERAL PROVISIONS
LOCAL AND PAROCHIAL GOVERNMENT ARTICLE
(For consideration June 1, 2, 1973)

CC-

1 Constitutional Convention of Louisiana of 1973

2 SUBCOMMITTEE PROPOSAL NUMBER

3 Introduced by Delegate Burton on behalf of the Subcommittee
4 Drafting General Provisions.

5 A PROPOSAL

6 Relative to provisions for local and parochial government.

7 PROPOSED SECTIONS:

8 Section 1. Municipalities; Incorporation, Consolidation,
9 Merger, and Government

10 Section 1. The legislature shall provide by general
11 law for the incorporation, consolidation, merger, and
12 government of municipalities. No special law shall be

[1129]

13 enacted to create a municipal corporation or to amend,
14 modify, or repeal its charter; however, if a municipality
15 is operating under a special legislative charter it may
16 be amended, modified, or repealed by special law as long
17 as such municipality continues to operate under such
18 charter.

20 Reported favorably.

22 Source: La. Const. Art. XIV, §510, 40 (1921).

24 Comment: Provides for municipal incorporation by general
25 law. Prohibits special law in language similar to
26 source provision.

28 Section 2. Parishes; Ratification of Boundaries,
29 Creation, Consolidation, and Dissolution

30 Section 2. (A) All parishes and their boundaries
31 as established under existing law are recognized and
32 ratified.

33 (B) The legislature shall provide by general law for
34 the creation, consolidation, or dissolution of parishes.
35 No new parish shall contain less than six hundred twenty-

1 five square miles, or less than fifty thousand inhabitants
2 and no parish shall be reduced below that area or number
3 of inhabitants.

5 Reported favorably.

7 Source: La. Const. Art. XIV, §51, 4 (1921).

9 Comment: Provides for ratification of existing parish
10 boundaries. Increases the population requirement of
11 the existing provision for creation of new parishes
12 from 7,000 to 50,000 inhabitants.

14 Section 3. Change of Parish Lines; Election

15 Section 3. Before taking effect any law changing
16 parish lines, consolidating parishes, dissolving parishes,
17 or creating new parishes shall be submitted to the electors
18 of the parishes to be affected at a special election held
19 for that purpose. The change shall take effect only if
20 two-thirds of the total vote cast on the question in each
21 affected parish is in favor thereof.

23 Reported without action. There is a division among members
24 of the subcommittee as to whether a majority vote or two-
25 thirds vote should be required to change parish lines.

26 The Law Institute recommends a majority vote.

28 Source: La. Const. Art. XIV, §52, 4 (1921).

30 Comment: Provides for consolidation, dissolution, and
31 creation of new parishes only after approval by a two-
32 thirds vote in each affected parish. The source pro-
33 visions provide that parishes may be dissolved and merged
34 by a two-thirds vote by the electors of the dissolving
35 parish and approval by a majority vote of the electors

4

1 election to affect a change in the location of the
2 parish seat, and also adds details as to how the
3 election may be called and how it shall be conducted.

5 Section 6. Existing Home Rule Charters and Plans of
6 Government of Parishes and Municipalities Ratified

7 Section 6. (A) The plans of government and home rule
8 charters of the parishes of East Baton Rouge, Jefferson,
9 and Plaquemines and of the cities of New Orleans, Baton
10 Rouge, and Shreveport shall remain in effect until amended,
11 modified, or repealed as provided therein. Each of them
12 shall retain the authority, powers, rights, privileges,
13 and immunities granted by its charter. Each shall be
14 subject to the duties imposed by the applicable consti-
15 tutional provisions under which its plan or charter was
16 adopted. Each of them also shall enjoy such additional
17 powers as are granted to political subdivisions by provi-
18 sions of this constitution, unless the exercise of such
19 powers is prohibited by its charter.

20 (B) Every other home rule charter adopted or authorized
21 when this constitution is adopted shall remain in effect
22 and may be amended, modified, or repealed as provided in
23 the charter.

25 Reported favorably.

27 Source: La. Const. Art. XIV, §3 (a), 3 (c), 3 (second d),
28 22, 37 (1921).

30 Comment: (a) The source provisions provide in detail for
31 the establishment and operation of the plan of government
32 for the parishes of East Baton Rouge and Plaquemines, and
33 the cities of Baton Rouge, New Orleans, and Shreveport.
34 Since the source provisions provide for purely local
35 matters, it is not necessary to include the detailed

1 provisions in the text of the constitution.

2 (b) Under Const. Art. XIV, §3 (second d), detailed pro-
3 cedures are set out for the adoption of a charter government
4 form of parish government. Such a plan of government has
5 been adopted in Plaquemines Parish and is specifically
6 ratified in this section.

7
8 Section 7. Powers and Limitations on Political Subdivisions

9 Section 7. (A) Any political subdivision may exercise
10 any power and perform any function pertaining to its govern-
11 ment and all other powers necessary, requisite, or proper
12 for the management of its affairs not denied to it by its
13 charter, by this constitution, or by general law, including
14 but not limited to the power (1) to legislate upon, regulate,
15 conduct, and control all matters of local governmental
16 administration; (2) to define the powers, duties, and quali-
17 fications of parochial or municipal employees; (3) to provide
18 for the protection of the public health, safety, morals, and
19 welfare; (4) to create special districts; (5) to license; (6)
20 to tax any enterprise or object not excluded by this consti-
21 tution or the general laws of this state; (7) to incur debt
22 and issue bonds, except as otherwise provided in this
23 constitution. Any political subdivision may exercise
24 concurrently with the state any power or function pertaining
25 to its government and affairs to the extent that the legislature
26 by general law does not specifically limit the concurrent
27 exercise of any such power or functions or specifically declare
28 the state's exercise of any such power or function to be ex-
29 clusive except as hereinafter provided.

30 (B) Political subdivisions do not have the power (1) to
31 incur debt payable from ad valorem tax receipts maturing
32 more than forty years from the time it is incurred; (2) to
33 define and provide for the punishment of a felony; or (3)
34 to enact private civil or criminal law governing civil rela-
35 tionships.

1 (C) Political subdivisions shall have the power that
2 the legislature may provide by law to levy and collect
3 occupational license taxes or taxes upon or measured
4 by income or earnings.

5 (D) The legislature may not deny or limit the power of
6 political subdivisions (1) to make local improvements by
7 special assessment and to exercise this power jointly
8 with other parishes and municipalities, and other classes
9 of units of local government having that power on the
10 effective date of this constitution unless that power is
11 denied by law to all other political subdivisions of the
12 same kind; or (2) to levy additional taxes upon areas within
13 their boundaries, in the manner provided by law, to provide
14 special services to those areas and for the payment of debt

15 incurred to provide those special services.

16 (E) The legislature shall not pass any law which changes,
17 modifies, or affects the structure and/or organization
18 and/or the particular distribution and redistribution of
19 the powers and functions of any political subdivision which
20 operates under a home rule charter.

21 (F) Powers and functions of any political subdivision
22 shall be construed liberally in favor of the political
23 subdivision.

24
25 Reported favorably.

26
27 Source: New. See, however, Ill., Const. Art. VII, §56 (a),
28 6(d), 6(e), 6(l), 6(m) (1970); and Model State Constitution,
29 Sixth Edition (Revised) Art. VIII, §8.02 (1968).

30
31 Comment: (a) The provisions in this section grant broad
32 powers of local self-government to parishes, municipalities,
33 and other units of local government. The grant of powers
34 is accomplished in two ways. In paragraph A these units
35 of local government are given general authority to

1 exercise any power and perform any function relating to
2 their government and affairs. Second, four important
3 powers--to regulate, to license, to tax, and to incur
4 indebtedness--are enumerated in the powers given to these
5 units of local government.

6 (b) This broad grant of powers is subject to restrictions
7 set forth in paragraph B relating to local debt, defining,
8 and providing for punishment of a felony and private or
9 civil laws governing civil relationships.

10
11 Section 8. Home Rule Charter

12 Section 8. (A) Any political subdivision may draft,
13 adopt, or amend a charter of government to be known as a
14 home rule charter in accordance with the provisions of
15 this section. The governing authority of any such political
16 subdivision may appoint a commission to prepare and propose
17 a charter, or may call an election for the purpose of
18 electing such a commission.

19 (B) The governing authority of any such political
20 subdivision shall call an election to elect a commission
21 to prepare and propose a charter or alternate charter when
22 presented with a petition signed by not less than twenty
23 percent of the electors who live within the boundaries of
24 the affected political subdivision, as certified by the
25 registrar of voters.

26 (C) A home rule charter shall be adopted when approved
27 by a majority of the electors voting on the charter
28 proposal at an election called for that purpose.

29
30 Reported favorably.
31
32 Source: La. Const. Art. XIV, §40 (1921).
33
34 Comment: These provisions grant home rule powers to parishes,
35 municipalities, . . . other local governmental units authorized

1 by law to perform general governmental functions. A home
2 rule charter may be adopted by a municipality under R.S.
3 33:1381, et seq., which are general laws providing the
4 requirements for adoption of a home rule charter.
5

6 Section 9. Legislation Increasing Municipal or Parish
7 Financial Burdens; Local Approval

8 Section 9. No law requiring an increase in expenditures
9 from funds of a political subdivision shall have effect
10 until approved by ordinance enacted by the governing
11 authority of the political subdivision affected thereby.
12 When funds sufficient to meet the increased expenditure
13 are provided to the political subdivision by law, local
14 approval shall not be required.
15

16 Reported without action. There is a division among members of
17 the subcommittee. Some members feel if this section is
18 adopted, a provision should be approved allowing municipal
19 employees to bargain collectively, and/or a provision per-
20 mitting municipal employees under civil service to engage
21 in certain political activities.
22

23 Source: New

24
25 Comment: Authorizes the legislature to impose new financial
26 burdens upon a political subdivision only when funds
27 are made available from state sources or, if not, only
28 after the local governing authority has approved the
29 increase.
30

31 Section 10. Appropriation to Political Subdivisions

32 Section 10. When the legislature makes funds

33 available to one or more political subdivisions and does
34 not specify within the act the particular purposes and
35 amounts for which such funds shall be allocated, the

1 determination of the purposes for which such funds shall
2 be expended, and the amount to be expended for each purpose
3 shall be made solely by the governing authority of the

4 political subdivision or political subdivisions to which
5 the funds are appropriated, or otherwise made available.
6

7 Reported favorably.

8
9 Source: New

10
11 Comment: This provision grants to political subdivisions contro-
12 over specific expenditure of funds appropriated by the leg-
13 islation when the legislature fails to specify within the
14 act making the funds available the particular purposes
15 and amounts for which such funds shall be allocated.
16

17 Section 11. Governing Authorities of Parishes and Munic-
18 ipalities; Controls Over Agencies They Create

19 Section 11. (A) In addition to any other powers
20 granted by the legislature, the governing authority of a
21 political subdivision shall have the following powers
22 over any agency heretofore or hereafter created by it:
23 (1) to appoint and remove members of the governing body
24 of the agency; (2) to exercise budgetary and fiscal control
25 over the agency, including the power to modify or veto
26 its operating budgets, in whole or in part; or to substitute
27 different budget therefor; (3) to abolish the governing
28 body of the agency and to substitute itself therefor, with
29 authority to exercise all of its powers and functions; and
30 (4) to abolish the agency if the obligations or indebted-
31 ness of the agency are not thereby impaired. No such
32 agency shall have authority to levy any tax or issue any
33 bonds unless the proposal to be submitted to the electorate
34 therefor first is approved by the governing authority of
35 the political subdivision.

10

1 (B) If the creation of the agency required the con-
2 currence of two or more such governing authorities,
3 concurrence of all of them shall be required for the
4 exercise of the above powers.
5

6 Reported favorably.

7
8 Source: La. Const. Art. XIV, §46 (1921).
9

10 Comment: Restates the source provision without substantive
11 change, but adds authority to political subdivisions to
12 appoint and remove members of the governing bodies of
13 agencies created by them, and adds authority to the
14 governing authority of the political subdivision to
15 substitute itself for the governing board and to exercise
16 all of its powers and functions.
17

Section 12. Assumption of Debt

Section 12. (A) Any political subdivision may assume the debt of any district or public agency, except school districts, situated and having jurisdiction entirely within the boundaries of such political subdivision and may merge or consolidate such district or agency into such political subdivision and upon such debt assumption the political subdivision shall succeed to and be vested with all of the rights, revenues, resources, jurisdiction, authority, and powers of such district or agency. No such action shall take effect unless a majority of the electors in such district and a majority of the electors in the political subdivision assuming the debt who vote in an election held for that purpose vote in favor of the proposition.

(B) If the district or agency which is abolished has any outstanding indebtedness, the authority provided for by this section shall not be exercised unless provision is made for the assumption of such indebtedness by the governing

11

authority or authorities of the political subdivisions involved.

Reported favorably.

Source: La. Const. Art. XIV, §14(k) (1921).

Comment: The source provision authorizes any parish to assume the debt of certain enumerated special districts, provided that property taxpayer approval is secured at an election held for that purpose. The above section extends the source provision to authorize any political subdivision to assume the indebtedness of any district or public agency, except school districts, lying entirely within its boundaries. Present provision requires a majority in number and amount to approve the action. Proposed provision requires a majority of the electors. This brings the provision into conformity with recent United States Supreme Court decisions to eliminate the taxpayer requirement for voting in such elections.

Section 13. Local Officials

Section 13. The electors of each political subdivision shall have the exclusive right to elect the chief executive officer and the members of their respective governing authorities. Such officials shall not be subject to removal by the legislature. The salaries of these officials shall not be reduced during the terms for which they are elected.

Reported favorably.

Source: La. Const. Art. XIV, §40(b) (1921)

33

Comment: Restates without substantive change Paragraph B of Section 40, but broadens it to include parish officers.

Section 14. Filling of Vacancies; Appointment

Section 14. (A) Vacancies occasioned by death, resignation, or otherwise, in the office of sheriff, assessor, clerk of district court, coroner, police juror, city council, parish or municipal governing authority, or special district thereof, mayor or chief executive officer of any political subdivision, city or parish school board, and any other local official elected within the boundaries of the political subdivision, shall be filled by appointment by the governing authority of the political subdivision or by the city or parish school board, unless otherwise provided by the home rule charter or plan of government of the political subdivision. A tie vote by the governing authority of the political subdivision or school board shall be broken by its presiding officer regardless of the fact that he may already have voted as a member of the appointing body.

(B) If, at the time a vacancy occurs in an elective office for which appointment is provided in Paragraph A of this section, the unexpired portion of the term of office is more than one year, a special election to fill the vacancy shall be held, without the necessity of a call by the governor, not more than six months nor less than four months, after first receipt of notice of the vacancy by the secretary of state, to be given as hereinafter provided, in the political subdivision or special district thereof in which the vacancy occurred, and in such case the appointment provided for in Paragraph A of this section shall be effective only until a successor is duly elected and qualified.

(C) Upon being informed of the occurrence of a vacancy in any of the offices specified in Paragraph A of this section, the clerk of the district court in the parish where the vacancy occurred, and in the parish of Orleans the clerk of the Criminal District Court, shall, within twenty-four hours after being thus informed, notify the secretary of

13

state in writing by registered or certified mail of the occurrence of the vacancy. Upon receipt of such notice, the secretary of state shall, within twenty-four hours after such receipt, notify in writing by registered or certified mail all election officials, including party committees and boards of supervisors of elections, having any duty to perform in connection with a special election to fill such vacancy.

(D) Nothing in this section shall be construed as changing the qualifications for the various offices involved and all appointments must be of persons who would otherwise

12 infeasible to hold office to which appointed.
13 (E) The provisions of this section shall apply to all
14 political subdivisions unless otherwise provided by the
15 charter or plan of government of the political subdivision
16 adopted in conformity with this constitution.

17
18 Reported favorably.

19
20 Source: La. Const. Art. VII, §69 (1921).

21
22 Comment: (a) This provision authorizes the governing authority
23 of the political subdivision wherein the vacancy occurs,
24 rather than the governor, to fill vacancies. Deleted from
25 the source provision are the elected offices of district
26 judge and district attorney.

27 (b) Other provisions in this section restate the source
28 provision and make no change in the law.

29
30 Section 15. Acquisition of Property

31 Section 15. Subject to such restrictions as the legis-
32 lature may provide by general law, political subdivisions
33 may acquire property for any public purpose, including but
34 not limited to acquisition by purchase, donation, ex-
35 propriation, or exchange.

1 Reported favorably.

2
3 Source: La. Const. Art. XIV, §14 (1921).

4
5 Comment: The source provision authorizes certain enumerated
6 political subdivisions to acquire property. The revised
7 section authorizes all political subdivisions to acquire
8 property, subject to restrictions imposed by general law.

9
10 Section 16. Servitudes of Way; Acquisition by Prescription

11 Section 16. The public, represented by the various political
12 subdivisions, may acquire servitudes of way by prescription
13 in the manner prescribed by law.

14
15 Reported favorably.

16
17 Source: La. Const. Art. XIV, §16 (1921).

18
19 Comment: Restates the source provision and extends its appli-
20 cability to include municipalities as well as parishes.

21
22 Section 17. Prescription Against State and Political
23 Subdivisions

24 Section 17. Prescription shall not run against the
25 state or any political subdivision or special district thereof

26 of in any civil matter, unless otherwise provided in this
27 constitution or expressly by general law.

28
29 Reported favorably.

30
31 Source: La. Const. Art. XIX, §16 (1921).

32
33 Comment: Existing provision prohibits the running of pre-
34 scription against the state, except as provided by the
35 constitution or laws. Revised section broadens this to

1 include political subdivisions and special districts.

2
3 Section 18. Zoning

4 Section 18. Political subdivisions may enact zoning
5 ordinances and create and classify therein residential,
6 commercial, industrial, and other districts, and preserve
7 the character of buildings, monuments, structures, and
8 buildings and areas of historical importance. Political
9 subdivisions may create airport zones and regulate the
10 heights of buildings, structures, and objects of natural
11 growth in areas surrounding airports.

12
13 Reported favorably. Mary Zervigon expressed the view that au-
14 thority granted in this section is not sufficient to enable
15 the Vieux Carre Commission to effectively perform its
16 functions.

17
18 Source: La. Const. Art. XIV, §29 (1921).

19
20 Comment: The source provision grants zoning authority to
21 municipalities generally, and to certain named parishes.
22 The revision extends the general authorization to all
23 political subdivisions.

24
25 Section 19. Industrial Areas

26 Section 19. The legislature may authorize parishes to
27 create industrial areas within their boundaries in accordance
28 with such procedures and subject to such regulations as the
29 legislature shall determine. Parish industrial areas shall
30 not be subdivisions of the state.

31
32 Reported favorably.

33
34 Source: La. Const. Art. XIV, §29.1 (1921).

35
1 Comment: The above revised provision continues the legislative
2 authority to permit the creation of industrial areas, but

leaves all of the procedures and regulations to the discretion of the legislature.

Section 20. Assistance to Local Industry by Political

Subdivisions

Section 20. (A) Subject to such restrictions as it may impose, the legislature may authorize any political subdivision, in order (i) to induce and encourage the location of or addition to industrial enterprises therein, or (ii) to provide funds for the establishment and furnishing of industrial plants for the conversion or processing of raw forms of agricultural products, or (iii) to provide movable or immovable property, or both, for pollution control facilities, to issue bonds and use the funds derived from the sale thereof to acquire and improve industrial plant sites and other property necessary to the purposes thereof, and to acquire, through purchase, construction, or otherwise, and to improve, industrial plant buildings and industrial plant equipment, machinery furnishing, and appurtenances, and to sell, lease, or otherwise dispose of all or any part of the foregoing.

(B) It is hereby found and declared that the purposes designed to be accomplished herein are public and proper legal purposes and will be of public benefit to the political subdivision issuing the bonds.

Reported favorably.

Source: La. Const. Art. XIV, §14(b.2), (b.3) (1921).

Comment: (a) The source provision provides detailed procedures for the issuance of bonds by political subdivisions to induce, encourage, and aid the location of industry therein.

17

Paragraph A of the revised section adopts the principle that the legislature may authorize such bonds, and the detailed procedures for the issuance of the bonds are omitted from the constitution and should be placed in the statutes.

(b) Continues present stipulation that such bonds are for public and proper legal purposes.

Section 21. Creation of Special Districts; Authority

Section 21. The power of the legislature by general or special law to create or authorize the creation of special districts, boards, agencies, commissions, and authorities of every type useful in carrying on the duties and functions of political subdivisions and, subject to the

limitations imposed in this constitution in Section 7(D) of this Article, to grant the special districts, boards, agencies, commissions, and authorities so created such rights, powers, and authorities as it deems proper, including, but not limited to, the power of taxation, the power to incur debt and issue bonds, and the power to reclaim property from the beds of lakes and streams, is hereby confirmed.

Source: New

Comment: (1) It is the purpose of this section, not only to clearly vest plenary authority in the legislature to create or authorize the creation of special districts and authorities of every type and define their powers, but this section is also to negate any argument that further constitutional authority is necessary for the legislature to exercise this function. The legislature will, however, be subject to limitations otherwise provided by the constitution, such as tax exemptions and debt limitations.

(2) The effect of the above section is to remove from

3

the constitution the following: (1) ports, harbors and terminal districts (§§30.1 and 31); (2) Lake Charles Harbor and Terminal District (§30.2); (3) navigation and river improvement districts (§§30.3 and 30.4); (4) Red River Waterway (§30.5); (5) garbage districts (§34); (6) Fourth Jefferson Drainage District (§35); (7) Jefferson Parish community center and playground districts (§36); (8) Jefferson Parish sewerage districts (§37.1); (9) Jefferson Parish public improvement districts (§38(1st) and §38(2nd)); (10) Calcasieu community center and playground districts (§39.1); (11) Jefferson Parish drainage districts (§43); (12) Sabine River Authority (§45); and (13) Louisiana Stadium and Exposition District (§47). The foregoing list is not exclusive. (References are to present sections).

(3) It is the purpose of the revised section to continue by legislative acts the special districts, boards, agencies, commissions, and authorities provided for in the present Article XIV. Legislation should be submitted to place them in the revised statutes.

(4) It is further recognized, however, that certain existing agencies by reason of their importance, scope, or peculiar circumstances have or should have special treatment in the constitution, such as the Civil Service Commission and the Board of Liquidation of City Debt of New Orleans. They are continued by other sections of the revision.

Section 22. Recall

Section 22. The legislature shall by general law provide

for the recall of state, district, parish, municipal, or ward officers, except judges of the courts of record, and except wherein otherwise provided by this constitution. The vote issue to be voted on at any recall election shall be whether such officers shall be recalled.

Reported favorably.

Source: La. Const. Art. IX, §9 (1921).

Comment: This section is taken from the source provision, and makes no changes in the law.

Section 23. Classification

Section 23. Except as provided in Section ____, the legislature may classify political subdivisions according to population or on any other reasonable basis related to the purpose of this classification, and legislation may be limited in its effect to any of such class or classes; but, no statute which is applicable to fewer than six political subdivisions shall become operative in any such political subdivision until submitted to and approved by a majority of the qualified electors of that political subdivision voting in an election held for that purpose.

Source: La. Const. Art. XIV, §22 (1921).

Comment: Under the source provision, legislation applicable to fewer than the five largest cities of the state shall not become operative in the city of New Orleans until approved by a majority of the qualified electors of the city of New Orleans voting at an election. The revision provides that if a law is applicable to fewer than six political subdivisions the law becomes operative in a political subdivision to which it applies only if approved by the voters of that political subdivision. Thus, the law becomes operative in a municipality where it is approved, even if it does not become operative in others because the voters disapprove or no election is held. The exception of Section ____, deals with municipal taxation, under that section the legislature is authorized to make exceptions for individual municipalities from general laws pertaining to taxation.

Section 24. Uniform Procedure for Calling, Conducting, and Canvassing the Returns of Certain Special Elections

Section 24. When any election is required to be held in any political subdivision pursuant to the provisions of this constitution which requires submission to the electors of any proposition or question, such as the change of parish

lines, change of a parish seat, levying of taxes, issuance of bonds or incurring of other debt obligations, the assumption of debt, or the adoption of a home rule charter, the election shall be called, conducted, and the returns thereof canvassed, in accordance with the law pertaining to elections for incurring bonded indebtedness and special taxes relative to local finance, as the same now exists or may hereafter be amended, or as may be otherwise provided by the legislature.

Reported favorably.

Source: New

Comment: Provides that applicable procedures set forth in the statutes shall be followed when holding special elections.

Section 25. Supremacy of Constitution and General Laws

Section 25. The provisions of this constitution shall be paramount and neither the legislature, nor any political subdivision, shall enact any laws or ordinances in conflict therewith. Except as otherwise provided in this constitution, the general laws enacted by the legislature shall be paramount to the ordinances of any political subdivision.

Reported favorably.

Source: New

Comment: Provides for supremacy of the constitution and general laws over ordinances enacted by political subdivisions.

Section 26. Intergovernmental Cooperation

Section 26. Any political subdivision may exercise any of its powers or perform any of its functions, including the financing thereof, jointly or in cooperation with any governmental entities, either within or without the state, except as the legislature shall provide otherwise by law.

Reported favorably.

Source: New. See, however, South Dakota Const. Art. IX, §3, (1889).

Comment: Provides for intergovernmental cooperation between parishes and municipalities and between these political subdivisions and the state and federal government.

Section 27. Terms Defined

Section 27. 1. As used in this Article "municipality"

means incorporated cities, towns, and villages.

2. "Political subdivision" as used in this constitution refers to parishes, municipalities, and any other unit of local government authorized by law to perform general governmental functions.

3. "Governing authority" means the body which exercises the legislative functions of the political subdivision.

4. "Chief executive officer" as used in this Article refers to the mayor, or any other popularly elected chief executive of any political subdivision.

5. "General law" as used in this article refers to a law of statewide concern which is uniformly applicable to every political subdivision in the entire state or which is uniformly applicable to all political subdivisions

22

within the same class as established in accordance with the classification provisions of Section 23 of this Article.

6. "Special law" means any law other than a general law.

Reported favorably.

Source: New

Comment: Provides definitions for various terms used in this Article.

Minutes of the Committee on Legislative Transition and Transitional Measures of the Constitutional Convention of 1973

Held pursuant to notice by the Secretary in accordance with the Rules of the Convention

Treaty Room, White House Inn, Baton Rouge, Louisiana
Tuesday, January 15, 1974, 9:00 a.m.

Presiding: Mary K. Zervigon, Chairperson of the Committee on Legislative Liaison and Transitional Measures

Present:

Representative Thomas A. Casey, ex officio
Mr. Emile M. Comar, Jr.
Representative Edward J. D'Gerolamo
Representative R. Harmon Drew
Representative Johnny Jackson, Jr.
Mr. Walter I. Lanier, Jr.
Mr. Louis M. Jones
Senator B.B. Rayburn
Mr. Jasper K. Smith
Representative Richard S. Thompson
Representative Lantz Womack
Ms. Mary K. Zervigon

Absent:

Mr. Calvin O. Payard
Mr. H.B. Hardee, Jr.
Representative John J. Thompson
Representative Conway LeBlou
Mr. Robert Munson
Mr. Kendall Vick

* * *

Representative D'Gerolamo moved the adoption of the Section "Ports; Transition to Statutes". Motion carried without objection.

Mr. Comar moved the adoption of the Section "Home Rule Charters; Authorization". Motion carried without objection.

The Committee on Local and Parochial Government submitted for the record a copy of Article 10, Section 23, from the 1921 Constitution, signed by members of that committee and also by members of this committee. This was for the purpose of indicating their intention to include Article 10, Section 23, in Section 9 of the Committee Proposal under consideration. A copy of that document is attached to and made part of these minutes as APPENDIX C.

Representative Thompson moved the adoption of a provision for the commissioner of elections to read:

"The commissioner of elections, as provided by Article ____, first elected under this constitution shall be elected to take office in 1976. The custodian of voting machines in office on the effective date of this constitution shall continue to exercise the functions of that office, without change, until the expiration of his term."

Motion carried without objection.

a pardon board to read:

"Until a pardon board is appointed under the terms of this constitution, the lieutenant governor, attorney general, and presiding judge of the supreme court shall continue to serve as a board of pardons."

Meeting carried without objection.

MINUTES

Minutes of the meeting of the Subcommittee on Public Welfare of the Committee on Education and Welfare of the Constitutional Convention of 1973. Held pursuant to notice mailed by the Secretary of the Convention on April 25, 1973. State Capitol Building, Room 206, Baton Rouge, Louisiana, Wednesday, May 2, 1973.

Presiding: Mr. Anthony Rachal, Jr., chairman of the Subcommittee on Public Welfare

Present: Mr. Flory
Mr. Olier
Mr. Hernandez
Mr. Landry
Mr. Lennox
Miss Wisham

Absent: Mr. Armentor

The Subcommittee on Public Welfare met in a one day session at the State Capitol Building on Wednesday, May 2, 1973.

The chairman called the meeting to order at 10:00 a.m., the secretary called the roll and a quorum was present.

The subcommittee reviewed the minutes of the previous meeting. Mr. Flory moved that the minutes be approved as written and Miss Wisham seconded the motion.

The chairman submitted to each member of the subcommittee a copy of a letter which he received from Mr. Kenneth Plaisance at Angola Penitentiary. A copy of this letter is attached hereto and made a part of these minutes.

The chairman introduced Mrs. Elayn Hunt, director of the Department of Corrections. Mrs. Hunt said that she feels that there is no need for the Department to be in the constitution, and that leaving it out would give it more flexibility to make changes as they are needed in dealing with correctional problems.

Mrs. Hunt gave a brief summary of how the Department of Corrections is set up. She said that the Department has a director appointed by the governor, directly responsible to the governor, and an advisory board with staggered terms, the Board of Corrections. The director has full administrative responsibility for all of the adult and

juvenile institutions as well as the adult probation and parole systems in the state. The juvenile probation and parole system is still under the jurisdiction of the Department of Welfare. She said that an adult offender who is committed to the Department of Corrections is classified and transferred to whichever institution is most appropriate for treatment.

When asked about the first offender, Mrs. Hunt said that when he goes to Angola, he goes through a classification procedure which takes from 30 days to six weeks. He receives psychological testing, and questionnaires are sent to his employer or teacher. After all information is obtained on the individual, a summary is drawn up and he goes before the DeQuincy Transfer Board where he is considered to be placed in the First Offender Institute at DeQuincy.

-2-

Mrs. Hunt pointed out that the greatest problem is the location of Angola. The Courts are directing that adequate medical care must be provided. She said that money will not be able to cure the problem of getting a medical staff willing to live at such a location. If anyone confined complains of not having received medical attention, if this complaint is not investigated, and if an attempt is not made to correct this problem, there will be personal liability placed on the part of the director.

Mrs. Hunt has no objection to a provision in the constitution prohibiting the leasing of inmates and use of prison labor for public works. As to suffrage for inmates, she feels that a great deal of consideration should be given to this problem because, as Mr. Lennox pointed out, if an inmate has a legal right to vote while he is serving his time, he may file suit to maintain suffrage, and the Court would probably rule in his favor.

With the completion of Mrs. Hunt's presentation, the chairman introduced Mr. Mark Carleton, assistant professor of history, Louisiana State University, Baton Rouge, Louisiana. Mr. Carleton prepared a written statement, a copy of which is attached hereto and made a part of these minutes. He said that penal reform and the Department of Corrections should be left out of the constitution because constitutional guidelines and restraints, however reasonable and wellmeaning they may be at the present time, may well impede rather than further penal reform in Louisiana.

-3-

Next on the agenda was Mr. Edwin O. Ware, president of the District Attorney's Association. Mr. Ware said that the constitution should contain as little as possible.

The simpler we can keep it, the better chance we have to pass it.

On the subject of convict suffrage, Mr. Ware feels that persons who have committed offences involving a great deal of moral turpitude should not be permitted to vote.

As an example, a man who has committed murder because he lost his temper and did not control himself should be allowed to vote after he has paid his debt to society; but a hired assassin should never again be allowed to vote.

With the completion of his presentation, Mr. Ware told the chairman that he would submit a written statement to the subcommittee.

Mr. Lennox gave a brief summary as to the three presentations heard. He said that all three witnesses recommended that the leasing and hiring of prison labor and use of prison labor for public works should be a matter of constitutional consideration. He said that all three witnesses recommended that the matter of prison suffrage should be a matter of consideration in the constitution. All three witnesses feel that there should be a redefinition of the term "juvenile"; and, all three witnesses feel that corrections and prisons should be left out of the constitution.

After Mr. Lennox's statement, the subcommittee adjourned for lunch.

* * *
-4-

Correctional institutions and penological methods in the United States have been subjected in recent years to an intense public and official scrutiny. Prison riots, exposures of brutality against inmates and guards alike, a rapidly expanding criminal population, and various court rulings demanding improved procedures have combined to re-awaken widespread support for real and immediate prison reform.

The correctional institutions and methods of Louisiana have not been ignored during this period of re-evaluation and pressure for change. As far back as 1952 the legislature, at the request of Governor Robert F. Kennon, authorized a \$9 million construction and modernization program for the state penitentiary at Angola, an institution which had been recently, and justifiably labeled as "America's Worst Prison" in a nationally-read magazine. Since then a professional staff has been gradually recruited and trained, educational programs have been established and expanded, and convict guards -- the bane of any sound correctional apparatus -- have finally begun to disappear. After over half a century of advocacy by reformers, a first-offender institution was opened at DeQuincy in 1958. Female offenders were moved from Angola to St. Gabriel in 1961 and a new and much improved facility for these people is nearing completion. An incentive pay program for inmates, improved supervision of parolees, and a greater effort toward job placement of former inmates could also be added to the list of reforms implemented in recent years.

The job is far from finished. A great deal remains to be done. None of our correctional institutions has yet become a "model" worthy of

imitation elsewhere. But a virtual revolution has taken place in Louisiana penology since the early fifties. To deny this or even to soft-pedal its magnitude is to indulge in blind fantasy.

The problem today in Louisiana is how to keep the momentum of penal reform going; how best to insure that Louisiana's correctional institutions and methods continue to be improved, as indeed they must be. I respectfully submit to this committee that two highly desirable prerequisites for continuation of penal reform in Louisiana are as follows: (1) that no definition or discussion of, nor any particular mandate for, penal reform be written into the proposed state constitution and (2) that the Department of Corrections be left in the Louisiana Revised Statutes, where it has been since 1968 when the legislature and the people wisely put it there.

All too often in Louisiana history, especially since 1879, the constitution has become the dwelling place of ideas, objectives or agencies which someone wanted to protect, guarantee or hide. In some cases this motivation was commendable and its beneficiary a worthy one, the Bill of Rights serving as a prime example. But while the rights of a citizen in a democracy are fundamental and basic, policy of any kind is not, whether one speaks of fiscal policy, foreign policy or penal policy. Policy must often change. Sometimes it must change suddenly or drastically. What works well today may not work well tomorrow. Thus it is best not to write policy of any kind into statements of fundamental or basic law. Rather leave policy to the policy-makers, in the case of corrections to the governor, the legislature, and most importantly, to the penologists. For if it is unwise to write finite definitions of policy into constitutions, it is hardly any wiser to put the policy-makers themselves into a constitution, unless it is your desire to check and circumscribe their actions beyond reasonable limits.

Corrections is a tough, frustrating and often thankless profession. But it is a profession, and one, moreover, in the process of transition and increased specialization. Constitutional guidelines and restraints, however

apparently reasonable and well-meaning at present, may well impede rather than further penal reform in Louisiana, and for this reason I again urge that penal reform generally and the Department of Corrections in particular be left out of the Constitution.

*Respectfully,
Walter T. Christian
LSUBA, Dept. of History*

CC/73 Research Staff
Committee on Education
and Welfare
June 1, 1973
Staff Memorandum No. 9

RE: Report of Subcommittee on Public Welfare.

* * *

The subcommittee has taken the following action on
constitutional provisions assigned to it:

Article VI, §11 Boards of health; state, parochial and municipal; state health officer.	Deleted
Article VI, §12 Public health; practice of healing arts; food and drug regulations.	Deleted
Article XIV, §17 State penal institutions; crimes in, or by inmates or employees; reimburse- ment of parish expense.	Retained CC-214
Article VIII, §6 Disqualifications from voting or holding office; employment.	Committee on Bill of Rights and Elections has a satisfactory proposal
Article XX, §1 Bond issues; Angola Plantation enlarge- ment and improvement.	Revenue, Finance and Taxation considers this provision obsolete
Article XIII, §6 Canal and hydro-electric developments; use of state waters; state ownership.	Committee on Natural Resources and Environ- ment recommends that this provision be placed in the statutes
Article XIV, §15 Civil service system; state, cities.	Under consideration
Article XIV, §15.1 Fire and police civil service; munici- palities of 13,000 to 250,000.	Under consideration
Article XIV, §15.2 Financial security for surviving spouses and children of law enforcement officers in certain cases.	New proposal CC-201 CC-201-A

* * *

- 1 -

CC-214

- 1 Constitutional Convention of Louisiana of 1973
- 2 COMMITTEE PROPOSAL NUMBER
- 3 Introduced by Anthony Rachul on behalf of the Subcommittee
- 4 on Public Welfare

[1140]

A PROPOSAL

5
6 To reimburse parishes for expenses incurred resulting
7 from crimes committed in penal institutions.
8 PROPOSED SECTION:
9 Article _____, Section 1. State Penal Institutions;
10 Crimes In, or by Inmates or Employees; Reimburse-
11 ment of Parish Expense
12 Section 1. In parishes in which are located penal
13 institutions of the State of Louisiana, the expenses
14 incurred by the parish arising from crimes committed
15 in such institutions or by the inmates or employees
16 thereof shall be reimbursed by the state.
17
18 Source: La. Const. Art. XIV, §17 (1921).

20 Comment: Retained without change.

Chapter VI

Committee Research Documents, Memoranda, and Other Materials Relative to the Administration of Criminal Justice

March 28, 1973

Staff Memo No. 9

March 28, 1973

Staff Memo No. 14

RE: Request by Delegate Novyse Soniat for information on the possibility of including in the rights article of the Constitution a provision for automatically restoring political rights for one who has committed a felony after he has completed his sentence.

Under the present Constitution (Article VIII, § 6) a person convicted of a felony is denied the right to vote unless he has been pardoned with express restoration of the franchise.

Some of the more recent state constitutions have provided for the automatic restoration of political rights after completion of sentences.

The Illinois Constitution provides for it as follows:

Art. III, § 2. VOTING DISQUALIFICATIONS

A person convicted of a felony, or otherwise under sentence in a correctional institution or jail, shall lose the right to vote, which right shall be restored not later than upon completion of his sentence.

The Montana Constitution (1972) provides as follows:

Art. 1 § 28. RIGHTS OF THE CONVICTED

Laws for the punishment of crime shall be founded on the principles of prevention and reformation. Full rights are restored by termination of state supervision for any offense against the state.

The above are representative provisions providing for automatic restoration of political rights. The Illinois provision would restore political rights as soon as the convicted person is released from confinement. While the Montana provision would wait until his supervised parole is terminated, which may be much later.

From a technical standpoint, a general section on the right to vote could be included with provision for its temporary suspension for persons under sentence. Such temporary suspension could also be extended to persons judged to be of unsound mind.

Such a section in the Constitution might read as follows:

Article 1, § ____ Right to Vote

Every citizen who is at least eighteen years old, has resided at least thirty days before an election and is residing in this state shall have the right to vote. This right may be suspended temporarily only while a person is judicially declared to be of unsound mind or is under an order of imprisonment for conviction of a felony.

The above request for information on bail bonds, how long a person may be kept in jail without bond, and the possibility of greater protection in the Constitution in this area.

The present Constitution, Article 1, Section 12 provides the following:

Section 12. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. No person shall be paid able by excessive bail, except in the case (1) persons charged with a capital offense, when the proof is so great as to leave the jury no reasonable doubt of a guilty verdict; (2) persons charged with a crime requiring a term of imprisonment of more than ten years, when the proof is so great as to leave the jury no reasonable doubt of a guilty verdict; (3) persons charged with a crime requiring a term of imprisonment of more than five years, when the proof is so great as to leave the jury no reasonable doubt of a guilty verdict. (As amended Acts 1936, ch. 199, sec. 3, 1936.)

The Eighth Amendment to the U. S. Constitution provides that excessive bail shall not be required.

"Bail" is the sum of money or other security deposited with the court to ensure that the person will appear for trial at the proper time.

In federal courts, bail cannot be denied to a person charged with a crime.

In state courts, bail cannot be denied to a person charged with a crime.

In state courts, bail cannot be denied to a person charged with a crime.

In state courts, bail cannot be denied to a person charged with a crime.

In state courts, bail cannot be denied to a person charged with a crime.

In state courts, bail cannot be denied to a person charged with a crime.

In state courts, bail cannot be denied to a person charged with a crime.

In state courts, bail cannot be denied to a person charged with a crime.

In state courts, bail cannot be denied to a person charged with a crime.

In state courts, bail cannot be denied to a person charged with a crime.

In state courts, bail cannot be denied to a person charged with a crime.

In state courts, bail cannot be denied to a person charged with a crime.

In state courts, bail cannot be denied to a person charged with a crime.

In state courts, bail cannot be denied to a person charged with a crime.

In state courts, bail cannot be denied to a person charged with a crime.

In state courts, bail cannot be denied to a person charged with a crime.

In state courts, bail cannot be denied to a person charged with a crime.

In state courts, bail cannot be denied to a person charged with a crime.

In state courts, bail cannot be denied to a person charged with a crime.

In state courts, bail cannot be denied to a person charged with a crime.

In state courts, bail cannot be denied to a person charged with a crime.

In state courts, bail cannot be denied to a person charged with a crime.

In state courts, bail cannot be denied to a person charged with a crime.

In state courts, bail cannot be denied to a person charged with a crime.

In state courts, bail cannot be denied to a person charged with a crime.

In state courts, bail cannot be denied to a person charged with a crime.

In state courts, bail cannot be denied to a person charged with a crime.

In state courts, bail cannot be denied to a person charged with a crime.

In state courts, bail cannot be denied to a person charged with a crime.

In state courts, bail cannot be denied to a person charged with a crime.

In state courts, bail cannot be denied to a person charged with a crime.

In state courts, bail cannot be denied to a person charged with a crime.

In state courts, bail cannot be denied to a person charged with a crime.

In state courts, bail cannot be denied to a person charged with a crime.

In state courts, bail cannot be denied to a person charged with a crime.

In state courts, bail cannot be denied to a person charged with a crime.

trial, Alexander... (1971), cont. denied... (1971), cont. denied... (1971), cont. denied...

The effect of the... (1971), cont. denied... (1971), cont. denied...

To prevent potential abuse under present constitutional provisions, a provision could be included requiring the release of persons in jail because of inability to raise bail if they are not brought to trial within a specified period.

The Constitution of Puerto Rico has such a provision in Article 11 of Chapter Section 11, Paragraph 6.

Investigative agencies should not be allowed to use confidential informants in the absence of a warrant or probable cause for arrest or search.

And a provision for the... (1971), cont. denied... (1971), cont. denied...

Every person shall be... (1971), cont. denied... (1971), cont. denied...

Every person shall be... (1971), cont. denied... (1971), cont. denied...

CG/73 Research Staff
Committee on Bill of
Rights and Elections
March 23, 1973
Staff Memo No. 15

RE: Newsmen's Shield Provision. CBRE request for information on the question of including in the rights article provision for shielding a newsmen from disclosing his sources of information in court proceedings.

In *Bronsbury v. Hayes*, 408 U.S. 620 (1972), the Supreme Court held that requiring newsmen to appear and testify before state and federal grand juries does not abridge the freedom of speech and press guaranteed by the First Amendment and that a newsmen's agreement to conceal criminal conduct of his news sources, does not give him a privilege of refusing to testify.

The above and related cases have caused newsmen to urge that Congress enact a law to give newsmen the privilege of refusing to divulge confidential information or sources of information utilized in the course of their newsgathering activities. A number of states have passed such shield laws in various forms including Louisiana. (See S.S. 45145) et seq., already furnished to the committee.)

The question arises whether such a provision should be included in a rights article to the Constitution. Research fails to reveal a shield provision in the constitution of any other state.

Advocates of shield provisions maintain that the press must be able to protect its sources so as to continue to expose corruption and lawlessness. They argue that today's in-depth investigative reporters make frequent use of confidential information to help them verify and evaluate the "on the record" news they get from official sources. Much of this "news" is said to be superficial, sometimes deliberately misleading, and almost always self-serving. The claim is made that confidential sources would soon dry up if their confidentiality cannot be guaranteed.

Opponents of shield laws argue that newsmen should not be given special status as to the confidentiality of their sources. Such a result would require the defining of a "newsmen" with potentially dangerous consequences for freedom of the press. Such definition could lead to restriction of newsmen, to examination of newsmen as bona fide newsmen, and to the creation of a licensed profession like doctors or lawyers in an area where there is no substantial public interest in protecting the public from "unqualified" newsmen.

In *Law of Shield Laws*, published by the... (1971), cont. denied... (1971), cont. denied...

The... (1971), cont. denied... (1971), cont. denied...

A constitutional provision to the... (1971), cont. denied... (1971), cont. denied...

CG/73
Committee on Bill of
Rights and Elections
March 25, 1973
Staff Memo No. 17

RE: Grand Juries. CBRE Request for a review of recent legal periodicals on the work of grand juries and whether grand juries should be retained.

In response to the request, four recent articles in legal periodicals dealing with grand juries were reviewed. The four were as follows: Seymour Gelber, "The Grand Jury Looks at Itself", Florida Bar Journal 45:576 (1971); Michael Tiger and Madeline R. Levy, "The Grand Jury as the New Inquisition", Michigan State Bar Journal 50:693 (1971); David L. Porter, "Grand Jury Paratice in the 1970's", Ohio State Law Journal 32:701 (1971); David J. Fine, "Federal Grand Jury Investigation of Political Dissidents", Harvard Civil Rights Law Review 7:432 (1972).

All except Gelber were very critical of the present use of the grand jury in state and federal practice.

Porter and Tiger traced the history of the grand jury. Tiger pointed out that it was designed to counterpose the power of the Executive and the Judiciary for the protection of the citizen, but at present it fails, in fact, to perform this

function. Like the petit jury, it was once regarded as a bulwark of liberty but not any more.

Porter points out that England, the home of the grand jury, abolished it except in a very few cases, in 1933. He noted that as the centuries rolled by, the petit jury became a highly refined tool; virtually the entirety of the law of evidence was shaped to take advantage of the strengths and weaknesses inherent in the petit jury system. The grand jury, however, changed less. It remained and remains a blunt, crude instrument of brute power. Its unparalleled investigatorial powers are admittedly of vast importance to the Government. But it has lost the counterbalancing characteristics which made those tolerable - the protection of the innocent accused against unfounded accusations.

Porter says a case can be made for abolishing the grand jury altogether on the basis that it rarely fails to indict. He cites a recent ABA Foundation survey of the decision to charge a suspect with a crime in American criminal justice. There is

almost no reference to grand juries, which theoretically are supposed to sift the evidence and decide whether or not to indict.

Porter does suggest there may be some cases in which the grand jury has a legitimate function to perform. Motor vehicle homicide cases present such a situation, in that the grand jury, by applying the standards of the general morals of society, is best able to decide whether a particular fatal accident, out of the countless numbers that occur, involves conduct sufficiently below societal norms to justify criminal prosecution.

Tigar points out that the Fifth Amendment requires all felony prosecutions in federal court to begin with a grand jury

2

indictment. With its broad investigatory powers, however, it has been converted into a vehicle for suppressing dissent.

Tigar says the grand jury performs its historic function of examining evidence to determine whether a crime has been committed in very few cases. Most district attorneys send only controversial cases to the grand jury--for example, cases involving alleged police misconduct, in which the D.A. can present a less-than-credible case for indictment; the grand jury can return "no bill" and the decision has an air of impartiality nonetheless. The D.A. can get an indictment almost at will, and the grand jury's institutional disinterest can be used to insulate him from criticism for indicting or failing to indict.

Tigar points out that witnesses refusing to answer questions of a grand jury can be jailed for up to three years, with great difficulty in obtaining release by bail while testing the refusal by an appeal. In grand jury investigations, he points out that there is no notice of the scope of the investigation, no confrontation of witnesses, no right or possibility to cross-examine, no right of counsel in the hearing room. The investigation, Tigar claims, destroys freedom of association by an assault on a person's political privacy.

Fine covers much the same ground as Tigar, concentrating on three criticisms: 1) the doctrine of the grand jury's unrestricted investigatory power, 2) the absence of standards regulating the government investigators' use of the resources of the grand jury, and 3) the policy of grand jury secrecy and the exclusion of the witness's attorney. On the latter point, Fine urges several reforms. He says that the only justification

3

for secrecy in the grand jury room is to protect the witness; hence it should be secret only if the witness wants it secret. The witness should be entitled to a transcript of his testimony and to the presence of his attorney in the room.

Gelber presents the results of a survey of former grand jurors serving during the period 1964-70 in Florida. The jurors urge that the empaneling judge provide much more training for grand jurors, that the grand jurors be empowered to hire their own investigators rather than rely almost entirely on the public prosecutor, and that higher caliber jurors in general be selected. In contrast to Tigar's article, the survey finds that the grand

jurors do not believe that the D.A. exercised an undue influence over them.

Gelber concludes his survey with a defense of the grand jury system. While results suggest that repairs may be necessary, he says it is a vital citizen function. It serves not only as a check and balance in our criminal justice system, but also enables citizens to see the machinery at work and to oversee its production.

CC/71 Research Staff

Committee on Bill of Rights and Elections

May 2, 1973

Staff Memorandum No. 30

RE: CBRE Request (by Delegate Vick) for information on the right to personal liberty (criminal procedure rights) recognized by the U. S. Constitution and the extent to which proposed sections of the rights article meet or surpass these rights.

Section I. Personal Liberty (Procedural Rights) in Document 23 includes Sections 10, 11, and 12 of Article I of the Law Institute Project; Delegate Weiss's proposed Sections 12, 15, and 16; Delegate Jenkins' proposed Sections 12, 13, 14, 15, 16, 17, and 35; and Delegate Roy's proposed Sections 11, 12, and 13.

The comparable provisions are the Fifth and Sixth Amendments to the U. S. Constitution, particularly as they are made obligatory on the states by virtue of the due process clause of the Fourteenth Amendment.

The U. S. Supreme Court has held that the following provisions are binding on the states no matter how minor the offense involved because they are fundamental rights and hence protected by the due process clause:

1. To a speedy public trial, In re Oliver, 333 US 257, 272 (1948),
2. To be informed of the nature and cause of the accusation, Smith v. O'Grady, 312 US 329 (1941),
3. To confront the witnesses against him, Pointer v. Texas, 380 US 400 (1965),
4. To compulsory process for obtaining witnesses in one's favor, Washington v. Texas, 388 US 14 (1967),
5. Not to be subject to double jeopardy, Benton v. Maryland, 395 US 784 (1969),
6. To remain silent, absent a grant of immunity from prosecution, Malloy v. Hogan, 378 US 1 (1964) and Murphy v. Waterfront Commission, 378 US 76 (1964).

The Supreme Court has recently held that an accused in any criminal proceeding has the right to be represented by his retained counsel at all critical stages. Indigents who cannot afford to retain counsel have the right to counsel provided by the state in any case in which imprisonment is imposed as a penalty. "We hold, therefore, that absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified

as petty, misdemeanor, or felony, unless he is represented by counsel at his trial," Argersinger v. Hamlin, Sheriff, 92 S. Ct. 2066 (1972). Under the ruling, only fines or other penalties not involving imprisonment may be imposed for even minor traffic offenses without the defendant being granted the right to counsel.

The right to trial by jury is more limited. Under the ruling in Duncan v. Louisiana, 391 US 145, 159 (1968), the right to a jury trial for a criminal offense is limited to cases in which the potential punishment is imprisonment for six months or more or a fine of \$500.00 or more. In addition, the jury need not consist of twelve persons but may be as few as six.

-2-

Finally, the federal requirement that felonies must be prosecuted by grand jury indictment does not apply to the states.

The Project 10, 11, and 12 tend to recognize only the minimum guarantees of the federal constitution and, as interpreted in the past, less than the minimum.

The Weiss proposal adds two rights not included in the federal guarantees, the right to be informed of the reasons for any detention and the right to an interpreter free of charge if the accused does not speak the language of the court. The latter is recognized in the 1970 Illinois Constitution. It is silent on the method of bringing an accused to trial in criminal cases.

The Jenkins proposal is silent on obtaining compulsory process. Jenkins 15 should probably read "six months or more" in lieu of "more than six months" to conform to the Duncan case.

In sum, the minimum guarantees of citizens against state action already provided for by virtue of the Fourteenth Amendment of the U. S. Constitution in this area of criminal procedural rights could be stated as follows:

Section _____. Rights of Every Accused Person

A person accused of any offense has the right to a speedy public trial, to be informed of the nature and cause of the accusation, to confront witnesses against him, to compulsory process for obtaining witnesses in his favor, to remain silent without a grant of immunity from prosecution, and to be free from double jeopardy for the same offense.

Section _____. Right to Counsel

No one may be imprisoned for any offense unless he is represented by counsel at his trial.

Section _____. Additional Guarantees

Every person accused of an offense punishable by imprisonment for six months or more has the right to a trial by

-3-

jury in the parish in which the offense was committed unless the venue be changed.

The \$500.00 for the Duncan case is not included in the latter section because it may not stand in the future with inflation, etc. The committee may wish to recognize additional criminal procedural rights in the Louisiana Constitution which are over and above those already recognized in the U. S. Constitution. Mr. Roy's proposals on the grand jury, for example, are apparently intended to provide such additional guarantees.

-4-

RE: Searches and Seizures

"Section 4--Searches and Seizures" of the proposed rights article reads:

Every person shall be secure in his person, houses, papers, and other possessions against unreasonable searches, seizures, or invasions of privacy. No warrant shall issue without probable cause, supported by oath or affirmation particularly describing the place to be searched, the persons or things to be seized, and the lawful purpose or reason for the search. Any person adversely affected by a search or seizure conducted in violation of this section shall have standing to raise the illegality of that search or seizure in the appropriate court of law. No law shall permit the interception or inspection of any private communication or message.

This section is directly related to the Fourth Amendment to the U. S. Constitution, which reads:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Fourteenth Amendment has been held to make the Fourth Amendment applicable to the states, so Section 4 of the proposed

rights article can in no way limit or diminish the guarantees provided by the Fourth Amendment; but can only enlarge or add to those rights and protections.

On this point Section 4 of the proposed rights article presents several questions. (1) Does the provision granting standing to challenge an unlawful search to "any person adversely affected" thereby make any significant change in the present status of the standing question? (2) What effect, if any, will the new section have on searches for and seizures of records and other papers held by third parties? (3) Does the new provision bar the interception of communications with the consent of one of the parties thereto? (4) Can the proposed section "cement" the exclusionary rule of Mapp v. Ohio, 367 U.S. 463 (1960), into Louisiana law? (5) Would the new section affect civil liability for its violation?

(1) Does the provision granting standing to challenge an unlawful search to "any person adversely affected" thereby make any significant change in the present status of the standing question?

At present, the test for standing to object to an unlawful search and seizure and to suppress evidence gained through an unlawful search and seizure as stated in Jones v. U.S., 362 U.S. 257, 261 (1959), and quoted as the rule in Alderman v. U.S., 394 U.S. 165, 173 (1968), see also U.S. v. Hix, 468 F.2d 66 (1972), is:

"In order to qualify as a person aggrieved by an unlawful search and seizure one must have been a victim of a search and seizure, one against whom the search was directed, as distinguished

the defendant must allege that he is a victim of an invasion of privacy to challenge the legality of a search. Alderman (supra) specifically states that evidence obtained through an unlawful search is objectionable only as to that person whose right of privacy was unlawfully disturbed.

The new language in Section 4 providing that "any person adversely affected" has standing to challenge the legality of a search probably extends the protection against unreasonable searches and seizures to defendants against whom evidence gathered as a result of an unlawful search is offered, whether or not his right to be secure in his person, house, papers, and effects were violated, effecting a substantial change in the status of the law.

(2) What effect, if any, will the new section have on searches for and seizures of records and other papers held by third parties?

The proposed section makes no special provision for protection of records of bank accounts and other similar records usually held by third parties. It does protect private communications or messages (see the last sentence of the section), which should include bank statements sent to the party accused or being investigated. However, records in the hands of banks or other fiduciaries seem not to be affected by the new proposal.

Records, papers, etc. are protected by the Fourth Amendment from unreasonable searches and seizures as effects of the individual, and against invasion of privacy. Bancroft v. Du Pont, 392 U.S. 364 (1968). Records should still be covered by the new provision, the present standards being applicable.

3

(3) Does the new provision for the interception of communications with the consent of one of the parties, Chapman?

The Supreme Court has not ruled on the constitutionality of 18 USC 2511 (2) (c), a federal statute allowing interception by one acting under color of law of a wire or oral communication when he is a party to the communication or when he has the prior consent of one of the parties to the communication.

A similar, but broader statute, enacted by New York (N.Y. Code Crim. Proc. §813-a), which allowed eavesdropping by expert order upon showing probable cause and allowing a 60-day period of surveillance, was declared unconstitutional by the Supreme Court. Berger v. N.Y., 388 U.S. 41 (1967). The rationale of the decision was that the failure of the statute to require a description of the communication sought to be "seized," allowing a blanket authorization to the law enforcement agencies to "seize" miscellaneous communications, and that the 60-day surveillance period, which could be extended without a showing of probable cause, was an unreasonable duration, authorizing the officer to continue surveillance beyond a reasonable time at his own discretion.

This case does not necessarily affect the one-sided consent authorization provided by 18 USC 2511 (2) (c). It does, however, change the test for coverage by the Fourth Amendment from the rule of Olmstead v. U.S., 277 U.S. 438 (1928), and On Lee v. U.S., 343 U.S. 747 (1951), requiring a physical trespass of some sort before a "search" can be said to have been effected. Berger held that the use of electronic devices to "capture" a conversation is a "search," covered by the Fourth Amendment, and is limited by the same standards of reasonableness and probable cause as a conventional search.

4

cause as a conventional search.

One lower court has ruled on the constitutionality of 2511 (2) (c), holding that the chapter on its face is constitutional. U.S. v. Becker, 334 F. Supp. 546 (D.C. N.Y. 1971). Other lower courts have cited Becker, applying the same standards to interceptions as they would conventional searches and seizures. U.S. v. Fiorella, 468 F. 2d. 688, (2nd Cir. 1972); U.S. v. Tortorella, 342 F. Supp. 1029 (D.C. N.Y. 1972); U.S. v. Mainello, 345 F. Supp. 863 (D. C. N. Y. 1972). These cases deal with warrant taps, and it seems from the cases that an interception with one-sided consent would not be declared to be an unconstitutional infringement on Fourth Amendment rights.

The new blanket prohibition of interception of private communications would seem to prohibit even one-sided consent interceptions, makes quite an innovation in this area, prohibiting any interception of a private communication.

(4) Can the proposed section "cement" the exclusionary rule of Mapp v. Ohio, 367 U.S. 463 (1960), into Louisiana law?

The rule of Mapp v. Ohio (evidence obtained in violation of the Fourth Amendment is not admissible) is not incorporated into the proposed section any more than it is in the Fourth or Fourteenth Amendments of the U. S. Constitution. The exclusionary rule is a means of enforcing the Fourth Amendment and is not technically required by that amendment. The proposed language is almost identical to that of the Fourth Amendment and it is a fair assumption that should Mapp v. Ohio be overruled or the rule of Mapp v. Ohio, 232 U.S. 183 (1914), altered, this section's interpretation would fit in on the fringes of the Fourth Amendment and that the rule of

5

evidence would be cut free should the Fourteenth Amendment be held not to make the exclusionary rule applicable to the states.

Thus while the proposed section on searches and seizures makes several major innovations here, it does not bolt down the present interpretations or methods of application.

(5) Would the new section affect civil liability for its violation?

Civil liability for unreasonable search and seizure in Louisiana is based on general tort law, and comes out of a combination of rights granted by the Fourth Amendment and duties imposed by Civil Code Article 2315. Wilde v. City of New Orleans, 12 La. Ann. 15 (1857); McGary v. Lafayette, 4 La. Ann. 440 (1849); Lorcher v.

Forgy, 2 La. Ann. 524 (1847). A later case indicated that the basis for recovery remains the same. Bundy v. Rural Town, 98 SW 2d 719 (1st Cir., 1957). Recovery is not dependent upon a special constitutional provision or special statute, as is the case federally. Because the new section expands the rights of the individual, and these rights would be protected by CC 2315, the tort would be expanded to cover the larger area of protection. No additional provisions need be made to preserve the action for damages because of its independent basis.

6

CC/73 Research Staff
Committee on Bill of
Rights and Elections
May 16, 1973
Staff Memorandum No. 38

RE: Federal-State Double Jeopardy

"Section 13 - Initiation of Prosecution" of the proposed Rights article reads:

Section 13. Initiation of Prosecution

Prosecution shall be initiated by indictment or information, but the prosecution of misdemeanors may be initiated by affidavits. No person shall be held to answer for capital crime, or felonies necessarily punishable by hard labor except on indictment by a grand jury, unless he specifically waives the necessity of the indictment. No person shall be twice put in jeopardy of life or liberty for the same offense, except on his own application for a new trial or where there is a mistrial or a motion in arrest of judgment is sustained.

This language recites the general double jeopardy protection provided by the Fifth Amendment to the U.S. Constitution, which is binding on the states by virtue of the Fourteenth Amendment.

This section leaves the double jeopardy protection unchanged, including the "separate sovereignty" rule with respect to double jeopardy. The separate sovereignty rule allows prosecution for an act or offense even if the defendant has been convicted or acquitted by another sovereignty for the same or similar offense. This rule operates between the

state and any other sovereignty, including the United States, other states, and other countries. It thus allows state prosecution after a federal conviction or acquittal for the same offense.

Although Waller v. Florida, 397 U.S. 387 (1969), touched on the problem by holding that the rule did not apply between a state and its subdivisions, it left the application of the rule with respect to federal and state prosecutions untouched.

This problem can be alleviated as to state prosecutions after federal conviction or acquittal by state statute or constitutional provision.

California enacted such a statute in 1872 and it was

held to bar state prosecution of a defendant who had been convicted by a foreign sovereignty for the same offense. Combs v. Superior Court of California, 11 Cal. 2d 490 (1948). A copy of the California provisions relating to this question are attached as Annex A.

An incorporation of such a provision into Section 13 of the proposed rights article would protect an accused from double jeopardy by state prosecution after federal conviction or acquittal.

Such an amendment could be provided for by substituting the following sentence for the last sentence of the proposed section:

"No person shall be twice put in jeopardy of life or liberty for the same offense even if convicted or acquitted by a court of competent jurisdiction of another sovereignty."

Such an amendment would result in the protection of an accused from being placed in jeopardy by Louisiana when he

-2-

has either been convicted or acquitted for the same offense by a court of another sovereignty, i. e. the United States, another state, or a foreign country.

Louisiana could not, of course, prevent trial in federal court once an accused was tried in a state court for the same or a similar offense. Only federal action could achieve this. If the policy of preventing double convictions were to be strongly urged in this area, it would be possible for the state to adopt a provision that a subsequent federal conviction for an offense would result in an extinguishment of the earlier Louisiana conviction for the same or similar offense.

-3-

Annex A

California Penal Code, Sections 656, 687, and 793 dealing with double jeopardy

§ 656 Exception conviction or acquittal is defense. When any person is convicted or acquitted of a crime in this state, he shall not be again convicted or acquitted of the same crime in this state, nor shall he be again convicted or acquitted of the same crime in any other state, territory, or foreign country, if the crime is the same as that for which he was convicted or acquitted in this state. [Enacted 1927]

§ 687 Spec. a. prosecution for the same offense prohibited. No person shall be prosecuted for the same offense in this state, nor shall he be prosecuted for the same offense in any other state, territory, or foreign country, if the crime is the same as that for which he was convicted or acquitted in this state. [Enacted 1927]

§ 793 Conviction or acquittal in another state for same crime. No person shall be prosecuted for the same crime in this state, nor shall he be prosecuted for the same crime in any other state, territory, or foreign country, if the crime is the same as that for which he was convicted or acquitted in this state. [Enacted 1927]

ing imposing criminal penalties for its distribution. Roth v. United States, 354 US 476 (1957). Material is obscene if "to the average person, applying contemporary community standards,

2

RE: Judicial restriction of the freedom of speech guarantee of the First Amendment to the United States Constitution

The First Amendment to the United States Constitution provides:

Congress shall make no law...abridging the freedom of speech, or of the press;...

This memorandum enumerates the major propositions established by Supreme Court decisions construing this provision.

1. The guarantee of the First Amendment is not to newspapers or to the "press" alone; it protects all citizens. The press has no greater rights in this regard than any other person.

2. The First Amendment, though stated as a prohibition on Congress alone, restricts the states with the same rigor it restricts Congress, through incorporation in the due process clause of the Fourteenth Amendment, Fiske v. Kansas, 274 US 380 (1927).

3. The First Amendment prevents any system of licensing the press; everyone has the freedom to publish without any license, Lovell v. Griffin, 303 US 451 (1938). The same cannot be true for radio and television broadcasting, where licenses are required because of the scarcity of available frequencies, National Broadcasting Co. v. United States, 319 US 190 (1943).

4. The amendment forbids previous restraints on publication, i.e. censorship of the press, Near v. Minn., 283 US 697 (1931). A slight exception may have arisen in the Pentagon Papers case in which the Court said in dictum that a serious threat to national security might allow the government to prohibit publication of certain materials. However, that exception is a narrow one, for the Court held in the same case that the threat to national security from publishing stolen classified information relating to the history of United States involvement in the Vietnam War was not sufficient to justify enjoining publication, New York Times Co. v. United States, 403 US 713 (1971). Motion pictures are within the protection of the First Amendment, but not to as great an extent as the printed media. The Court has held there is no absolute constitutional right to exhibit any and all motion pictures without censorship, Times Film Corp. v. Chicago, 365 US 43 (1961).

5. A tax based on gross receipts on the privilege of engaging in the business of selling advertising in a newspaper or periodical is impermissible as a device to limit circulation of information. Grosjean v. American Press Co., 297 US 233 (1936) (attempt by Huey Long to tax large-circulation newspapers).

6. Despite the absolute language of the First Amendment, the Court has held that obscenity is not within the area of protected speech. The states may regulate obscene matter, includ-

ing the dominant theme of the material taken as a whole appeals to prurient interest." The justification for removing obscenity from the realm of protected speech, despite the absolute language of the First Amendment, rests primarily on practices at the time of the adoption of the Constitution. At that time, regulation of obscene matters was permitted, and the regulation continued after the adoption of the constitution, supporting a determination that the drafters must not have intended to protect obscenity.

7. Government may prohibit distribution to children of material deemed harmful to them. Such laws to protect children are upheld even if the material they prohibit might not be obscene for adults under the Roth test, Ginsberg v. New York, 390 US 629 (1968).

8. Not protected by the First Amendment is speech directed to inciting imminent lawless action that is likely to produce such action, Brandenburg v. Ohio, 395 US 444 (1969). Mere advocacy is not enough to justify state action; inciting to violence is not enough if there is no substantial danger that the action will result.

9. The law of defamation constitutes an exception to the freedom of expression protected by the First Amendment. Loss of reputation caused by libel or slander is a compensable loss under tort law, and criminal libel prosecutions by the state are allowed. However, since New York Times Co. v. Sullivan, 376 US 254 (1964), the types of defamatory statement which the state can regulate has been narrowed. The rule as stated in that case is that with

respect to "public figures," one is not liable to a suit for damages if the speaker does not make a statement maliciously, even if that statement is untrue and damage is caused. One is liable, with respect to public figures, only if there was actual malice, (knowledge that the information was false or with reckless disregard of whether it was false or not). Garrison v. Louisiana, 379 US 64 (1964), extends this same protection in criminal libel prosecution.

Because of the difficulties in determining what a "public figure" is, the Court is tending to a position which extends the New York Times rule to all areas of "public interest." Rosenbloom v. Metromedia, 403 US 29 (1971). In that case, a "private" citizen was prevented from recovering damages, for a false statement because he was discussed with respect to breaking the law, a matter of "public interest." The Court, in other words, seems to be sanctioning the development of a different obscenity definition for minors and allowing the state to regulate the publication and distribution of matter that is not obscene according to the adult test but may nevertheless be harmful to minors. Such a

state statute, however, must be limited to controlling access of minors to the material and must not be so broad as to limit the distribution of such material to adults.

10. The freedom of expression protected by the First Amendment extends beyond words and includes "symbolic speech", some types of action that are a means of conveying expression or belief. Protected has been display of a red flag as symbol of opposition to organized government, Stromberg v. California, 283 US 359

4

(1931). A flag salute is a form of utterance within the protection of the amendment, W.Va. Bd. of Ed. v. Barnette, 319 US 624 (1943). Wearing black armbands by students as a protest against the Vietnam war was protected, Tinker v. Des Moines School District, 393 US 503 (1969).

Protection for sit-ins and demonstrations in public places is less strong. Time, place and circumstance may be regulated, but not in a manner that gives government such discretion that it may allow expression of some views and not others, Cox v. Louisiana, 379 US 536 (1965).

The committee's tentative provision protecting freedom of expression provides:

No law shall abridge the freedom of every person to speak, write, publish, photograph, illustrate, or broadcast on any subject or to gather, receive, and transmit knowledge and information, nor shall such activities ever be subject to censorship, licensure, registration, control, or special taxation.

Whether this proposal would be construed by the courts as an absolute protection, or whether the courts would carve out exceptions for defamation, obscenity and minors is open to question and cannot be accurately predicted.

Under this article, it would seem:

- 1/ No prior restraints or censorship are possible under any circumstances.
- 2/ No licensing or special taxation of any freedom of expression media is possible.
- 3/ The prohibition of "control" on "such activities" is one without prior judicial definition, so there is little guide to future development. It might be argued that this language

5

would prohibit laws regulating defamation and obscenity, for this is a type of "control" on those activities. On the other hand, the court might use a historical argument and draw analogy from the federal developments to say the intent of the constitution was to allow such control by government in those areas.

4/ The provision would seem to seriously inhibit a person's action for invasion of his privacy by some media.

If actions for defamatory matter and the regulation of obscenity for all or for minors is to be clearly allowed, these are among the alternatives that are available:

- 1/ Use the exact language of the federal provision.
- 2/ Use the exact language of the present Louisiana provision:
- 3/ "No law shall abridge the freedom to speak, write,

publish, photograph, illustrate, or broadcast on any subject, or to gather, receive, and transmit knowledge and information, nor shall such activities be subject to censorship, licensing, registration, or special taxation.

- 4/ After "information" in the tentative proposal add:
"except to provide civil remedies and punishment for malicious defamation, to regulate the dissemination of obscenity, and to regulate publications harmful to minors in a manner that does not infringe on the rights of adults."
- 5/ After "information" in the tentative proposal add:
"except to provide civil remedies for malicious defamation and to regulate the dissemination of obscenity, in publications and public entertainments to which uncompensated minors have access."



RECEIVED

OFFICE OF THE ATTORNEY GENERAL, NO. 41

RE: MEMORANDUM OF THE COMMISSIONER OF THE STATE OF LOUISIANA

FROM: LEE HARRIS

RE: Comments to Proposed Legislation

The Louisiana State Law Institute issued official comments to proposed codes has led to those comments being accepted by the Council on the Code of Louisiana. The Institute has also issued comments on the proposed Code of Louisiana. While the Council on the Code of Louisiana has not yet issued its final decision on the proposed Code of Louisiana, it is my understanding that the Code of Louisiana will be adopted in its present form. The Institute has also issued comments on the proposed Code of Louisiana.

I write this, however, to advise you that the Institute has issued comments on the proposed Code of Louisiana. The Institute has also issued comments on the proposed Code of Louisiana. While the Council on the Code of Louisiana has not yet issued its final decision on the proposed Code of Louisiana, it is my understanding that the Code of Louisiana will be adopted in its present form. The Institute has also issued comments on the proposed Code of Louisiana.

When an article is accepted for publication in the Louisiana State Law Institute, the Institute will issue a preliminary draft of the article. The Institute will also issue a preliminary draft of the article. The Institute will also issue a preliminary draft of the article.

In this case, the Committee on the Code of Louisiana has issued a preliminary draft of the article. The Committee on the Code of Louisiana has also issued a preliminary draft of the article. The Committee on the Code of Louisiana has also issued a preliminary draft of the article.

The Committee on the Code of Louisiana has issued a preliminary draft of the article. The Committee on the Code of Louisiana has also issued a preliminary draft of the article. The Committee on the Code of Louisiana has also issued a preliminary draft of the article. The Committee on the Code of Louisiana has also issued a preliminary draft of the article.

The Committee on the Code of Louisiana has issued a preliminary draft of the article. The Committee on the Code of Louisiana has also issued a preliminary draft of the article. The Committee on the Code of Louisiana has also issued a preliminary draft of the article. The Committee on the Code of Louisiana has also issued a preliminary draft of the article.

In this case, the Committee on the Code of Louisiana has issued a preliminary draft of the article. The Committee on the Code of Louisiana has also issued a preliminary draft of the article. The Committee on the Code of Louisiana has also issued a preliminary draft of the article. The Committee on the Code of Louisiana has also issued a preliminary draft of the article.

The Committee on the Code of Louisiana has issued a preliminary draft of the article. The Committee on the Code of Louisiana has also issued a preliminary draft of the article. The Committee on the Code of Louisiana has also issued a preliminary draft of the article. The Committee on the Code of Louisiana has also issued a preliminary draft of the article. The Committee on the Code of Louisiana has also issued a preliminary draft of the article.

"and" that appear on lines 32 and 33 might similarly be replaced by "or". If it is the committee's intention, all or part of the suggested additional sentence might be added at the end to carry out the committee's intention more effectively than by inclusion of words in the comments.

Section 11. Freedom of Religion

It is suggested that the last sentence be placed first as it is in the present constitution and that the indicated stylistic changes be made.

Section 12. Freedom of Assembly and Movement

For purposes of style, it is suggested that the sentence be phrased positively instead of negatively.

Section 13. Rights of the Accused

The phrase "his legal rights" is vague and might be replaced by "the reason for his detention". Other proposed changes are mainly of style.

4

Section 14. Initiation of Prosecution

The first sentence might be deleted since it does not provide any effective protection. The last sentence has been revised to provide federal-state double jeopardy if that is the wish of the committee. Other changes are of style only.

Section 15. Grand Jury Proceedings

There are technical problems with the use of the term "accused" in this section. It is suggested that we are talking first about a "witness", secondly about a "person under investigation" and only at the end about an "accused".

Section 16. Fair Trial

Other than the single word changes, it is suggested that the phrase "and all evidence presented shall be competent, relevant, and material" is not necessary and affords little or no additional protection.

Section 17. Trial by Jury in Criminal Cases

While the Duncan case called for trial by jury in all cases of potential imprisonment of six months or more, it has not been specifically so applied. District Attorney Richardson's recommendation to change the wording to "more than six months" is well taken.

Section 18. Right to Bail

Other than minor style changes, it is suggested that the long phrase "may be bailable in the discretion of the judge" be changed to "the judge may grant bail" in the two places it occurs.

5

Section 19. Right to Humane Treatment

Only minor style changes are recommended.

Section 20. Right to Vote

The first sentence might best be phrased positively rather than negatively. The last sentence seems out of

place as presently written since mandates to the legislature do not normally appear in a declaration of rights. If it is to be retained, use the suggested language. As an alternative it might be included in the article on general governmental provisions together with a mandate on the conduct of elections along the following lines:

Section _____. Election Procedures

The legislature shall provide equitable procedures for the conduct of elections and may require advance registration of voters under a system of permanent registration.

Section 21. Right to Keep and Bear Arms

While the changes suggested are for purposes of style, they may have some slight substantive content.

Section 22. Right to Conserve One's Culture

The suggested change is to provide more effective protection for the right.

Section 23. Writ of Habeas Corpus

The language is clear and concise and no further comment is necessary.

Section 24. Access to Courts

The words "and justice" might be deleted as superfluous. The additions to the last sentence are suggested to ensure

6

that political subdivisions are not immune from suit but that persons acting in an official public capacity are. The words "and liability" should be added because of court interpretations that distinguish between "suit" and "liability".

Section 25. Prohibited Laws

No comment.

Section 26. Unenumerated Rights

No comment.

7

CC/73 Research Staff
September 26, 1973
Staff Report No. 10-A

DIGEST OF COMMITTEE PROPOSAL NO. 25

PREAMBLE AND

ARTICLE I, DECLARATION OF RIGHTS

FIRST ENROLLMENT

Jackson, et al.

Preamble

Present constitution (Preamble) expresses gratitude to Almighty God for civic, political, and religious liberties enjoyed and, with the desire to continue these blessings, ordains and establishes the constitution.

Proposed constitution retains the above provisions, adds "economic" to the liberties enjoyed, states additional objects of the constitution as protecting individual rights, opportunity for individual development, equality of rights, promotion of health, safety, education, and welfare, representative government, domestic tranquility, and the common defense.

[1151]

Present constitution (Art. I, §1) states that government originates with the people, is founded on their will, and is instituted solely for the good of the whole. Its ends are to secure justice, preserve peace and promote the interest and happiness of the people.

Proposed constitution retains above provisions but adds that government is instituted to protect individual rights as well as the good of the whole. The second sentence substitutes "rights" and "general welfare" for "interest." A third sentence states that the enumerated rights are inalienable by the state and are to be preserved inviolate by the state.

Present constitution (Art. I, §2) prohibits deprivation of life, liberty, or property except by due process of law.

Proposed constitution retains the same provision.

Present constitution has no provision regarding equal protection of the laws or prohibitions against slavery.

Proposed constitution prohibits the denial of equal protection and specifies that this includes a prohibition of laws that discriminate based on race or religion and a prohibition against laws that "arbitrarily, capriciously, or unreasonably discriminate" based on birth, age, sex, culture, physical condition, or political ideas or affiliations. It also prohibits slavery and involuntary servitude except in the latter case as a punishment for crime.

Present constitution (Art. I, §2; Art. III, §3; Art. IV, §§5 and 11) generally prohibits the taking or damaging of private property except for public purposes and after just and adequate compensation. The legislature is given a specific power to provide for the granting of private rights-of-way for roads of necessity and for drainage for agricultural and other necessary purposes with the payment of just and adequate compensation. In addition, there is a specific provision for expropriation of rights-of-way for highways and drains therefor. There is further provision (Art. VI, §19.1) that property may be taken for highway purposes by orders rendered ex parte in expropriation suits prior to judgment therein, provided that a provision is made for deposit before such taking with a court officer for the amount of appraisal of the property so taken and damages to which the owner may be entitled.

Proposed constitution asserts a general right to property subject to reasonable statutory restrictions and reasonable exercise of the police power. It prohibits the taking or damaging of property by public bodies except for a necessary purpose and with just compensation paid to the owner or into court for his benefit. The

-2-

owner is to be compensated "to the full extent of this loss." Private entities authorized to expropriate property cannot do so except for a "public and necessary" purpose with the issue of whether the purpose is public and necessary being a judicial question. In all expropriations each party has a new right to a trial by jury to determine such compensation. There is a prohibition against the taking of a business enterprise for the purposes of operating it or halting competition with government enterprises. Personal effects other than contraband are prohibited from being expropriated. The provisions of the Section do not apply to "appropriation" of property necessary for levee and levee drainage purposes.

Present constitution (Art. I, §7) prohibits unreasonable searches and seizures of persons, houses, papers, and effects except upon warrant and with probable cause, and with the place to be searched and the persons or things to be seized being particularly described.

Proposed constitution retains the above provisions and adds additional protection for "property" and "communications" to the things to be protected against unreasonable searches and seizures. It also requires that the warrant shall include the lawful purpose or reason for the search. In addition, any person adversely affected by an illegal search and seizure has standing to raise the illegality in court.

Present constitution (Art. XIX, §7) prohibits the quartering of a soldier, sailor, or marine in any house in time of peace without the consent of the owner.

Proposed constitution prohibits the quartering of any person in any house without the consent of the owner or lawful occupant.

Present constitution (Art. I, §3) prohibits the curtailment or restraint of liberty of speech or of the press and permits any person to speak, write, and publish his sentiment on all subjects, being responsible for the abuse of that liberty.

Proposed constitution retains the above provisions without substantial change.

-3-

Present constitution (Art. I, §4) states that everyone may worship God as his conscience dictates, that no law shall be passed respecting an establishment of religion or prohibiting the free expression thereof, and that no preference shall be given to nor any discrimination made against, any church, religion, or form of religious faith or worship.

Proposed constitution provides that no law shall be enacted respecting an establishment of religion or prohibiting the free exercise thereof, and discontinues the other provisions.

Present constitution (Art. I, §5) recognizes the right to assemble peaceably and to petition for a redress of grievances.

Proposed constitution provides that no law shall impair the right to assemble peaceably or to petition for a redress of grievances.

Present constitution (Art. I, §9, 10) states judicial-criminal procedural rights beginning with rights to a fair trial including the right to have the assistance of counsel (§9) and then refers to the right of the accused to be informed of the nature and cause of the accusation against him (§10).

Proposed constitution provides that upon arrest or detention, a person shall be advised of the reason for his arrest or detention, his right to remain silent, his right against self-incrimination, his right to the assistance of counsel and the right to court appointed counsel if indigent. The accused shall be informed of the "nature and cause" of the accusation against him. The right to appointed counsel for indigents is extended to offenses punishable by imprisonment. The legislature is mandated to provide a uniform system for securing counsel for indigents. Also added is the provision that no person shall be subjected to imprisonment or forfeiture of rights or property without the right of judicial review based on a complete record of all evidence upon which the judgment is based.

Present constitution (Art. I, §9) provides that felonies shall be prosecuted by indictment or information except that capital crimes must be by indictment. Misdemeanors may be by affidavit. Double jeopardy is prohibited.

-4-

Proposed constitution retains above provisions but deletes statement that misdemeanors may be by affidavit.

Present constitution (Art. I, §9, 11) provides for a speedy public trial by an impartial jury. There is great detail about venue if a crime occurs partly in and partly out of a parish or within one hundred feet of the parish line. The privilege against self-incrimination, right to confront witnesses, and to defend oneself are provided.

Proposed constitution adds that an accused is presumed innocent until proven guilty, retains the above provisions but deletes detail on venue and provides simply that venue may be changed in accordance with law. Also provides that an accused may testify in his own behalf.

Present constitution (Art. I, §59, 10; Art. VII, §41) provides for a jury trial in criminal prosecutions but that in cases not punishable by hard labor, unless otherwise provided by law, the trial shall be by a judge without a jury. If the punishment may be at hard labor, the case is tried by a jury of five; if the punishment is necessarily at hard labor, it is tried by a jury of twelve, nine of whom may concur to render a verdict; and if the punishment may be capital, it is tried by a jury of twelve all of whom must concur to render a verdict. In jury trials, the accused may challenge jurors peremptorily, the number to be fixed by law.

Proposed constitution retains above provisions for a jury of twelve in cases in which punishment is necessarily at hard labor, except that ten instead of nine must concur to render a verdict. For lesser cases in which punishment may be at hard labor or imprisonment of six months or more, trial shall be before a jury of six, five of whom must concur to render a verdict. Jury trial may be waived in all except capital cases. In addition to peremptory challenges, the accused has the right to full voir dire examination of prospective jurors.

Jackson, et al.

Section 17

Present constitution (Art. I, §12) provides for the right to bail except for a person charged with a capital offense when the proof is evident or the presumption great or where a person is actually sentenced to more than five years at hard labor.

Proposed constitution retains above provisions but provides that after conviction and before sentencing, the judge has discretion with regard to bail if the maximum sentence is over five years and the accused is bailable if the maximum sentence is less. After sentence and before final judgment, the right to bail is recognized if the actual sentence is less than five years and the judge has discretion if the sentence is greater.

-5-

Jackson, et al.

Section 18

Present constitution (Art. I, §11, 12) prohibits treatments designed to compel confessions and prohibits excessive fines and cruel and unusual punishments.

Proposed constitution prohibits euthanasia, torture, or cruel, excessive or unusual punishments. It also provides that full rights of citizenship are restored by termination of state or federal supervision for any offense.

Jackson, et al.

Section 19

Present constitution (Art. VIII, §61, 2, 3, 4) contains detailed qualifications for registering and voting including age of twenty-one, citizenship, residence in the state for one year, the parish six months, the municipality four months, and the precinct three months, good character, ability to understand and interpret the constitution and the obligations of citizenship, certain literacy requirements, prohibition of poll taxes, special qualifications for taxpayers as voters, and qualifications for primary elections.

Proposed constitution provides simply that every citizen of the state over eighteen shall have the right to register and vote except that the right may be suspended while a person "is interdicted and judicially declared mentally incompetent, or under an order of imprisonment for conviction of a felony."

Jackson, et al.

Section 20

Present constitution (Art. I, §8) provides that a well-regulated militia being necessary for the security of a free state, the right of the people to keep and bear arms shall not be abridged. It also allows for punishing the carrying of concealed weapons.

Proposed constitution simply prevents abridgement of the right to keep and bear arms but provides that laws may prohibit the carrying of weapons concealed on the person.

Jackson, et al.

Section 21

Present constitution (Art. I, §13) prohibits the suspension of the writ of habeas corpus except in the case of rebellion or invasion.

Proposed constitution does not allow any exceptions to the prohibition against suspending the writ of habeas corpus.

-6-

Jackson, et al.

Section 22

Present constitution (Art. I, §6) provides that courts shall be open and that every person shall have a remedy for injury done to his rights, land, goods, person, or reputation without delay.

Proposed constitution also provides for access to courts for redress of injury. "Person, property, reputation, or other rights" are substituted for "rights, land, goods, person, or reputation."

Jackson, et al.

Section 23

Present constitution (Art. IV, §13) prohibits ex post facto laws or laws impairing the obligation of contracts.

Proposed constitution prohibits bills of attainder, ex post facto laws and laws impairing the obligation of contracts.

Jackson, et al.

Section 25

Present constitution (Art. I, §15) states that the enumeration of rights is not to be construed to deny or impair other rights of the people not expressly stated.

Proposed constitution states that the enumeration is not to be construed to deny or disparage other rights retained by the individual citizens of the state.

Jackson, et al.

Section 26

Present constitution contains no prohibition against discrimination.

Proposed constitution has a prohibition against discrimination based on race, religion, or national ancestry in access to public places, accommodations and facilities, and prohibits "arbitrary, capricious, or unreasonable discrimination" based on age, sex, or physical condition in such access.

Jackson, et al.

Section 27

Present constitution contains no provision for preliminary examinations in criminal cases.

Proposed constitution recognizes a right to a preliminary examination in all felony cases, except those indicted by a grand jury.

-7-

MEMORANDUM TO CONSTITUTIONAL COMMITTEE CHAIEMEN FROM CARLOS JACOB, LEGAL COUNSEL - OFFICE

NOTE: For the most part, this memorandum will be related to the field of Criminal Law in a general way with some possible reference to Courts and District Attorneys. The first portion will be keyed to the proposed preamble and Bill of Rights as published in the local press and as related to the 1921 Constitution Articles and Sections.

At the outset it is felt that the Constitutional Committee on Bill of Rights is to be congratulated on doing a fine job and also in updating the 1921 Bill of Rights, which itself was a comprehensive one. It is only in certain very close and technical areas of criminal law that we have any suggestions to make.

For example, as published in the newspaper, we feel

that the paragraphs headed PREAMBLE, ORIGIN AND PURPOSE, PROHIBITED LAWS AND INDIVIDUAL DIGNITY are very good and very thorough. We have no suggestions to make in regard to them.

FREEDOM OF EXPRESSION:

As indicated by its title, this paragraph covers freedom of speech, freedom of press and other forms of freedom of expression. We simply wish to point out to the Committee Chairmen that because this paragraph is so very broad and comprehensive, it does not provide adequate protections in the field of obscenity, pornography, defamation, threats including peace bond remedies, as well as libel and slander actions, both civil and criminal. Obscenity will no longer be a crime.

There is also a possibility that this paragraph eliminates occupational licenses or any regulation whatsoever because of the last clause of the paragraph.

While this new paragraph certainly recognizes the

rights of people to express themselves, there is no belief as to the rights of citizens to be protected against the abuse of police liberties as was provided in the 1921 Constitution.

-2-

FREEDOM OF RELIGION:

This paragraph is excellent and we have no suggestions thereto.

RIGHT OF ASSEMBLY AND FREEDOM OF MOVEMENT:

There is a strong possibility that this paragraph concerning a right to enter and leave the state might restrict and even prevent the granting of probation, suspended sentence and paroles in meritorious cases if the authority granting such clemency could not place conditions on leaving the state or the jurisdiction of the authority.

FREEDOM FROM DISCRIMINATION:

This is a concise statement on this subject and we have no suggestions as to it.

ACCESS TO COURTS:

This also is an excellent summary statement and we have only two comments to make as to it.

- (1) The last sentence completely eliminates the sovereign immunity of the State of Louisiana, which presently exists inherently in most areas but would be abolished by this provision. It is presumed that the Committee desired that result.
- (2) It is respectfully suggested that the last sentence be rewritten to read, "The State shall not be immune from suit." This would remove the exclusion as to individuals. It is submitted that, to the extent that it presently exists, the immunity afforded to the members of the Legislature, the Governor, Lt. Governor, Judges of Courts of Record and District Attorneys (and their assistants) for acts done in the performance of their official duties, should be retained. Otherwise, it is conceivable that this provision would be in violation of the privileges of immunities clause of the Fourteenth Amendment which is in favor of all citizens of the United States.

-3-

TRIAL BY JURY IN CIVIL CASES:

While we feel sure that the Committee intended to restrict this matter to civil cases, the third sentence in using the word "determination of facts in any other case before any court", could be construed to mean criminal and quasi-criminal cases. It is respectfully suggested that the last sentence might better read, "the determination of facts

in any other civil (or non-criminal) case before any court or administrative body shall be subject to review".

DUE PROCESS OF LAW:

Our only comment in this connection is that it omits the portion prohibiting the taking of private property except for public purposes and then upon just compensation being paid therefor. Possibly the Committee considered that this was included in the broad language of the paragraph.

SEARCHES AND SEIZURES:

Because of certain U.S. Supreme Court decisions, notably Mapp vs. Ohio and its progeny, the exclusionary rule formerly binding only upon the Federal system and some states, is now binding upon all states. As a result, a whole new field of law has been thrust upon the State of Louisiana which has been forced to borrow piecemeal from the Federal system and occasionally from other states. It must not be enlarged in any way.

First, there is always a possibility that Mapp vs. Ohio may be overruled. Also, the system of criminal law now has become devoted so much to technical matters explaining how evidence was obtained, why it was obtained and for what purpose it is being used, that the question of guilt and innocence of the accused has become sublimated to all other preliminary motions and technicalities. (Canada has abolished the rule entirely)

This one area of law has called for many more separate and preliminary trials and has caused the need for adding more prosecution officers, courtrooms and judges than any other area of law. Witnesses are repeatedly brought back and

-4-

forth to court on numerous occasions for the trial of various motions, such as motions to suppress evidence, long before the actual final trial on the merits as to the guilt or innocence of the accused. As a result, the witnesses begin to feel that they are on trial instead of the accused person.

(1) It is thought that the phrase, "any person adversely affected by a search or seizure....shall have standing to raise the illegality of that search or seizure" is too broad, it extends that defense unnecessarily and adds one more unnecessary burden upon the prosecution.

In other words, the rule or test should be as to whether or not there was an unconstitutional search from the person or the house of the accused. Often there is perfectly valid and relevant evidence which is obtained through a search by permission of a spouse or the owner or lessee of the house or apartment where the contraband or murder weapon has been found and the search was properly authorized.

Under those circumstances, the owner of the murder weapon, narcotics or other contraband would be a "person adversely affected", but if he was not the only person who had authority to give permission for the search, then he should have no standing to make the challenge. For example, in the area of narcotics, many people live together, some married and some unmarried, and some stay in apartments by sufferance or ten-

portable and the true authorized person has given consent to the search and seizure.

[illegible]

For example, sources of automobiles without tampered under certain conditions have been found to be not a sufficient basis of the reliability of automobiles. This case has been held by the U.S. Supreme Court in connection with the obtaining of blood samples from the very person of an accused, even over his objection and over the protest of his attorney, because the blood alcohol content in drunk drivers diminishes with the passage of time. In fact, the alcoholic content would in many cases have completely disappeared by the time a search warrant could be obtained so as to make the search and seizure technically legal. It is well-known fact that many drunk drivers cause deaths upon the highways.

Therefore, the only searches and seizures which are illegal are the searches and seizures of houses and possessions in such an unreasonable manner as to be unconstitutional.

As another example, if a murder weapon was found in the house of Mr. "A", but it belonged to and was used by Mr. "B" in the commission of a murder or armed robbery or aggravated battery, there is no valid reason why "B" should be allowed to claim that the search of "A's" house was unconstitutional.

[2] Another serious objection to the phrasing of this paragraph, is the sentence, "No law shall permit the interception or inspection of any private communication or message." There is no definition of the word "private". If this were ever to be held to include face-to-face communication, or conversation between an accused person and his confederate, or between an accused person and an arresting officer, then society would lose the benefit of the use of extortive letters, extortion, returned statements, extortion, prison communication, confessions by the other party, and other letters and other written notes. These laws establish the right of the accused.

Thus, for $\alpha = 1$ we find $\lim_{\beta \rightarrow 0} \beta \ln \beta = 0$ and $\lim_{\beta \rightarrow 0} \beta \ln \beta = 0$.

-6-

information was available to Federal officials. It could eliminate all oral, written and telephone communications from an accused person unless such communication was done out in the open public for all people to see and to hear. We can not believe that the Committee intended this result to follow.

1. I have been thinking about you a lot lately, and I hope you are doing well.

It should be pointed out that every court in the country that has considered the problem of the recording of a conversation of a confidential source may take any of three courses, either by telephone recordings, wire, tape or disc recordings or by video-tape recordings, has pointed out that the playing back of that recording in the trial situation of that case, statement of counsel.

It is accordingly further submitted that the secrecy of an investigation going on is not threatened by such recordings.

Moreover, this language would eliminate the giving of consent by one party to a telephone or other type of conversation, it could prevent the tracing or recording of threatening phone calls and obscene phone calls or the placing of mechanical means of detecting the source of such threatening phone calls. (The proposed sentence should be deleted.)

RIGHT TO KEEP A JOB: 60%

There is one paragraph to be read that it should be pointed out that, as written, it would very likely prohibit the confiscation of property and other actions against the confiscation of citizens. At present, when a plan is made for a person's estate, the design must be the confiscation of the estate and the property of the estate. This is the only way to ensure that the estate is not confiscated. We doubt seriously that the Committee intends to allow the confiscation of property and other actions against the confiscation of citizens. At present, when a plan is made for a person's estate, the design must be the confiscation of the estate and the property of the estate. This is the only way to ensure that the estate is not confiscated.

- 3 -

CRIMINAL LAW - GENERAL.

The above items are presently encompassed in sections 1-8 of Article 1 of the 1921 Constitution. Some of the remaining Articles of the Bill of Rights in the former Constitution, particularly in the field of criminal law, are not covered in the above matters and probably will be covered somewhere else such as in the Article related to Courts or Judiciary.

However, we should like to mention some of them at this time. For example, Sections 9 through 15 of Article 1 of the former Constitution contain very valuable rights in criminal law, valuable both to the accused and to society.

We feel all of these rights should be retained somewhere in the new Constitution because they relate to such matters as affidavits, informations, indictments, grand juries, speedy public trial, venue, witnesses, counsel, double jeopardy, peremptory challenges, self-incrimination, confessions, bail and other matters. All of those items are still important and they were very comprehensively included and should be retained.

The only suggestion we will have as to the bill, is the possibility that the appropriate Committee might wish to allow bail, at the discretion of the court, in instances where a pre-sentence investigation has been ordered by the Court.

Under the present law, if a person pleads guilty to a felony, the court must give him a chance to present his defense. If he wishes to obtain full information through a preliminary hearing, the court should be required to hold such a hearing. If the defendant is found guilty, the court should be required to give him a chance to present his defense. If the defendant is found guilty, the court should be required to give him a chance to present his defense.

Under the present law, if a person pleads guilty to a felony, the court must give him a chance to present his defense. If he wishes to obtain full information through a preliminary hearing, the court should be required to hold such a hearing.

Under the present law, if a person pleads guilty to a felony, the court must give him a chance to present his defense. If he wishes to obtain full information through a preliminary hearing, the court should be required to hold such a hearing. If the defendant is found guilty, the court should be required to give him a chance to present his defense. If the defendant is found guilty, the court should be required to give him a chance to present his defense.

Under the present law, if a person pleads guilty to a felony, the court must give him a chance to present his defense. If he wishes to obtain full information through a preliminary hearing, the court should be required to hold such a hearing.

Under the present law, if a person pleads guilty to a felony, the court must give him a chance to present his defense. If he wishes to obtain full information through a preliminary hearing, the court should be required to hold such a hearing. If the defendant is found guilty, the court should be required to give him a chance to present his defense. If the defendant is found guilty, the court should be required to give him a chance to present his defense.

Under the present law, if a person pleads guilty to a felony, the court must give him a chance to present his defense. If he wishes to obtain full information through a preliminary hearing, the court should be required to hold such a hearing.

Under the present law, if a person pleads guilty to a felony, the court must give him a chance to present his defense. If he wishes to obtain full information through a preliminary hearing, the court should be required to hold such a hearing.

Under the present law, if a person pleads guilty to a felony, the court must give him a chance to present his defense. If he wishes to obtain full information through a preliminary hearing, the court should be required to hold such a hearing.

In this way, more young attorneys could get invaluable training and also more career officers could be developed. Frequently the three-year rule presently in existence for all Assistants means that after a three-year delay, an industrious and talented young attorney would advance far enough in the private sector that he would not be interested in being an Assistant District Attorney.

APPEALS IN CRIMINAL CASES

The present system of appeals to the State Supreme Court is workable and should not be changed. We also feel that all criminal appeals should go to the State Supreme Court and not to some other intermediate court, either presently in existence or newly created. The reason for this is that criminal matters are very important and they should be uniform throughout the state. If there were an intermediate court of criminal appeals or if there were separate intermediate courts hearing criminal appeals, conflicts and uncertainty would result and the need for uniformity is so great that the Supreme Court should handle the matter in the final instance.

Under the Federal Constitution as interpreted by the U.S. Supreme Court, every criminal defendant is entitled to a jury trial if the penalty is more than six months. We have no objection to that. But since the decision of the trial court is final, it is final and we cannot change the case in

-10-

the event of an acquittal, we feel that the decision of the trial jury should also be final on questions of fact in the event of a conviction.

Therefore, the present system of bills of exception and review of trial court rulings, on questions of law only, by the Supreme Court should be retained. Otherwise, there would be a unilateral system in which the Supreme Court would be reviewing questions of fact and granting reversals if the verdict was in favor of society but it could not review questions of fact if the jury verdict was in favor of the accused and acquitted him.

In other words, the Supreme Court should not have authority to review questions of fact in a criminal case just as the proposed paragraph provides that in civil damage suits, no fact tried by a jury shall be re-examined on appeal.

John A. Richardson
District Attorney

DIRECTOR, COMMITTEE FOR THE STUDY OF THE
ADMINISTRATIVE REORGANIZATION OF THE STATE

Stagg, et al.

Section 1

Present constitution (Art. V, §5) provides for an "executive department" composed of 16 offices, 11 of which are presently elected, namely, the governor, lieutenant governor, treasurer, secretary of state, registrar of land affairs, commissioner of agriculture, commissioner of conservation, commissioner of insurance, and custodian of vehicles and machines. Also provides for an elected attorney general (Art. VII, §55) and an elected superintendent of education (Art. VII, §51).

Proposed Section 1(A) provides for an "executive branch" composed of five elective offices, namely, an elected governor, lieutenant governor, registrar of land affairs, commissioner of agriculture, and superintendent of education. Also deletes from constitution the commissioner of conservation as an officer appointed by the governor.

Authorizes a maximum of 20 departments in the executive branch. (Paragraph B) (New)

Stagg, et al.

Section 5(F)

Present constitution (Art. V, §61) authorizes the governor to grant reprieves for all offenses against the state. Provides that, except in case of impeachment or treason, he may grant pardons, commute sentences, and remit fines and forfeitures, upon written recommendation of at least two members of the pardon board (lieutenant governor, attorney general, and the president judge of the sentencing court). Authorizes the governor to grant reprieves for treason until the end of the next legislative session but vests pardon power for this crime in the legislature. Provides for automatic pardon for first-offender felon upon completion of his sentence.

Proposed Section 5(F) authorizes the governor to reprove, grant commutation of sentence, and pardon persons convicted of offenses against the state, except in case of treason or impeachment. Also authorizes him to remit fines and forfeitures imposed for such offenses.

Deletes the specific provision for a 3-member pardon board. Authorizes legislature to provide "additional methods for the foregoing and other post conviction remedies."

Stagg, et al.

Section 8

Present constitution (Art. VII, §55), has provided for a department of justice composed of an attorney general, a first and second attorney general, and members of the superior and inferior courts. Vests in the attorney general the supervision over district attorneys, and requires him to recommend to the governor on or of all legal matters in which the state has an interest or to intervene in proceedings. It also authorizes protection of the state's rights and interests. (Article VII, §56), and Highway Advisory Board (Art. VI, §22(e)).

Proposed Section 8 retains a department of justice (placing the provisions in the article on the executive branch rather than that on the judiciary). It authorizes the governor to be the head of the department and to appoint and remove the attorney general. Also authorizes the attorney general to supervise, prosecute or intervene in any legal affairs or other proceedings, (2) exercise supervision over district attorneys, (3) for cause, supersede any attorney representing the state in any proceeding, and (4) perform other duties conferred upon him.

(For administrative use only, June 14, 1973)

Power of Other Elective Officials,

Making provisions for the executive branch

PROPOSED SECTION

Section 3. Attorney General; Powers

The department of justice shall be headed by the attorney general. All state attorneys are to be a part of the office of the attorney general, except as otherwise provided by law. The attorney general shall have the power and authority to institute and prosecute or to intervene in any and all suits or other proceedings, civil or criminal, as is necessary for the assertion or protection of the rights and interests of the state. The attorney general shall exercise supervision over the several district attorneys throughout the state, and shall perform such other functions as provided by law.

Source: La. Const. Art. VII, §55, 56 (1921).

source provision. Creates the department of justice headed by the attorney general. Adds provision that all state attorneys, as part of the office of the attorney general, unless otherwise provided by law.



STATE OF LOUISIANA CONSTITUTIONAL CONVENTION OF 1973, 1. O. NO. 1728 A. BATES WOODS (LOUISIANA 1973)
REVISIONS: 1973

December 18, 1973

J. L. WHEAT
Chairman
LOUISIANA CONSTITUTIONAL
CONVENTION OF 1973

MEMO TO: JUDGE TATE, CHAIRMAN, COMMITTEE ON STYLE AND DRAFTING
FROM: REP. ALPHONSE JACKSON, CHAIRMAN, COMMITTEE ON BILL OF RIGHTS AND ELECTIONS

The Committee on Bill of Rights and Elections has agreed to accept the recommendations of your committee dated 11/21/73 with respect to style and drafting changes of the "Preamble" and "Declaration of Rights" with the following modifications:

A. The sections should be arranged in the following order with the following titles:

PREAMBLE

Article I. Declaration of Rights

- Section 1. Origin and Purpose of Government
- Section 2. Due Process of Law
- Section 3. Right to Individual Dignity
- Section 4. Right to Property

Section 5. Right to Privacy
 Section 6. Freedom from Intrusion
 Section 7. Freedom of Expression
 Section 8. Freedom of Religion
 Section 9. Right of Assembly and Petition
 Section 10. Rights of the Accused
 Section 11. Right to Preliminary Examination
 Section 12. Initiation of Prosecution
 Section 13. Right to a Fair Trial
 Section 14. Jury Trial in Criminal Cases
 Section 15. Right to Bail
 Section 16. Right to Judicial Review
 Section 17. Right to Humane Treatment
 Section 18. Writ of Habeas Corpus
 Section 19. Access to Courts
 Section 20. Right to Vote
 Section 21. Right to Keep and Bear Arms
 Section 22. Freedom from Discrimination
 Section 23. Prohibited Laws
 Section 24. Unenumerated Rights

Section 17. Right to Humane Treatment

On page 8, line 9, after the word "state" delete the word "and"

Section 20. Right to Vote

On page 7, delete line 7 and insert in lieu thereof "vote, except that this right may be sued."

Section 22. Freedom from Discrimination

On page 13, line 5, add a comma after the word "facilities"

C. Presentation of this Report.

Delegate Woody Jenkins will appear before your committee and explain the changes proposed above by the Committee on Bill of Rights and Elections.

-3-

B. Changes in Particular Sections.

Section 4. Right to Property

On page 9, line 5, after the words "right to", delete the words "acquire, control, own" and insert in lieu thereof the words "acquire, own, control"

On page 10, at the beginning of line 7, delete "completion" and insert in lieu thereof the word "competition"

On pages 9 and 10, delete all subtitles and subparagraphs in the "Right to Property" Section.

Section 5. Right to Privacy

On page 12, line 18, after the word "seizure" delete the words "which violates" on lines 18 and 19 and insert in lieu thereof the words "conducted in violation of"

Section 7. Freedom of Expression

On page 5, line 6, after the word and punctuation "press," delete the word "Any" and insert in lieu thereof "Every."

Section 9. Right of Assembly and Petition

On page 6, line 19, after the word "of" delete the word "every" and insert in lieu thereof the word "any"

Section 10. Rights of the Accused

On page 16, delete lines 3 through 7 and insert in lieu thereof "Section 10. When any person has been arrested or detained in connection with the investigation or commission of any offense, he shall be advised fully"

On page 16, line 14, before the word "to" add the words "his right"

On page 16, delete lines 28, 29 and 30 and insert in lieu thereof the words "and compensating qualified counsel for indigents."

Note: The Committee may also wish to shift the last sentence of this section to a more appropriate article.

Section 11. Right to Preliminary Examination

On page 18, line 6, add a comma after the word "cases"

-2-

Section 12. Initiation of Prosecution

On page 19, line 9, add a comma after the word "imprisonment"

Section 13. Right to a Fair Trial

On page 20, line 4, after the word "until" delete the word "proved" and insert in lieu thereof the word "proven"

Section 15. Right to Bail

On page 23, line 8, after the word "proof" delete the word "is" and delete all of line 9.

On page 23, line 16, after the word "less" delete the comma and insert in lieu thereof the punctuation and word "; and"

On page 23, line 24, after the word "less" delete the comma and insert in lieu thereof the punctuation and word "; and"

Section 16. Right to Judicial Review

Note: The Committee may wish to shift the last sentence of this section to a more appropriate article.

COMMITTEE PROPOSAL NO. 21: FIRST ENROLLMENT

JUDICIAL BRANCH

Styling Suggestious from Committee on Style and Drafting:

Comparative Presentation

SECTIONS ADOPTED BY CONVENTION	CHANGES RECOMMENDED BY COMMITTEE
1 ARTICLE V. JUDICIAL BRANCH	1 ARTICLE V. JUDICIAL BRANCH
2 Section 1. Judicial Power	2 Section 1. Judicial Power
3 Section 1. The judicial	3 Section 1. The judicial
4 power shall be vested in a	4 power is vested in a supreme
5 supreme court, court of	5 court, courts of appeal,
6 appeal, district courts, and	6 district courts, and other
7 other courts authorized by	7 courts authorized by this
8 this constitution.	8 Article. (u)

COMMENT:

(1) Manual, Rule 1 -- present tense.

(2) Elements, V, 16 -- be clear.

1

Section 2.

1 Section 2. Habeas Corpus.	1 Section 2. Habeas Corpus.
2 Needful Writs, Orders	2 Needful Writs, Orders
3 and Process	3 and Process; Contempt
4 Section 2. A judge may	4 Section 2. A judge may
5 issue writs of habeas corpus	5 issue writs of habeas corpus (f)
6 and all other needful writs,	6 and all other needful writs, orders,
7 orders and process in aid of	7 and process in aid of the justice
8 the jurisdiction of his court.	8 dictation of his court. Exer-
9 Exercise of this authority by	9 case of this authority by a
10 a judge of the supreme court	10 judge of the supreme court or o
11 or court of appeal is subject	11 a court of appeal is subject
12 to review by the whole court.	12 to review by the whole court.
13 The power to punish for con-	13 The power to punish for con-
14 tempt of court shall be limi-	14 tempt of court shall be
15 ted by law.	15 limited by law.
16	16

Comment:

(1) Manual, Rule 20: Elements, 1, 2 -- commas in series.

(2) Elements, 11, 15 -- parallelism.

Section 3.

1	Section 3. Supreme Court;	1	Section 3. Supreme Court.
2	Composition; Judgments;	2	Composition; Judgments.
3	Terms	3	Terms
4	Section 3. The supreme court	4	Section 3. The supreme
5	shall be composed of a chief justice	5	court shall be composed of a
6	and six associate justices, four of	6	chief justice and six associate
7	whom must concur to render judg-	7	justices, four of whom must
8	ment. The term of a judge of the	8	concur to render judgment.
9	supreme court shall be ten years.	9	The term of a supreme court
10		10	judge shall be ten years.

Comment:

(1) Manual, Rule 5--substitute word for phrase.

Section 4.

1	Section 4. Supreme Court:	1	Section 4. Supreme
2	Districts	2	Court; Districts
3	Section 4. The state shall	3	Section 4. The state
4	be divided into at least six supreme	4	shall be divided into at least
5	court districts, with at least one	5	six supreme court districts,
6	judge elected from each. The pres-	6	and at least one judge shall
7	ent districts and the number of	7	be elected from each. The
8	judges assigned to each are retained,	8	districts and the number of
9	subject to change by a two-thirds	9	judges assigned to each on the
10	vote of the elected members of each	10	effective date of this consti-
11	house of the legislature.	11	tution are retained, subject
12		12	to change by law enacted by
13		13	two-thirds of the elected men-
14		14	bers of each house of the
15		15	legislature.

Comment:

(1) Elements, V, 16--be clear.

(2) Ibid.

(3) Standardization of language.

1	Section 5. Supreme Court.	1	Section 5. Supreme Court.
2	Supervisory, Original, and	2	Supervisory, Original, and
3	Appellate Jurisdiction; Rules-	3	Appellate Jurisdiction; Rules-
4	Making Power; Assignment of	4	Making Power; Assignment of
5	Judges	5	Judges
6	Section 5. (A) The supreme	6	Section 5. (A) The supreme
7	court has general supervisory juris-	7	court has general supervisory juris-
8	diction over all other courts. It	8	diction over all other courts. It
9	may establish procedural and admini-	9	may establish procedural and admini-
10	strative rules not in conflict with	10	strative rules not in conflict with
11	law. It may assign a sitting or	11	law. It may assign a sitting or
12	retired judge to any court.	12	retired judge to any court.
13	(B) The supreme court has	13	(B) The supreme court has
14	exclusive original jurisdiction of	14	exclusive original jurisdiction of
15	disciplinary proceedings against	15	disciplinary proceedings against
16	members of the bar.	16	members of the bar.
17	(C) Except as otherwise pro-	17	(C) Except as otherwise pro-
18	vided in this constitution, the	18	vided in this constitution, the
19	supreme court's jurisdiction in	19	supreme court's jurisdiction in
20	civil cases extends to both the	20	civil cases extends to both the
21	law and the facts. In criminal	21	law and the facts. In criminal
22	matters, its appellate jurisdic-	22	matters, its appellate jurisdic-
23	tion extends only to questions of	23	tion extends only to questions of
24	law.	24	law.
25	(D) In addition to appeals	25	(D) In addition to appeals
26	provided for elsewhere in this	26	provided for elsewhere in this
27	constitution, the following cases	27	constitution, the following cases
28	shall be appealable to the supreme	28	shall be appealable to the supreme
29	court:	29	court:
30	(1) A case in which a law or	30	(1) A case in which a law or
31	ordinance has been declared un-	31	ordinance has been declared un-
32	constitutional;	32	constitutional;
33	(2) Cases in which the defen-	33	(2) Cases in which the defen-
34	dant has been convicted of a felony	34	dant has been convicted of a felony
35	or in which a fine exceeding five	35	or in which a fine exceeding five

Section 5. (A) (B) (C) (D)

Section 5. (D) (E) (F)

16
17
18
19
20
21
22

16 involved in a civil action properly
17 before it.

18
19
20
21
22

Comment:

- (1) Manual, Rules 5, 13; Elements, II, 13 -- omit needless words.
- (2) Manual, Rule 11 -- singularization
- (3) Standardization of language.
- (4) Formalization of language.
- (5) Manual, Rules 5, 13; Elements, II, 13 -- omit needless words.

1 Section 7. Supreme Court;
2 Judicial Administrator,
3 Clerk and Staff;
4 Section 7. The Supreme Court
5 has authority to select a judicial
6 administrator, its clerks, and
7 personnel, and prescribe their
8 duties.

1 ... Supreme Court
2 Personnel
3 Section 7. The ...
4 court may select a judicial
5 administrator, its clerks, and
6 other personnel, and prescribe
7 their duties.
8

Comment:

- (1) Standardization of language.
- (2) See Elements, I, 4--omit comma when subject common to two verbs and connective is "and".

Section 8
(A), (B) & (C)

SECTION 5.
(D), (E), & (F)

- (6) Manual, Rule 5 -- substitute word for phrase, standardization of language.
- (7) Manual, Rule 5 -- substitute word for phrase; Manual, Rule 11 -- singularization.
- (8) Manual, Rules 5, 13; Elements, II, 13 -- omit needless words.
- (9) Ibid.
- (10) Elements, II, 16 -- keep related words together.
- (11) Standardization of language.
- (12) Manual, Rule 11 -- present tense; Elements, II, 13 -- parallelism.
- (13) Standardization of language.

7

Section 6.

1 Section 6. Supreme Court;
2 the Chief Justice
3 Section 6. (A) When a vacancy
4 is in the office of chief justice
5 occurs, the judge oldest in point of
6 service on the court, shall succeed
7 to the office.
8 (B) The chief justice is the
9 chief administrative officer of
10 the judicial system of the state,
11 subject to rules adopted by the
12 court.

1 Section 6. Supreme Court;
2 Chief Justice
3 Section 6. The judge
4 oldest in point of service on
5 the supreme court shall be
6 chief justice. He is the
7 chief administrative officer of
8 the judicial system of the state,
9 subject to rules adopted by the
10 court.
11
12

1 Section 8. Courts of Appeal;
2 Panels; Number Necessary
3 to Decision; Terms
4 Section 8. The state shall
5 be divided into at least four
6 circuits, with one court of appeal
7 in each circuit. Each court shall
8 sit in panels of at least three
9 judges selected according to
10 rules adopted by the court. A
11 majority of the judges sitting
12 in a case must concur to render
13 judgment. However, when the
14 judgment of the district court
15 is to be modified or reversed,
16 and one judge dissents, the case
17 shall be reargued, before a
18 panel of at least five judges,
19 prior to rendition of judgment,
20 and a majority must concur to
21 render judgment. The term of a
22 court of appeal judge shall be
23 ten years.
24

1 Section 8. Courts of Appeal;
2 Circuits; Panels; Judges
3 Terms
4 Section 8. (A) Circuits; Panels
5 The state shall be divided into
6 least four circuits, with one court
7 of appeal in each. Each court shall
8 sit in panels of at least three
9 judges selected according to rules
10 adopted by the court.
11 (B) Judgments. A majority of
12 the judges sitting in a case must
13 concur to render judgment. However,
14 when a judgment of a district court
15 is to be modified or reversed and
16 one judge dissents, the case shall
17 be reargued before a panel of at
18 least five judges prior to rendition
19 of judgment, and a majority must
20 concur to render judgment.
21 (C) Terms. The term of a
22 court of appeal judge shall be ten
23 years.
24

Comment:

- (1) Manual, Rules 5, 13 and Elements II, 13-- omit needless words; Elements II, 15--parallelism.
- (2) Elements, V, 16 -- be clear--indefinite article more suitable here than definite article.
- (3) Webster's, Rule 4.1.2.1 -- clause or phrase essential to main idea of sentence not set off by comma.

10

Comment:

- (1) Sentences arranged to conform with suggested language of Section 12.

8

1 Section 9. Courts of Appeal;
2 Circuits and Districts

1 Section 9. Courts of
2 Appeal; Circuits and

Section 9.

Section 9. Each circuit shall be divided into at least three districts, with at least one judge elected from each. After January 1, 1975, no judge shall be elected at large from within the circuit. The present circuits and districts and the number of judges as elected in each circuit are retained, subject to change by two-thirds vote of the elected members in each house of the legislature.

DISTRICTS
Section 9. Each circuit shall be divided into at least three districts, with at least one judge shall be elected from each. After January 1, 1975, no judge shall be elected at large from within the circuit. The circuits and districts and the number of judges as elected in each circuit on the effective date of this constitution are retained, subject to change by law enacted by two-thirds of the elected members of each house of the legislature.

Comment:

- (1) Elements, V, 16--be clear.
- (2) Standardization of language.
- (3) Ibid.

11

Section 10.
(A) + (a)

Section 10. Courts of Appeal, Appellate and Supervisory Jurisdiction
Section 10. (A) Except in those cases appealable to the supreme court and as otherwise provided in this constitution, a court of appeal has appellate jurisdiction of all civil cases decided within its circuit. It has appellate jurisdiction of all matters appealed from the family and juvenile courts, except criminal prosecutions of persons other than juveniles. It has supervisory jurisdiction over all cases in which an appeal would lie to that court.
(B) Except as limited to questions of law by this constitution or as provided by law in the review of administrative agency determinations, its appellate jurisdiction extends to law and facts.

Section 10. Courts of Appeal: Jurisdiction
Section 10. (A) Jurisdiction. Except in cases appealable to the supreme court and except as otherwise provided by this constitution, a court of appeal has appellate jurisdiction of all (1) civil matters decided within its circuit and (2) matters appealed from family and juvenile courts, except criminal prosecutions of persons other than juveniles. It has supervisory jurisdiction over cases in which an appeal would lie to it.
(B) Scope of Review. Except as limited to questions of law by this constitution, or as provided by law in the review of administrative agency determinations, appellate jurisdiction of a court of appeal extends to law and facts.

Comment:

- (1) Manual, Rules 5, 13 and Elements, 11, 13--omit needless words.
- (2) Elements, 11, 15--parallelism.

- (3) Standardization of language.
- (4) Same as above, but use "shall" instead of "will".
- (5) Elements, 11, 15--parallelism.
- (6) Manual, Rules 5, 13 and Elements, 11, 13--omit needless words.
- (7) Ibid.
- (8) Ibid.
- (9) Manual, Rules 5, 13 and Elements, 11, 13--omit needless words.
- (10) Manual, Rules 5, 13 and Elements, 11, 13--omit needless words.
- (11) Manual, Rules 5, 13 and Elements, 11, 13--omit needless words.
- (12) Elements, V, 16--be clear.

13

Section 11.

Section 11. Courts of Appeal, Certification to Supreme Court:
Determination
Section 11. A court of appeal may certify any question of law before it to the supreme court, whereupon the supreme court may give its binding instruction, or consider and decide the case upon the whole record.

Section 11. Courts of Appeal, Certification to Supreme Court:
Section 11. A court of appeal may certify any question of law before it to the supreme court, and the supreme court thereupon may give its binding instruction, or consider and decide the case upon the whole record.

Comment:

- (1) Manual, Rule 5--use short words.
- (2) Elements, V, 16--be clear.
- (3) Webster's, Rule 4.1.2--use language or phrase distinctive to main idea of sentence not set off by comma.
- (4) Manual, Rules 5, 13 and Elements, 11, 13--omit needless words.

14

Section 12.

Section 12. Courts of Appeal, Chief Judge:
Duties
Section 12. There shall be a chief judge of each court of

Section 12. Courts of Appeal, Chief Judge:
Section 12. There shall be a chief judge of each court of

6 appeal who shall be the judge
7 oldest in point of service on
8 the court and who shall admin-
9 ster the court subject to rules
10 adapted by the court.

Comment:

(1) Manual, Rule 8--rewrite "there is".

15

Section 13.

1 Section 13. Courts of
2 Appeal: Clerks and Staff
3 Section 13. Each court of
4 appeal has authority to select
5 its clerk and other personnel
6 and prescribe their duties.
7

Comment:

(1) Standardization of language.

16

Section 14.

1 Section 14. District
2 Courts: Judicial Districts
3 Section 14. The state shall
4 be divided into judicial districts,
5 each composed of one or more
6 parishes and served by one or
7 more district judges.
8

Comment:

(1) Manual, Rule 12--singularization.

17

Section 15.
(C) + (D)

1 Section 15. Courts:
2 Continued Jurisdiction
3 Judicial Districts changed
4 Terms
5 Section 15. (A) The districts
6 parish, corporation, city, family,
7 and juvenile courts existing at
8 the time of the adoption of this

1 Section 13. Courts of
2 Appeal: Personnel
3 Section 13. Each court of
4 appeal may select its clerk and
5 other personnel and prescribe
6 their duties.
7

9 constitution are retained. The
10 legislature may abolish or merge
11 trial courts of limited or special-
12 ized jurisdiction subject to
13 the limitations in Sections 14
14 and 21 of this Article. The
15 legislature may establish trial
16 courts of limited jurisdiction
17 which shall have parishwide
18 territorial jurisdiction and
19 subject matter jurisdiction which
20 shall be uniform throughout the
21 state. The office of city mar-
22 shal is continued until such time
23 as the city court he serves is
24 abolished by the legislature.
25 (B) The judicial districts
26 existing at the time of the adop-
27 tion of this constitution are retained.
28 The legislature, by a majority vote of
29 the elected members of each house,
30 with approval in a referendum in each
31 district and parish affected, may es-
32 tablish, divide, or merge judicial dis-
33 tricts, subject to the limitations of
34 of Section 21 of this Article.
35 (C) The term of a district and

9 parish, city, and magistrate
10 courts existing on the effec-
11 tive date of this constitution
12 are retained. Subject to the
13 limitations in Sections 14 and
14 21 of this Article, the legis-
15 lature may abolish or merge
16 trial courts of limited or
17 specialized jurisdiction. The
18 legislature may establish trial
19 courts of limited jurisdiction
20 with parishwide territorial
21 jurisdiction and subject
22 matter jurisdiction which shall
23 be uniform throughout the state.
24 The office of city marshal is
25 continued until the city court
26 he serves is abolished.
27 (B) Judicial Districts.
28 The judicial districts exist-
29 ing on the effective date of
30 this constitution are retained.
31 Subject to the limitations in
32 Section 21 of this Article, the
33 legislature may establish,
34 divide, or merge judicial
35 districts with approval in a

18

Section 15.
(C) + (D)

1 parish judges shall be six years.
2 (D) The legislature may
3 increase or decrease the number of
4 judges in any judicial district
5 by a two-thirds vote of the elected
6 membership of each house.
7
8
9
10
11

1 referendum on each district
2 and parish affected.
3 (C) Term. The term of a
4 district, parish, or city court
5 judge shall be six years.
6 (D) Number of Judges. The
7 legislature may change the num-
8 ber of judges in any judicial
9 district by law enacted by
10 two-thirds of the elected members
11 of each house.

Comment:

- (1) Names of courts arranged in proper hierarchy.
- (2) Standardization of language.
- (3) Section number changed to conform to renumbering.
- (4) Manual, Rule 18--place exceptions first.
- (5) Manual, Rule 5--Substitute word for phrase.
- (6) Manual, Rules 5, 13 and Elements, II, 13--omit needless words.
- (7) Ibid.
- (8) Standardization of language.
- (9) Manual, Rule 18--place exceptions first.
- (10) Manual, Rules 5, 13 and Elements, II, 13--omit needless words.

Section 15.
(A) + (B)
(C) + (D)

- (11) Elements, II, 16--keep related words together.
 (12) "city court" added to this section to allow elimination of Section 15.1 as enrolled.
 (13) Manual, Rule 5--substitute word for phrase.
 (14) Standardization of language.

19

SECTION 15.1

1 Section 15.1. City Court
 2 Judges; Terms
 3 Section 15.1. A judge of
 4 a city court shall be elected for
 5 the same term as a district court
 6 judge.

20

Section 16. (A) + (B)

1 Section 16. District
 2 Courts; Original Juris-
 3 diction
 4 Section 16. (A) Unless other-
 5 wise authorized by this constitu-
 6 tion, a district court shall have
 7 original jurisdiction in all civil
 8 and criminal matters. It shall
 9 have exclusive original juris-
 10 diction: of felony cases and of
 11 cases involving: the title to
 12 immovable property; the right to
 13 office or other public position;
 14 civil or political rights; pro-
 15 bate and succession matters; the
 16 state, a political corporation,
 17 or a succession, as a party
 18 defendant, regardless of the
 19 amount in dispute; and the ap-
 20 pointment of receivers or liquid-
 21 ators to corporations or partne-
 22 rships.
 23 (B) A district court shall
 24 have appellate jurisdiction as
 25 provided by law.

21

SECTION 16. (A) + (B)

Comment:

- (1) Standardization of language.
 (2) Standardization of language.

(3) See Manual, College, Bar, Page 118411-118412
 needless.

(4) Manual, Page 11, 13 and Element 11, 13--omit
 needless.

(5) Manual, Page 11, 13 and Element 11, 13--omit
 needless.

(6) 11-13

(7) Element, V, 16--be clear.

22

Section 17

1 Section 17. District
 2 Courts; Chief Judge
 3 Section 17. Each district
 4 court shall elect from its mem-
 5 bers a chief judge who shall
 6 exercise, for the term designated
 7 by the court, the administrative
 8 functions as prescribed by rule
 9 of court.

1 Section 17. District
 2 Courts; Chief Judge
 3 Section 17. Each district
 4 court shall elect from its mem-
 5 bers a chief judge who shall
 6 exercise, for a term designated
 7 by the court, the administrative
 8 functions prescribed by rule of
 9 court.

COMMENTS:

(1) Elements, V, 16--be clear--indefinite article
 preferred in context.

(2) Manual, Rules 5, 13 and Elements, II, 13--omit
 needless words.

23

SECTION 18

1 Section 18. Juvenile Courts;
 2 Jurisdiction
 3 Section 18. Notwithstanding
 4 any provision of this Article to
 5 the contrary, the juvenile and
 6 family courts shall have such
 7 jurisdiction as the legislature
 8 shall provide by law.

1 Section 18. Juvenile Courts;
 2 Jurisdiction
 3 Section 18. Notwithstanding
 4 any contrary provision of
 5 Section 16 of this Article,
 6 juvenile and family courts shall
 7 have jurisdiction as provided by
 8 law.

COMMENTS:

(1) Standardization of language.

(2) Elements, V, 16--be clear.

(3) Manual, Rules 5, 13, and Elements,
 II, 13--omit needless words.

(4) Manual, Rule 5--avoid hackneyed
 reference words.

(5) Manual, Rules 5, 13 and Elements,
 II, 13--omit needless words.

24

Section 19.

1 Section 19. Mayors' Courts;	1 Section 19. Mayors' Courts;
2 Justices of the Peace.	2 Justices of the Peace.
3 Continued.	3 Courts.
4 Section 19. Mayors' courts and	4 Section 19. Mayors' courts
5 justice of the peace courts	5 and justice of the peace courts
6 existing at the time of the	6 existing on the effective date ⁽¹⁾
7 adoption of this constitution	7 of this constitution are continu-
8 are continued subject to change	8 subject to change by law. ⁽¹⁾
9 by the legislature.	9

Comment:

(1) Standardization of language.

25

SECTION 21 becomes Section 20

1 Section 21. Judges; Term of	1 Section 20. Judges;
2 Office or Compensation May	2 Decrease in Terms and
3 Not Be Decreased	3 Compensation Prohibited
4 Section 21. No Judge's term of	4 Section 20. The term of
5 office or compensation shall be	5 office, retirement benefits, ⁽¹⁾
6 decreased during the term for	6 and compensation of a judge
7 which he is elected.	7 shall not be decreased during
8 the term for which he is	8 elected.
9	9

Comment:

(1) Formalization of language.

(2) "retirement benefits" moved from Section 34 to Section 21 to group together similar provisions relating to the protections for judges.

26

SECTION 22-2 becomes Section 21.
(A) + (B)

1 Section 22. Judges; Election;	1 Section 21. Judges;
2 Vacancy in Office	2 Election; Vacancy
3 Section 22. (A) Except as	3 Section 21. (A) Election.
4 otherwise provided in this	4 Except as otherwise provided
5 Section all judges shall be	5 in this Section, all judges
6 elected. Election of judges shall	6 shall be elected. Election ⁽¹⁾
7 be as the regular congressional	7 shall be at the regular con-

8 election.	8 congressional election.
9 (B) A newly-created judgeship	9 (B) Vacancy. A newly-
10 or a vacancy in the office of	10 created judgeship or a vacancy
11 any judge shall be filled by a	11 in the office of a judge shall
12 special election which shall be	12 be filled by special election ⁽³⁾
13 called by the governor, and held	13 called by the governor and
14 within six months of the day on	14 held within six months after ⁽⁶⁾
15 which the vacancy occurs or the	15 the day on which the vacancy
16 judgeship is established, except	16 occurs or the judgeship is
17 when the vacancy occurs in the	17 established, except when the
18 last six months of an existing	18 vacancy occurs in the last
19 term. Until the vacancy is	19 six months of an existing
20 filled, the supreme court shall	20 term. Until the vacancy is
21 appoint a person meeting the	21 filled, the supreme court shall
22 qualifications, other than	22 appoint a person meeting the
23 domicile, for the office, to	23 qualifications for the office, ⁽⁷⁾
24 serve at its pleasure, who shall	24 other than domicile, to serve
25 be ineligible as a candidate for	25 at its pleasure. ⁽⁸⁾ The appointee
26 election to the judgeship at	26 shall be ineligible as a candi-
27 the election to fill the vacancy	27 date at the election to fill the
28 or the newly created judicial	28 vacancy or the newly-created
29 office. For service as an	29 judicial office. No person ⁽¹⁰⁾
30 appointed judge, the person	30 serving as an appointed judge.
31 appointed to fill the vacancy,	31 other than a retired judge.
32 other than a retired judge, shall	32 shall be eligible for retire-
33 not be eligible for retirement	33 ment benefits provided for
34 benefits provided for the	34 the elected judiciary.
35 elected judiciary.	35

27

SECTION 22 (C) becomes Section 21. (C).

1 (C) A judge serving on the date	1 (C) End of Term.
2 of adoption of this constitution	2 serving on the effective date
3 shall continue in office for the	3 of this constitution shall
4 term to which elected and shall	4 serve through December thirty-
5 serve through December thirty-first	5 first of the last year of his
6 of the last year of his term or, if	6 term or, if the last year of
7 the last year of his term is not	7 his term is not in the year of
8 in the even-numbered year of a	8 a regular congressional elec-
9 regular congressional election,	9 tion, then through December
10 then through December thirty-	10 thirty-first of the following
11 first of the following year. The	11 year. The election for the
12 election for the next term in the	12 next term shall be held in the
13 office will be held in the year	13 year in which the term expires.
14 in which the term expires as	14 as provided above.
15 provided above.	15

Comment:

(1) Webster's, Rule 4.2.1.--comma sets off introductory adverbial clause.

(2) Manual, Rules 5, 13 and Elements, II, 13--omit needless words.

(3) See Webster's definitions--meanings in this context identical; Manual, Rule 5--use short words.

(4) Manual, Rules 5, 13 and Elements, II, 13--omit needless words.

(5) Ibid.

(6) Manual, Rule 3--make clear the first and last days of a time period.

(7) Elements, II, 16--keep related words together.

- (8) Manual, Rule 10--short sentences; Rule 14--unrelated ideas in separate sentences.
 (9) Manual, Rules 5, 13 and Elements, II, 13--omit needless words.
 (10) Ibid.
 (11) Elements, II, 11--put statements in positive form.
 (12) Standardization of language.
 (13) Manual, Rules 5, 13 and Elements, II, 13--omit needless words.
 (14) Ibid.
 (15) Ibid.; Standardization of language.
 (16) Webster's, Rule 4.4.2--comma to aid clarity.

28

- (4) Elements, V, 15, to be clear.
 (5) Manual, Rule 10--short sentences; Rule 14--unrelated ideas in separate sentences.
 (6) Standardization of language.
 (7) Elements, V, 15, to be clear.
 (8) Manual, Rule 10--short sentences; Rule 14--unrelated ideas in separate sentences.

30

SECTION 24 becomes SECTION 23.

SECTION 23 becomes (A) + (B)

SECTION 24 becomes (A) + (B)

1 Section 23. Retirement of
 2 Judges.
 3 Section 23. (A) Within two
 4 years after the effective date of
 5 this constitution, the legisla-
 6 ture shall provide for a retire-
 7 ment system for judges which shall
 8 apply to a judge taking office
 9 after the effective date of the
 10 statute enacting the system
 11 and to which a judge in office
 12 at the time of its adoption may
 13 elect to join with credit for
 14 all prior years of judicial
 15 service without contribution
 16 therefor; provided, however, a
 17 judge in office or retired at
 18 the time of adoption of this
 19 constitution, shall not have
 20 diminished any retirement bene-
 21 fits or judicial service rights,
 22 nor shall the benefits to which
 23 his surviving spouse is entitled,
 24 be reduced.
 25 (B) A judge shall not remain
 26 in office beyond his seventieth
 27 birthday, except as otherwise
 28 provided in this Section.
 29
 30

1 Section 23. Judges.
 2 Retirement.
 3 Section 23. (A) Within two
 4 years after the effective date of
 5 this constitution, the legisla-
 6 ture shall provide for a retire-
 7 ment system for judges
 8 which shall apply to a judge
 9 taking office after the effective
 10 date of the law enacting the
 11 system and to which a judge
 12 in office at that time
 13 may elect to become a member,
 14 with credit for all prior years
 15 of judicial service and without
 16 contribution therefor.
 17 The retirement benefits and
 18 judicial service rights of a
 19 judge in office or retired on
 20 the effective date of this
 21 constitution shall not be
 22 diminished, nor shall the bene-
 23 fits to which a surviving
 24 spouse is entitled be reduced.
 25 (B) Mandatory Retirement.
 26 Except as otherwise provided
 27 in this Section, a judge shall
 28 not remain in office beyond
 29 his seventieth birthday.

1 Section 24. Judges: Qualifi-
 2 cations; Practice of Law
 3 Prohibited.
 4 Section 24. A judge of the
 5 supreme court, court of appeal,
 6 district court, family court,
 7 parish court, or court having
 8 solely juvenile jurisdiction shall
 9 have been admitted to the practice
 10 of law in this state for at least
 11 five years prior to his election,
 12 shall have been domiciled in the
 13 respective district, circuit,
 14 or parish for at least two years
 15 immediately preceding election,
 16 and shall not practice law.
 17
 18
 19

1 Section 23. Judges.
 2 Qualifications.
 3 Section 23. A judge of
 4 the supreme court, court of
 5 appeal, district court, family
 6 court, parish court, or court
 7 having solely juvenile juris-
 8 diction shall have been ad-
 9 mitted to the practice of law
 10 in this state for at least
 11 five years prior to his
 12 election, and shall have
 13 been domiciled in the
 14 respective district, circuit,
 15 or parish for the two years
 16 preceding election.
 17 He
 18 shall not practice law.
 19

Comment:

- (1) Elements, II, 12--use specific language.
 (2) Manual, Rules 5, 13 and Elements, II, 13--omit needless words.
 (3) Manual, Rule 10--short sentences; Rule 4--unrelated ideas in separate sentences.

31

SECTION 25 becomes SECTION 24

SECTION 23 becomes (A) + (B)

Comment:

- (1) Standardization of language.
 (2) Manual, Rules 5, 13 and Elements, II, 13--omit needless words.
 (3) Formalization of language; Elements, II, 12--specific language.

1 Section 25. Judiciary Com-
 2 mission; Composition;
 3 Terms; Vacancy; Grounds for
 4 Removal; Powers.
 5 Section 25. (A) The Judiciary
 6 Commission shall consist of one
 7 court of appeal judge and two
 8 district court judges selected
 9 by the supreme court; two attorneys
 10 admitted to the practice of law
 11 for at least ten years and one
 12 attorney admitted to the practice

1 Section 24. Judiciary
 2 Commission.
 3 Section 24. (A) The
 4 Judiciary Commission shall
 5 consist of one court of
 6 appeal judge and two district
 7 court judges selected by the
 8 supreme court; two attorneys
 9 admitted to the practice of
 10 law for at least ten years and
 11 one attorney admitted to the
 12 practice of law for at least ten years and one

11 of law for at least three years
 12 but not more than ten years who
 13 are not judges, active or retired,
 14 not public officials other than
 15 notaries public, selected by the
 16 Louisiana Conference of Court
 17 of Appeal Judges' Association or
 18 its successors, and three citizens,
 19 not lawyers, judges active or
 20 retired, nor public officials,
 21 appointed by the Louisiana
 22 District Judges' Association or
 23 its successor.
 24 (B) A member of the commission
 25 shall serve a four-year term and
 26 shall not be eligible to succeed
 27 himself.
 28 (C) A member's term shall termi-
 29 nate when he loses the status
 30 causing his appointment or when
 31 any event occurs which would have
 32 made him ineligible for appointment
 33 (D) When a vacancy occurs, a

1 attorney admitted to the prac-
 2 tice of law for at least three
 3 years but not more than ten
 4 years, selected by the Confer-
 5 ence of Court of Appeal Judges
 6 or its successor. They shall
 7 not be judges, active or re-
 8 tired, or public officials,
 9 other than notaries public; and
 10 (3) three citizens, not
 11 lawyers, judges active or re-
 12 tired, or public officials,
 13 selected by the Louisiana
 14 District Judges' Association
 15 or its successor.
 16 (B) Term; Vacancy. 1.
 17 member of the commission shall
 18 serve a four-year term and
 19 shall be ineligible to
 20 succeed himself.
 21 (C) Powers. On recom-
 22 mendation of the judiciary
 23 commission, the supreme court
 24 may censure, suspend with or
 25 without salary, remove from
 26 office, or retire involuntarily a
 27 judge for willful misconduct
 28 relating to his official duty,
 29 willful and persistent failure
 30 to perform his duty, persistent
 31 and public conduct prejudicial to
 32 the administration of justice
 33 that brings the judicial office
 34 into disrepute, conduct while
 35 in office which would constitute
 36 a felony, or conviction of a
 37 felony. On recommendation of
 38 the Judiciary Commission, the
 39 supreme court may disqualify a
 40 judge from exercising any
 41 judicial function, without loss
 42 of salary, during pendency of
 43 the proceedings in the supreme
 44 court. On recommendation of the
 45 Judiciary Commission, the supreme
 46 court may retire involuntarily a
 47 judge for disability that
 48 seriously interferes with the
 49 performance of his duties and

32 that is, or is likely to become,
 33 of a permanent character. The
 34 supreme court shall make rules
 35 implementing this section and

32 (19) proceedings in the supreme
 33 court. On recommendation of
 34 the judiciary commission, the
 35 supreme court may retire

33

SECTION 25 becomes SECTION 21.

1 providing for confidentiality	1 involuntarily a judge for
2 and privilege of commission pro-	2 disability that seriously
3 ceedings.	3 interferes with the perfor-
4 (F) Action against a judge	4 mance of his duties and that
5 under this Section shall not pre-	5 is or is likely to become
6 clude disciplinary action against	6 permanent. The supreme court
7 him with respect to his license	7 shall make rules implementing
8 to practice law.	8 this Section and providing for
9 confidentiality and privilege	9 of commission proceedings.
10 of commission proceedings.	10 (B) Other Disciplinary
11 Action. Action against a	11 judge under this Section shall
12 judge under this Section shall	12 not preclude disciplinary
13 not preclude disciplinary	13 action against him concerning
14 action against him concern-	14 his license to practice law.
15 ing	
16 his license to practice law.	

SECTION 25 becomes

SECTION 21.

1 successor shall be appointed for
 2 a four-year term by the authority
 3 which appointed his predecessor.
 4 (E) On recommendation of the
 5 Judiciary Commission, the supreme
 6 court may censure, suspend with
 7 or without salary, remove from
 8 office, or retire involuntarily a
 9 judge for willful misconduct
 10 relating to his official duty,
 11 willful and persistent failure
 12 to perform his duty, persistent
 13 and public conduct prejudicial to
 14 the administration of justice
 15 that brings the judicial office
 16 into disrepute, conduct while
 17 in office which would constitute
 18 a felony, or conviction of a
 19 felony. On recommendation of
 20 the Judiciary Commission, the
 21 supreme court may disqualify a
 22 judge from exercising any judi-
 23 cial function, without loss of
 24 salary, during the pendency of
 25 the proceedings in the supreme
 26 court. On recommendation of the
 27 Judiciary Commission, the supreme
 28 court may retire involuntarily a
 29 judge for disability that
 30 seriously interferes with the
 31 performance of his duties and

1 succeed himself. His term
 2 shall end upon the occurrence
 3 of any event which would have
 4 made him ineligible for appoint-
 5 ment. When a vacancy occurs,
 6 a successor shall be appointed
 7 for a four-year term by the
 8 authority which appointed his
 9 predecessor.
 10 (C) Powers. On recom-
 11 mendation of the judiciary
 12 commission, the supreme court
 13 may censure, suspend with or
 14 without salary, remove from
 15 office, or retire involuntarily
 16 a judge for willful misconduct
 17 relating to his official duty,
 18 willful and persistent failure
 19 to perform his duty, persistent
 20 and public conduct prejudicial
 21 to the administration of justice
 22 that brings the judicial office
 23 into disrepute, conduct while
 24 in office which would constitute
 25 a felony, or conviction of a
 26 felony. On recommendation of
 27 the judiciary commission, the
 28 supreme court may disqualify
 29 a judge from exercising any
 30 judicial function, without loss
 31 of salary, during pendency of

Comment:

- (1) See Manual, Rules 22 - 26--lower case title when not official.
- (2) Enumeration suggested for readability.
- (3) Elements, II, 15--parallelism.
- (4) Manual, Rule 10--short sentences.
- (5) Elements, II, 15--consistent usage.
- (6) Elements, II, 11--positive form.
- (7) Manual, Rules 5, 13 and Elements, II, 13--omit needless words.
- (8) Ibid.
- (9) Ibid.
- (10) Webster's, Rule 4.1.2.1--clause or phrase essential to main idea of sentence not set off by commas.
- (11) Manual, Rules 5, 13 and Elements, II, 13--omit needless words.
- (12) Manual, Rule 5--substitute word for phrase.

34

SECTION 26 becomes SECTION 25

1 Section 26. Department of	1 Section 25. Department
2 Justice; Composition;	2 of Justice; Attorney
3 Attorney General; Election	3 General; Assistants
4 and Assistants	4 Section 25. There shall
5 Section 26. There shall be a	5 be a Department of Justice con-
6 department of justice consisting	6 sisting of an attorney general,
7 of an attorney general, a first	7 a first assistant attorney
8 assistant attorney general, and	8 general, and other necessary
9 other necessary assistants and	9 assistants and staff. The
10 staff. The attorney general	10 attorney general shall be
11 shall be elected for a term of	11 elected for a term of four years

12 four years at the state general
13 election, and the assistants
14 shall be appointed by the
15 attorney general to serve at his
16 pleasure.

12 at the state general election
13 (2) He shall appoint assistants to
14 serve at his pleasure.
15
16

Comment:

(1) Manual, Rule 10--short sentences; Rule 14--
unrelated ideas in separate sentences.

(2) Manual, Rule 11--active voice.

15

SECTION 27 becomes

Section 21.

1 Section 27. Attorney General:
2 Powers and Duties; Vacancy
3 Section 27. (A) The attorney
4 general shall be the state's
5 chief legal officer. As may be
6 necessary for the assertion or
7 protection of the rights and
8 interests of the state, the
9 attorney general shall have
10 authority to:
11 (1) institute and prosecute
12 or intervene in any civil
13 actions or proceedings;
14 (2) advise and assist, upon
15 request of a district attorney,
16 in the prosecution of a criminal
17 case; and
18 (3) for cause when authorized
19 by the court of original jurisdiction
20 in which any proceeding
21 or affidavit is pending, subject
22 to judicial review, supersede
23 any attorney representing
24 the state in any civil or criminal
25 action.
26 He shall have such other
27 powers and perform such other
28 duties as may be authorized by
29 this constitution or provided
30 by statute.

1 Section 26. Attorney
2 General; Powers and
3 Duties
4 Section 26. The attorney
5 general shall be the chief legal
6 officer of the state. (1) As necessary
7 for the assertion or protection
8 of the rights and interests
9 of the state, the attorney general
10 may (2)
11 (1) institute and prosecute
12 or intervene in any civil
13 action or proceeding;
14 (2) advise and assist,
15 upon request of a district
16 attorney, in the prosecution
17 of a criminal case; and
18 (3) for cause, when
19 authorized by the court of
20 original jurisdiction in which
21 any proceeding or affidavit is
22 pending and subject to judicial
23 review, supersede any attorney
24 representing the state in any
25 civil or criminal action.
26 He shall have other powers
27 and perform other duties authorized
28 by this constitution or
29 provided by law. (1)
30

Comment:

(1) Manual, Rules 5, 13 and Elements, II, 13--
omit needless words.

(2) Standardization of language.

16

SECTION 27 becomes Section 21.

(3) Manual, Rule 12--singularization.

(4) Webster's Rule 4.2.1--commas set off introductory expressions.

(5) Elements, V, 16--be clear.

(6) Dictionary Spelling of "general."

(7) Manual, Rule 10--avoid hackneyed reference words.

(8) Manual, Rules 5, 13 and Elements, II, 13--omit needless words.

(9) Standardization of language.

17

SECTION 28
SECTION 37 (B) becomes SECTION 21.
SECTION 29 (1), (3), (5), (7), (9), (11), (13), (15), (17), (19), (21), (23), (25), (27), (29), (31), (33), (35), (37), (39), (41), (43), (45), (47), (49), (51), (53), (55), (57), (59), (61), (63), (65), (67), (69), (71), (73), (75), (77), (79), (81), (83), (85), (87), (89), (91), (93), (95), (97), (99), (101), (103), (105), (107), (109), (111), (113), (115), (117), (119), (121), (123), (125), (127), (129), (131), (133), (135), (137), (139), (141), (143), (145), (147), (149), (151), (153), (155), (157), (159), (161), (163), (165), (167), (169), (171), (173), (175), (177), (179), (181), (183), (185), (187), (189), (191), (193), (195), (197), (199), (201), (203), (205), (207), (209), (211), (213), (215), (217), (219), (221), (223), (225), (227), (229), (231), (233), (235), (237), (239), (241), (243), (245), (247), (249), (251), (253), (255), (257), (259), (261), (263), (265), (267), (269), (271), (273), (275), (277), (279), (281), (283), (285), (287), (289), (291), (293), (295), (297), (299), (301), (303), (305), (307), (309), (311), (313), (315), (317), (319), (321), (323), (325), (327), (329), (331), (333), (335), (337), (339), (341), (343), (345), (347), (349), (351), (353), (355), (357), (359), (361), (363), (365), (367), (369), (371), (373), (375), (377), (379), (381), (383), (385), (387), (389), (391), (393), (395), (397), (399), (401), (403), (405), (407), (409), (411), (413), (415), (417), (419), (421), (423), (425), (427), (429), (431), (433), (435), (437), (439), (441), (443), (445), (447), (449), (451), (453), (455), (457), (459), (461), (463), (465), (467), (469), (471), (473), (475), (477), (479), (481), (483), (485), (487), (489), (491), (493), (495), (497), (499), (501), (503), (505), (507), (509), (511), (513), (515), (517), (519), (521), (523), (525), (527), (529), (531), (533), (535), (537), (539), (541), (543), (545), (547), (549), (551), (553), (555), (557), (559), (561), (563), (565), (567), (569), (571), (573), (575), (577), (579), (581), (583), (585), (587), (589), (591), (593), (595), (597), (599), (601), (603), (605), (607), (609), (611), (613), (615), (617), (619), (621), (623), (625), (627), (629), (631), (633), (635), (637), (639), (641), (643), (645), (647), (649), (651), (653), (655), (657), (659), (661), (663), (665), (667), (669), (671), (673), (675), (677), (679), (681), (683), (685), (687), (689), (691), (693), (695), (697), (699), (701), (703), (705), (707), (709), (711), (713), (715), (717), (719), (721), (723), (725), (727), (729), (731), (733), (735), (737), (739), (741), (743), (745), (747), (749), (751), (753), (755), (757), (759), (761), (763), (765), (767), (769), (771), (773), (775), (777), (779), (781), (783), (785), (787), (789), (791), (793), (795), (797), (799), (801), (803), (805), (807), (809), (811), (813), (815), (817), (819), (821), (823), (825), (827), (829), (831), (833), (835), (837), (839), (841), (843), (845), (847), (849), (851), (853), (855), (857), (859), (861), (863), (865), (867), (869), (871), (873), (875), (877), (879), (881), (883), (885), (887), (889), (891), (893), (895), (897), (899), (901), (903), (905), (907), (909), (911), (913), (915), (917), (919), (921), (923), (925), (927), (929), (931), (933), (935), (937), (939), (941), (943), (945), (947), (949), (951), (953), (955), (957), (959), (961), (963), (965), (967), (969), (971), (973), (975), (977), (979), (981), (983), (985), (987), (989), (991), (993), (995), (997), (999), (1001), (1003), (1005), (1007), (1009), (1011), (1013), (1015), (1017), (1019), (1021), (1023), (1025), (1027), (1029), (1031), (1033), (1035), (1037), (1039), (1041), (1043), (1045), (1047), (1049), (1051), (1053), (1055), (1057), (1059), (1061), (1063), (1065), (1067), (1069), (1071), (1073), (1075), (1077), (1079), (1081), (1083), (1085), (1087), (1089), (1091), (1093), (1095), (1097), (1099), (1101), (1103), (1105), (1107), (1109), (1111), (1113), (1115), (1117), (1119), (1121), (1123), (1125), (1127), (1129), (1131), (1133), (1135), (1137), (1139), (1141), (1143), (1145), (1147), (1149), (1151), (1153), (1155), (1157), (1159), (1161), (1163), (1165), (1167), (1169), (1171), (1173), (1175), (1177), (1179), (1181), (1183), (1185), (1187), (1189), (1191), (1193), (1195), (1197), (1199), (1201), (1203), (1205), (1207), (1209), (1211), (1213), (1215), (1217), (1219), (1221), (1223), (1225), (1227), (1229), (1231), (1233), (1235), (1237), (1239), (1241), (1243), (1245), (1247), (1249), (1251), (1253), (1255), (1257), (1259), (1261), (1263), (1265), (1267), (1269), (1271), (1273), (1275), (1277), (1279), (1281), (1283), (1285), (1287), (1289), (1291), (1293), (1295), (1297), (1299), (1301), (1303), (1305), (1307), (1309), (1311), (1313), (1315), (1317), (1319), (1321), (1323), (1325), (1327), (1329), (1331), (1333), (1335), (1337), (1339), (1341), (1343), (1345), (1347), (1349), (1351), (1353), (1355), (1357), (1359), (1361), (1363), (1365), (1367), (1369), (1371), (1373), (1375), (1377), (1379), (1381), (1383), (1385), (1387), (1389), (1391), (1393), (1395), (1397), (1399), (1401), (1403), (1405), (1407), (1409), (1411), (1413), (1415), (1417), (1419), (1421), (1423), (1425), (1427), (1429), (1431), (1433), (1435), (1437), (1439), (1441), (1443), (1445), (1447), (1449), (1451), (1453), (1455), (1457), (1459), (1461), (1463), (1465), (1467), (1469), (1471), (1473), (1475), (1477), (1479), (1481), (1483), (1485), (1487), (1489), (1491), (1493), (1495), (1497), (1499), (1501), (1503), (1505), (1507), (1509), (1511), (1513), (1515), (1517), (1519), (1521), (1523), (1525), (1527), (1529), (1531), (1533), (1535), (1537), (1539), (1541), (1543), (1545), (1547), (1549), (1551), (1553), (1555), (1557), (1559), (1561), (1563), (1565), (1567), (1569), (1571), (1573), (1575), (1577), (1579), (1581), (1583), (1585), (1587), (1589), (1591), (1593), (1595), (1597), (1599), (1601), (1603), (1605), (1607), (1609), (1611), (1613), (1615), (1617), (1619), (1621), (1623), (1625), (1627), (1629), (1631), (1633), (1635), (1637), (1639), (1641), (1643), (1645), (1647), (1649), (1651), (1653), (1655), (1657), (1659), (1661), (1663), (1665), (1667), (1669), (1671), (1673), (1675), (1677), (1679), (1681), (1683), (1685), (1687), (1689), (1691), (1693), (1695), (1697), (1699), (1701), (1703), (1705), (1707), (1709), (1711), (1713), (1715), (1717), (1719), (1721), (1723), (1725), (1727), (1729), (1731), (1733), (1735), (1737), (1739), (1741), (1743), (1745), (1747), (1749), (1751), (1753), (1755), (1757), (1759), (1761), (1763), (1765), (1767), (1769), (1771), (1773), (1775), (1777), (1779), (1781), (1783), (1785), (1787), (1789), (1791), (1793), (1795), (1797), (1799), (1801), (1803), (1805), (1807), (1809), (1811), (1813), (1815), (1817), (1819), (1821), (1823), (1825), (1827), (1829), (1831), (1833), (1835), (1837), (1839), (1841), (1843), (1845), (1847), (1849), (1851), (1853), (1855), (1857), (1859), (1861), (1863), (1865), (1867), (1869), (1871), (1873), (1875), (1877), (1879), (1881), (1883), (1885), (1887), (1889), (1891), (1893), (1895), (1897), (1899), (1901), (1903), (1905), (1907), (1909), (1911), (1913), (1915), (1917), (1919), (1921), (1923), (1925), (1927), (1929), (1931), (1933), (1935), (1937), (1939), (1941), (1943), (1945), (1947), (1949), (1951), (1953), (1955), (1957), (1959), (1961), (1963), (1965), (1967), (1969), (1971), (1973), (1975), (1977), (1979), (1981), (1983), (1985), (1987), (1989), (1991), (1993), (1995), (1997), (1999), (2001), (2003), (2005), (2007), (2009), (2011), (2013), (2015), (2017), (2019), (2021), (2023), (2025), (2027), (2029), (2031), (2033), (2035), (2037), (2039), (2041), (2043), (2045), (2047), (2049), (2051), (2053), (2055), (2057), (2059), (2061), (2063), (2065), (2067), (2069), (2071), (2073), (2075), (2077), (2079), (2081), (2083), (2085), (2087), (2089), (2091), (2093), (2095), (2097), (2099), (2101), (2103), (2105), (2107), (2109), (2111), (2113), (2115), (2117), (2119), (2121), (2123), (2125), (2127), (2129), (2131), (2133), (2135), (2137), (2139), (2141), (2143), (2145), (2147), (2149), (2151), (2153), (2155), (2157), (2159), (2161), (2163), (2165), (2167), (2169), (2171), (2173), (2175), (2177), (2179), (2181), (2183), (2185), (2187), (2189), (2191), (2193), (2195), (2197), (2199), (2201), (2203), (2205), (2207), (2209), (2211), (2213), (2215), (2217), (2219), (2221), (2223), (2225), (2227), (2229), (2231), (2233), (2235), (2237), (2239), (2241), (2243), (2245), (2247), (2249), (2251), (2253), (2255), (2257), (2259), (2261), (2263), (2265), (2267), (2269), (2271), (2273), (2275), (2277), (2279), (2281), (2283), (2285), (2287), (2289), (2291), (2293), (2295), (2297), (2299), (2301), (2303), (2305), (2307), (2309), (2311), (2313), (2315), (2317), (2319), (2321), (2323), (2325), (2327), (2329), (2331), (2333), (2335), (2337), (2339), (2341), (2343), (2345), (2347), (2349), (2351), (2353), (2355), (2357), (2359), (2361), (2363), (2365), (2367), (2369), (2371), (2373), (2375), (2377), (2379), (2381), (2383), (2385), (2387), (2389), (2391), (2393), (2395), (2397), (2399), (2401), (2403), (2405), (2407), (2409), (2411), (2413), (2415), (2417), (2419), (2421), (2423), (2425), (2427), (2429), (2431), (2433), (2435), (2437), (2439), (2441), (2443), (2445), (2447), (2449), (2451), (2453), (2455), (2457), (2459), (2461), (2463), (2465), (2467), (2469), (2471), (2473), (2475), (2477), (2479), (2481), (2483), (2485), (2487), (2489), (2491), (2493), (2495), (2497), (2499), (2501), (2503), (2505), (2507), (2509), (2511), (2513), (2515), (2517), (2519), (2521), (2523), (2525), (2527), (2529), (2531), (2533), (2535), (2537), (2539), (2541), (2543), (2545), (2547), (2549), (2551), (2553), (2555), (2557), (2559), (2561), (2563), (2565), (2567), (2569), (2571), (2573), (2575), (2577), (2579), (2581), (2583), (2585), (2587), (2589), (2591), (2593), (2595), (2597), (2599), (2601), (2603), (2605), (2607), (2609), (2611), (2613), (2615), (2617), (2619), (2621), (2623), (2625), (2627), (2629), (2631), (2633), (2635), (2637), (2639), (2641), (2643), (2645), (2647), (2649), (2651), (2653), (2655), (2657), (2659), (2661), (2663), (2665), (2667), (2669), (2671), (2673), (2675), (2677), (2679), (2681), (2683), (2685), (2687), (2689), (2691), (2693), (2695), (2697), (2699), (2701), (2703), (2705), (2707), (2709), (2711), (2713), (2715), (2717), (2719), (2721), (2723), (2725), (2727), (2729), (2731), (2733), (2735), (2737), (2739), (2741), (2743), (2745), (2747), (2749), (2751), (2753), (2755), (2757), (2759), (2761), (2763), (2765), (2767), (2769), (2771), (2773), (2775), (2777), (2779), (2781), (2783), (2785), (2787), (2789), (2791), (2793), (2795), (2797), (2799), (2801), (2803), (2805), (2807), (2809), (2811), (2813), (2815), (2817), (2819), (2821), (2823), (2825), (2827), (2829), (2831), (2833), (2835), (2837), (2839), (2841), (2843), (2845), (2847), (2849), (2851), (2853), (2855), (2857), (2859), (2861), (2863), (2865), (2867), (2869), (2871), (2873), (2875), (2877), (2879), (2881), (2883), (2885), (2887), (2889), (2891), (2893), (2895), (2897), (2899), (2901), (2903), (2905), (2907), (2909), (2911), (2913), (2915), (2917), (2919), (2921), (2923), (2925), (2927), (2929), (2931), (2933), (2935), (2937), (2939), (2941), (2943), (2945), (2947), (2949), (2951), (2953), (2955), (2957), (2959), (2961), (2963), (2965), (2967), (2969), (2971), (2973), (2975), (2977), (2979), (2981), (2983), (2985), (2987), (2989), (2991), (2993), (2995), (2997), (2999), (3001), (3003), (3005), (3007), (3009), (3011), (3013), (3015), (3017), (3019), (3021), (3023), (3025), (3027), (3029), (3031), (3033), (3035), (3037), (3039), (3041), (3043), (3045), (3047), (3049), (3051), (3053), (3055), (3057), (3059), (3061), (3063), (3065), (3067), (3069), (3071), (3073), (3075), (3077), (3079), (3081), (3083), (3085), (3087), (3089), (3091), (3093), (3095), (3097), (3099), (3101), (3103), (3105), (3107), (3109), (3111), (3113), (3115), (3117), (3119), (3121), (3123), (3125), (3127), (3129), (3131), (3133), (3135), (3137), (3139), (3141), (3143), (3145), (3147), (3149), (3151), (3153), (3155), (3157), (3159), (3161), (3163), (3165), (3167), (3169), (3171), (3173), (3175), (3177), (3179), (3181), (3183), (3185), (3187), (3189), (3191), (3193), (3195), (3197), (3199), (3201), (3203), (3205), (3207), (3209), (3211), (3213), (3215), (3217), (3219), (3221), (3223), (3225), (3227), (3229), (3231), (3233), (3235), (3237), (3239), (3241), (3243), (3245), (3247), (3249), (3251), (3253), (3255), (3257), (3259), (3261), (3263), (3265), (3267), (3269), (3271), (3273), (3275), (3277), (3279), (3281), (3283), (3285), (3287), (3289), (3291), (3293), (3295), (3297), (3299), (3301), (3303), (3305), (3307), (3309), (3311), (3313), (3315), (3317), (3319), (3321), (3323), (3325), (3327), (3329), (3331), (3333), (3335), (3337), (3339), (3341), (3343), (3345), (3347), (3349), (3351), (3353), (3355), (3357), (3359), (3361), (3363), (3365), (3367), (3369), (3371), (3373), (3375), (3377), (3379), (3381), (3383), (3385), (3387), (3389), (3391), (3393), (3395), (3397), (3399), (3401), (3403), (3405), (3407), (3409), (3411), (3413), (3415), (3417), (3419), (3421), (3423), (3425), (3427), (3429), (3431), (3433), (3435), (3437), (3439), (3441), (3443), (3445), (3447), (3449), (3451), (3453), (3455), (3457), (3459), (3461), (3463), (3465), (3467), (3469), (3471), (3473), (3475), (3477), (3479), (3481), (3483), (3485), (3487), (3489), (3491), (3493), (3495), (3497), (3499), (3501), (3503), (3505), (3507), (3509), (3511), (3513), (3515), (3517), (3519), (3521), (3523), (3525), (3527), (3529), (3531), (3533), (3535), (3537), (3539), (3541), (3543), (3545), (3547), (3549), (3551), (3553), (3555), (3557), (3559), (3561), (3563), (3565), (3567), (3569), (3571), (3573), (3575), (3577), (3579), (3581), (3583), (3585), (3587), (3589), (3591), (3593), (3595), (3597), (3599), (3601), (3603), (3605), (3607), (3609), (3611), (3613), (3615), (3617), (3619), (3621), (3623), (3625), (3627), (3629), (3631), (3633), (3635), (3637), (3639), (3641), (3643), (3645), (3647), (3649), (3651), (3653), (3655), (3657), (3659), (3661), (3663), (3665), (3667), (3669), (3671), (3673), (3675), (3677), (3679), (3681), (3683), (3685), (3687), (3689), (3691), (3693), (3695), (3697), (3699), (3701), (3703), (3705), (3707), (3709), (3711), (3713), (3715), (3717), (3719), (3721), (3723), (3725), (3727), (3729), (3731), (3733), (3735), (3737), (3739), (3741), (3743), (3745), (3747), (3749), (3751), (3753), (3755), (3757), (3759), (3761), (3763), (3765), (3767), (3769), (3771), (3773), (3775), (37

- (10) Webster's, II, 13--omit needless words.
- (11) Webster's, II, 13--omit needless words.
- (12) Webster's, II, 13--omit needless words.
- (13) Webster's, II, 13--omit needless words.
- (14) Webster's, II, 13--omit needless words.

19

SECTION 29 becomes

- 1 Section 29. Defense of
- 2 Criminal Prosecution: Removal
- 3 Section 29. In each parish, a
- 4 attorney or assistant district
- 5 attorney shall appear, plead or
- 6 in any way defend, or assist in
- 7 defending any criminal prosecu-
- 8 tion or charge. A violation shall
- 9 be cause for removal.
- 10
- 11
- 12

40

SECTION 30 becomes SECTION 31

- 1 Section 30. Sheriff: Duties.
- 2 Tax Collector
- 3 Section 30. In each parish, a
- 4 sheriff shall be elected for a
- 5 term of four years. He shall be
- 6 the chief law enforcement officer
- 7 in the parish, except as other-
- 8 wise provided by this constitu-
- 9 tion, and shall execute court
- 10 orders and process. He shall
- 11 be the collector of state and
- 12 parish-and-vacuum taxes and
- 13 automobile taxes and licenses
- 14 as provided by law.
- 15 This section shall not apply
- 16 to the Parish of Orleans.
- 17

Comment:

- (1) Webster's, II, 4.4.1--no comma between closely related grammatical sequences.
- (2) Webster's, II, 13--omit needless words.
- (3) Webster's, II, 13--omit needless words.
- (4) Webster's, II, 13--omit needless words.
- (5) Webster's, II, 13--omit needless words.
- (6) Webster's, II, 13--omit needless words.
- (7) Webster's, II, 13--omit needless words.
- (8) Webster's, II, 13--omit needless words.
- (9) Webster's, II, 13--omit needless words.
- (10) Webster's, II, 13--omit needless words.
- (11) Webster's, II, 13--omit needless words.
- (12) Webster's, II, 13--omit needless words.
- (13) Webster's, II, 13--omit needless words.
- (14) Webster's, II, 13--omit needless words.
- (15) Webster's, II, 13--omit needless words.
- (16) Webster's, II, 13--omit needless words.
- (17) Webster's, II, 13--omit needless words.

41

SECTION 31 becomes

- 1 Section 31. Clerk: Election.
- 2 Power and Duties: Election.
- 3 Office Hours.
- 4 Section 31. (A) In each parish,
- 5 a clerk of the district court
- 6 shall be elected by the quali-
- 7 fied electors of the parish for
- 8 a term of four years. He shall
- 9 be ex-officio notary, public
- 10 and parish recorder of conveyances,
- 11 mortgages, and other acts and
- 12 shall have such other duties
- 13 and powers as may be prescribed
- 14 by law. The clerk may appoint
- 15 deputies with such duties and
- 16 powers as may be prescribed by
- 17 law and he may appoint, with
- 18 the approval of the district
- 19 judges, minute clerks with such
- 20 duties and powers as may be
- 21 prescribed by law.
- 22 (B) The legislature shall
- 23 establish statewide uniform
- 24 office hours for all clerks
- 25 of district courts.

Comment:

- (1) Webster's, II, 4.4.1--no comma between closely related grammatical sequences.
- (2) Webster's, II, 13--omit needless words.
- (3) Webster's, II, 13--omit needless words.
- (4) Webster's, II, 13--omit needless words.
- (5) Webster's, II, 13--omit needless words.
- (6) Webster's, II, 13--omit needless words.
- (7) Webster's, II, 13--omit needless words.
- (8) Webster's, II, 13--omit needless words.
- (9) Webster's, II, 13--omit needless words.
- (10) Webster's, II, 13--omit needless words.
- (11) Webster's, II, 13--omit needless words.
- (12) Webster's, II, 13--omit needless words.
- (13) Webster's, II, 13--omit needless words.
- (14) Webster's, II, 13--omit needless words.
- (15) Webster's, II, 13--omit needless words.
- (16) Webster's, II, 13--omit needless words.
- (17) Webster's, II, 13--omit needless words.
- (18) Webster's, II, 13--omit needless words.
- (19) Webster's, II, 13--omit needless words.
- (20) Webster's, II, 13--omit needless words.
- (21) Webster's, II, 13--omit needless words.
- (22) Webster's, II, 13--omit needless words.
- (23) Webster's, II, 13--omit needless words.
- (24) Webster's, II, 13--omit needless words.
- (25) Webster's, II, 13--omit needless words.

42

SECTION 32 becomes

- 1 Section 32. Coroner: Election.
- 2 Term: Qualifications.
- 3 Duties.
- 4 Section 32. In each parish,
- 5 a coroner shall be elected for
- 6 a term of four years. He shall
- 7 be a licensed physician and
- 8 possess such other qualifications
- 9 and perform such duties as are
- 10 provided by law. However, the
- 11 requirement that he be a
- 12 licensed physician shall not ap-
- 13 ply to any parish in which there
- 14 is no licensed physician who will
- 15 accept the office.
- 16

SECTION 33 becomes

- 1 Section 33. Coroner: Election.
- 2 Section 33. In each parish,
- 3 a coroner shall be elected for
- 4 a term of four years. He shall
- 5 be a licensed physician and
- 6 possess such other qualifications
- 7 and perform such duties as are
- 8 provided by law. However, the
- 9 requirement that he be a
- 10 licensed physician shall not ap-
- 11 ply to any parish in which there
- 12 is no licensed physician who will
- 13 accept the office.
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

SECTION 30

- 1 Section 30. Coroner: Election.
- 2 Section 30. In each parish,
- 3 a coroner shall be elected for
- 4 a term of four years. He shall
- 5 be a licensed physician and
- 6 possess such other qualifications
- 7 and perform such duties as are
- 8 provided by law. However, the
- 9 requirement that he be a
- 10 licensed physician shall not ap-
- 11 ply to any parish in which there
- 12 is no licensed physician who will
- 13 accept the office.
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Comment -

(1) Webster's, Rule 4.4.1--comma between closely related grammatical sequences.

(2) Manual, Rule 6--avoid harknayed reference words.

(3) Manual, Rules 5, 13 and Elements, II, 13--omit needless words.

(4) Manual, Rule 15--short sentences; Rule 14--unrelated ideas in separate sentences.

(5) Elements, II, 11--put statements in positive form.

(6) Manual, Rules 5, 13 and Elements, II, 13--omit needless words.

43

SECTION 33 becomes SECTION 33.

1	Section 33. Vacancies.	1	Section 31. Vacancies.
2	Section 33. When a vacancy	2	Section 31. When a
3	occurs in the following offices,	3	vacancy occurs in the following
4	the duties of the office, until	4	offices, the duties of the
5	it is filled by election as	5	office, until it is filled
6	provided by law, shall be as-	6	by election as provided by
7	sumed by: in the case of sheriff,	7	law, shall be assumed by the
8	the chief criminal deputy; dis-	8	persons herein designated.
9	trict attorney, the first as-	9	(1) sheriff, by the chief
10	sistant; clerk of a district	10	criminal deputy; (2) district
11	court, the chief deputy; coroner,	11	attorney, by the first assis-
12	the chief deputy. If there is	12	tant; (3) clerk of a district
13	no such person to assume the	13	court, by the chief deputy;
14	duties at the time of the	14	(4) coroner, by the chief
15	vacancy, the governing authority	15	deputy. If there is no such
16	or authorities of the parish or	16	person to assume the duties
17	parishes concerned shall appoint	17	when the vacancy occurs, the
18	a qualified person to assume the	18	governing authority or autho-
19	duties of the office until	19	rities of the parish or
20	filled by election.	20	parishes concerned shall
21		21	appoint a qualified person
22		22	to assume the duties of the
23		23	office until filled by
24		24	election.

Comment:

(1) Elements, V, 16--be clear.

(2) Manual, Rules 5, 13 and Elements, II, 13--omit needless words.

(3) Enumeration suggested for readability.

(4) Elements, II, 15--parallelism.

(5) Manual, Rules 5, 13 and Elements, II, 13--omit needless words.

44

SECTION 34 becomes SECTION 32.

1	Section 34. Reduction of	1	Section 32. Reduction
2	Salaries and Benefits Pro-	2	of Salaries and
3	hibited	3	Benefits Prohibited
4	Section 34. No attorney	4	Section 32. The salary
5	general, judge, district	5	and retirement benefits of an

6 attorney, sheriff, coroner, or
7 clerk of the district court
8 shall have his salary or retire-
9 ment benefits diminished during
10 his term of office.
11

6 attorney, coroner, or
7 clerk of the district court
8 shall have his salary or retire-
9 ment benefits diminished during
10 his term of office.
11

Comment -

(1) Sentence rearranged to conform with construction and to parallel content of Section 21; protection of judges moved to Section 21.

45

SECTION 35 becomes SECTION 33.

1	Section 35. Orleans Parish	1	Section 33. Orleans Parish
2	Courts, Officials; Continued	2	Courts, Officials
3	Section 35. Except for pro-	3	Section 33. Except for pro-
4	visions relating to terms of	4	visions relating to terms of
5	office as provided elsewhere in	5	office as provided elsewhere in
6	this Article and notwithstanding	6	this Article, and notwithstanding
7	any other provision of this	7	any other contrary provision of
8	constitution to the contrary,	8	this constitution, the following
9	the following courts and officers	9	courts and officers in Orleans
10	in Orleans Parish are continued,	10	Parish are continued, subject to
11	subject to change by a vote of	11	change by law: the civil and
12	a majority of the elected mem-	12	criminal district courts; the
13	bers of each house of the legis-	13	city, municipal, traffic ⁽⁵⁾ and
14	lature: the civil and criminal	14	juvenile courts; the clerks ⁽⁴⁾
15	district courts, the city, muni-	15	of the civil and criminal
16	cipal, traffic and juvenile	16	district courts; the civil and
17	courts, the clerks of the civil	17	criminal sheriffs; the
18	and criminal district courts,	18	constables and the clerks of ⁽⁴⁾
19	the civil and criminal sheriffs,	19	the first and second city courts;
20	the constables and the clerks	20	the register of conveyances ⁽⁴⁾ and
21	of the first and second city	21	the recorder of mortgages.
22	courts, the register of con-	22	
23	veyances, and the recorder of	23	
24	mortgages.	24	

Comment:

(1) Webster's, Rule 4.2.1--comma sets off introductory adverbial clause.

(2) Manual, Rule 5--substitute word for phrase.

(3) Standardization of language.

(4) Webster's, Rule 5.1.3--semicolon as strong comma.

(5) Manual, Rule 20, Elements, I, 2--commas in series.

46

SECTION 36 become (A) + (B)

SECTION 34 (A) + (B)

1 Section 34. Jurors.
2 Qualifications, Exemptions
3 Section 36. (A) A citizen of
4 the state, who is domiciled with-
5 in the parish in which he is to
6 serve as a juror and who has
7 reached the age of majority, is
8 eligible to serve as a juror.
9 The legislature may provide
10 additional qualifications.
11 (B) The supreme court by rule
12 shall provide for exemption of
13 jurors.

1 Section 34. Jurors
2 Section 34 (A) Quali-
3 fications. A citizen of the
4 state who has reached the age
5 of majority is eligible to
6 serve as a juror within the
7 parish in which he is domiciled.
8 The legislature may provide
9 additional qualifications.
10 (B) Exemptions. The
11 supreme court shall provide
12 by rule for exemption of
13 jurors.

Comment:

- (1) Manual, Rules 5, 13 and Elements, II, 13--omit
needless words.
(2) Elements, II, 16--keep related words together.

47

SECTION 37 becomes SECTION 35

1 Section 37. Grand Jury
2 Section 37. (A) There shall
3 be a grand jury or grand juries
4 in each parish whose qualifica-
5 tions, duties and responsibilities
6 shall be provided by law. The
7 secrecy of the proceedings, in-
8 cluding the identity of the
9 witnesses appearing, shall be
10 provided for by law.
11 (B) Except as otherwise pro-
12 vided in this constitution, a
13 district attorney, or his desig-
14 nated assistant, shall have
15 charge of every criminal prose-
16 cution by the state in his
17 district, shall be the repre-
18 sentative of the state in his
19 district before the grand jury,
20 and its legal advisor. He shall
21 perform such other duties as
22 may be provided by law.
23 (C) At all stages of grand
24 jury proceedings, anyone
25 testifying in such proceedings
26 shall have the right to the
27 advice of counsel while testify-
28 ing.

1 Section 35. Grand Jury
2 Section 35. (A) Grand Jury
3 There shall be a grand jury or
4 grand juries in each parish, whose
5 qualifications, duties, and respon-
6 sibilities shall be provided by
7 law. The secrecy of the proceedings,
8 including the identity of witnesses,
9 shall be provided by law.
10 (B) Right to Counsel.
11 A person testifying at any stage
12 in grand jury proceedings shall
13 have the right to the advice of
14 counsel while testifying.
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Note: Section
37 (B) and
amended becomes
Section 27 (B)

- See page 38 -

Comment:

- (1) Webster's, Rule 4.1.2--omits to set off
appositional phrase.
(2) Manual, Rule 20 and Elements, I, 2--omits in
series.
(3) Manual, Rules 5, 13 and Elements, II, 13--omit
needless words.
(4) Ibid.
(5) Ibid.

48

COMMITTEE PROPOSAL NO. 21 FIRST ENDEAVOR

Changes recommended by Committee on Judiciary and Committee on
Style and Printing to the Constitution of the Commonwealth of Massachusetts
as amended previously, but containing no amendments to the
provisions as adopted by the constitution.

COMPARATIVE TABLE

SECTION AS AMENDED PROPOSAL NO. 21, 1971 BY THE COMMITTEE ON JUDICIARY	EXISTING CHAPTER BY THE CONSTITUTION PROVISIONS
1 Section 9. Courts of Appeal; 2 Circuits and Districts 3 Section 9. Each circuit shall 4 be divided into at least three 5 districts, and at least one judge 6 shall be elected from each. After 7 January 1, 1975, no judge shall 8 be elected at large from within 9 the circuit. The circuits and 10 districts and the number of 11 judges as elected in each circuit 12 on the effective date of this 13 constitution are retained, subject 14 to change by law enacted by two- 15 thirds of the elected members of 16 each house of the legislature.	1 Section 9. Courts of Appeal; 2 Circuits and Districts 3 Section 9. Each circuit shall 4 be divided into at least three 5 districts, and at least one judge shall 6 be elected from each. The circuits 7 and districts and the number of 8 judges as elected in each circuit 9 on the effective date of this 10 constitution are retained, subject 11 to change by law enacted by two- 12 thirds of the elected members of 13 each house of the legislature.

CAVEAT: In Section 9 as enrolled, the second
(1) sentence reads: "After January 1,
1975, no judge shall be elected at
large from within the circuit."
Subsequently, the convention adopted
Delegate Proposal No. 32 which re-
stated Section 9 without that second
sentence. The convention has thus
adopted possible conflicting provisions.
If the latest expression of the
convention is to be preferred,
Section 9 would delete that second
sentence.

SECTION 16 (B)

SECTION 16. (A) ORIGINAL JURISDICTION. Except as other- wise authorized by this constitu- tion, a district court shall have exclusive jurisdiction of all civil and criminal matters. It shall have exclusive original juris- diction of felony cases and of cases involving title to immov- able property, the right to office or other public position; civil or political rights; probate and succession matters; the state; a political corporation or pub-	(A) ORIGINAL JURISDICTION. Except as otherwise authorized by this constitution, a district court shall have original jurisdiction of all civil and criminal matters. It shall have exclusive original jurisdiction of felony cases and of cases involving title to immovable property, the right to office or other public position; civil or political rights; probate and succession matters; the state; a political corporation or pub-
--	--

14 a political corporation, or a
15 succession, and a defendant, and
16 the appointment of receivers or
17 liquidators for corporations or
18 partnerships.

14 trial subdivision, or a
15 as a defendant, and the appoint
16 ment of receivers or li
17 for corporations or partne
18

CAVEAT: In referring to the exclusive original jurisdiction of the district court, the sections as enrolled make reference to cases in which "a political corporation" is a defendant. That expression recitates the corresponding provision of the 1921 Constitution. However, in light of the subsequent use and definition, in the article on local and parochial government, of the term "political subdivision," it may be clearer to use the expression "political corporation or political subdivision." Such usage would continue in effect the judicial construction of the term "political corporation" as well as include the meaning of "political subdivision" as used in the new constitution.

2

SECTION 23

1 Section 23. Judges, Quali-
2 fications.
3 Section 23. A judge of the
4 supreme court, a court of appeal,
5 district court, family court,
6 parish court, or court having
7 solely juvenile jurisdiction
8 shall have been admitted to the
9 practice of law in this state for
10 at least five years prior to his
11 election, and shall have been
12 domiciled in the respective
13 district, circuit, or parish for
14 the two years preceding election.
15 He shall not practice law.
16

1 Section 23. Judges, Quali-
2 fications.
3 Section 23. A judge of the
4 supreme court, a court of appeal,
5 district court, family court,
6 parish court, or court having
7 solely juvenile jurisdiction shall
8 have been admitted to the practice
9 of law in this state for at least
10 five years prior to his qualifica-
11 tion as a candidate, and shall
12 have been domiciled in the res-
13 pective district, circuit, or
14 parish for the two years preceding
15 qualification. He shall not
16 practice law.

CAVEAT: As adopted by the convention, the residence and practice requirements for judges are stated in terms of time periods preceding election. To be consistent with the time requirements used in the legislative and executive articles, the reference should be to the time preceding "qualification as a candidate."

3

SECTION 27 (H)

1 Section 27. An Election,
2 Qualifications, Jurisdiction. In
3 each judicial district a district
4 attorney shall be selected for a
5 term of six years. He shall have
6 been admitted to the practice of
7 law in the state for at least five
8 years prior to his election and
9 shall have resided in the district
10 for the two years preceding elec-
11 tion. A district attorney may

1 the Election, qualifications
2 Assistant. In each judicial
3 district a district attorney shall
4 be selected for a term of six
5 years. He shall have been ad-
6 mitted to the practice of law in
7 the state for at least five years
8 prior to his qualification as a
9 candidate and shall have resided
10 in the district for the two years
11 preceding qualification. A

14 require assistance in exercising
15 the case, and shall
16

14 district attorney or other
15 assistant to the district attorney
16

CAVEAT: As adopted by the convention, the residence and practice requirements for judges are stated in terms of time periods preceding election. To be consistent with the time requirements used in the legislative and executive articles, the reference should be to the time preceding "qualification as a candidate."

(1)

4

COMMITTEE ENDORSED BY THE FIRST ENLIGHTENED

DECLARATION OF RIGHTS

Styling Suggestions from Committee of Style and Drafting

COMPARATIVE PRESENTATION

SECTIONS ADOPTED BY CONVENTION	CHANG. RECOMMENDED BY COMMITTEE
1 A PREAMBLE	1 PREAMBLE
2 We, the people of Louisiana,	2 We, the people of Louisiana,
3 grateful to Almighty God for the	3 grateful to Almighty God for the
4 civil, political, economic, and	4 the civil, political, economic,
5 religious liberties we enjoy, and	5 and religious liberties we
6 desiring to protect individual	6 enjoy, and desiring to protect
7 rights to life, liberty, and prop-	7 individual rights to life,
8 erty; afford opportunity for the	8 liberty, and property; afford
9 fullest development of the indi-	9 opportunity for the fullest
10 vidual; assure equality of rights;	10 development of the individual;
11 promote the health, safety, educa-	11 assure equality of rights;
12 tion, and welfare of the people;	12 promote the health, safety,
13 maintain a representative and	13 education, and welfare of the
14 orderly government; ensure domes-	14 people; maintain a representa-
15 tic tranquility; provide for the	15 tive and orderly government;
16 common defense; and secure the	16 ensure domestic tranquility;
17 blessings of freedom and justice	17 provide for the common defense.
18 to ourselves and our posterity, do	18 and secure the blessings of
19 ordain and establish this consti-	19 freedom and justice to
20 tution.	20 ourselves and our posterity, do
21	21 ordain and establish this
22	22 constitution.

COMMENT:

NO CHANGE.

-1-

SECTION 1

1 ARTICLE I. DECLARATION OF RIGHTS
2 Section 1. Origin and Purpose
3 of Government
4 Section 1. All government, of
5 right, originates with the people,
6 as founded on their will alone, and
7 as instituted to protect the rights

1 ARTICLE I. DECLARATION
2 OF RIGHTS
3 Section 1. Origin and
4 Purpose of Government
5 Section 1. All govern-
6 ment, of right, originates
7 with the people, is founded

8 of the individual and for the good
9 of the whole. Its only legitimate
10 ends are to secure justice for all;
11 preserve power, protect the rights,
12 and promote the happiness and gen-
13 eral welfare of the people. The
14 rights enumerated in this Article
15 are inalienable by the state and
16 shall be preserved inviolate by
17 the state.
18
19
20
21
22

COMMENT:

(1) Do not separate two objects of same in-
divisible.

-2-

SECTION 2

1 Section 2. Due Process of Law
2 Section 2. No person shall be
3 deprived of life, liberty or prop-
4 erty, except by due process of law.
5
6

COMMENT:

(1) Manual, Rule 20 and Elements, I, 2--commas
in series.

-3-

SECTION 3

1 Section 3. Right to Individ-
2 dual dignity
3 Section 3. No person shall be
4 denied the equal protection of the
5 law. No law shall discriminate
6 against a person on account of race
7 or religious ideas, religious be-
8 liefs, or religious affiliations;
9 No law shall arbitrarily, caprici-
10 ously, or unreasonably discrimi-
11 nate against any person by reason
12 of birth, age, sex, culture, phy-
13 sical condition, political ideas

1 Section 3. Right to
2 Individual Dignity
3 Section 3. No person shall
4 be denied the equal protection
5 of the laws. No law shall dis-
6 criminate against a person
7 because of race or religious
8 ideas, beliefs, or affilia-
9 tions. No law shall
10 arbitrarily, capriciously, or
11 unreasonably discriminate
12 against a person because of
13 birth, age, sex, culture,

14 or political affiliation. Slavery
15 and involuntary servitude are pro-
16 hibited, except in the latter case
17 as a punishment for crime.
18
19

COMMENT:

- (1) Manual, Rule 5--substitute word for phrase.
- (2) Manual, Rules 5,13 and Elements, II, 13--omit needless words.
- (3) Standardization of language.
- (4) Manual, Rule 5--substitute word for phrase.
- (5) Manual, Rules 5,13 and Elements, II, 13--omit needless words.
- (6) Ibid.

-4-

SECTION 4

1 Section 4. Right to Property
2 Section 4. Every person has
3 the right to acquire, control, own,
4 use, enjoy, protect, and dispose of
5 private property. This right is
6 subject to reasonable statutory re-
7 strictions and the reasonable
8 exercise of the police power. Prop-
9 erty shall not be taken or damaged
10 by the state or its political sub-
11 divisions except for public pur-
12 poses and with just compensation
13 paid to the owner or into court
14 for his benefit. Property shall
15 not be taken or damaged by any pri-
16 vate entity authorized by law to
17 expropriate property, except for a
18 public and necessary purpose and
19 with just compensation paid to the
20 owner and, in such proceedings,
21 the issue of whether the purpose
22 is public and necessary shall be
23 a judicial question. In all ex-
24 propriations, any party shall have
25 the right to trial by jury to de-
26 termine compensation and the owner
27 shall be compensated to the full
28 extent of his loss. No business
29 enterprise or any of its assets
30 shall be taken for the purpose of
31 operating that enterprise or for
32 the purpose of halting competition
33 with government enterprises, except
34 that municipalities may expropriate
35 utilities within their jurisdiction.

-5-

SECTION 4

1 Personal effects, other than weapons, shall never be taken. This
2 hand, shall never be taken. This
3 provisions of this Section shall not
4 apply to appropriation of property
5 necessary for levee and levee drain-
6 age purposes.
7
8
9
10
11
12
13
14
15
16
17
18
19

COMMENT:

(1) Manual, Rules 5, 13 and Elements, 11, 13--
omit needless words.

(2) Ibid.

(3) Manual, Rule 12--singularization: Manual,
Rule 11--present tense.

(4) Webster's, Rule 4.2.3 and Elements, I, 4--
comma before conjunction introducing independent
clause.

(5) Manual, Rules 5, 13 and Elements, 11, 13--
omit needless words.

(6) Manual, Rule 12--singularization.

(7) Manual, Rule 10--short sentences: Rule 14--
unrelated ideas in separate sentences.

(8) Manual, Rule 12--singularization.

(9) Manual, Rules 5, 13 and Elements, 11, 13--
omit needless words.

-6-

SECTION 5

1 Section 5. Right to Privacy
2 Section 5. Every person shall
3 be secure in his person, property,
4 communications, houses, papers, and
5 effects against unreasonable
6 searches, seizures, or invasions of
7 privacy. No warrant shall issue
8 without probable cause supported by
9 oath or affirmation particularly
10 describing the place to be searched,
11 the persons or things to be seized,
12 and the lawful purpose or reason
13 for the search. Any person ad-
14 versely affected by a search or
15 seizure conducted in violation of
16 this Section shall have standing
17 to raise the illegality of that

1 Section 5. Right to
2 Privacy
3 Section 5. Every person
4 shall be secure in his person,
5 property, communications,
6 houses, papers, and effects
7 against unreasonable searches,
8 seizures, or invasions of
9 privacy. No warrant shall
10 issue without probable cause
11 supported by oath or affirma-
12 tion, and particularly describ-
13 ing the place to be searched,
14 the persons or things to be
15 seized, and the lawful purpose
16 or reason for the search. Any
17 person adversely affected by

18 search or seizure in the appropri-
19 ate court of law.
20
21
22
23
24
25
26

COMMENT:

(1) Elements, V, 14--the clear

(2) Manual, Rules 5, 13 and Elements, 11, 13--
omit needless words.

(3) Ibid.

SECTION 6

1 Section 6. Freedom from
2 Intrusion
3 Section 6. No person shall
4 be quartered in any house without
5 the consent of the owner or law-
6 ful occupant.

1 Section 6. Freedom from
2 Intrusion
3 Section 6. No person
4 shall be quartered in any
5 house without the consent of
6 the owner or lawful occupant

COMMENT:

NO CHANGE

-8-

SECTION 9 becomes SECTION 7

1 Section 9. Liberty of Speech
2 and Freedom of the Press
3 Section 9. No law shall ever
4 be passed to curtail or restrain
5 the liberty of speech or freedom
6 of the press; any person may speak,
7 write and publish his sentiments on
8 all subjects, being responsible for
9 the abuse of that liberty or free-
10 dom.

1 Section 7. Freedom of
2 Expression
3 Section 7. No law shall
4 curtail or restrain the
5 freedom of speech or of
6 the press. (3) Every person may
7 speak, write, and publish his
8 sentiments on any subject,
9 but is responsible for abuse
10 of that freedom.

COMMENT:

(1) Manual, Rules 5, 13 and Elements, 11,
13 -- omit needless words.

(2) Ibid.

(3) Manual, Rule 10-- short sentences;
Rule 14--unrelated ideas in separate
sentences.

(4) Manual, Rule 20 and Elements, I, 2--
commas in series.

(5) Manual, Rule 12--singularization.

(6) Manual, Rules 5, 13 and Elements, 11,
4--omit needless words.

(7) *Ibid.*

-9-

SECTION 10 becomes SECTION 3

1 Section 10. Freedom of	1 Section 9. Freedom of
2 Religion	2 Religion
3 Section 10. No law shall be	3 Section 8. No law shall
4 enacted respecting an establishment	4 be enacted respecting an
5 of religion, or prohibiting the free	5 establishment of religion or
6 exercise thereof.	6 prohibiting the free exercise
7	7 thereof.

COMMENT:

NO CHANGE

SECTION 11 becomes SECTION 9

16 Section 11. Freedom of	16 Section 9. Right of
17 Assembly and Movement	17 Assembly and Petition.
18 Section 11. No law shall	18 Section 9. No law shall
19 impair the right of every person	19 impair the right of any
20 to assemble peaceably or to peti-	20 person to assemble peaceably
21 tion government for a redress of	21 or to petition government for
22 grievances.	22 a redress of grievances.

COMMENT:

(1) Elements, V, 16--be clear.

-10-

SECTION 19 becomes SECTION 10

1 Section 19. Right to Vote.	1 Section 10. Right to
2 Section 19. Every citizen of	2 Vote.
3 the state, upon reaching eighteen	3 Section 11. Every citizen
4 years of age shall have the right	4 of the state, upon reaching
5 to register and vote, except that	5 (1)
6 this right may be suspended while	6 eighteen years of age, shall
7 a person is incarcerated and judi-	7 vote, except that this right
8 cially declared mentally incompet-	8 suspended while a person is
9 ent, or under an order of in-	9 incarcerated and judicially
10 placement for commitment to a	10 declared mentally incompetent
11 felony.	11 (2)
12	12 under an order of imprison-
13	13 ment for conviction of a felony.
14	

COMMENTS:

(1) Webster's, Rule 4.1.1--commas to set off
parenthetical expression.

(2) Elements, 11, 15--parallelism.

-11-

SECTION 20 becomes SECTION 11

1 Section 20. Right to Keep and	1 Section 11. Right to Keep
2 Bear Arms	2 and Bear Arms
3 Section 20. The right of each	3 Section 11. The right of
4 citizen to keep and bear arms shall	4 each citizen to keep and bear
5 not be abridged, but this provi-	5 arms shall not be abridged, but
6 sion shall not prevent the passage	6 this provision shall not pre-
7 of laws to prohibit the carrying	7 vent the passage of laws to pro-
8 of weapons concealed on the person.	8 hibit the carrying of weapons
9	9 concealed on the person.

COMMENT:

NO CHANGE

-12-

SECTION 26 becomes SECTION 12

1 Section 26. Freedom from	1 Section 12. Freedom from
2 Discrimination	2 Discrimination
3 Section 26. In access to public	3 Section 12. In access to
4 areas, accommodations, and facili-	4 public areas, accommodations
5 ties every person shall have the	5 and facilities, every person
6 right to be free from discrimina-	6 shall be free from discrimina-
7 tion based on race, religion, or	7 tion based on race, religion, or
8 national ancestry and from arbi-	8 national ancestry and from ar-
9 trary, capricious, or unreasonable	9 bitrary, capricious, or un-
10 discrimination based on age, sex,	10 reasonable discrimination based
11 or physical condition.	11 on age, sex, or physical con-
12	12 dition.

COMMENT:

(1) Webster's Rule 4.4.2--comma inserted
for clarity.

(2) Manual, Rules 5, 13 and Elements, 11, 13--
omit needless words.

-13-

SECTION 12 becomes SECTION 13

1 Section 12. Rights of the	1 Section 13. Rights of
2 Accused	2 the Accused
3 Section 12. When any person	3 Section 13. When any
4 has been arrested or detained in	4 person has been arrested or
5 connection with the investigation	5 detained in connection with
6 or commission of any offense, he	6 the investigation or commission

7 shall be advised fully of the reason for his arrest or detention.
 8 his right to remain silent, his right against self incrimination,
 9 his right to the assistance of counsel and, to court appointed counsel, if indigent. In all criminal prosecutions the accused shall be informed of the nature and cause of the accusation against him. At all stages of the proceedings, every person shall be entitled to assistance of counsel of his choice, or appointed by the court in indigent cases if charged with an offense punishable by imprisonment. The legislature shall provide for a uniform system for securing counsel for indigents, including qualifications and compensation.

2 of any offense, he shall be advised fully of the reason for his arrest or detention, his right to remain silent, his right against self incrimination, his right to the assistance of counsel and, if indigent, his right to court appointed counsel. In a criminal prosecution, an accused shall be informed of the nature and cause of the accusation against him. At each stage of the proceedings, every person is entitled to assistance of counsel of his choice, or appointed by the court if he is indigent and charged with an offense punishable by imprisonment. The legislature shall provide for a uniform system for securing and compensating qualified counsel for indigents.

-14-

SECTION 13

COMMENT:

- (1) Elements, V, 16--be clear.
- (2) Elements, II, 15--parallelism.
- (3) Manual, Rule 12--singularization.
- (4) Elements, II, 15--parallelism.
- (5) Manual, Rule 12--singularization.
- (6) Manual, Rule 11--present tense.
- (7) Elements, V, 16--be clear.
- (8) Ibid.; Elements, II, 15--parallelism.

-15-

SECTION 27 becomes SECTION 14

1 Section 27. Right to Preliminary Examination
 2
 3 Section 27. In all felony cases, except those indicted by a grand jury, the right to a preliminary examination shall not be denied.
 4
 5
 6
 7

1 Section 14. Right to Preliminary Examination
 2
 3 Section 14. The right to a preliminary examination shall not be denied in felony cases except when the accused is indicted by a grand jury.

COMMENT:

- (1) Elements, V, 16--be clear.

-16-

SECTION 13 becomes SECTION 14

1 Section 13. Right to Preliminary Examination
 2
 3 Section 13. Prosecution of a felony shall not be instituted by indictment or information, except that no person shall be held to answer for any capital crime or any crime punishable by life imprisonment, except by indictment by a grand jury. No person shall be twice placed on jeopardy for the same offense, except on his own application for a new trial or when a mistrial is declared or a motion in arrest of judgment is sustained.

1 Section 14. Right to Preliminary Examination
 2
 3 Section 14. Prosecution of a felony shall not be instituted by indictment or information, except that no person shall be held to answer for any capital crime or any crime punishable by life imprisonment, except by indictment by a grand jury. No person shall be twice placed on jeopardy for the same offense, except on his own application for a new trial or when a mistrial is declared or a motion in arrest of judgment is sustained.

COMMENT:

- (1) Manual, Rule 12--singularization
- (2) Manual, Rule 5--substitute word for phrase
- (3) Standardization of language.
- (4) Elements, V, 16--be clear.
- (5) Manual, Rules 5, 13 and Elements, II, 13--omit needless words.
- (6) Manual, Rule 20 and Elements, I, 2--commas in series; Elements, II, 15--parallelism.
- (7) Ibid.

-17-

SECTION 15 becomes SECTION 16

1 Section 15. Fair Trial
 2
 3 Section 15. Every person charged with a crime shall be presumed innocent until proven guilty, and shall be entitled to a speedy, public, and impartial trial in the parish where the offense or an element of the offense occurred, unless venue be changed in accordance with law. No person shall be compelled to give evidence against himself. An accused shall be entitled to confront and cross-examine the witnesses against him, to compel the attendance of witnesses, to present a defense, and to testify in his own behalf.

1 Section 16. Right to Fair Trial
 2
 3 Section 16. Every person charged with a crime shall be presumed innocent until proven guilty and is entitled to a speedy, public, and impartial trial in the parish where the offense occurred, unless venue is changed in accordance with law. No person shall be compelled to give evidence against himself. An accused is entitled to confront and cross-examine the witnesses against him; to compel the attendance of witnesses; to present a defense, and to testify in his own behalf.

COMMENT:

- (1) Manual, Rule 11--present tense.
 (2) See Elements, 1, 4--omit comma when subject common to two verbs and connective is "and."
 (3) Manual, Rule 11--present tense.
 (4) Manual, Rule 11--indicative mood.
 (5) Manual, Rule 11--present tense.

18-

SECTION 16 becomes SECTION 16

1	Section 16. Trial by Jury in	1	Section 17. Jury Trial
2	Criminal Cases	2	in Criminal Cases
3	Section 16. Criminal cases in	3	Section 17. A criminal
4	which the punishment may be capital	4	case in which the punishment
5	shall be tried before a jury	5	may be capital shall be
6	of twelve persons, all of whom	6	tried before a jury of twelve
7	must concur to render a verdict;	7	persons, all of whom must
8	cases in which the punishment is	8	concur to render a verdict.
9	necessarily confinement at hard	9	(1) A case in which the punish-
10	labor shall be tried before a jury	10	ment is necessarily confine-
11	of twelve persons, ten of whom	11	ment at hard labor shall be
12	must concur to render a verdict.	12	tried before a jury of twelve
13	Cases in which the punishment may	13	persons, ten of whom must
14	be confinement at hard labor or	14	concur to render a verdict.
15	confinement without hard labor	15	(2) A case in which the punishment
16	of more than six months, shall be	16	may be confinement at hard
17	tried before a jury of six persons	17	labor or confinement without
18	five of whom must concur to render	18	hard labor for more than six
19	a verdict. Except in capital cases	19	months shall be tried before
20	a defendant may knowingly and	20	a jury of six persons, five
21	intelligently waive his right to a	21	of whom must concur to render
22	trial by jury. In all criminal	22	a verdict (6) the accused shall
23	prosecutions tried by a jury the	23	have the right to full voir
24	accused shall have the right to	24	dire examination of prospec-
25	full voir dire examination of	25	tive jurors and to challenge
26	prospective jurors and to chal-	26	jurors peremptorily. The
27	lenge jurors peremptorily. The	27	number of challenges shall be
28	number of challenges shall be	28	fixed by law. Except in
29	fixed by law.	29	capital cases, a defendant
30		30	may knowingly and intelligently
31		31	waive his right to a trial by
32		32	jury.
33		33	
34		34	
35		35	

-19-

SECTION 17

COMMENT:

- (1) Manual, Rule 12--singularization.
 (2) Manual, Rule 10--short sentences; Rule 12--singularization.
 (3) Manual, Rule 12--singularization.

(4) Change preposition from "of" to "for" to aid readability.

(5) Elements, 11, 5--parallelism.

(6) Manual, Rules 5, 13 and Elements, 11, 13--omit needless words.

(7) Elements, 11, 9--paragraph unit of composition; sentence placement selected to end unit.

-20-

SECTION 17 becomes SECTION 17

1	Section 17. Right to Bail	1	Section 16. Right to Bail
2	Section 17. Excessive bail shall	2	Section 18. Excessive
3	not be required. Before and during	3	bail shall not be required.
4	a trial, a person shall be bailable	4	Before and during a trial,
5	by sufficient sureties, unless	5	a person shall be bailable
6	charged with a capital offense and	6	by sufficient surety, except
7	the proof is evident and the pre-	7	when he is charged with a capi-
8	sumption of guilt is great. After	8	tal offense and the proof is
9	conviction and before sentencing,	9	evident and the presumption
10	a person shall be bailable if the	10	of guilt is great. After
11	maximum sentence which may be im-	11	conviction and before sentenc-
12	posed is imprisonment of five years	12	ing, a person shall be bail-
13	or less. The judge may grant bail	13	able if the maximum sentence
14	if the maximum sentence which may	14	which may be imposed is
15	be imposed is imprisonment in ex-	15	(2) imprisonment for five years
16	cess of five years. After sentenc-	16	(3) or less; and the judge may
17	ing and until final judgment, per-	17	grant bail if the maximum
18	sons shall be bailable if the	18	sentence which may be imposed
19	sentence actually imposed is five	19	is imprisonment exceeding
20	years or less and the judge in his	20	(6) five years. After sentencing
21	discretion may grant bail if the	21	and until final judgment, a
22	sentence actually imposed is in	22	person shall be bailable if
23	excess of five years imprisonment.	23	(5) the sentence actually imposed
24		24	is five years or less; and the
25		25	judge may grant bail if the
26		26	sentence actually imposed
27		27	(8) exceeds imprisonment for five
28		28	years. (9)
29		29	
30		30	
31		31	
32		32	
33		33	
34		34	
35		35	

-21-

SECTION 18

COMMENT:

(1) Manual, Rule 11 -- singularization; Elements, V, 16 -- be clear.

(2) Elements, 11, 15 -- parallelism; i.e., preposition changed to conform with Section 14.

(3) Ibid. -- i.e., sentences continued to describe ten different possible during second of three possible time periods.

(4) Manual, Rule 5 -- substitute word for phrase.

(5) Manual, Rule 12 -- singularization.

(6) Elements, II, 15 -- parallelism, i.e., same construction followed as that discussed in footnote (3).

(7) Manual, Rules 5, 13 and Elements, II, 13 -- omit needless words.

(8) Manual, Rule 5 -- substitute word for phrase.

(9) Formalization of language.

-22-

Last paragraph of SECTION 12 becomes SECTION 14

1 No person shall be subjected	1 Section 14. Right to
2 to imprisonment or forfeiture of	2 Judicial Review
3 his rights or property without the	3 Section 19. No person
4 right of judicial review based	4 shall be subjected to imprison-
5 upon a complete record of all evi-	5 ment or forfeiture of rights
6 dence upon which such judgment is	6 or property without the right
7 based. The cost of the transcrip-	7 of judicial review based upon
8 tion of such record shall be paid	8 a complete record of all
9 as provided by law. This right	9 evidence upon which the judg-
10 may be intelligently waived.	10 ment is based. This right may
11	11 be intelligently waived. The
12	12 cost of transcribing the record
13	13 shall be paid as provided by
14	14 law.

COMMENT:

(1) Manual, Rule 15, 13 and Elements, II, 13 -- omit needless words.

(2) Manual, Rule 6 -- avoid hackneyed reference words.

(3) See Elements II, 16 -- keep related sentences together.

(4) Manual, Rule 5 -- substitute word for phrase.

-23-

SECTION 18 becomes SECTION 20

1 Section 18. Right to Humane	1 Section 20. Right to
2 Treatment	2 Humane Treatment
3 Section 18. No law shall sub-	3 Section 20. No law shall
4 ject any person to euthanasia, tor-	4 subject any person to
5 ture, cruel, excessive, or unusual	5 euthanasia, to torture, or to
6 punishments. Full rights of citi-	6 cruel, excessive, or unusual
7 zenship shall be restored upon	7 punishment. Full rights of
8 termination of state and federal	8 citizenship shall be restored
9 supervision following conviction	9 upon termination of state
10 for any offense.	10 and federal supervision fol-
11	11 lowing conviction for any
12	12 offense.

COMMENT:

(1) Elements, II, 15 -- parallelism.

(2) Manual, Rule 12 -- singularization.

-24-

SECTION 19

1 Section 19. Right of Access	1 Section 19. Right of Access
2 Courts	2 Courts
3 Section 19. The right of access	3 Section 19. The right of
4 access shall not be suspended	4 access shall not be sus-
5	5

CURRENT:

NO CHANGE

-25-

SECTION 21

1 Section 22. Access to Courts	1 Section 22. Access to Courts
2 Section 22. All courts shall	2 Section 22. All courts shall
3 be open, and every person shall	3 be open, and every person shall
4 have an adequate remedy by due	4 have an adequate remedy by due
5 process of law and justice, ad-	5 process of law and justice, ad-
6 ministered without denial, par-	6 ministered without denial,
7 tiality, or unreasonable delay	7 partiality, or unreasonable
8 for injury to him in his person,	8 delay for injury to him in his
9 property, reputation, or other	9 person, property, reputation, or
10 rights.	10 other rights.

COMMENT:

(1) Elements, 1, 2 and Manual, Rule 20 -- commas in series.

SECTION 23

1 Section 23. Prohibited Laws	1 Section 23. Prohibited Laws
2 Section 23. No bill of attainder	2 Section 23. No bill of attainder,
3 ex post facto law, or law impairing	3 ex post facto law, or law impairing
4 the obligation of contracts shall	4 the obligation of contracts shall
5 be enacted.	5 be enacted.

COMMENT:

NO CHANGE

-26-

[1177]

SECTION 25 becomes SECTION 24

16	Section 25. Unenumerated	16	Section 24. Unenumerated
19	Rights	19	Rights
20	Section 25. The enumeration	20	Section 24. The enumeration
21	in this constitution of certain	21	in this constitution of certain
22	rights shall not be construed to	22	rights shall not deny or dis-
23	deny or disparage other rights	23	parage other rights retained b
24	retained by the individual citi-	24	the individual citizens of the
25	zens of the state	25	state

COMMENT:

(1) Manual, Rules 5, 13 and Elements, 11, 13 --
omit needless words.

TABLE OF CASES

Page

Aguilar v. Texas, 378 U.S. 108 (1964).....	600
Alabama v. Boykin, <i>see Boykin</i> , this table.	
Alderman v. U.S., 394 U.S. 165 (1968), rehearing denied, 394 U.S. 939 (1968).....	1145, 1146
American Press Co. v. Grosjean, <i>see Grosjean</i> , this table.	
Amphex v. State, <i>see State</i> , this table.	
Argersinger v. Florida, <i>see Argersinger</i> , this table.	
Argersinger v. Hamlin, 407 U.S. 25 (1972).....	513, 514, 516, 663, 874, 875-876, 1145
Arizona v. Miranda, <i>see Miranda</i> , this table.	
Banks v. Food Town, 98 So. 2d 719 (La. App.1st Cir 1957).....	1147
Banks v. State, <i>see State</i> , this table.	
Barksdale v. State, <i>see State</i> , this table.	
Barnette v. West Virginia Board of Education, <i>see West Virginia</i> , this table.	
Becker v. U.S., <i>see U.S.</i> , this table.	
Benton v. Maryland, 395 U.S. 784 (1969).....	1144
Berger v. New York, 388 U.S. 41 (1967).....	1146
Board of Education v. Brown, <i>see Brown</i> , this table.	
Boykin v. Alabama, 395 U.S. 238 (1969).....	635
Boyle v. Stack, <i>see Stack</i> , this table.	
Brandenburg v. Ohio, 395 U.S. 444 (1969).....	1148
Branzburg v. Hayes, 408 U.S. 665 (1972).....	1143
Brown v. Board of Education, 347 U.S. 483 (1954).....	592
Brown v. Kansas, <i>see Brown v. Board of Education</i> , this table.	
Butts v. Curtis Publishing Co., <i>see Curtis</i> , this table.	
California v. Chime!, <i>see Chime!</i> , this table.	
California v. Edwards, <i>see Edwards</i> , this table.	
California v. Hurtado, <i>see Hurtado</i> , this table.	
California v. Stromberg, <i>see Stromberg</i> , this table.	
Carlson v. Landon, 342 U.S. 524 (1952).....	1142
Chicago v. Times Film Corp., <i>see Times Film</i> , this table.	
Chime! v. California, 395 U.S. 752 (1969).....	600
City of New Orleans v. Harrison, 257 La. 923, 244 So. 2d 834 (La. 1971).....	358
City of New Orleans v. Wilde, <i>see Wilde</i> , this table.	
Cortese v. Parham, <i>see Parham</i> , this table.	
Coumas v. Superior Court, 192 P. 2d 449 (Ca. 1948).....	1147
Cox v. Louisiana, 379 U.S. 536 (1965).....	1149
Curtis Publishing Co. v. Butts, 225 F. Supp 916 (N.D. Ga. 1964), aff'd. 351 F. 2d 702 (5th Cir 1965), aff'd. 388 U.S. 130 (1967).....	614
Davis v. Mississippi, 394 U.S. 721 (1969).....	884
DeForte v. Mancusi, <i>see Mancusi</i> , this table.	
Des Moines School District v. Tinker, <i>see Tinker</i> , this table.	
Duncan v. Louisiana, 391 U.S. 145 (1968), rehearing denied, 392 U.S. 947 (1968).....	684, 874, 897, 1145, 1151
Dupree v. State, <i>see State</i> , this table.	
Edwards v. California, 314 U.S. 160 (1941).....	918
Ex Parte Milligan, 4 Wall. 2 (1866).....	888, 889
Ex Parte Young, <i>see Ex Parte Milligan</i> , this table.	
Favre v. Henderson, 348 F. Supp 423 (W.D. La. 1972), rev'd. 472 F.2d 1382 (5th Cir 1973).....	409
Ferguson v. Plessy, <i>see Plessy</i> , this table.	
Fink v. Heyd, <i>see U.S. ex rel. Fink</i> , this table.	

Page

Fiorella v. U.S., <i>see U.S.</i> , this table.	
Fiske v. Kansas, 274 U.S. 380 (1927).....	1148
Florida v. Waller, <i>see Waller</i> , this table.	
Food Town v. Banks, <i>see Banks</i> , this table.	
Forgay v. Larthet, <i>see Larthet</i> , this table.	
Fuentes v. Shevin, 407 U.S. 67 (1972).....	568-569
Furman v. Georgia, 408 U.S. 238 (1972), rehearing denied, 409 U.S. 902 (1972).....	437
Garrison v. Louisiana, 379 U.S. 64 (1964).....	1148
Georgia v. Furman, <i>see Furman</i> , this table.	
Gerstein v. Pugh, <i>see Pugh v. Rainwater</i> , this table.	
Gideon v. Wainwright, 372 U.S. 335 (1963).....	516, 640, 661
Ginsberg v. New York, 390 U.S. 629 (1968), rehearing denied, 391 U.S. 971 (1968).....	1148
Griffin v. Lovell, <i>see Lovell</i> , this table.	
Grosjean v. American Press Co., 297 U.S. 233 (1933).....	1148
Hamlin v. Argersinger, <i>see Argersinger</i> , this table.	
Harrison v. City of New Orleans, <i>see City</i> , this table.	
Hayes v. Branzburg, <i>see Branzburg</i> , this table.	
Henderson v. Favre, <i>see Favre</i> , this table.	
Heyd v. U.S. ex rel. Fink, <i>see U.S.</i> , this table.	
Hinchey v. Hinchey, 203 So. 2d 409 (La. App. 2nd Cir 1967).....	1149
Hirtoto v. California, <i>see Hurtado</i> , this table.	
Hogan v. Malloy, <i>see Malloy</i> , this table.	
Hurtado v. California, 110 U. S. 516 (1884).....	640
In re Oliver, 333 U.S. 257 (1948).....	1144
Iris v. Moose Lodge, <i>see Moose Lodge</i> , this table.	
Johnson v. Louisiana, 406 U.S. 356 (1972).....	685
Jones v. U.S., 362 U.S. 257 (1959).....	1145
Kansas v. Fiske, <i>see Fiske</i> , this table.	
Kemp v. Stanley, 204 La. 110, 15 So. 2d 1 (1943).....	358-359, 1085, 1086, 1102-1103, 1107-1108, 1110-1111, 1192-1195
Kurtzman v. Lemon, <i>see Lemon</i> , this table.	
Lafayette v. McGary, <i>see McGary</i> , this table.	
Landon v. Carlson, <i>see Carlson</i> , this table.	
Larthet v. Forgay, 2 La. Ann. 524 (1847).....	1146
Lemon v. Kurtzman, 403 U.S. 602 (1971), rehearing denied, 404 U.S. 876 (1971).....	627
Louisiana v. Cox, <i>see Cox</i> , this table.	
Louisiana v. Duncan, <i>see Duncan</i> , this table.	
Louisiana v. Favor, <i>see Favre v. Henderson</i> , this table.	
Louisiana v. Garrison, <i>see Garrison</i> , this table.	
Louisiana v. Johnson, <i>see Johnson</i> , this table.	
Lovell v. Griffin, 303 U.S. 444 (1938).....	1148
Mainello v. U.S., <i>see U.S.</i> , this table.	
Malloy v. Hogan, 378 U.S. 1 (1964).....	1144
Mancusi v. DeForte, 392 U.S. 364 (1968).....	1146
Mapp v. Ohio, 367 U.S. 643 (1961).....	600, 601, 604, 865, 892, 915, 1145, 1146, 1154
Maryland v. Benton, <i>see Benton</i> , this table.	
McGary v. Lafayette, 4 La. Ann 440 (1849).....	1146
Metromedia v. Rosenbloom, <i>see Rosenbloom</i> , this table.	
Milligan, <i>see Ex Parte Milligan</i> , this table.	
Minnesota v. Near, <i>see Near</i> , this table.	
Miranda v. Arizona, 384 U.S. 436 (1966).....	410, 850, 875-876, 919

Mississippi v. Davis, <i>see Davis</i> , this table.	
Moore Lodge v. Irvis, 407 U.S. 163 (1972)	713
Murphy v. Waterfront Commission, 378 U.S. 52 (1964) ..	1144
National Broadcasting Co. v. U.S., 319 U.S. 190 (1943) ..	1148
Near v. Minnesota, 283 U.S. 697 (1931)	1148
New York v. Berger, <i>see Berger</i> , this table.	
New York v. Ginsberg, <i>see Ginsberg</i> , this table.	
New York Times Co. v. Sullivan, 376 U.S. 254 (1964) 608, 614, 621, 1148	
New York Times Co. v. U.S., 403 U.S. 713 (1971)	1148
Nix v. U.S., <i>see U.S.</i> , this table.	
O'Grady v. Smith, <i>see Smith</i> , this table.	
Ohio v. Brandenburg, <i>see Brandenburg</i> , this table.	
Ohio v. Mapp, <i>see Mapp</i> , this table.	
Ohio v. Terry, <i>see Terry</i> , this table.	
Oliver, <i>see In re Oliver</i> , this table.	
Olmstead v. U.S., 277 U.S. 438 (1928)	1146
On Lee v. U.S., 343 U.S. 747 (1951)	1146
Parham v. Cortese, 407 U.S. 67 (1972)	568-569
Parker v. Seegers, <i>see Seegers</i> , this table.	
Plessy v. Ferguson, 163 U.S. 537 (1896)	592
Pointer v. Texas, 380 U.S. 400 (1965)	1144
Pugh v. Rainwater, 355 F. Supp. 1286 (S.D. Fla. 1973), aff'd in part, rev'd in part, 483 F.2d, 778 (5th Cir. 1973), aff'd in part, rev'd in part sub nom. <i>Gerstein v. Pugh</i> , 420 U.S. 103 (1975)	664, 716
Rainwater v. Pugh, <i>see Pugh</i> , this table.	
Raymond v. State, <i>see State</i> , this table.	
Reed v. Reed, 404 U.S. 71 (1971)	591
Richardson v. Tilton, <i>see Tilton</i> , this table.	
Roth v. U.S., 354 U.S. 476 (1957)	895, 1148
Rosenbloom v. Metromedia, 403 U.S. 29 (1971)	1148
Saturday Evening Post, <i>see Curtis</i> , this table.	
Seegers v. Parker, 256 La. 1039, 241 So. 2d 213 (1970), cert. denied 403 U.S. 931 (1971)	627, 987
Shevin v. Fuentes, <i>see Fuentes</i> , this table.	
Smith v. O'Grady, 312 U.S. 329 (1941)	1144
Stack v. Boyle, 342 U.S. 1 (1951)	1142
Stanley v. Kemp, <i>see Kemp</i> , this table.	
State v. Amphey, 259 La. 161, 249 So. 2d 560 (1971), cert. denied 405 U.S. 1074 (1972)	662
State v. Banks, 111 La. 22, 35 So. 370 (1904)	1142
State v. Barksdale, 247 La. 198, 170 So. 2d 374 (1964), cert. denied 382 U.S. 921 (1965)	642
State v. Dupree, 256 La. 146, 235 So. 2d 408 (1970)	1142
State v. Johnson, <i>see Johnson</i> , this table.	
State v. Raymond, 258 La. 1, 245 So. 2d 335 (1971), cert. denied 404 U.S. 805 (1971)	1143

Stromberg v. California, 283 U.S. 359 (1931)	1149
Sullivan v. New York Times Co., <i>see New York Times</i> , this table.	
Superior Court v. Coumas, <i>see Coumas</i> , this table.	
Terry v. Ohio, 392 U.S. 1 (1968)	851, 915
Texas v. Aguilar, <i>see Aguilar</i> , this table.	
Texas v. Pointer, <i>see Pointer</i> , this table.	
Texas v. Washington, <i>see Washington</i> , this table.	
Tilton v. Richardson, 403 U.S. 672 (1971), rehearing de- nied, 404 U.S. 874 (1971)	627
Times Film Corp. v. Chicago, 365 U.S. 43 (1961)	1148
Tinker v. Des Moines School Dist., 393 U.S. 503 (1969) ..	1149
Tortorello v. U.S., <i>see U.S.</i> , this table.	
U.S. v. Alderman, <i>see Alderman</i> , this table.	
U.S. v. Becker, 334 F. Supp. 546 (S.D.N.Y. 1971)	1146
U.S. ex rel. Fink v. Heyd, 287 F. Supp. 716 (E.D. La. 1968), aff'd 408 F. 2d 7 (5th Cir 1969), cert. denied 396 U.S. 895 (1969)	1142
U.S. v. Fiorello, 468 F. 2d 688 (2nd Cir 1972), cert. denied 417 U.S. 917 (1974)	1146
U.S. v. Jones, <i>see Jones</i> , this table.	
U.S. v. Mainello, 345 F. Supp. 863 (E.D.N.Y. 1972)	1146
U.S. v. National Broadcasting Co., <i>see National Broadcasting</i> , this table.	
U.S. v. Nix, 465 F. 2d 90 (5th Cir. 1972), cert. denied 409 U.S. 1013 (1973), rehearing denied 409 U.S. 1119 (1973)	1145
U.S. v. New York Times Co., <i>see New York Times</i> , this table.	
U.S. v. Olmstead, <i>see Olmstead</i> , this table.	
U.S. v. On Lee, <i>see On Lee</i> , this table.	
U.S. v. Roth, <i>see Roth</i> , this table.	
U.S. v. Tortorello, 342 F. Supp. 1029 (S.D.N.Y. 1972), aff'd 480 F. 2d 764 (2nd Cir 1973), cert. denied 414 U.S. 866 (1973)	1146
U.S. v. Weeks, <i>see Weeks</i> , this table.	
Wainwright v. Gideon, <i>see Gideon</i> , this table.	
Waller v. Florida, 397 U.S. 387 (1969), rehearing denied 398 U.S. 914 (1970)	1147
Washington v. Texas, 388 U.S. 14 (1967)	1144
Waterfront Commission v. Murphy, <i>see Murphy</i> , this table.	
Weeks v. U.S., 232 U.S. 383 (1914)	1146
West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943)	1149
Wilde v. City of N.O., 12 La. Ann. 15 (1857)	1146

ADDENDA

32nd Days Proceedings—August 17, 1973

may be divided by the police jury, thereof, into not more than six justice of the peace wards. In other words, in St. Tammany Parish, just using that as an example, it seemed like this is going to be a temporary arrangement anyway, till the legislature steps in and does something.

Mr. Dennis Mr. Burns, the last sentence states, that the number of justice of the peace wards in the several parishes shall remain as now fixed until rearranged, or until the office of justice of the peace may be abolished as herein provided. I believe that would take care of any situation where there might be more than six, if that's what you are worried about, sir.

Mr. Burns Now, didn't that mean that when they are rearranged that there shall not be more than six in any one ward? I mean in any one parish?

Mr. Dennis No, sir.

Mr. Burns Well, what does that six mean, that the police jury thereof into not more than six or more than three?

Mr. Dennis That means if there is a new parish created, you could only have six. But if you have more than six now in a parish, you keep six.

Mr. Burns It doesn't apply to existing parishes and the number of wards that now exist?

Mr. Dennis The last sentence does, it says the number justice of peace wards in the several parishes shall remain as now fixed.

Mr. Burns Well, I understand that.

Mr. Hayes Judge Dennis, I imagine you have answered some part of the question I had about this "more than and less than" business. Why you must have at least three justices of the peace, if you must have justices of the peace?

Mr. Dennis Mr. Hayes, this language came out of the '21 Constitution. I don't know why they said you had to have not less than three. All I'm trying to do gentlemen, at the request of some people who were worried about the J.P.'s, is put back in this new constitution the same language that was in the old one, pertaining to justices of the peace.

Mr. Hayes Your committee, then, didn't come up with anything new with reference to the justice of the peace. Are they based on population at all?

Mr. Dennis No, sir.

Mr. Hayes No population?

Mr. Dennis No, I don't believe they are.

Mr. D'Gerolamo Judge Dennis, what does your amendment do to parishes who do not come under the police jury form of government and have justices of the peace and constables?

Mr. Dennis Well, I don't think it would do anything, Mr. D'Gerolamo. Because of the last sentence, which says, the number of justice of peace wards in the several parishes shall remain as now fixed. But the first part there comes straight out of the, in fact, all of this that I'm adding, comes straight out of the '21 Constitution. So if you've got some J.P.'s without having a police jury, under the old constitution, I think you can continue them under the new constitution.

Mr. D'Gerolamo We have a consuetudinary form of government in Jefferson Parish, with six justices of the peace and constables.

Mr. Dennis Yes, sir.

Further Discussion

Mr. Champagne Mr. Chairman, ladies and gentlemen, I am very much opposed to Judge Dennis' amendment for many reasons. The first of which, it is 1921 vintage, this is 1973. The second is, I made a pledge to my people to try to work for a new, modern, shorter constitution. This does nothing in that respect. Further, I only last night, was in a meeting in which justices of the peace were in attendance. I assured them that they would be kept in their position until such time, as the legislature saw fit to change that position. They accepted this, graciously and nicely. They thought it was a good move, they were satisfied. I have been told by some people here, that the legislature will never abolish the J.P. courts and the mayor courts. I ask you if the legislature finds this too political to tackle, why should we risk passage of this constitution by taking on that point. I feel that the committee's proposal, as submitted, is an excellent one. I think it's clear to me. I think it's clear to the people in the parishes. I think that there is not a justice of the peace or mayor who understands exactly that his position is maintained at this time. I'm sure they are all aware of the position they now hold. Now we made provisions that the legislature could provide for parish courts. At the time those courts are provided, I can see that when they do this, these courts will be eliminated. Most of the mayors, including mine, in my district, are not violently opposed to doing away with their courts. What they wonder about, is where will the money they were getting will come from. I feel that the committee proposal is a good one. I am extremely against the amendment. I hope you will join me in defeating the amendment.

Questions

Mr. Chatelain Mr. Champagne, at this meeting you attended last night, was not it in Lafayette Parish?

Mr. Champagne Right.

Mr. Chatelain You and I were at the same meeting, were we not? I will join you in strenuously opposing the amendment.

Further Discussion

Mr. Rayburn Mr. Chairman and fellow delegates, I don't know where Judge Dennis got this amendment, but he must have stayed up late last night. Under the present committee proposal, it states in there, that the existing justice of the peace courts shall remain as they are at the time of the adoption of this constitution. They shall be continued subject to change by the legislature. I think that language is broad enough. Now this amendment says, that you can go back and you can't have over six or you can abolish them all or less than three or abolish them all. So I don't really know what we are trying to do with this amendment that can't be done in the present proposal, where it says, subject to change by the legislature. It does say here, that any parish, the parish of Orleans excepted, as usual, may be divided by the police jury into not more than six, not more than six or not less than three. Or they may abolish them all. So I don't see any need for this amendment, when you've got the broad language you have. You are leaving it subject to change by the legislature in the committee's proposal. You are leaving it subject to change by the police jury in this proposal, with certain restrictions. I just want to say this in closing, I don't know who you people are going to look to to adopt this final product if we ever come up with one. But you keep on at the rate you're going, you're going to have every little old snuff-dipper, every little old tobacco chewer, disgruntled judges, disgruntled teachers, disgruntled other people and by the time you add them all together, this thing is going to be in an awful mess. The legislature, in this provision right here, has the complete control and authority. If they think you need J.P.'s to continue them or if they want to abolish them, abolish them. And I see nothing wrong with that.

Vice Chairman Miller in the Chair

Ms. Zervigon Senator, you made a remark that Orleans was excepted, as usual...

Mr. Rayburn I know you don't have any J.P.'s down there.

Ms. Zervigon Was this amendment requested by anybody in Orleans that you know of?

Mr. Rayburn I don't know who requested the amendment. I see Judge Dennis' name on it, I don't know if that's because it's his proposal or what. I don't know who. I know this, I've talked to some J.P.'s a while back and they are very concerned about what we are going to do with their little old office. I think this is planned here, that it leaves it strictly up to the legislature. This leaves it up to the police jury, so I don't know who they rather be at the whims of the police jury or the legislature. It looks like they are getting a shot in their way it goes here. But, I'm just of the opinion that I think the language is plain here and we should leave it along.

Further Discussion

Mr. Fontenot Madame Chairman, fellow delegates, I rise in opposition to this amendment. We were elected to rewrite a constitution. And like Mr. Champagne said, we promised people we would take out the excess verbiage. Judge Dennis, says he proposed this because it's just like the 1921 Constitution. This is exactly what the people want us to rewrite, the 1921 Constitution, with all its excess verbiage. I think the committee proposal in three lines said exactly what Judge Dennis is saying with his amendment, which is God know how many lines. Therefore, I think we ought to just stick with the committee proposal. It says the same thing, it has the same substance and let's get on with the convention. We don't need all this excess language, every time some thing comes up, people wanted to leave it just like it was. It says the same thing in this section the committee proposed. Let's stick with the committee. And I also move the previous question.

[Motion for the Previous Question rejected: 16-83.]

Further Discussion

Mr. Perez Madame Chairman and delegates, in fairness to Judge Dennis, I would like to explain to you what the present posture of the law is with respect to justices of the peace, so that you will understand what you are voting on. The proposed section provides the justices of the peace courts existing at the time of the adoption of the constitution are continued, subject to change by the legislature. Now the present law, under the present constitution, it is provided that when the local governing authority determines that it wants to change the boundaries of wards, that it may do so. And that there shall be one justice of the peace for each ward in the parish. Now the problem we are getting into is that we will effectively be changing the law so that instead of the local government providing for a justice of the peace for each ward in the parish, it would require that whenever any particular local government wanted to either decrease or increase the number of justices of the peace, they would have to go to the legislature and get an act. Now the amendment suggested by Judge Dennis, is exactly the same provision which is now in the present 1921 Constitution. The question was raised, with respect to the reference to police jury. And whether or not, for instance in the parish of Jefferson, where they have gone to a council form of government, whether it would apply to them. In the parish of Plaquemines, we have a council form of government and we have no provision. I am sure Jefferson has the same in which the new council of Jefferson Parish and Plaquemines succeeded to all the rights, responsibilities, etc. of the police

jury. That particular provision does not, and will not, under the law give any trouble. The other provision, with respect to the number of justices of the peace, the last sentence in the proposed amendment by Judge Dennis, which is exactly what's in the constitution now, would protect those justices of the peace who now hold office. But provide that in the event, in the future that there should be no more than six if changes were made in the justices of the peace offices. So again, if you leave the section as it is, you will substantially be changing the law and require the local government to go to the legislature to get an act passed to change the number of the justices of the peace. Whereas, with the provisions submitted by Judge Dennis, it could be done on a local level by local government. That's the difference between the two.

Further Discussion

Mr. Sandoz Madame Chairman, fellow delegates, I rise in opposition to this amendment and in support of the committee proposal. I think this is a classic example of the difference between 1921 language and 1973 language. We are saying in three lines what this amendment, in a very awkward way, says in twelve lines. For example, we are keeping the parish of Orleans as far as police juries. In the fifty intervening years there are several other parish governments that no longer have police juries. I think the committee proposal which was considered after much deliberation is much superior to the amendment which has been offered here. I urge you to defeat this amendment and, Madame Chairman, I ask for a record vote.

Further Discussion

Mr. Tate Madam Chairperson, fellow delegates, I want just to call your attention--I am wasting your time, but we have that in the present constitution, but when Avozelles Parish wanted to reduce the number of justices, they had to have a constitutional amendment that reads in the constitution, Article VII, Section 46, page 224, it says all that you've said here and then it says, "provided however that the police jury of the parish of Avozelles may reduce the number of justices of the peace for Ward 9 of that parish to one." Now this is a sample of the sort of thing you get into when you get into this kind of detail. Avozelles Parish is a great parish, Miss Perkins and Mr. Roy, and I am sure the people love to have to vote on it. The present constitution, for instance, says the legislature shall have the power to abolish justice of the peace courts. As I view it in the committee's amendment is essentially a reasonable, sound regulation of an institution that is useful in some areas of the state and will probably eventually wither away by the force of time and parish courts and so on. I'm subject to questions. I am against the amendment and for the committee record.

[Previous Question ordered. Record vote ordered. Amendment rejected: 7-100. Motion to reconsider tabled.]

Chairman Henry in the Chair

Personal Privilege

Mr. Dennis Mr. Chairman, fellow delegates, I would like to take one minute to explain what happened on that amendment and apologize to the convention for the confusion. Mr. Perez had asked me to--he pointed out a problem involved that we were changing the law to some extent as he said and I thought I was offering what was going to be a technical amendment to simply clarify that the law was going to be continued. I did not appreciate the complexities I was getting into. I should have allowed Mr. Perez to offer the amendment since he understood it far better than I did. I apologize for getting the convention into that situation.

[Previous Question ordered on the Section.]

Section passed: 10-1. Motion reconsider tabled.]

Reading of the Section

Mr. Poynter Section 20. Preservation of evidence Section 20. Evidence shall be preserved in all trials. The method of preservation shall be provided by law or by rule of the Supreme Court not inconsistent therewith.

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, this will be a new provision in the constitution that is not contained in the constitution at present. The problem that created this section has already been alluded to by Mr. Avant. It is to fill a need in the law for an adequate appeal from courts of limited jurisdiction such as justice of the peace, mayors' courts and city courts. It is to make sure that there will be an adequate record, and primarily this is aimed at criminal cases, but it will apply to civil cases also. Primarily, it is designed to bring justice to a situation where perhaps it may not exist at the present time. Where a defendant is convicted and incarcerated by a J.P. or a city court and no record is made of his testimony or the evidence at the trial at the present time, when he tries to appeal or go up on a writ he has no record to present to the court he appeals to. This section would simply make sure that evidence is recorded in all trials and it would leave to court rule or law the method by which the record, the testimony and evidence would be recorded, transcribed and presented to the higher court. I ask for your favorable adoption of this section.

Questions

Mr. Duval Judge Dennis, did I understand you to say that justices of the peace would have to keep records?

Mr. Dennis Yes sir. This is something that the committee had in mind that could be provided by rule that justices of the peace at least record all testimony on a cassette recorder. At least some record would be made of what happened at the trial. This would not require a court reporter necessarily. But it would require that some type of record be made. Whereas now, you know, no record is made in a J.P. court trial.

Mr. Duval Did you check into the expenses, what this would be?

Mr. Dennis No sir. That is why we left the matter flexible in the hands of the Supreme Court and the legislature to work out reasonable rules. We realize we are dealing with courts that don't have a lot of money to operate. Let me also deal with a previous thing called justice and we feel that that must be served by a record of some sort being made of what went on at the trial because a man or a lady could be incarcerated for a substantial period of time as a result of one of these trials.

Mr. Duval Do you really feel this is necessary in the constitution? Couldn't it be handled by a statute? Do you think it is necessary to be in the constitution?

Mr. Dennis The committee felt it was necessary and adopted the section because the committee felt very strongly that something should be done about the hiatus in our law where no record is required to be made of what goes on in a small court trial like this.

Mrs. Warren Judge Dennis, I'm trying to find out if there are any trials where the justice of the peace now, where there are no records made?

Mr. Dennis It is my information, and it may be faulty, that the justices of the peace customarily

do not make records of their trials. That no record is made.

Mrs. Warren Why?

Mr. Dennis Well, under the present law it provides for a trial de novo from the J.P. court. That is you have a trial in the J.P. court and if you don't like what happened then you ask for a new trial in the district court, all over again, where testimony is introduced again. But this would say that the J.P. has got to record what goes on in his court so that on appeal they would know what went on the first time. It wouldn't be tried over, see.

Mrs. Warren I think that's a good amendment.

Mr. Jack Judge Dennis, I need to be brought up to date. Does the justice of the peace now have any criminal jurisdiction? I know at one time they did not. They were a committing magistrate but they never did hear those things.

Mr. Dennis It is a committing magistrate at the present time.

Mr. Jack All right now, you mean then we are going to make them—I never heard of them committing anybody or hearing a committing but the only thing I know they have jurisdiction of those cases under a hundred dollars, civil ones. Are they going to have to make some method of that and who is going to pay for all of this? That's what I want to know.

Mr. Dennis Well, the method for preservation shall be provided by law or by rule of court not inconsistent therewith. That means that the legislature can decide who will pay for this. Or that the Supreme Court could make a rule not inconsistent with law.

Mr. Jack Judge, isn't this a thing that the legislature is very well capable of dealing with instead of putting it in the constitution?

Mr. Dennis Well sir, the legislature is capable of dealing with a lot of things that we are putting in the constitution. But we are putting them in the constitution—I believe the committee recommended that this be put in the constitution because they felt that it was extremely important that it be done.

Mr. Kelly Judge Dennis, this provision is not necessarily directed at justices of the peace courts though. This is to be made applicable to district courts. Is that correct?

Mr. Dennis This is to be made applicable to all courts.

Mr. Kelly That is correct. Would you not agree that there are some cases right now, even in district courts, where a complete record is not retained for the people before that court?

Mr. Dennis That is correct, Mr. Kelly. I may not have selected the best example in my earlier illustration. This would apply to all courts and it would require that they preserve the evidence introduced in all trials.

Mr. Stinson Judge Dennis, preserve means to keep it from now on, doesn't it?

Mr. Dennis Yes sir.

Mr. Stinson Well, suppose a man is charged with carrying a concealed weapon and he had an expensive pistol or gun and he is cleared, the court could still keep that and wouldn't have to return it to him?

Mr. Dennis Well, I think—let me qualify what I said. You said preserve from now on. I don't think it necessarily means to preserve forever. I think

32nd Days Proceedings—August 17, 1976

the intention is clear that it is to be preserved in case of an appeal so I think that after an appeal is over I don't know that this would apply.

Mr. Stinson But it doesn't say that and preserve usually means from now on doesn't it?

Mr. Dennis I think logic demands that interpretation of it.

Further Discussion

Mr. Avant Mr. Chairman, fellow delegates to the convention, this is a most important section of this article. Under the law now, if you are convicted and the court is not a court of record you have the right to a trial de novo. You don't necessarily have that right under this article as it is now drawn. The only absolute right of appeal that you have in a criminal case, under this article as it is now drawn, is if you are sentenced to more than six months in jail or if you are fined more than five hundred dollars. Otherwise, under this article as it is now drawn, you have only the right to ask an appellate court to review it under a discretionary writ which they may or may not grant. Now as I explained to you when I was up here before, it was my position in the committee and I did everything I can to have it adopted, that we adopt a provision that said that nobody, nobody can be fined or imprisoned or subjected to any forfeiture without a complete record of all of the evidence upon which that judgment is based and the right to appeal based upon such a record. We fought that thing and I couldn't prevail in the committee and what we finally wound up with is what you have before you. That is that the legislature may provide for certain appellate jurisdiction in the district court which, coupled with this provision requiring the preservation of evidence in all trials, would leave it up to the legislature to provide whether or not you would have a trial de novo in those cases or whether or not you would have a full and complete record on which you could base an appeal or base an application for a writ of review. Now this writ of review business, if that is what the legislature ultimately decides that they are going to do, is not worth a thing if you don't have a record. An appeal is not worth a thing if you don't have a record. If you are tried and convicted and the evidence is not preserved, you can have all kinds of rights of appeal and all kind of rights to ask for a review but review what? There is nothing to review. It is a rule of law which all lawyers know that the judgment of the lower court is presumed to be correct. The burden is on the party who is appealing to point to something and say this is in error or this is the wrong, this is why I am entitled to relief. If you don't have a record, you don't have a right. You have only a hollow worthless remedy. I implore you, do not delete this provision from this section because if you do, and bear this in mind, if you do then it is possible for a man to be imprisoned for up to six months, five months and twenty-eight days, to be fined, to have his driver's license taken away from even though he may deserve every day for a living, and he has absolutely no right except the hollow remedy to ask the court to look at it in their discretion based upon no record. What they are going to look at I don't know. So I submit to you that this is a most vital part of this entire article and that if you delete it then you are seriously jeopardizing the right of every person in this state.

Questions

Mr. Hayes Mr. Avant, I don't know if I really understand this. In Section 20, has to do with preserving records in all courts, right? Is that correct?

Mr. Avant That's correct.

Mr. Hayes Whenever you have a trial, regardless to the court, you will have a record. All right now, what does that have to do with a trial de novo?

Mr. Avant Well, it is has this to do with the trial de novo. The legislature could provide if ---this doesn't say that there will be a complete transcript, it says that the evidence will be preserved, whatever that means. The legislature could provide if in these cases from justice of the peace courts or from mayors' courts or city courts where they don't have a court reporter and a complete shorthand transcript and all of that, if the preservation of evidence is inadequate under this provision, which was the best that I could get out of the committee, then they could provide for a trial de novo and hopefully they would. But if you take this out then you've got nothing.

Further Discussion

Mr. Newton Mr. Chairman, fellow delegates, I rise in opposition to this section. I don't have too much of a problem with it if I said, "Evidence shall be preserved in all criminal trials," but it doesn't say that. It says, "all trials." Now let me tell you city fellows something. Out in the country we try some small law suits. You are talking about fifty or one hundred dollars. The guy wants to have his day in court and he wants the judge to decide the case. You go in that courtroom and they are going to transcribe the testimony and you've got to put down a twenty dollar deposit, a twenty-five dollar deposit, a thirty dollar deposit, and you may not want that testimony transcribed. You may want to go ahead and put your evidence on, have your case heard, let the judge decide it, shake hands and go home. Under this section as we've got it here, I couldn't even waive the transcript if I wanted to. I submit in answer to some of Mr. Avant's appeal. I think that if there were no records and there were no provisions for a trial de novo that any statute with such provisions would be unconstitutional, a deprivation of due process of law and I urge the defeat of the section. Thank you.

Questions

Mr. Lanier Mr. Newton, are you aware that in the parish that I come from we have a lot of French speaking justices of the peace and a lot of French speaking people? Don't you think that the problem that you've just described would be compounded by the fact that very often we'll have the proceedings in French?

Mr. Newton I certainly do agree with you.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Anzalone]. On page 6, delete lines 1 through 26 inclusive in their entirety and insert in lieu thereof the following: "Section 20. Evidence and its method of preservation shall be provided by law."

Explanation

Mr. Anzalone Ladies and gentlemen of the convention, the committee proposal makes it mandatory that you have a transcript of all evidence in all trials regardless of which court you are attempting to try your case in this state. It is the case of those who are used to the justice of the peace courts and realize that these people deal strictly in minor, minor matters. If there is an appeal lodged against the justice of the peace decision, the case is tried de novo. There are not that many. What you are doing here by establishing a rule that you have testimony transcribed in every case is that you are now making the justice of the peace hire additional personnel which is absolutely and totally useless. The legislature, in its infinite wisdom, can provide if it sees fit along with its jurisdiction over the justice of the peace courts, methods, requirements or anything else that they want to put on it. What you are telling the legislature here in effect is that you either come up with the money to further fund the justice of the peace courts or we are going

clerk taking over the duties of that office rather than someone appointed by the police jury who might have no experience in running that clerk's office?

Mr. Perez Well, I can answer the question this way. No, I do not agree with you. I think in all probability if that chief clerk has been a good person and one who deserves to be appointed, I believe the local government would probably appoint him anyhow. But we do have the possibility that that person may not be properly qualified as clerk, although he might have made a very good first assistant clerk. But there's a great deal of difference between being an employed assistant of some kind and having the judgment to be the chief of an office.

Mr. Stinson The last provision says "by election as proposed by this constitution". In the constitution, it says "election as provided by law." Don't you think they conflict and maybe there should be...

Mr. Perez No, there is no conflict, Mr. Stinson. The reason for this is that in our local Government Article we have a provision for calling of special elections in the event of a vacancy, and we very advisedly put that provision in to say "by this constitution" to make it in line with our local government provision.

Mr. Hernandez Mr. Perez, I notice that you did not mention the assessor. If you have already explained why you didn't mention the assessor, I extend my apologies. If not....

Mr. Perez No sir, I did not. The only reason is we dealt only with those offices which are included within this article.

Further Discussion

Mr. Burson Mr. Acting Chairman, fellow delegates, if we accept either the committee proposal or the amendment which has been offered by most of the members of the Local Government Committee, it will be a change from the status quo, because under Article VII, Section 69 of the present constitution, the governor made appointments in the offices of district attorney, clerk of court, coroner or sheriff, if and when a vacancy occurred. So it seems to me that you simply got to decide whether you think it is better in foregoing the system where the governor used to make the appointment, to depend upon the fortuitous circumstance of having a capable assistant at a given time in the office or injecting into this question, some judgment on the point of locally elected officials. Now I submit to you that in response to an argument that has been raised earlier, that we wanted an experienced man to fill this position, that under the committee proposal there would be nothing to keep a sheriff or a clerk who is going out of office from appointing a new chief assistant the day before he goes out of office, who might never even have served in the office. But under this provision, he would be, would have to be, the successor to the office. Now if you can't imagine circumstances, I can imagine a few from my experience in local politics, where the sheriff or the clerk might find that the most capable chief assistant that he should appoint the week before he goes out of office would be his son, or his brother, or his brother-in-law. Now is this the kind of succession that you want to provide for these very important local offices? I don't think so. I think it's a good stopgap. I think it's a good check to have the local governmental authority that's thoroughly familiar with the characters and the abilities of the people who will be considered to fill the vacancy to make that kind of a decision. Now we've heard a lot of talk here, most of which I have gone along with, about how we ought to have confidence in the legislature, who are the elected representatives of the people. I submit to you we ought to

have confidence in the police juries or the parish commission councils or other forms of parish government who are also the direct elected representatives of the people to make a decision of this nature. We should not rely on the whim, possibly, of a man who is going out of office, perhaps under a cloud, perhaps not. But just as Mr. Perez has pointed out, I think if most of you will reflect on your own experience in local government, you will undoubtedly be able to think of at least one or two instances where a man might be a dandy chief deputy, might be an outstanding chief deputy clerk, but would not be the man that you would want to run the office. So I urge you very strongly to adopt favorably the amendment as proposed.

Questions

Mr. Anzalone How come we're going to not allow the sheriffs, the clerks and the coroners to have their whims, but we're going to let the D.A.s have their whims?

Mr. Burson Mr. Anzalone, I would be for the same provision for the D.A. if there is any way how we could figure out where you had two parishes, which one would govern in the charter. And that was the reason why we left that alone.

Mr. Nunez Mr. Burson, would you envision that if we adopted the committee proposal as such, that you would have a lot... especially in the fact that... and the question will come in a minute, that this takes place: if a man wants to resign, it means that automatically his chief deputy or criminal deputy or clerk or what have you, don't you envision the fact where the dynasties can be perpetrated on the public by putting his son or his brother or his father or his mother, whoever he wanted to succeed him, in that office, and then resigning?

Mr. Burson I don't think there's any question about that. I think if a man has been in office for twenty years and he thought he had a son who was a real fine... would make a real fine sheriff, that it would be very easy for him to resign and to leave his son to take the position, or his brother-in-law or anybody else, and in effect name his successor or give him a tremendous advantage at the next election.

Mr. Kean Mr. Burson, as I understand this amendment, it would provide that this filling of the vacancy would only last until the vacancy is then filled by an election, as provided by this constitution. It is my understanding that that refers back to the provision in the local government article which will require an election to be held within a relatively short period of time.

Mr. Burson Yes, sir, that's correct. Within less than a year.

Further Discussion

Mr. A. Landry Ladies and gentlemen of the convention. I rise in opposition to this amendment. Even though I think I enjoy wonderful relations with my police jury I just feel that as this proposal of the committee is drawn up, if you read the first line "when a vacancy occurs in the following offices, the duties of the office, until it is filled by election as provided by law," which means that the legislature can provide that the election will be held within six months if it so desires. Now this reason that this change has been made, I believe, is for good government. This will... if this proposal of the committee is adopted, it will force the public officials to appoint a man or a woman as their chief deputy who has the capabilities to be able to carry on the work of the office if something would happen to the public officials.

In the case of the clerk of court, continuity in office, or continuity in government I should

say, is terrifically important, because remember that the clerk can sign special orders, can render judgment, and immediately upon the death of that clerk, automatically his chief deputy would take over and would insure continuity in office. It may take two weeks before the police jury meets in order to be able to appoint an individual. And when they do, they may appoint a politician, not necessarily a public servant.

And I'm asking you today to please defeat this amendment and go along with the method of succession that the judiciary committee has come up with.

Questions

Mrs. Zervigon Mr. Landry, I'd like a point of Clarification, please.

Earlier in this constitution when we've had the first assistant to the official take over his job on his death or indictment or whatever, this has been the first assistant that's been confirmed by some other body and not just selected out of hand by him. Isn't that correct?

Mr. A. Landry That is correct, but it's not necessary that we have to live in the past. Let's look toward the future.

Mrs. Zervigon Well, I'm talking about the past two weeks.

Mr. A. Landry Mary, what has happened in the past may not have been good either, and we are looking at this point that, for instance, I am going to make sure that if this constitution passes....

Mrs. Zervigon I'm not talking about the past history of the state, Mr. Landry. I'm talking about the past articles that we've confirmed. Isn't it so that the first assistants that take over that are specified in the executive department are confirmed by the Senate and in our discussions, we said that one of the questions that ought to come up before the senate is: is this person fit to succeed to the office?

Mr. A. Landry That's correct, but let me explain to you something else that you may not know, that the police jury has no authority to tell me who to hire in my office, either.

Mrs. Zervigon No, I understand that, Mr. Landry.

Mr. A. Landry And I think this. I think that if you had a chief deputy who would succeed as I mentioned before, you would have continuity in the office, continuity of government, because the clerk's office is quite different than some of the other offices that you speak about.

This office has to continue. It has to have someone. For instance, only my chief deputy has the right, when I leave the office, to sign judgments and other papers involving the court. And, therefore, if my chief deputy is not available, I have to designate someone to act in my place if I leave the office.

Mrs. Zervigon Thank you.

Mr. Kelly Mr. Landry, do you not agree that this amendment would simply set up a process of whereby you'd have a miniature election when a vacancy occurred with that election being run by the local politicians?

Mr. Roy Thank you, Mr. Landry, you've exceeded your time.

[Previous Question ordered. Amendment rejected: 36-74. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendments are sent up by Delegates Arias, Nunez, D'Gerolamo, Toca and others.

Amendment No. 1, on page 12, line 27 after the word "deputy" delete the semi-colon and add the following:

"Except in the parish of Jefferson, the parish assessor shall assume all duties of the sheriff whenever the sheriff is out of the parish."

Mr. Roy Take Mr. D'Gerolamo's name off of that amendment.

[Amendment withdrawn. Previous question ordered on the Section. Section passed: 109-3. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter Section 34, Reduction of Salaries and Benefits Prohibited.
Section 34. No attorney general, district attorney, sheriff, or clerk of district court shall have his salary or retirement benefits diminished during his term of office.

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, this is a standard phrase or standard provision that is usually adopted to protect public officials during their term of office. It simply provides that none of those listed shall have their salary or retirement benefits diminished during their term of office.

Questions

Mr. Anzalone Judge Dennis, how does this differ from the retirement system that we have set up for the judges, if there is any difference?

Mr. Dennis Well, there was a provision in the committee proposal to give this protection to judges. However, that was deleted and, as of this time, the judges do not have this protection.

Mr. Anzalone Then you would say that these are greater benefits than we have given to the judges?

Mr. Dennis No, it was the committee's intention to provide this in Section 23, I believe, for judges, but that was one of the sections that was deleted with the amendments that were adopted. I don't know whether it was intentional. I think it may have been an oversight.

Amendment

Mr. Poynter The following amendment sent up by Delegate Conino:

Amendment No. 1, page 13, line 4, immediately after "general" delete the remainder of the line and insert in lieu thereof the following:
"Judge, district attorney, sheriff, coroner."

Explanation

Mr. Conino Mr. Acting Chairman, ladies and gentlemen of the delegation, if you will look at Section 34 to read as follows now: "no attorney general, judge, district attorney, sheriff, coroner or clerk of court shall have his salary or retirement benefits diminished during his term of office."

What we are doing in this amendment is putting in the coroner. The coroner has been declared a constitutional officer and we've omitted the judges. As far as the future judges are concerned, in the Jack amendment, as you remember, we stated that the legislature shall within two years after the effective date of the constitution propose a retirement plan for the judges. This retirement plan, when it would go into effect, would be for the judges in office at the time of the adoption of the constitution, so there is no provision for the incoming judges.

The amendment would make the judges and the coroner have the same status as the other constitutional officers which are listed: the attorney

45th Days Proceedings—September 12, 1973

Mr. Henry No, sir. The amendment, in the Chair's opinion, is not germane, Mr. Keane.

[Previous Question ordered on the Section.
Section passed: 67-0. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter "Section 22. Access to Court.

"Section 22. All courts shall be open and every person shall have an adequate remedy by due process of law and justice administered without denial, partiality, or unreasonable delay for actual or threatened injury to him and his person, property, reputation, or other rights. Neither the state, its political subdivisions, nor any private person shall be immune from suit and liability."

Explanation

Mr. Guarisco Let me say first off that the last sentence dealing with "neither the state, its political subdivisions, nor any private person shall be immune from suit or liability" is, as you may recognize, the sovereign immunity issue again. Since we've taken care of that in a previous section, the committee has no objection to reading the last sentence that is taken care of earlier by the convention. So we'll deal... I'll deal strictly with the first part of the article... the section. I don't think there's any particular controversy in this part of the section, and we made one basic change or two basic changes in there. The old constitution reads, "All courts shall be open, and every person for injury done him in his rights, lands, goods, person, or reputation shall have adequate remedy by due process without denial, partiality, or unreasonable delay." The only difference is that we added in the words "unreasonable delay for actual or threatened injury," and I think that will correct a hiatus in the law in that in the old constitution the injury according to the language had to be already done before a person possibly could bring an action to... for redress. So taking into consideration the... an injunction, injunctive relief, whereas you might want to stop a person from doing injury to you that may be threatening to you, then you have a right to bring that action... that is threatened. You can do it under the present law, but we thought we would temper this clause by including it and constitutionalizing "threatened injury" and having the right to redress for threatened injury. I'll yield to any questions.

Questions

Miss Wisham Mr. Guarisco, would you elaborate a little more about "adequate remedy" for me, please? What does "adequate remedy" mean as related to this statement?

Mr. Guarisco Well, whatever the remedy may be necessary for the particular action. An adequate remedy for personal injury might be a money compensation. Adequate remedy for someone expropriating somebody's property would be possibly to stop those persons from taking your property. It would depend on the nature of the cause of action whatever it may be, and then the judicial function would then take over and make that determination.

Miss Wisham Good, thank you.

Mr. Casey Mr. Guarisco, on line 29, the beginning phrase, "All courts shall be open," does that specifically then rule out the possibility of closed hearings in juvenile matters?

Mr. Guarisco No. The present constitution has "all courts" now, and we are repeating that part of it, and that still doesn't preclude the legislature from having special acts for juvenile hearings. I don't think that would make any change

in our law because the language isn't changed and the interpretation has been that juvenile proceedings are secret.

Mr. Casey And this is the exact wording of today's constitution?

Mr. Guarisco Mr. Casey, I'll just read it to you to allay your fears: "Section 6. Open Courts." In the old constitution, "All courts shall be open and every person"; it starts with that language. No change.

Mr. Hayes Could you tell me what you mean by "unreasonable delay" in terms of months or years, or something of this nature?

Mr. Guarisco Again, you are talking about a judicial determination—what's unreasonable and what's reasonable. I don't think we can put definite time schedules down and when a case shall be heard and so forth.

Mr. Hayes I know you couldn't put down, but is there an absolute limit you say you could place on what is unreasonable? Would you say three years, two years?

Mr. Guarisco I don't think we can do that in the constitution. No, Mr. Hayes, no way. I might also add to Mr. Casey's question about the courts being open; this is not literally open insofar as opening the door to the physical courtroom. It's open to the litigants figuratively or access to the courts. It doesn't have anything to do with the walls, or the doors to the physical courtroom.

Mr. Duval Mr. Guarisco, the word "threatened" is a change in the law, is it not?

Mr. Guarisco It's a change in the constitution, but I don't think it's a change in the law. I think you still have redress for threatened injury via injunctive relief.

Mr. Duval Let me ask you this. Is it the committee's intention to create new causes of action by inserting the word "threatened" in the constitution?

Mr. Guarisco Absolutely not.

Mr. Duval Do you think it possible that through judicial interpretation new causes of action could be created by use of this word?

Mr. Guarisco I don't think so, but I think it should be left to judicial interpretation.

Mr. Perez I'm very much concerned about the end of the sentence on line 1 of page 7, "or other rights," and particularly when you talk about "threatened injury to other rights." Could you explain to me what that means? What rights are we talking about?

Mr. Guarisco Well, Mr. Perez, we didn't intend for this list to be exclusive... illustrative, and we felt that if there are any other rights that a person may properly bring before the court, then he would have a remedy or a right to bring it.

Mr. Perez Wouldn't that mean then that every person under any claim that he would make would have a cause of action in the courts, no matter what his alleged cause of action would be because when you say "or other rights," there is no limitation?

Mr. Guarisco I think there is a limitation in the fact that the court could still properly entertain an exception of no right of action; that person may not have a right to bring the suit.

Mr. Perez I was addressing myself to cause, sir, not right of action, and I don't believe you've answered the question with respect to cause of

action.

Amendment

Mr. Poynter Delegate Conroy sends up the following amendment:

Amendment No. 1, on page 7, line 1, after the word "rights" delete the remainder of the line and delete lines two and three, both inclusive in their entirety.

Explanation

Mr. Weiss The second sentence of this section again raises the question of sovereign immunity. You may recall that this convention spent the better part of two days back in July arguing about sovereign immunity. Ultimately, after many, many different kinds of amendments were presented, Section 14 of the legislative powers section was finally adopted dealing with this question, as this convention ultimately determined it should be dealt with by a vote of 80 to 26. I disagreed with the conclusion which this convention reached at that time, and voted against the final amendment which Mr. Kelly had proposed, that set out what would be included in the constitution, but I think it inappropriate to fight that battle again after we spent so much time on it, and I think that the section should be deleted and left to be handled under the Section 14 of the Legislative Powers Article as we have already done. I move the adoption of the amendment.

Further Discussion

Mr. De Blieux Mr. Chairman and ladies and gentlemen of the convention, if what Mr. Conroy said is true that we've already passed this particular section and he doesn't want to raise it again, I don't see why he proposed this amendment. The Style and Drafting can decide whether or not they want this particular provision here or the one that's working in the judicial section where we adopted it. I would object to the amendment and just say, "Vote it down and let's go along to something else."

[Previous question ordered.]

Closing

Mr. Conroy Just very briefly, the committee itself has concurred as presented in the oral presentation of this with the deletion of this sentence because it is consistent with the prior sentence, and as a member of the Committee on Style and Drafting I urge you not to dump things like that into this Committee on Style and Drafting. Let's settle them here on the floor, take it out, and let it be resolved as it was earlier. Thank you.

Questions

Mr. Avant Mr. Conroy, is it not a fact that this sentence that you are deleting goes beyond the question of immunity of state and political subdivisions and deals with the immunity of private persons?

Mr. Conroy Not in my judgment it doesn't because to the extent that it refers to private persons, there are occasions in which a private person is able to cloak himself with sovereign immunity, and I think the whole question was debated at great length as to the problems that exist on some degrees of personal immunity that do invoke the sovereign immunity concept. That's what led to the ultimate wording of the amendment that was ultimately adopted under the Legislative Powers Article, to my appreciation.

Mr. Avant There are personal immunities other than sovereign immunity, and if you delete this sentence, the legislature can extend immunity to classes of persons not on any doctrine of sovereign immunity. Is that not true, sir?

Mr. Conroy Well, I don't. . . not in any fashion that I would regard as dangerous. Certainly the legislature could, but you'd still have your equal protections clause, your due process clause, all the other clauses which protect individuals in their rights and the preservation of their rights, so I don't think that here it's pertinent. I would have assumed and do still assume that the insertion of it here coupled with "state and its political subdivisions" was intended to inject the issue in connection with the sovereign immunity issue.

Mr. Weiss Delegate Conroy, don't you think this is germane to the access to the courts in that it simply defines who may go to the courts, and therefore, the committee put it in for that reason? Don't you think that's good enough reason?

Mr. Conroy I don't follow you.

Mr. Weiss In other words, who may go to the courts for what issue? If you have. . .

Mr. Conroy That's in the first sentence.

Mr. Weiss And that's right, and it further defines it in that it may be because of political, or because of a political subdivision you may appear before the courts, and they are not immune.

Mr. Conroy But we already covered the extent to which they are or are not immune, Dr. Weiss, under the Legislative Powers Article. As I said before, after quite lengthy debate we dealt with that question there and determined exactly to what extent they should be liable.

Mr. Lanier Mr. Conroy, doesn't this sentence here go substantially further than the convention did under the Legislative Section? In fact didn't, in the Legislative Section, didn't we say that the state was not immune for contract in tort, but for all other matters the immunity had to be waived by the legislature?

Mr. Conroy That's correct. The two provisions are inconsistent as they presently are worded. In other words if we wanted to leave this sentence in, at least it would have to be subject to consideration of amendments which would bring it in line with what was done before, or we'd have to debate as to whether we wanted to stick with what we had done before and so forth. As I pointed out in my argument, I didn't agree with the conclusion that was reached then, and I still don't agree with it, but I think that the convention has spoken and we ought to delete this sentence and go by what we did before.

Mr. Lanier And if there are substantive inconsistencies, Style and Drafting cannot rectify substantive inconsistencies.

Mr. Conroy They could not rectify them. All they could do is point out back to the convention that there were inconsistencies for the convention to resolve because Style and Drafting could not and should not attempt to resolve substantial differences between sections.

[Amendment adopted: 78-17.
Motion to reconsider tabled.]

Amendment

Mr. Poynter The amendment is sent up by Delegate Arnette.

Amendment No. 1, page 6, line 32, after the word "for" and before the word "injury" delete the words "actual or threatened".

Explanation

Mr. Arnette This is a very simple amendment, and the main thing it does is bring the constitution that we're proposing in present line with the

present constitution. I don't know whether the committee intended to create any new causes of action, but I'm afraid that this language might. I don't know that it will, necessarily. It has been universally held throughout the jurisprudence of the United States, that when you say "injury," if it's a threatened immediate injury to someone's rights, it may chill their rights or something like this, you do have redress in the court. This is the definition of "injury" so I don't think we need to put this "threatened injury" in there and possibly create several more causes of action. If it was intended not to create other causes of action as Mr. Guarisco has stated, then definitely I think we ought to leave it out. It is excess verbiage if it does not create anything new. I'll yield to any questions.

Questions

Mr. Roy Mr. Arnette, if a person were going to be liable and had been being liable for the last several weeks, don't you realize that by putting "threatened injury" in here that one could seek redress before the final libel occurred or the final slander that involved maybe his family, and that's the reason we put it in here, and it would be left up to the court to determine whether it was serious enough to allow him in court at that time?

Mr. Arnette Mr. Roy, I'd just like to point out to you under the present law which just states "for injury" he may do that right now.

Mr. Roy That's not so because in the present law sometimes you get met with a prematurity exception, don't you?

Mr. Arnette That's a possibility, yes. I don't want to bring a suit if it is premature. That's the whole point of me taking out "threatened injury."

Mr. Roy No, but you understand the court tells you when you go to file the lawsuit because you know that somebody's going to libel and slander you, and he's got it at the newspaper office to do it, and you want to have a hearing on it, the court can say, "your suit is premature because you have not yet been injured, and the threatened injury is not enough."

Mr. Arnette It depends on what type of threatened injury it is, Mr. Roy. You know that as well as I do. If the threatened injury is immediate, if it chills your rights, if it hurts your person, if it hurts your property rights, then definitely it is an injury that a person can get redress for in the courts. The only thing that worries me is the point that you just brought up--that it would open up excess, new litigation, and that's the thing I object to. I think a person's rights as they presently are are quite adequate to protect him.

Mr. Roy Don't you think that the Declaratory Judgment Act is in essence something of this nature also?

Mr. Arnette The Declaratory Judgment Act is under the present law which states "for injury," so I don't think we need to change the constitution and take the chance on opening it up to excess litigation. When a person would not have standing now, I don't think he ought to have standing in the future. I think if we put "threatened" in there then we're going to cause problems; we're going to cause excess litigation, and I don't think we want to have additional causes of action for people. I think what we want to do is let the people have the rights and causes of action that they have at present, and this is what my amendment does. It just brings it in line with the present constitution.

Mr. Roy Well, if "threaten" doesn't mean anything, or it means exactly what you said with respect to

the old constitution, why are you afraid of putting it in here?

Mr. Arnette Because if you put "threatened" in there, it doesn't necessarily mean immediate threatened injury that would chill a person's rights, or cause damage to his property rights or things of this nature, and I think if we put "threatened" in here, we're making a great mistake, Mr. Roy, because "threatened" opens it up for many, many additional new causes of action that a person would not have standing to sue for in court at the present time.

Mr. Willis Mr. Arnette, I own the view, and I trust you do too, that simplicity is the closest thing to perfection.

Mr. Arnette I think simplicity and clarity is the best thing, yes.

Mr. Willis Now, we have rid ourselves of the last sentence, and I ask you to look at the first sentence, and read it with me, and I'll put a question mark to that later. "All courts shall be open and every person shall have adequate remedy by due process of law and justice." Now, I ask you, if a period were to be put there, how can you have adequate remedy by due process of law and justice without it being administered and so forth. Don't you think that that is words, words, words?

Mr. Arnette Well, that's a possibility, Mr. Willis. I just saw one particular snake in here, and I'd definitely like to kill it right now. If there are other things in here that you don't agree with, I might be inclined to go along with you.

Vice Chairman Casey in the Chair

Mr. Goldman Mr. Arnette, I've been listening to this legal discussion about stopping somebody from publishing something or something like that because it might be injurious to them. It seems to me like that would be prior restraint. You mean if I was going to run an editorial against some action or against some person whom we thought was doing something wrong, we always send these editorials out to them ahead of time and give them a chance to reply. Could they go to court and stop me from running that editorial? That's definitely prior restraint.

Mr. Arnette I think you might have a valid point there, Mr. Goldman.

[Previous question ordered. Amendment adopted: 9-1-74. Motion to reconsider denied.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Avant], on page 7, line 3, (of course, now it really followed the word "rights" on line) at the end of the line add the following: "no person shall be immune from suit and liability except as otherwise provided by law."

Explanation

Mr. Avant I don't care to explain that amendment; that's not the amendment I asked be prepared. The amendment was, "No private persons shall be immune from suit and liability except as otherwise provided in this constitution."

Mr. Casey Mr. Avant, you withdraw your amendment for correction, is that correct?

Mr. Poynter Do it one more time for me, Mr. Avant. "No private person"--right?

Mr. Avant "No private person shall be immune from suit and liability, except as otherwise provided in this constitution." The purpose of this amendment is rather simple. It is to prohibit the

legislature from passing laws which will give immunity to private individuals of various and sundry classes to be selected by the legislature of immunity for their acts. For example, just recently I had an experience along with several thousand other people in my area where a utility company, in spraying its power lines with a hybridize, damaged to a great extent the property of everybody over about a fifteen mile stretch. Now the legislature could very well decide, in its wisdom, that that's the kind of conduct that they should be protecting. You couldn't do anything about that if that happened to you. I can think of other examples where statutes have been passed in other states extending immunity to various categories of persons from being liable for damages as a result of their conduct in certain particular areas. I do not think that is sound. I think that all citizens should stand on an equal footing, insofar as the responsibility for the consequences of their acts are concerned. This will simply nip that in the bud in advance.

Questions

Mr. Tobias Mr. Avant, what is a private person? Do you not mean individual?

Mr. Avant A private person is an individual, a corporation other than a public corporation.

Mr. Perez Is there any companion measure in the present constitution similar to the one that you've offered, Mr. Avant?

Mr. Avant I don't believe, Mr. Perez.

Mr. Perez One thing that bothers me very much is you say, "No private person shall be immune from suit." What about a child, a minor? What about a husband and wife relationship? All these various provisions we have in the Civil Code and otherwise.... All of these various situations we have where it prohibits suit in those situations - I'm very much concerned about that.

Mr. Avant Mr. Perez, as you probably know, a minor now is not immune from being sued. He just has to be sued through his tutor, who is the person who represents him in court. But if a minor injures you and he has property, you can sue that minor through his tutor. You can recoup your judgment out of that minor's property. The same is true with respect to the other categories you mentioned.

Mr. Perez Can a minor sue at the present time or only through his guardian?

Mr. Avant A minor is sued and he does sue through his legal representative.

Mr. Perez Can a minor sue his father or his parents?

Mr. Avant Under certain circumstances, yes, and under certain circumstances, no.

Mr. Perez But, this would be an absolute right with regard to the suit by the father against a child, child against a father, husband against a wife and so forth which we have many limitations on now in our Civil Code. Isn't that correct?

Mr. Avant This has to do with an immunity, an absolute immunity, Mr. Perez.

Mr. Velazquez Mr. Avant, wouldn't this preclude situations where in some states if a doctor comes upon the scene of an accident, he is required to administer, to give assistance, and in some states when he renders emergency assistance, he is given immunity from any problems that might result from that emergency assistance?

Mr. Avant That's a so-called good Samaritan Doctrine, Mr. Velazquez. I don't happen to be in favor of that. I think if he stops, he ought to give you the same type of treatment he's supposed

to give you if you were paying him.

Mr. Velazquez Well, doesn't the good Samaritan Doctrine extend to... if you see an automobile overturned and as a good neighbor, you stop and try to give the people some assistance and in the process of giving them assistance, you do more damage than good, in some states you would be immune from damage or against that too?

Mr. Avant Mr. Velazquez, that has nothing to do with immunity. You're only required to exercise due and reasonable care and do what an ordinary reasonably prudent person would do under the circumstances. If you were just a private citizen and you stopped to render aid to someone, that's all that would be required of you is to do what a reasonable and prudent person would do under the circumstances. If you were a layman, I don't expect that your failure to perform brain surgery on him would be held to be a lack of due and reasonable care under the circumstances. You just do the best you could. I see no fear, reason to fear in that area.

Mr. Lanier Mr. Avant, I've got an amendment here and it says, "No person shall be immune from suit and liability, except as otherwise provided by law." Is this the one that was changed, are we taking it like this?

Mr. Avant Well, now they said that was my amendment. That was not my amendment, Mr. Lanier. I had an amendment, but they told me that that was my amendment.

Mr. Lanier Well, but what I'm getting at is that all we....

Mr. Avant If I had wound up changing your amendment because I was erroneously informed that that was my amendment, I apologize.

Mr. Lanier No, no, I don't have an amendment. What I'm getting at is, what is under discussion is that no private person in the constitution or no person as provided by law. Which one are we going with?

Mr. Avant "Except as provided in this constitution."

Mr. Lanier "Except as provided in this constitution." OK. Then that brings up the questions that I have. What about the interspersal immunity established by statute? If we were to wish to keep that, would we then have to put that in the constitution?

Mr. Avant I don't think that the adoption of interspersal immunity is necessarily going to be sound or valid after the action of this convention the other day, Mr. Lanier.

Mr. Lanier What about the immunity given to the coroner on commitments? Would this amendment have the effect of doing away with that, unless that was placed in the constitution?

Mr. Avant If the coroner wrongfully put you away when any reasonable man, any reasonable coroner wouldn't put you away, for reasons other than medical, for reasons other than his best judgment, why should he be immune?

Mr. Lanier Let me ask you this. Have you had a staff research to see how many immunities are presently statutory in our law?

Mr. Avant I haven't had a research made to see how many there are, but I can tell you there are many.

Mr. Lanier So, in order for us to rationally determine which ones we wish to preserve, we would have to review each one and then vote to see whether it

should go in the constitution or not, if your amendment is adopted. Is that correct?

Mr. Avant No.

Mr. Lanier Would not the effect of your amendment, in the absence of putting them in the constitution, be to repeal all of these immunities?

Mr. Avant I don't think necessarily so.... immunities, yes.

Mr. Keane Mr. Avant, following up Mr. Lanier's question, as I appreciate it at the present time, there is a provision in the statutes dealing with civil defense personnel and it grants to them immunity. As I understand your amendment, that would do away with that statutory....

Mr. Avant That is not an absolute immunity under the statutes, I don't believe, Mr. Keane. If a civil defense personnel comes to your place and just arbitrarily does something to you, he's not immune from that. It only says it's a limited immunity under circumstances where they wouldn't be liable anyhow.

Mr. Keane Whether it's limited or otherwise, your amendment would do away with it?

Mr. Avant That's right.

Mr. Keane And taking your example dealing with the utility company that sprayed the fence lines or whatever they did as I read this amendment, the legislature could grant the utility company immunity from suit under those circumstances.

Mr. Avant No, because it's a private person.

Mr. Keane Oh, I see. In other words you are including in the term "private persons," corporations and so forth?

Mr. Avant The word "person" includes corporations. Corporations are persons as you know, but they are not citizens.

Mr. Keane So that under your amendment then no private individual, corporation or any other type of organization could be granted immunity unless it was put in the constitution?

Mr. Avant That would not be enjoyed by everyone.

Further Discussion

Mr. Duval Mr. Acting Chairman, fellow delegates, I rise in adamant opposition to Mr. Avant's amendment, although I understand his intent. This particular amendment could have more sweeping changes in our present law that we don't know about than anything that's been introduced to this convention. I ask you to very seriously think about it. There are many immunities of various types or another set up in our law for very good reasons. There are really too many to list. But under this, all of them could possibly be obliterated. Although it may not be Mr. Avant's intent, that's what the language says: "No private person shall be immune from suit and liability." All your charitable institutions, your eleemosynary institutions, have an immunity in the law, your churches and some of your hospitals, but your churches. Certainly. All of them are going to subject to liability now under this amendment. In Louisiana, husband and wife, there's an interspousal immunity. All of this is going to be changed. What about the immunity of legislators on the floor of the legislature? They are still a private person. Under Mr. Avant's definition they have not all of a sudden become public people. The legislative immunity is done away with. Judicial immunity when a judgment is a decision, done away with. Many, many different instances -- this amendment is far too pervasive. It's not needed. If there are certain inequities

in the law, the legislature can specifically remedy them without a broad sweeping amendment that we have no idea of the ramifications -- which we haven't studied -- which would be very, very ill-advised to adopt without going into this matter very deeply. I cannot urge you enough to vote against this amendment, because we really don't know what it does. What about a minor under four years old? Is this person going to be now guilty.... now he can be guilty of negligence? I don't know how many changes. What about the Workman's Compensation Act where the employer is actually in essence immune from suit in tort? He's only liable for the.... it's a no-fault type action. He's only liable under that specific statute granting him a limited immunity in tort. I realize that is not Mr. Avant's intention. But under this broad sweeping language no telling what could be found in hell to come under this language. I urge you very much to vote against this amendment. As I feel we do not have enough information to seriously understand it, that many, many exemptions and immunities and privileges under law would be repealed to the detriment of Louisiana. Thank you.

Further Discussion

Mr. Conroy I want to very briefly underline what Mr. Duval has said. I rise in opposition to the amendment. It's difficult I think for any attorney to stop so quickly and try to list all of the possible areas in which immunities presently exist that should be preserved for private persons. Mr. Duval has rattled off some. The questions from the floor indicated others. The basic concept of immunities that exists in the present law are frequently that some people should be protected within the wisdom of the legislature and others, for the good of the intentions of the state, should be clothed with immunities. Under this category fall the charitable immunities. There are other immunities where people such as stockholder's immunity, there is the interspousal immunity that was referred to. In other areas, there are occasions when people are, in effect, asked to do dangerous things and clothed with immunity in connection with it otherwise, the things might not get done. I think in this area falls the good Samaritan law, where a doctor is asked to perform under circumstances where he could not otherwise properly perform and not assume the risk where he is doing a worthwhile public service. I think it is similar to the situation also that exists with the civil defense immunity. I think on occasions we've found very dangerous circumstances which have existed in the river, where chemicals have to be removed from the bottom of the river, or things such as that where nobody could operate or perform the things unless they could feel satisfied that they were clothed with a proper type of immunity to protect them -- where they are required for the good of the whole to undertake extremely dangerous activities which they could not undertake without some degree of immunity. I urge you to reject this amendment.

Further Discussion

Mr. Avant Mr. Chairman, this amendment is a highly technical amendment insofar as the law is concerned. I can see that some of my brothers at the bar don't understand my intention behind the amendment. So if I am in order, I would ask permission to withdraw the amendment until such time as I can explain it to them.

[Amendment withdrawn. Previous Question ordered on the Section. Section passed: 105-0. Motion to reconsider tabled.]

Announcements
[I Journal 467-488.]

[Adjournment to 1:00 o'clock p.m., Thursday, September 13, 1973.]

MR. LOWE (cont'd)

If you're here Saturday, you'll get your voucher signed and we'll get you a check in the mail probably before the 20th. The form that you'll need for your tax return, we should get to you before you leave, a form 1099, which will show your earnings for the year 1973. So, we hope we can get that to you before you leave on Saturday. Thank you, Mr. Chairman.

MR. HENRY

You have a question, Mr. Bollinger?
Gentlemen, ladies.

MR. LOWE

We're not talking about property taxes anymore, Boysie.

MR. BOLLINGER

Monday, if for some reason we don't get the form 1099, does that mean we don't have to pay taxes on this income?

MR. LOWE

Well, I've checked that with the I.R.S., and I think that's the position they're probably going to take.

MR. HENRY

All right. Mr. Clerk, proceed.

MR. POYNTER

Next proposal is Delegate Proposal No. 102 introduced by Delegate Vick, Abraham and others.

A proposal to provide with respect to an alternative provision relative to the Judicial Branch.

MR. HENRY

Proceed and explain it, Mr. Vick.

MR. VICK

Mr. Chairman, there are some technical amendments that are coming, I believe. During the course of this convention some months ago, in heated debate, my good friend-- or I should say, our good friend-- Camille Gravel, said from this microphone that "I've tried logic and that has failed, and perhaps this afternoon I'll attempt sympathy." Well, I can't believe that this body has rejected logic, the tenor of the times (including Watergate and all of its ramifications), and history-- primarily legal history-- but the history of this state as well. Mind you, I'm not rejecting any sympathy votes, and with only sixteen-avenue delegates in the house, I'll take any kind I can get. The power of the attorney general to initiate criminal prosecutions has been in either the constitution of this state or the statutes since 1813, which was its inception as a state in this Union. Forty-four states in this Union allow the attorney general, their respective attorneys general to initiate local prosecutions and this would make, if this convention rejects this alternate and goes with the proposal that's currently in the constitution, we would drop from the list of states and that would make only forty-three. So, Louisiana would again be taking a step backward. Now, the American Law Institute and the American Bar Association and the President's Commission on Law Enforcement have said in study after study that the trend to increase the power of the attorney general on a state basis is absolutely essential in order to further the ends of good law enforcement, and the reasons for that are numerous. But, remember ladies and gentlemen, if you will, remember, because I'm going to repeat this over and over again, the attorney general of this state is not asking that his powers be increased, but remain the same. The President's Commission on Law Enforcement and the Administration of Justice, which was in a book entitled The Challenge of Crime in a Free Society, in 1967 said, and I quote, "at common law the attorney general had full authority over local prosecutions. The office of county or

MR. VICK (cont'd)

district attorney represented a division of the attorney general's powers. In those states where the local prosecutor is independently selected the attorney general should retain power to initiate prosecutions when, in his opinion, the interests of the state so require." That's exactly what we have in the Constitution of '21. The President's Commission went on to say, "experience demonstrates, that such authority when granted is used only infrequently." That is also the history of this state, ladies and gentlemen, that we have had the power and it has been used very infrequently. Further, the President's Commission said, and I quote, "in those rare instances where local prosecutors are unable or unwilling to prosecute, the attorney general should be able to enter the case and assist or direct the prosecutor. When such power exists, it is rarely exercised. But, it should be available to the attorney general and we have that power now." Again, ladies and gentlemen, these are the recommendations of the President's Commission on Law Enforcement. Louisiana fits that mold. This convention by its vote has seen fit, as the attorney general said in his memorandum to you the other day, to strip him of those important functions. Where are we now? What do we have? Again, I refer to Dean Sullivan's letter to the attorney general of December 14th, wherein he says,--insofar as the power we're concerned with today, the power over criminal prosecutions, is commenting on his present powers in Section 56, of Article VII of the Constitution of '21--and I quote, "This can only be interpreted as a plain and clear grant of authority to the attorney general to institute, prosecute and intervene in any criminal prosecution brought in the name of the state in a court of criminal jurisdiction." Further, Article 62, of the Code of Criminal Procedure reinforces this grant in the following language: "The attorney general has authority to institute and prosecute or to intervene in any proceedings as he may deem necessary for the assertion or the protection of the rights and interests of the state." Now, on page 2, ladies and gentlemen, Dean Sullivan deals with a case that you have heard discussed from this microphone. It was decided in 1943 and dealt with a super-session by the then Attorney General Stanley, in a case involving Tangipahoa Parish and we have today, two of the descendants of the participants in that case. We have here, Chaslin Perez, who represented the D.A. in Tangipahoa, and we have Sheriff Edwards, whose father was involved in that litigation. Ladies and gentlemen, the holding in this case has been so misstated, so confused, so obfuscated, and Dean Sullivan lays it to rest I think in some respects, but let me tell you what the attorney general considers to be the holding in Kemp v. Stanley. It's very simple, that if a district attorney is doing his job, the attorney general cannot intervene or supersede. There are those who agree with the attorney general. It may not be the District Attorneys' Association, but Dean Sullivan goes further, and I won't bother to read it all to you. But, he says, and I quote, "It should be pointed out that the power of the attorney general is a discretionary one, which he may exercise or not in the constitutional language quote, 'as he may deem necessary for the assertion or protection of the rights and interests of the state.'" Certain language in Kemp would indicate that this discretionary power may be reviewed by the courts. Well, of course, ladies and gentlemen, there isn't a thing that we do that's not subject to judicial review. The work of this convention is subject to judicial review. Now, another point that the district attorneys find unacceptable, insofar as vagueness I believe, or perhaps it's just the concept, is the power of supervision. For example, Mr. Ware said to the attorney general, in my presence on at least two occasions, "What does that mean? That does the power to supervise mean?" Well, Dean Sullivan says and I quote--at the bottom of page 2, Section 56 of Article VII of the Constitution specifically empowers the attorney general to--quote, "exercise supervision over the several district attorneys throughout the state."

MR. VICK (cont'd)

This authority is restated in almost identical language in Article 62 of the Code of Criminal Procedure, "subject to the supervision of the attorney general, the district attorney has entire charge and control of every criminal prosecution instituted or pending in his district, and determines when, where, and how he shall prosecute." Now, ladies and gentlemen, that is the broadest grant of power that the legislature has probably ever given to any single officeholder in the history of the state. Further, Dean Sullivan says, "It seems evident that the legislature has implemented the constitutional provision by making every act of the district attorney in a criminal case from decision to prosecution and the final disposition only vaguely subject to the supervision of the attorney general." He contrasts this with the others. This is obviously an area of potential difficulty since the term "supervision" is not subject to ready or easy interpretation, and it must also be kept in mind that the Supreme Court in *Kemp* stated, "we refrain from attempting to state generally in this opinion, the extent of the attorney general's powers. Each case must be decided as it is arising and is presented to us." Now, ladies and gentlemen, we get to the current proposal before you--and Dean Sullivan concludes in his opening statement by saying, and I quote, "clearly this reduces"--this proposal that's currently before us and I told you yesterday that Dean Sullivan has not changed one word of his letter to the attorney general even with the small changes that were made--"clearly this proposal reduces the power of the attorney general in criminal cases, removes entirely the authority to initiate criminal prosecutions, and reduces the possible participation of the attorney general in the prosecution of criminal cases to that of advising and assisting." Remember as today, we adopted the amendment to make it "written"... "on written request from the district attorney." He concludes, "this represents a very significant change in the policy which has heretofore been the basic law of this state"--I might add, "Ames"--since 1913 in its present form and since 1813 when this state became a part of the Union. Now, the power of supervision, of course, in this current proposal before the convention has been removed entirely, and Dean Sullivan says of that, "The power of the attorney general to supervise the district attorneys is eliminated completely from the proposed constitutional revision." This again represents a very significant change in the policy which was expressed in the '21 Constitution. Should the revision become effective the district attorneys would have complete control over all criminal prosecutions and would be completely free of any control or direction by the attorney general. In my opinion, this would also require the repeal of Article 62 of the Code of Criminal Procedure and the elimination of the supervisory power of the attorney general from Article 61. Finally, the better note of this section, for cause--for cause. What does that mean? Dean Sullivan says as follows: "A new power is granted to the attorney general to supersede a district attorney in any criminal action of the proposed constitutional revision. Apparently, in keeping with the implication of *Kemp v. Stanley*, this authority has been limited to those situations where the supersession 'for cause' is further limited to those cases in which the supersession is authorized by a court of original jurisdiction in which the case is pending. The entire process is specifically made subject to judicial review. The very difficult task of defining 'for cause' is left either to the legislature or the Supreme Court acting on a case by case basis. In view of the limitations created it is my opinion that any attempted exercise of this power would produce such difficulty and such protracted litigation as to make it ineffective in any practical sense." Although outside the scope of this opinion, Dean Sullivan concludes, "It should be noted that any dispute arising over the attempted exercise of this power which would require protracted judicial review might well have an adverse effect on the right of a speedy trial of the defendant in a particular criminal

MR. VICK (cont'd)

proceeding, and thus be in violation of the rights guaranteed by the United States Constitution." Ladies and gentlemen, fellow delegates, I'll conclude on this note, by quoting from the governor's admission of this convention, "The constitution--he said--must give the attorney general of our state subject to court approval, the independent right to institute and prosecute criminal proceedings. District attorneys who are violently opposed to this proposition in my judgment have no real basis for opposing it. They do, I understand, and I do not challenge their position. I merely say that I think it is in the interest of what is good for government, and the attorney general of our state should have that authority." Ladies and gentlemen, everything we do is subject to judicial review. The Constitution of '21 and the powers given to the attorney general were subject to judicial review: to wit, *Kemp v. Stanley*. The attorney general of this state is satisfied with the decision in *Kemp v. Stanley* because remember, if a district attorney is doing his job, the attorney general has no business there. That's what he has said repeatedly. In conclusion, I remind you that the attorney general is not asking that his powers be increased, but really remain the same, and let the people decide. I don't think that's a great deal to ask. Mr. Chairman, I'll attempt to answer any questions.

MR. CASEY

Are there any questions of Mr. Vick?
Mr. Duval.

MR. DUVAL

Re: Vick, what you have is exactly what's in the 1921 Constitution?

MR. VICK

Verbatim.

MR. DUVAL

It's not your intent to legislatively overrule Kemp v. Stanley, but let the courts decide in the future what this language means. Is that correct?

MR. VICK

On a case by case basis, Mr. Duval.

MR. CASEY

Any other questions?

Mr. Jones is now recognized for the floor.

Mr. Burson, Mr. Henry has Jones on the list, and then, Burson.

MR. JONES

Mr. Chairman, ladies and gentlemen...

MR. CASEY

Wait just a minute, Mr. Jones.

Please proceed, Mr. Jones.

MR. JONES

Mr. Chairman, fellow delegates, I am for alternatives. The call of this convention was people-oriented. There was no qualifying fee. There were candidates galore. Some of us ran in a primary with as many as from twenty-five to fifty opponents. There is no question that the legislature in establishing this convention wanted the people to participate in making the tough decisions. They so provided in the act for alternatives. I am for Alternative 102, which defines the powers of the attorney general of this state to include both civil and criminal jurisdiction. You know up to this point in the convention that I have been the delegate for industry. I replaced Mr. Lennox in the middle of December and have diligently tried to represent my appointment. As a lawyer, this was not difficult. In fact, it has been a lot of fun. I have represented industry positions in banking. Industry was against the concept of limiting multiperish banking, and I represented the great big banks against the poor little rich banks. Public utilities—industry wanted a better break from the Public Service Commission, and I ate steak with the telephone company and crow on this convention floor, and poor Rev. Landrum, he missed his steak dinner. He wasn't feeling very well and only had a cup of beef soup and coffee. I just put that in there so Senator Rayburn would know that I got my steak. Revenue bonds—industry wanted the state to have the right to issue them, and I participated in this portion of the Revenue and Taxation Article. Tax exemption—industry wanted to keep its right to tax exemption, and I worked for this exemption. At this late stage in the convention, I have completed most of the work of industry. Now, I assume a different posture. Most of you know that I've been associated with the Department of Justice of this state since last September. But, in case any delegates do not know this fact, I wish to call this to their attention. I am associated with the attorney general in the Civil Division. It has been my appreciation and impression from the outset of the short time I've been in this convention that those delegates not associated with the district attorneys and the local sheriffs do not fully understand what is now provided in the proposed constitution in defining the duties and responsibilities

MR. JONES (cont'd)

of the attorney general. I will try to explain them and reason with you to the best of my ability in simple, plain language. Under the proposed constitution, the attorney general becomes for all practical purposes only the civil legal officer of this state. The district attorneys will have full control of the criminal work. The attorney general can only participate in criminal prosecution to assist the district attorney, and then only when he is so invited in writing. As you know, there are approximately thirty-four judicial districts, one district attorney for each judicial district. Now, the 1921 Constitution and the law of this state since 1813, which is over a hundred and sixty years ago, has provided that the attorney general shall have not only civil legal responsibility, but criminal responsibility. Further, he shall have supervision over the district attorneys of this state. The proposed constitution removes the supervisory powers of the attorney general over the district attorneys, thus resulting in making each one of the district attorneys autonomous in his own judicial district. Now, think of this, the attorney general is elected statewide. He is one of the four leading executive officials of this state. The D.A.'s are elected individually from their respective judicial district. Each of the elected delegates to this convention represents approximately 1/105 of the total population of this state. Now, this convention has, by a majority vote, cut in half the powers of the attorney general. You have eliminated his control over criminal prosecution and his supervisory powers over the thirty-four district attorneys. It is only fair and just that you place an alternative on the ballot of this people-oriented convention that will grant to the voters of this state the opportunity to make this important decision for themselves, and that decision is: do they want an attorney general who is only a civil legal officer, or do they want an attorney general who has supervisory power over the thirty-four district attorneys and has primary responsibility to initiate criminal proceedings? This is the issue in plain and simple language: not to give to the citizens of this great state the alternative to choose their own fate is to disfranchise them without a vote. Let's don't have this happen. Let's don't have the attorney general campaigning in this state to defeat our constitution that we've worked so hard to complete. Now, let's consider the facts. First, I must congratulate the representatives of the district attorneys and the local sheriffs. They've done a good job of "belling the cat." Now, they're out from under the supervision of the attorney general and will have sole primary responsibility for criminal prosecution. Delegates, search your hearts. Is this good for the people of Louisiana? I know your hearts agree with me that we are warring a constitution, not only for ourselves, but for our children and for generations yet unborn. We should not change a basic legal concept that has existed for over a hundred and sixty years in this state without giving the people a chance to vote their choice. Now, under the proposed constitution, let's turn and see how it would work.

MR. CASEY

You've exceeded your time just about, Mr. Jones. Try to conclude, please.

MR. JONES

You have thirty-four D.A.'s that are solely autonomous in their own district, each with his own ideas, free of supervision by the attorney general, and you know what that means—"What Lola wants, Lola gets." We've already had a case, I'm told, recently where a D.A. is refusing to recognize the Sunday closing laws. The merchants in a large urban area are insisting that the D.A. close his shops in the rural adjoining area. This is only the beginning. Under the rule of law, what does the governor do? Who does he turn to to enforce the law? He won't be able to call upon the attorney general.

MR. CASEY

Mr. Jones, I'll have to ask you to conclude now. You have exceeded your time, sir.

MR. JONES

All right, sir.
I'd like to conclude with this on your mind: Let's don't take away from the people of this State a hundred and sixty years of basic legal concept. I ask that you vote favorably to place this alternative on the ballot for the people to make the decision. I thank you.

MR. CASEY

Mr. Burson is now recognized for the floor.

MR. BURSON

Mr. Chairman, fellow delegates, this is a matter which we have debated, I suppose, four or five different times in this convention, and this convention has spoken overwhelmingly each time in favor of the general policy position, at first, that the attorney general should have no criminal jurisdiction at all. Then, secondly, as a result of a compromise suggested by the governor of this state, and which is the final article on the attorney general, that he should have the power to institute criminal cases, but should do so only for cause when authorized by the court which would have original jurisdiction, subject to full judicial review, so that if the district court didn't think that cause existed, then the attorney general could take his case directly to the Supreme Court of the State of Louisiana where such cases go. I would point out to you, I don't blame the attorney general's two assistants for trying to increase his power. But, the attorney general, contrary to their apparent belief has always been, and will still be a party to all criminal matters once they're on appeal. This has always been our law. This is not affected by what we do here. So, we're not talking about the appellate phase of criminal law, what we're talking about is the power to institute criminal prosecution. We're concerned, or should be concerned, not with what the district attorneys want, which is no criminal jurisdiction at all for the attorney general; or what the attorney general wants which is the power to come in and institute criminal prosecutions any time he decides that he ought to; but, to protect the people, I think we've hit a good and a workable middle ground. I might point out to you that we have added here the power to supersede local district attorneys, which under no possible interpretation of the old constitution, did the attorney general have. But, again, he's got to show cause. He's got to show a reason. So, really I think we're taking basically the same position because Mr. Vick said again that if the local district attorney is doing his job, the attorney general has got no business going into the parish to attempt to prosecute crime. Well, we're saying the same thing. The only thing that we've done in this constitutional provision that we've adopted is we've set up a procedure and a mechanism whereby we have a mutual third party—the judiciary—the people that are supposed to decide such matters, to decide when the attorney general should come in and when and if the local district attorney is not doing his job. If you will recall, Mr. Duval asked Mr. Vick, "Well, how would you have this decided on the basis of Kemp v. Stanley?" Kemp v. Stanley, by the way—with all due respects to the good Dean Sullivan, whom I do not know; I'm sure he's a good law professor—but I don't know a practicing criminal attorney in this state that wouldn't tell you that Kemp v. Stanley said that the second sentence of the old constitutional provision on the attorney general's power, which provided for supervision over district attorneys meant and qualified the first sentence which gave him the power to institute, meant they had to be read together and meant he couldn't institute anything unless the local D.A. was not doing his job. Well, if this is what Kemp

MR. BURSON (cont'd)

v. Stanley says, then we are agreed. He said, "Let's decide it on a case by case basis." That's exactly how it will be decided under the provision that we've adopted here. In the proper case the court can provide in the benefit and for the welfare of the people of the State of Louisiana for the attorney general to act. I would remind you in closing that power is neutral. We've heard a lot here about the attorney general's power to come in and act in the interest of the state. But, if he's got the power to institute criminal proceedings, I submit to you, he can also act if that power is not subject to some control in the worst interest of the people of the state. I can suggest to you that there are certain times in our very recent past, very recent past, involving such things as voter registration, particularly in my parish, where the state attempted to come in and purge our voter registration rolls of about a third of the citizens of our parish where our local district attorney had to go into federal court and get an order to prevent them from doing it. So, think about that. Power is neutral. It can be used for good purposes, or it can be used for bad purposes, and I submit to you that what we've done here is insured the people of this state that they've got a remedy available if and when the local criminal prosecution breaks down. But, we've also protected them from an overambitious attorney general who may be exercising power when he shouldn't be exercising it. I submit to you, we should reject this alternative and maintain the viability of the very good provision we have adopted.

MR. CASEY

Mr. Ciarrusso has a question, Mr. Burson.

Would you yield to him?

MR. CIARRUSSO

Jack, do you anticipate any infringement on the authority of locally elected officials, if this alternative is adopted?

MR. BURSON

Yes, I could definitely foresee such infringement because if you just say that the...and I might point out, that this alternative purports to include the language of the old constitution. But, the form that's suggested for the ballot suggests that it means such more because it would say that the attorney general would have the power to institute civil and criminal suits without limitation. It certainly implies that. I think that this power would be subject to abuse, and the best example I can use is, think in recent history in Louisiana. Who have been the people who have been prone to abuse the power of prosecution? Has it been the elected local district attorneys, or has it been some appointed prosecutors that we have operating in our state? I think if we'll ask that question, then we come up with the answer that applies here.

MR. CIARRUSSO

Jack, how often in the past has the attorney general invoked this authority, and if he has, you know, if you can think of a case, under what circumstances?

MR. BURSON

The only case that I know about in the books--and I looked at the annotations under this section--and Kemp v. Stanley and a couple of others seem to be the only ones that I can find. It hasn't been, to my knowledge, invoked in a very, very long time, or even attempted to be invoked. So, either the attorney general must have thought 1) that the local prosecutors were doing a good job or 2) he must have realized he didn't have that power at all under the holding of Kemp v. Stanley which I would think is the law.

MR. CIARRUSSO

Last question, Jack: Do you believe that the people's interests

120th Days Proceedings—January 17, 1974

MR. JACKSON (cont'd)
are best protected on what we've adopted, on it, on submit this alternative to the people as well."

MR. BURNS
Now, I don't. I think the best interests of the people are protected in the section that we have adopted, and I think we ought not to leave it susceptible to change because we provided there the ultimate safeguard. The courts are the ultimate guardian of individual liberties in this country, anyone. That's what we provide.

MR. CASEY
You've exceeded your time, Mr. Burson.
Mr. Fontenot is next on the list.
Mr. Johnny Jackson.

MR. J. JACKSON
Mr. Chairman, ladies and gentlemen of the convention, I rise in support of Mr. Vick's proposal, not because I'm against the local D.A. or I'm against the attorney general, but I seem to me, very clearly, that we may not--and not being familiar with that process--that we may not recognize the depths of what we're doing and what we may not be doing. I've heard some of the concerns about making the A.G. so autonomous, and on all-extensive in terms of his power. But, I can very well see that that could be the same on a local level, and at what point besides the judicial interpretation do you have the kinds of--for lack of better words--let me say, check and balance. I agree with you, Sheriff, that I don't think that if the mores of a parish says that chicken fights are in order that the A.G. ought to be coming up in there stirring up the people. But, at the same time, when there is corruption as such in government, as such, and because they are all elected officials, that it would seem to me that you might have a political problem there where a D.A. may be just not forced to prosecute. I think if we look at the history of the invocation of the A.G.'s power, it's not readily made clear to me that he has abused in any form or manner. Secondly, I'm just sorry--and I know that there is some sentiments against the present A.G. personality--but I can't do anything about that. I'm just trying to talk on the substance of whether the A.G. ought to have some sort of option when there is some breakdown--it may not be intentional on the part of local D.A.'s--but because of maybe political pressures that he may not be able to perform his duty. I say that particularly--again I rise in support--because I personally felt that some people had the various image that I was one, particularly in my debate about the juvenile proposal, one who favored protection of those who commit criminal offenses. From the arguments I've heard so far, in that we are providing an alternative, in that that questions there is ramifications on both ends of the spectrum, that we ought to allow such an alternative to be posed to the people. With the kinds of political muscles that I think D.A.'s have back home, if they seriously feel that this would jeopardize their position, I think that they could defeat the alternative. In addition, I just wonder very seriously, what if a certain segment of a local parish may want certain reforms and the powers that may not be, and the powers in the political structure says, "Well, no. You're treading on dangerous territory. You're not only affecting the mores; you're affecting, really, the political structure." If you're not in the "in crowd," I can very well see that some may very well have been used in argument against A.G. Some may very well be persecuted and prosecuted on the local level. I think that the question raised by Mr. Vick's proposal is the question of great concern to all the people of the state, great concern on the part of the D.A.'s on the local level, great concern to attorney general, and particular v, great concern of those people who feel that there ought to be a greater enforcement--and I repeat--a great enforcement without discretion

MR. J. JACKSON (cont'd)
of the law. I think that we ought to at least leave this question open for consideration, and hopefully after we're over, they'll be some discussion and moving for the adoption of this document; there will be some discussion and some time brought out whether I, as a voter, would vote for what we have in the present constitution, or vote for the alternative. I think it's that critical, and I just hope that we attempt to listen and attempt to understand that that is a two-edged sword, and that those of us who may be concerned about law enforcement and concerned about what's going on in government and going on and understand the political ramifications of it--the serious political ramifications of it--then I think that we would be very wise to offer this as an alternative as we did with some other very highly controversial issues. So, for that reason, I would ask that you would support the alternative proposal.

MR. CASEY
Mr. Jackson, will you yield to a question from Mr. Burns?

MR. BURNS
Are there any more speakers?

MR. CASEY
Mr. Burns, we have Mr. Guarisco, Mr. Roy, and Rev. Stovall just asked for the floor.
Mr. Guarisco is now recognized for the floor.

MR. GUARISCO
Mr. Acting Chairman, ladies and gentlemen of the convention, I rise in support of the Vick alternate for several reasons. One reason is that I, myself--and I don't think many persons in this convention ran on a platform that the attorney general of this state had too much power, and that they were going to go up to Baton Rouge and see that we reduce some of this power. This all happened since you've gotten here, and since you've probably been lobbied by the district attorneys. Now, Mr. Burson stood up here and said during the debate on the Bill of Rights--when we were talking about the rights of the accused; we were talking about the rights of the poor and the blacks and the women as opposed to prosecution and the district attorneys--that we must trust our public officials. But, he was only speaking about the public officials that he was directly connected with: that is, the local district attorney's office. But, when it comes to the attorney general, we forget all about this public trust, and the district attorneys don't want to trust the attorney general. That's odd to me. They want to be trusted with far, far more power--the power to put people in jail, to put them away for good, and so forth, and to prosecute--but they don't want to be supervised or supervised by any other superior. I urge that you support this amendment.

MR. CASEY
Mr. Roy is now recognized for the floor.

MR. ROY

Mr. Chairman, ladies and gentlemen of the convention, I hate to raise against the 120th Days Proceedings, but I feel that I rise in favor, for one time, of the district attorneys and the farmers of this state, for the things of which you say. Right now, I've defended lawsuit brought by the attorney general's office to stop soybean farmers in Iowa from having their property because, allegedly, in Kansas County, it's alleged that the farmer is doing in a particular line. Now, now, to say, so the farmer thing that can happen when the attorney general has the broadest authority to take order because that can happen to anyone, bass fishermen, even farmers. I don't think where you stand on it, but I know where I stand. But, there's no question about it, point is that under the present constitution, as Mr. Vick would have it in the attorney general, the attorney general has unlimited power to intervene in any experiment that he wishes and to supersede a district attorney. Now, you know that I've had my quarrels with the D. A.'s here, but I'd much rather have the D. A. in a parish subject to the vote of that parish, to determine whether a particular case will be brought to trial or not. The present provision, which we have passed, allows the court—it is seen there—to allow the attorney general to intervene in a criminal case. So, I urge you to vote against this particular proposal. Let's keep what we've got, and let's make it so that the attorney general has got to have a public necessity to come on in a case, and not allow some environmentalist attorney he's got with him to, at the whim of whoever he chooses, run around and try to file lawsuits to stop people from farming, and other things of that nature, in this state. Thank you.

MR. CASEY

Reverend Stovall and Reverend Stovall is the last speaker on the list.

MR. STOVALL

Mr. Chairman, ladies and gentlemen of the convention, this is a very serious matter that is before us at this time. You will recall that yesterday Mr. Pugh presented an amendment. Where, previously, we had said the governor will support the laws of the state, it was necessary to change that to say the governor will execute the laws and enforce the laws of the state. The reason is quite evident. The people of our state want a system of government that will guarantee the enforcement of our laws. This question that is before us at the present time is not one as to whether or not we favor the attorney general or the district attorney; it is a question of whether or not we want law and order, of whether or not we want a system to provide justice. It is a question of whether or not we want a system that will correct injustices and abuses. It is a question of whether or not we want to maintain the historic American system of checks and balances. I submit to you that to present this alternative to our people is a means of guaranteeing this. The district attorneys have overplayed their hand. They're asking for too much power. Our historic system calls for a system of checks and balances, and I think it is a false fear that the district attorneys have. Mr. Burson said, a moment ago, that this provision has not been invoked. Why, then, would they have a fear of this provision? We have heard it said, on other occasions, that power corrupts and absolute power corrupts absolutely. I think this is a case where the district attorneys are seeking too much power and, therefore, they need this check and balance that is provided by this alternative provision. What we would be doing, in voting favorably for Mr. Vick's alternate provision, is not to make the final decision, but it is to leave it to the people. Therefore, I suggest and encourage you to give favorable support to this alternative provision that has been presented to us at this time.

MR. CASEY

Mr. Burns is recognized.

MR. BURNS

Mr. Chairman, are there any other speakers?

MR. CASEY

No other speakers, Mr. Burns.

MR. BURNS

I move the previous question.

MR. CASEY

Mr. Burns now moves the previous question.

Just a minute, Mr. Burns. I didn't know it, but the Clerk says we have a technical amendment. Do you mind withdrawing your motion just so we can adopt...

MR. BURNS

No, I withdraw it.

MR. CASEY

The Clerk will read the technical amendment.

MR. POYNTER

Mr. Vick, at this time, sends up a set of amendments which are basically technical amendments. They're rather lengthy—be passed out right now. The basic purpose, I can tell you, of the amendments is to make the style of the proposal conform to the other proposals, relative to alternatives—and, in particular, Section 3 (A) and the language of [Section] 3 (B). Rather than reciting in full the text of what's in the extant draft of the constitution, just substitute a simple paragraph, be in conformity with the others, and redo the other provisions consistent therewith.

MR. CASEY

Mr. Vick, are you going to explain the amendment?

Mr. Vick has sent up amendments.

Is there any objection to the adoption of a technical amendment?

Then, without objection, the amendment is adopted.

Mr. Burns now moves the previous question on Delegate Proposal No. 101. I'm sorry. It's on Delegate Proposal No. 102.

Is there any objection?

Without objection, then, previous question is ordered.

Mr. Vick, you have a right to close.

MR. VICK

Thank you, Mr. Chairman and fellow delegates; this is the last hurrah and—as Judge Tate said some time ago—this will be my last time, I hope, before this convention. I just want you to remember that the attorney general is not asking that his powers be increased, but that they remain the same and only resolve the people decide. With that, Mr. Chairman, I will submit to consider any questions, if there are any.

MR. CASEY

Mr. Burson has a question.

MR. BURSON

Mr. Vick, would you agree that the United States Attorney General, or any of his deputies, cannot intervene in any parish in the State of Louisiana in a criminal matter until they have previously obtained an indictment from a federal grand jury?

MR. VICK

The United States: Yes.

120th Days Proceedings—January 17, 1974

MR. BURSON

In other words, they have to go through not just the judicial proceeding, but a grand jury proceeding, before they can move on a criminal matter in any parish in this state. Isn't that correct?

MR. VICK

I don't see the analogy, Mr. Burson, but I would concede your point.

MR. CASEY

Have you completed your remarks, Mr. Burson?

Do we have another question? O. K.

Mr. Vick now moves the adoption of Delegate Proposal No. 102.

Before the vote, Mr. Vick now suggests the absence of a quorum.

The Clerk will open the machine for roll call.

Please vote your machines, delegates. Quorum call.

Are you through voting?

The Clerk will close the machine.

58 delegates present and a quorum.

Mr. Jones, why do you rise?

MR. JONES

I ask for a record vote.

MR. CASEY

It's an automatic record vote, Mr. Jones, since we're voting on a delegate proposal.

Mr. Vick has moved the adoption of Delegate Proposal No. 102.

Therefore, when the machine is opened, those in favor of the adoption of Proposal No. 102 will vote yes. Those opposed will vote no. The Clerk will open the machine.

Please vote your machines, delegates.

Are you through voting?

The Clerk will close the machine.

36 yeas and 62 nays, and the delegate proposal has been rejected.

Mr. Burson now moves to reconsider the vote by which Delegate Proposal No. 102 was defeated and lay that motion on the table.

Without objection, so ordered.

O. K., Mr. Clerk.

MR. POYNTER

The next proposal is Delegate Proposal No. 103, introduced by Delegates Elkins, Grter, Toca, Flory, Asseff, and others:

A proposal to provide with respect to an alternative provision relative to the legislative branch.

Again, I might say, in light of some prior discussion in this convention, the printed copy does not have the requisite number of signatures on it due to the fact that the printer could not read many of the signatures. As introduced, there were more than sufficient number of persons, delegates, who did sign the proposal for it to be validly introduced under the rules.

A proposal to provide with respect to an alternative provision relative to the legislative branch.

MR. CASEY

Mr. Avant is now recognized for the floor.

MR. AVANT

Mr. Chairman--Mr. Acting Chairman, I believe--and fellow delegates, I'm going to try to be as brief as possible because this is really a simple issue. It's not very complicated. The present constitution, as you know, provides that the legislature shall meet biannually, in the even number years, for sixty calendar days in a regular session--an open session--in which any and all types of legislation may be introduced. It then provides that, in

Mr. Jenkins proposed an original section entitled "Administering of Oaths" but after a brief discussion agreed to withdraw it (See TP No. 37).

Mr. Jenkins proposed an original section entitled "Freedom of Movement" but this was tabled.

"Freedom to Dissent," which was TP No. 39 by Mr. Jenkins, was withdrawn.

Dr. Weiss proposed a section (TP No. 40) the right of an assembly based on the Louisiana Law Institute Project Article I, Section 5. It was amended by the addition of a provision on freedom of movement by Mr. Jenkins (TP No. 41) the deletion of the word "officials" by Mr. Vick (TP No. 42) and the addition of a longer title by Dr. Weiss (See TP No. 43).

Mr. Jenkins introduced an original proposal entitled "Freedom of Commerce" (TP No. 44) which was rejected 1-6. Mr. Jenkins' proposal entitled "Prohibition of Government Competition and Monopolies" was referred to the research staff (See TP No. 45).

The proposal by Mr. Roy entitled "Freedom from Discrimination" (TP No. 46) evoked considerable debate after which the meeting adjourned until the following day.

THE MEETING RECONVENED

Tuesday, April 17, 1973, 9:00 a.m.

Presiding: Rep. Alphonse Jackson, Jr., Chairman

Present

Absent

Mrs. Judy Dunlap
Anthony J. Guarisco, Jr.
Rep. Alphonse Jackson, Jr.
Rep. Louis "Woody" Jenkins
Chris J. Roy
Mrs. Moyse E. Soniat
Ford E. Stinson
Kendall Vick
Rep. Shady Wall
Dr. Gerald H. Weiss

(5)

Roll call was taken by the committee secretary. A quorum was present. Delegate Roy reintroduced TP No. 46. Mrs. Soniat moved to amend it to prohibit discrimination in access to public accommodations (TP No. 47). Her proposal was adopted 5-4. In the debate it was pointed out that the section was intended to prohibit private discrimination as opposed to state action which was covered in the section entitled "Right to Individual Dignity."

Mr. Jenkins proposed TP No. 48 as an amendment involving freedom of association and it was accepted by Messrs. Roy and Soniat. The proposal was then adopted 5-4 by a roll call vote (See TP No. 48).

Dr. Weiss proposed TP No. 49 consisting of three original proposed sections entitled "Right of Redress," "Rights of the Child," and "Right to Due Process of Law." Mr. Roy proposed TP No. 50 "Access to Courts" as a substitute for "Right of Redress" and it was adopted 8-1. Mr. Jenkins proposed TP No. 51 entitled "Due Process of Law" in lieu of the Weiss proposal on the same subject and it was adopted. The Weiss proposal "Rights of the Child" was referred to the research staff. TP No. 51 in turn

was amended by TP No. 52 of Mr. Vick, and as amended was adopted unanimously with one person absent.

Mr. Jenkins' proposal, TP No. 53, entitled "Availability of Rights" was withdrawn.

Mr. Guarisco proposed a section involving a right to a civil jury trial based on the Seventh Amendment to the United States Constitution (See TP No. 54). A motion to table was defeated 3-4.

(6)

Mr. Roy proposed a single word amendment which was accepted by Mr. Guarisco (TP No. 55). Mr. Jenkins then proposed an amendment entitled "Trial by Jury in Civil Cases" (TP No. 54) which was accepted by Messrs. Guarisco and Roy and passed unanimously. The proposal passed despite the fact that Mr. Tobias of the Judiciary Committee made a special appearance before the Bill of Rights Committee urging that the matter be tabled because it was also being considered by the Judiciary Committee.

Mr. Jenkins proposed TP No. 57 entitled "Searches and Seizures." Mr. Roy moved to substitute TP No. 58 which in turn was amended by Mr. Vick (TP No. 59) and Mr. Jenkins (TP No. 60). The amendments were accepted and the Roy proposal as amended was adopted unanimously.

Dr. Weiss proposed TP No. 61 on the right to property. Mr. Jenkins moved to substitute his TP No. 62 and then the entire matter was referred to the research staff.

Dr. Weiss proposed TP No. 63 entitled "Freedom from Military Intrusion." It was amended slightly by Mr. Roy (TP No. 64) and then adopted 7-1.

Dr. Weiss proposed TP No. 65 on the right to vote but action was deferred on the matter.

The Weiss proposal entitled "Right to Direct Participation in Government" (TP No. 66) was referred to the research staff. Action on the Weiss proposal, "Civil Service Rights" was deferred (See TP No. 67).

The Jenkins proposal, "Freedom to Keep and Bear Arms" (TP No. 69) was introduced. The attempt by Mr. Vick to

(7)

substitute "Right to Arms" (TP No. 69) was rejected. Dr. Weiss then proposed TP No. 70 which was amended by Mr. Jenkins (TP No. 71) and adopted.

Mrs. Dunlap moved for adjournment and the meeting adjourned at 5:30 p.m.

Rep. Alphonse Jackson, Jr., Chairman

(8)

[1199]

April 17, 1973

CBRE Tentative Proposal No. 47 By Mrs. Soniat

Background: Amendment to TP No. 46.

After the words "and sex" in TP No. 46, add the words
"in access to public accommodations or"

Disposition: Adopted 5-4.

April 17, 1973

CBRE Tentative Proposal No. 48 By Mr. Jenkins

Background: Amendment to TP No. 46 as amended by TP No. 47.

Amend the section to read as follows:

Section ____ Freedom from Discrimination

All persons shall have the right to be free from discrimination on the basis of race, color, creed, national ancestry, and sex in access to public accommodations or in the sale or rental of property. Nothing herein shall be construed to prohibit freedom of association.

Disposition: Accepted as an amendment by Mr. Roy and Mrs. Soniat. The section, as amended, was then tentatively adopted by a roll call vote 5-4 on April 17, 1973. A minority report to delete the section was adopted by Messrs. Jenkins, Dunlap, Stinson and Weiss.

The Roll Call

Dunlap	No
Guarisco	Yes
Jackson	Yes
Jenkins	No
Roy	Yes
Soniata	Yes
Stinson	No
Vick	Yes
Wall	Absent
Weiss	No

April 17, 1973

CBRE Tentative Proposal No. 49 By Dr. Weiss

Background: Three original proposal sections.

Section ____ Right of Redress

Everyone has the right to sue the state, its political subdivisions, or any person or legal entity that violates any of his recognized rights and to obtain compensation or other appropriate redress of his injury.

Section ____ Rights of the Child

Persons below the age of majority may exercise all recog-

nized rights unless specifically precluded by laws which enhance the protection of such persons.

Section ____ Right to Due Process of Law

No person shall be deprived of any of his rights without due process of law.

Disposition: Substitutes were adopted for "Right of Redress" and "Right to Due Process of Law" and "Rights of the Child" was referred to the research staff.

April 17, 1973

CBRE Tentative Proposal No. 50 By Mr. Roy

Background: Substitute proposal for the section in TP No. 49 entitled "Right of Redress". The substitute is based on Louisiana Law Institute Project Article I, Section 6.

Section ____ Access to Courts

All courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality; or unreasonable delay for actual or threatened injury done him in his person, property, reputation, or other rights. Neither the state nor any person shall be immune from suit.

Disposition: Tentatively adopted 8-1 on April 17, 1973. The comment is to say that "state" includes "any political subdivisions and corporations". The historical concept of sovereign immunity is to be included in the comment with the question of whether one may seize state property being left to the courts. The comment is also to state that every person shall having standing to challenge the constitutionality of any law enacted pursuant to this Constitution if he has a direct interest in the validity of the law in question.

April 17, 1973

CBRE Tentative Proposal No. 51 By Mr. Jenkins

Background: Amendment for the section in TP No. 49 entitled "Right to Due Process of Law".

Amend the section in TP No. 49 entitled "Right to Due Process of Law" to read as follows:

Section ____ Due Process of Law

No person shall be deprived of life, liberty, or property, without due process of law.

Disposition: Replaced by a substitute proposal. See TP No. 52.

April 17, 1973

CBRE Tentative Proposal No. 52 By Mr. Vick

Background: An original substitute proposal to replace the section in TP No. 49 entitled "Right to Due Process of Law" as amended by TP No. 51.

Section ____ Due Process of Law

No person shall be deprived of life, liberty, property, or other rights without substantive and procedural due process of law.

Disposition: Tentatively adopted 9-0 on April 17, 1973.

April 17, 1973

CBRE Tentative Proposal No. 57 By Mr. Jenkins

Background: An original proposal.

Section ____ Searches and Seizures

Every person shall be secure in his person against unreasonable searches and seizures, and no such search or seizure shall be undertaken except upon warrant therefor issued upon probable cause supported by an oath or affidavit specifically describing the person to be searched or seized.

Disposition: Replaced by a substitute proposal.

April 17, 1973

CBRE Tentative Proposal No. 58 By Mr. Roy

Background: Substitute proposal for TP No. 57 adopted from Louisiana Law Institute.

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no search or seizure shall be made except upon warrant therefor issued upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized and the purpose or reason for the search.

Disposition: Amended and tentatively adopted. See TP No. 60.

April 17, 1973

CBRE Tentative Proposal No. 59 By Mr. Roy

Background: Amendment to TP No. 58.

Section ____ Searches and Seizures

Every person shall be secure in his person, houses, papers, and other possessions against unreasonable searches, seizures, or invasions of privacy. No warrant shall issue without probable cause, supported by oath or affirmation particularly describing the place to be searched, the persons or things to be seized, and the lawful purpose or reason for the search. Any person adversely affected by a search or seizure conducted in violation of this section shall have standing to raise the illegality of that search or seizure in the appropriate court of law.

Disposition: Accepted by Mr. Roy, subsequently amended and tentatively adopted. See TP No. 60.

April 17, 1973

CBRE Tentative Proposal No. 60 By Mr. Jenkins

Background: Amendment to TP No. 58, namely, adding a sentence at the end thereof.

Section ____ Searches and Seizures

Every person shall be secure in his person, houses, papers, and other possessions against unreasonable searches, seizures, or invasions of privacy. No warrant shall issue without probable cause, supported by oath or affirmation particularly describing the place to be searched, the persons or things to be seized, and the lawful purpose or reason for the search. Any person adversely affected by a search or seizure conducted in violation of this section shall have standing to raise the illegality of that search or seizure in the appropriate court of law. No law shall permit the interception or inspection of any private communication or message.

Disposition: Accepted by Messrs. Roy and Vick and tentatively adopted April 17, 1973, by unanimous vote.

April 17, 1973

CBRE Tentative Proposal No. 63 by Dr. Weiss

Background: A proposal adopted from the 1972 Montana Constitution, Article II, Section 32.

Section ____ Freedom from Military Intrusion

No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, except in the manner provided by law.

Disposition: Amended and tentatively adopted. See TP No. 64.

April 17, 1973

CBRE Tentative Proposal No. 64 by Mr. Roy

Background: An amendment to TP No. 63 to broaden the protection against intrusion.

Amend TP No. 63 to read as follows:

Section _____. Freedom from Military Intrusion

No person shall in time of peace be quartered in any house without the consent of the owner or lawful occupant, nor in time of war, except in the manner provided by law.

Disposition: Accepted by Dr. Weiss and tentatively adopted 7-1 on April 17, 1973.

April 17, 1973

CBRE Tentative Proposal No. 68 by Mr. Jenkins

Background: An original proposal.

Section _____. Freedom to Keep and Bear Arms

The freedom of each person to keep and bear arms shall not be abridged nor shall this right every be subject to licensure, registration, control or taxation.

Disposition: Replaced by a substitute proposal. See TP No. 70.

April 17, 1973

CBRE Tentative Proposal No. 69 by Mr. Vick

Background: A substitute to TP No. 68 based on the 1970 Illinois Constitution, Article I, Section 22.

Section _____. Right to Arms

Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed.

Disposition: Rejected.

April 17, 1973

CBRE Tentative Proposal No. 70 by Dr. Weiss

Background: A substitute for TP No. 68 based on the Law Institute Project, Article I, Section 9.

Section _____. Right to Keep and Bear Arms

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be abridged. This provision shall not prevent the passage of laws to prohibit the carrying of concealed weapons or otherwise to regulate reasonably the keeping and bearing of arms.

Disposition: Amended and tentatively adopted. See TP No. 71.

April 17, 1973

CBRE Tentative Proposal No. 71 by Mr. Jenkins

Background: An amendment to TP No. 70.

Amend TP No. 70 by adding a sentence at the end thereof so that the section would read as follows:

Section _____. Right to Keep and Bear Arms

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be abridged. This provision shall not prevent the passage of laws to prohibit the carrying of concealed weapons or otherwise to regulate reasonably the keeping and bearing of arms. Nothing contained herein shall allow the confiscation or special taxation of arms.

Disposition: Amendment accepted by Dr. Weiss and the proposal as amended was tentatively adopted 6-1 with 1 abstention on April 17, 1973. A motion to reconsider was defeated.

May 19, 1973

CBRE Tentative Proposal No. 115 by Mr. Roy

Background: A proposal to amend Section 4, Right to Privacy by deleting the last sentence and including the word "communications", after "persons", in the first sentence.

Section 6. Right to Privacy

Every person shall be secure in his person, communications, papers, and other possessions against unreasonable searches, seizures, or invasions of privacy. No warrant shall issue without probable cause, supported by oath or affirmation particularly describing the place to be searched, the persons or things to be seized, and the lawful purpose or reason for the search. Any person adversely affected by a search or seizure conducted in violation of this section shall have standing to raise the illegality of that search or seizure in the appropriate court of law.

Disposition: Tentatively adopted without objection on May 19, 1973.

June 14, 1973

CBRE Tentative Proposal No. 139 by Mr. Conkern

Background: A deletion from the section on right to individual dignity.

Delete "Nothing herein shall prohibit freedom of association or permit the imposition of quotas".

Disposition: Accepted.

June 14, 1973

CBRE Tentative Proposal No. 140 by Mr. Stinson

Background: An amendment to the section on right to individual dignity.

Substitute the word "beliefs" for "ideas" in the section entitled "Right to Individual Dignity".

Disposition: Rejected 1-6.

SUBJECT MATTER INDEX

[CROSS REFERENCED TO PROPOSALS INDEX]

	Institu- ment No.	(Sec- tion No.)
—A—		
ALTERNATIVE PROPOSALS		
Attorney General.....	DP 99	
	DP 102	
ATTORNEY GENERAL		
Alternative proposal	DP 99	
	DP 102	
Generally	CP 4	(1-3)
	CP 6	(28, 29)
	CP 21	(26, 27)
	DP 96	
Powers, duties	CP 4	(8)
	CP 6	(29)
	CP 21	(27)
	DP 44	
	DP 96	
	DP 99	
	DP 102	
Qualifications	CP 4	(2)
	CP 6	(29)
	DP 44	
—B—		
BAIL (See CIVIL RIGHTS, CRIMES AND CRIMINAL PROCEDURE: Accrual)		
BILL OF RIGHTS (See CIVIL RIGHTS, particular subjects)		
—C—		
CIVIL RIGHTS		
Accused; prosecution, grand jury, trial, bail, humane treatment	CP 2	(12)
	DP 75	
	DP 76	
	DP 93	
	CP 25	(12, 17)
Arms, bear	CP 25	(20)
	CP 2	(20)
Assembly, petition	CP 25	(11)
	CP 2	(11)
Discrimination	CP 25	(3, 7, 12)
	CP 2	(3, 7)
Due process of law	CP 25	(2)
	CP 2	(2, 22)
Equal protection of law	CP 25	(3)
	CP 2	(3)
Expression	CP 25	(9)
	CP 2	(9)
Fair trials	CP 25	(15)
Felonies		
Grand jury indictment	CP 25	(13)
Preliminary examination	CP 25	(27)
Generally	CP 25	
	CP 2	
Habeas corpus	CP 25	(21)
	CP 2	(21)
Individual dignity	CP 25	(3)
Intrusion	CP 25	(6)
Judicial review	CP 25	(12)
Jury trials	CP 2	(8)
	CP 25	(8, 16)
News reporter, information sources; protection	DP 2	
Press	CP 25	(9)
Privacy, search, seizure, quarter	CP 25	(5)
	CP 2	(5)
Speech	CP 25	(9)
Trials	CP 25	(8, 15, 16)
	CP 2	(8)
Women		
Jury service	DP 13	

	Institu- ment No.	(Sec- tion No.)
CLERKS OF COURT (See COURTS)		
CORONERS		
Election, term, qualifications, duties	CP 6	(34)
	CP 21	(32)
Vacancies	CP 6	(35)
	CP 21	(33)
CORRECTIONAL AND PENAL INSTITUTIONS		
Convict labor, lease	CP 12	(1)
Pardon, commutation, reprieve, gubernatorial	CP 4	(5)
Pardons, Board of	CP 4	(5)
Parishes, reimbursement by state	CP 12	(1)
COURTS		
Accessibility	CP 2	(22)
	CP 25	(22)
Appeal, Courts of		
Generally	CP 6	(1, 8-13)
	CP 21	(1, 8-13)
Jurisdiction	CP 6	(10)
	CP 21	(10)
City Courts	CP 6	(19)
	CP 21	(15)
Contempt, power limitation	CP 6	(2)
	CP 21	(2)
District Courts (See also "Orleans Parish" herein)		
Chief Judges	CP 6	(17)
	CP 21	(17)
Generally	CP 6	(1, 14-17)
	CP 21	(1, 14-17)
Jurisdiction	CP 6	(16)
	CP 21	(16)
Family Courts		
Appeal, Courts of; jurisdiction	CP 6	(10)
	CP 21	(10)
Establishment, abolition, merger, retention	CP 6	(19)
	CP 21	(15)
Jurisdiction, legislative provision	CP 21	(18)
Judges (See also particular court herein)		
Writs, orders, process; issuance	CP 6	(2)
	CP 21	(2)
Judiciary Commission	CP 6	(27)
	CP 21	(25)
Juries and Jurors		
Grand Juries		
Criminal charges, proceedings	DP 62	
	DP 93	
Generally	CP 6	(39)
	CP 21	(37)
	DP 62	
	DP 93	
Indictment, proceedings	CP 2	(13, 14)
	CP 25	(13, 14)
Qualifications, selection	CP 6	(38)
	CP 21	(36)
Selection, women jurors	DP 13	
Jury trials		
Criminal cases	DP 75	
Justices of the Peace	CP 6	(21)
	CP 21	(19)
Juvenile Courts		
Appeal, Courts of; jurisdiction	CP 6	(10)
	CP 21	(10)
Establishment, abolition, merger, retention	CP 6	(19)
	CP 21	(15)
Generally	CP 6	(18, 19)
	CP 21	(15, 18)

	Instru- ment No.	(See Instru- ment No.)
Jurisdiction	CP 6	(18)
Original jurisdiction, exclusive	CP 21	(18)
Magistrate Court	DP 13	(15)
Marshal, City	CP 21	(15)
Mayors' Courts	CP 6	(21)
Municipal Courts	CP 21	(19)
Orleans Parish	CP 6	(19)
Officials: continuation, terms, duties, powers; reduction of terms, retirement benefits, compensation	CP 6	(37)
Parish Courts	CP 21	(35)
Supreme Court	DP 16	(19, 20)
Generally	CP 21	(15)
Jurisdiction, powers	CP 6	(1, 11, 23-27, 38)
Juror qualifications, exemptions	CP 21	(1-7, 11, 21-25, 36)
Traffic Courts	CP 6	(5)
CRIMES AND CRIMINAL PROCEDURE		
Accused rights; prosecution, grand jury, trial, bail, humane treatment	CP 2	(12-18)
Appeals	CP 25	(12-18, 27)
Felonies, prosecution	DP 62	(5)
Legislation, uniform application	DP 75	(5)
Pardons	DP 76	(13)
Board of	DP 93	(12)
Gubernatorial powers	CP 3	(5)
DP 96		(5)
DECLARATION OF RIGHTS (See CIVIL RIGHTS)		
DISTRICT ATTORNEYS AND ASSISTANT DISTRICT ATTORNEYS		
Generally	CP 6	(30, 31)
Grand jury prosecution	CP 21	(28, 29)
Supervision, attorney general	DP 62	(8)
Vacancies	CP 4	(35)
CP 21		(33)
EQUAL RIGHTS (See CIVIL RIGHTS)		
GOVERNOR		
Pardons, Board of	CP 4	(5)
Pardon; commutation, reprieve, remission	CP 4	(5)

	Instru- ment No.	(See Instru- ment No.)
JUDGES (See COURTS)		
JUDICIARY (See also ATTORNEY GEN- ERAL, COURTS)		
Generally	CP 6	(27)
Judiciary Commission	CP 21	(25)
Justice, Department of	CP 6	(28)
JURIES AND JURORS (See COURTS)		
JUSTICE, DEPARTMENT OF (See ATTOR- NEY GENERAL, JUDICIARY)		
LAWS		
Local, special laws	CP 3	(12)
LEGISLATURE AND LEGISLATORS		
Juror qualifications	DP 22	(18, 19)
Juvenile Courts	CP 21	(15, 18)
Limitations		
Local, special laws	CP 17	(12)
Local government	CP 3	(12)
Limitations; police power	DP 22	
LOCAL GOVERNMENT		
Powers		
Limitations	CP 17	(12)
NEWS MEDIA		
Free activity	CP 2	(9)
Reporters, information sources; protection	CP 25	(9)
DP 2		
PARDON, BOARD		
Continuance, provisional	CP 38	(21)
PENAL INSTITUTIONS (See CORREC- TIONAL AND PENAL INSTITUTIONS)		
POLITICAL RIGHTS (See CIVIL RIGHTS)		
SHERIFFS		
Election, term, duties	CP 6	(32)
CP 21		(30)
TRANSITIONAL PROVISIONS (See also particular subject)	CP 38	
WOMEN (See CIVIL RIGHTS)		

PROPOSALS INDEX

C.P. No. 2

(See below C.P. No. 25, substituted for C.P. No. 2)
Instruments, 50

C.P. No. 3, Section 12

Instruments, 53

C.P. No. 4, Section 5 (F) Pardon Power

(See also C.P. No. 38 Section 21 Pardon Board)

[Constitution Art. IV, §5(E) Pardon, Commutation, Reprieve and Remission; Board of Pardons]
Instruments, 54, 55, 56, 57
Transcripts, 399, 404-411, 412-419, 421, 800-802, 803-810, 828, 838-839, 840
Minutes, 1062-1063, 1064-1066, 1069-1070, 1072-1077, 1079, 1080-1082, 1092, 1094-1101, 1112-1116, 1118-1119, 1119-1123
Committee Research Documents, 1156, 1157

C.P. No. 4, Section 8

(See also C.P. No. 21 Section 26 and Section 27)

[Constitution Art. IV, §8 Attorney General; Powers and Duties]

Instruments, 54, 55, 56, 57
Transcripts, 422-423, 800, 802, 825-826
Minutes, 1063, 1066-1071, 1077-1078, 1079, 1080, 1082-1091, 1092, 1098, 1101-1112, 1116-1117, 1117-1118, 1123-1124
Committee Research Documents, 1157

C.P. No. 6

(See also C.P. No. 21, substituted for C.P. No. 6)
Instruments, 59-65

C.P. No. 12, Section 1

[Constitution Art. XII, §7 State Penal Institutions; Reimbursement of Parish Expenses]

Instruments, 66, 67, 68
Transcripts, 747-749, 799, 838-839, 841
Committee Research Documents, 1138-1139, 1140

C.P. No. 17, Section 12

[Constitution Art. VI, §9 Limitations on Local Governmental Subdivisions]

Instruments, 69, 70
Transcripts, 720-742, 816
Committee Research Documents, 1125, 1128-1129, 1131

C.P. No. 17, Section 12.1

[Constitution Art. VI, §10 Codification of Ordinances]

Instruments, 70
Transcripts, 742-743, 816

C.P. No. 21, Section 1

[Constitution Art. V, §1 Judicial Power]

Instruments, 71, 78, 90
Transcripts, 424, 786, 787
Minutes, 931-982, 1023, 1038, 1042, 1053, 1055, 1056, 1059
Committee Research Documents, 1158

C.P. No. 21, Section 2

[Constitution Art. V, §2 Habeas Corpus, Needful Writs, Orders and Process; Contempt]

Instruments, 71, 78, 90
Transcripts, 424-425, 786, 787
Minutes, 983, 1023, 1033, 1038, 1042, 1053, 1055, 1056, 1059
Committee Research Documents, 1158

C.P. No. 21, Section 3

[Constitution Art. V, §3 Supreme Court; Composition; Judgments; Terms]

Instruments, 71, 78, 90
Committee Research Documents, 1159

C.P. No. 21, Section 4

[Constitution Art. V, §4 Supreme Court; Districts]

Instruments, 71, 78-79, 90-91

Committee Research Documents, 1159

C.P. No. 21, Section 5

[Constitution Art. V, §5 Supreme Court; Jurisdiction; Rule-Making Power; Assignment of Judges]

Instruments, 71-72, 79, 91
Transcripts, 426-442, 786, 787-788
Minutes, 932-936, 944-945, 948, 951, 983, 984-990, 992-994, 1022, 1023, 1024-1025, 1033, 1034, 1037, 1038-1039, 1042, 1054, 1055, 1057, 1059
Committee Research Documents, 1156, 1159-1160

C.P. No. 21, Section 6

[Constitution Art. V, §6 Supreme Court; Chief Justice]

Instruments, 72, 79-80, 91-92
Committee Research Documents, 1160

C.P. No. 21, Section 7

[Constitution Art. V, §7 Supreme Court; Personnel]

Instruments, 72, 80, 92
Committee Research Documents, 1160

C.P. No. 21, Section 8

[Constitution Art. V, §8 Courts of Appeal; Circuits; Panels; Judgments; Terms]

Instruments, 72, 80, 92
Committee Research Documents, 1160

C.P. No. 21, Section 9

[Constitution Art. V, §9 Courts of Appeal; Circuits and Districts]

Instruments, 72, 80, 92
Committee Research Documents, 1160-1161, 1170

C.P. No. 21, Section 10

[Constitution Art. V, §10 Courts of Appeal; Jurisdiction]

Instruments, 72, 80-81, 92-93
Transcripts, 443-447, 786, 788
Minutes, 932-936, 951, 960, 991, 1025, 1034, 1039, 1046, 1056, 1057, 1060
Committee Research Documents, 1161

C.P. No. 21, Section 11

[Constitution Art. V, §11 Courts of Appeal; Certification]

Instruments, 72, 81, 93
Transcripts, 447, 786, 788
Minutes, 991, 1025, 1039, 1046, 1056, 1057, 1060
Committee Research Documents, 1161

C.P. No. 21, Section 12

[Constitution Art. V, §12 Courts of Appeal; Chief Judge]

Instruments, 72, 81, 93
Committee Research Documents, 1161-1162

C.P. No. 21, Section 13

[Constitution Art. V, §13 Courts of Appeal; Personnel]

Instruments, 72, 81, 93
Committee Research Documents, 1162

C.P. No. 21, Section 15

[Constitution Art. V, §15 Courts; Retention; Jurisdiction; Judicial District Changes; Terms]

Instruments, 73, 81-82, 93-94
Transcripts, 448, 449-470, 566, 786, 789, 838-839, 840
Minutes, 947-948, 957-959, 959-960, 960-982, 983-984, 996, 1020, 1022, 1023-1024, 1025-1026, 1027, 1031-1032, 1034, 1036, 1039-1040, 1049, 1053, 1056, 1058, 1060
Committee Research Documents, 1162-1163

C.P. No. 21, Section 16

[Constitution Art. V, §16 District Courts; Jurisdiction]
Instruments, 73, 82, 94
Transcripts, 470-475, 786, 789, 794-795
Minutes, 991, 994-995, 996, 1027, 1035, 1040, 1047-1048, 1050, 1058, 1060
Committee Research Documents, 1163, 1170-1171

C.P. No. 21, Section 17

[Constitution Art. V, §17 District Courts; Chief Judge]
Instruments, 73, 82, 94
Transcripts, 475-478, 786, 789
Minutes, 996, 1026, 1034, 1040, 1048, 1058, 1060
Committee Research Documents, 1163

C.P. No. 21, Section 18

[Constitution Art. V, §18 Juvenile and Family Courts; Jurisdiction]
Instruments, 73, 82, 94
Transcripts, 478-479, 553-566, 786, 789-790, 838-839, 841
Minutes, 951, 996, 1026, 1037-1038, 1040, 1049, 1058, 1060
Committee Research Documents, 1163

C.P. No. 21, Section 19

[Constitution Art. V, §20 Mayors' Courts; Justice of the Peace Courts]
Instruments, 73, 83-84, 94-95
Transcripts, 479, 786, 790, 838-839, 841, 1181-1183
Minutes, 981, 996, 1027, 1035
Committee Research Documents, 1164

C.P. No. 21, Section 21

[Constitution Art. V, §21 Judges; Decrease in Terms and Compensation Prohibited]
Instruments, 73, 83, 95
Transcripts, 480-482, 786, 790, 838-839, 841
Minutes, 982, 991, 996, 1004, 1035, 1040, 1054, 1058, 1060
Committee Research Documents, 1164

C.P. No. 21, Section 22

[Constitution Art. V, §22 Judges; Election; Vacancy]
Instruments, 73-74, 83-84, 95
Committee Research Documents, 1164-1165

C.P. No. 21, Section 23

[Constitution Art. V, §23 Judges; Retirement]
Instruments, 74, 84, 95-96
Committee Research Documents, 1165

C.P. No. 21, Section 24

[Constitution Art. V, §24 Judges; Qualifications]
Instruments, 75, 84, 96
Committee Research Documents, 1165, 1171

C.P. No. 21, Section 25

[Constitution Art. V, §25 Judiciary Commission]
Instruments, 75, 84-86, 96-97
Transcripts, 483-489, 551-552, 786, 791, 838-839, 841
Minutes, 1002-1003, 1027, 1035, 1040-1041, 1051-1052, 1061
Committee Research Documents, 1165-1166

C.P. No. 21, Section 26

(See Also C.P. No. 4 Section 8)
[Constitution Art. IV, §8 Attorney General; Powers and Duties]
Instruments, 75, 86, 97
Transcripts, 490-498
Minutes, 1027, 1041, 1052, 1054, 1061
Committee Research Documents, 1166-1167

C.P. No. 21, Section 27

[Constitution Art. IV, §8 Attorney General; Powers and Duties]
Instruments, 75-76, 86, 97-98

Transcripts, 496-499

Minutes, 996, 1027, 1035-1036, 1041, 1052, 1054, 1061-1062
Committee Research Documents, 1167

C.P. No. 21, Section 28

(See Also C.P. No. 21 Section 29)
[Constitution Art. V, §26 District Attorneys]
Instruments, 76, 86-87, 98
Transcripts, 499-510, 786, 791, 795, 838-839, 841
Minutes, 941, 951, 956, 958, 1019-1020, 1027, 1036, 1041, 1052, 1054
Committee Research Documents, 1167-1168, 1171

C.P. No. 21, Section 29

[Constitution Art. V, §26(C) District Attorneys; C. Prohibition]
Instruments, 76, 87, 98
Transcripts, 512-517, 786, 791, 795, 838-839, 841
Minutes, 1041, 1052
Committee Research Documents, 1168

C.P. No. 21, Section 30

[Constitution Art. V, §27 Sheriffs]
Instruments, 76, 87, 98-99
Transcripts, 517-524, 786, 792, 838-839, 841
Minutes, 951, 996, 996-997, 1003-1004, 1004-1019, 1027, 1041, 1052-1053
Committee Research Documents, 1168

C.P. No. 21, Section 32

[Constitution Art. V, §29 Coroners]
Instruments, 76, 87-88, 99
Transcripts, 525-530, 786, 792, 838-839, 841
Minutes, 996, 997-1002, 1020, 1027, 1042, 1053, 1055
Committee Research Documents, 1168-1169

C.P. No. 21, Section 33

[Constitution Art. V, §30 Vacancies]
Instruments, 76-77, 88, 99
Transcripts, 530, 786, 792, 838-839, 841, 1185-1186
Minutes, 1020, 1021, 1027, 1042, 1050, 1055
Committee Research Documents, 1169

C.P. No. 21, Section 35

[Constitution Art. V, §32 Orleans Parish Courts; Officials]
Instruments, 77, 88, 100
Transcripts, 450-464, 531-538, 786, 793, 838-839, 841
Minutes, 945-946, 955-956, 960, 961-982, 996, 1020, 1024, 1035, 1053
Committee Research Documents, 1169

C.P. No. 21, Section 36

[Constitution Art. V, §33 Jurors]
Instruments, 77, 88-89, 100
Transcripts, 538-541, 786, 793, 838-839, 841
Minutes, 1021, 1027, 1035, 1042
Committee Research Documents, 1170

C.P. No. 21, Section 37

[Constitution Art. V, §34 Grand Jury]
Instruments, 77, 89, 100
Transcripts, 541-551, 786, 793-794, 811-815, 838-839, 841
Minutes, 940-942, 943, 946-947, 949-950, 996, 1021, 1027, 1035, 1042
Committee Research Documents, 1143-1144, 1156, 1170

C.P. No. 25, Section 2

[Constitution Art. I, §2 Due Process of Law]
Instruments, 101, 106, 112
Transcripts, 567-583, 796
Minutes, 909, 1199, 1200-1201
Committee Research Documents, 1150, 1152, 1154, 1158, 1172

C.P. No. 25, Section 3

[Constitution Art. I, §3 Right to Individual Dignity]
 Instruments, 101, 106, 112
 Transcripts, 583-598, 796
 Minutes, 846-847, 859, 861, 889, 909-910, 925, 927, 928, 929, 930,
 1199, 1203
 Committee Research Documents, 1150, 1152, 1172

C.P. No. 25, Section 5

[Constitution Art. I, §5 Right to Privacy]
 Instruments, 101-102, 107, 113
 Transcripts, 589-604, 796-797
 Minutes, 844-845, 849-855, 865, 890, 891, 892, 904-907, 911, 912,
 944-917, 925, 930, 1199, 1201, 1202
 Committee Research Documents, 1145-1147, 1150, 1152, 1154,
 1155, 1173

C.P. No. 25, Section 6

[Constitution Art. I, §6 Freedom from Intrusion]
 Instruments, 102, 107, 113
 Transcripts, 604, 797
 Minutes, 911, 912, 930, 1199, 1201-1202
 Committee Research Documents, 1150, 1152, 1173

C.P. No. 25, Section 7

See also C.P. No. 25 Section 26
 Instruments, 102

C.P. No. 25, Section 9

[Constitution Art. I, §7 Freedom of Expression]
 Instruments, 102, 107, 113
 Transcripts, 605-609, 611-626, 797, 798
 Minutes, 847-848, 865, 889, 890, 892-896, 909, 910, 911, 928, 929,
 930
 Committee Research Documents, 1148-1149, 1150-1151, 1152,
 1153-1154, 1158, 1173-1174

C.P. No. 25, Section 11

[Constitution Art. I, §9 Right of Assembly and Petition]
 Instruments, 102, 107, 113
 Transcripts, 627-632, 797, 798
 Minutes, 848, 860, 890, 893, 911, 912, 918-919, 930, 1199
 Committee Research Documents, 1149-1150, 1151, 1152, 1154,
 1158, 1175

C.P. No. 25, Section 12

[Constitution Art. I, §13 Rights of the Accused, Art. I, §19 Right to
 Judicial Review]
 Instruments, 102, 107-108, 114, 116
 Transcripts, 632-648, 649-663, 797, 798
 Minutes, 860, 861, 862, 868-878, 889, 890, 896, 919-921, 930
 Committee Research Documents, 1144-1145, 1151, 1152, 1158,
 1174-1175

C.P. No. 25, Section 13

[Constitution Art. I, §15 Initiation of Prosecution]
 Instruments, 102, 108, 114
 Transcripts, 663-673, 798
 Minutes, 860, 862, 866-867, 878-880, 890, 896-897, 907-908, 910,
 911, 912, 921-923, 928, 929, 930
 Committee Research Documents, 1143-1144, 1147, 1151, 1152,
 1158, 1175

C.P. No. 25, Section 14

Instruments, 102-103
 Transcripts, 676-679
 Minutes, 900-904, 907-908, 930
 Committee Research Documents, 1151

C.P. No. 25, Section 15

[Constitution Art. I, §16 Right to a Fair Trial]
 Instruments, 103, 108, 115
 Transcripts, 676-683, 798
 Minutes, 860, 862, 889, 911, 913, 923-924, 930
 Committee Research Documents, 1151, 1152, 1158, 1175-1176

C.P. No. 25, Section 16

[Constitution Art. I, §17 Jury Trial in Criminal Cases]
 Instruments, 103, 108-109, 115
 Transcripts, 684-685, 687-689, 798
 Minutes, 860, 863, 867, 889, 890, 897-898, 911, 913, 924, 930
 Committee Research Documents, 1150, 1151, 1153, 1154, 1156,
 1176

C.P. No. 25, Section 17

[Constitution Art. I, §18 Right to Bail]
 Instruments, 103, 109, 115-116
 Transcripts, 685-687, 798
 Minutes, 860, 864, 886-888, 889, 911, 913, 930
 Committee Research Documents, 1142-1143, 1151, 1153, 1158,
 1176-1177

C.P. No. 25, Section 18

[Constitution Art. I, §20 Right to Humane Treatment]
 Instruments, 103, 109, 116
 Transcripts, 689-702, 798
 Minutes, 860, 862-864, 890, 898-900, 911, 913, 928, 929, 930
 Committee Research Documents, 1142, 1151, 1153, 1158, 1177

C.P. No. 25, Section 20

[Constitution Art. I, §11 Right to Keep and Bear Arms]
 Instruments, 103, 110, 113-114
 Transcripts, 703-710, 798
 Minutes, 855-859, 890, 891, 892, 911, 913-914, 925, 926-927, 928,
 929, 930, 1199, 1202
 Committee Research Documents, 1151, 1153, 1155, 1174

C.P. No. 25, Section 21

[Constitution Art. I, §21 Writ of Habeas Corpus]
 Instruments, 103, 110, 116
 Transcripts, 710
 Minutes, 860, 864, 888-889, 911, 914, 930
 Committee Research Documents, 1151, 1153, 1177

C.P. No. 25, Section 22

[Constitution Art. I, §22 Access to Courts]
 Instruments, 103-104, 110, 116
 Transcripts, 798, 1187-1191
 Minutes, 860, 900, 911, 914, 930, 1199, 1200
 Committee Research Documents, 1151, 1153, 1154, 1177

C.P. No. 25, Section 26

[Constitution Art. I, §12 Freedom from Discrimination]
 Instruments, 110, 114
 Transcripts, 711-714, 797, 798
 Minutes, 848, 859-860, 911, 912, 928, 929, 930-931, 1199, 1200
 Committee Research Documents, 1150, 1153, 1154, 1158, 1174

C.P. No. 25, Section 27

[Constitution Art. I, §14 Right to Preliminary Examination]
 Instruments, 110, 114
 Transcripts, 715-718, 797, 798
 Minutes, 889
 Committee Research Documents, 1153, 1175

C.P. No. 38, Section 5

[Constitution Art. XIV, §23 Continuation of Actions and Rights]
 Instruments, 117, 118
 Transcripts, 829-833, 842

C.P. No. 38, Section 11

[Constitution Art. XIV, §18 Existing Laws]

Instruments, 117, 118
Transcripts, 836-838, 842**C.P. No. 38, Section 12**

[Constitution Art. XIV, §26 Constitution Not Retroactive]

Instruments, 117, 119
Transcripts, 833-834, 842**C.P. No. 38, Section 21**

(See also C.P. No. 4, Section 5 (F))

[Constitution Art. XIV, §31 Pardon Board]

Instruments, 117, 119
Transcripts, 835, 842
Minutes, 1138**D.P. No. 2**Instruments, 120
Committee Research Documents, 1143**D.P. No. 13**

Instruments, 120

D.P. No. 22

[Constitution Art. III, §12 Prohibited Local and Special Laws]

Instruments, 121, 122-123, 124-125
Transcripts, 750-764, 786, 815, 817, 826**D.P. No. 32**

Instruments, 126, 127

D.P. No. 43

[Constitution Art. V, §19 Special Juvenile Procedures]

Instruments, 128, 129, 130

Transcripts, 744-746, 750, 764-786, 817-824, 826, 827, 838-839, 841
Minutes, 952-955, 1037**D.P. No. 44**

Instruments, 131

D.P. No. 46

(See also C.P. No. 21, Section 35)

[Constitution Art. V, §32 Orleans Parish Courts; Officials]

Instruments, 131

D.P. No. 62

Instruments, 132

D.P. No. 75

Instruments, 132

D.P. No. 76

Instruments, 133

D.P. No. 93

(See also C.P. No. 21, Section 37)

Instruments, 133

D.P. No. 96Instruments, 134
Minutes, 1123, 1124**D.P. No. 99**

Instruments, 134-135

D.P. No. 102Instruments, 136-137
Transcripts, 1192-1198

REF

DOCUMENTS OF THE LOUISIANA
CONSTITUTIONAL CONVENTION
OF 1973: Relative to the
Administration of
Criminal Justice

DATE	ISSUED TO

**LEGISLATIVE RESEARCH
LIBRARY**

House of Representatives

P.O. Box 44012

Baton Rouge, LA 70804



